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April 21, 2009

VIA HAND DELIVERY

D.C. Zoning Commission
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: Response to Letters Filed by the Department of Navy and the U.S. Marine Corps
and Regarding Case Nos. 03-12G/03-13G and 03-12H/03-13H

Dear Members of the Commission:

On behalf of Capper/Carrollsborg Venture, LLC, together with the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant"), we hereby respectfully request that the Zoning Commission not reopen the record to accept the letter from the Department of Navy, dated April 1, 2009, or the letter from the U.S. Marine Corps, dated April 3, 2009.

Neither the Navy nor the Marine Corps has presented any indication regarding why it did not present testimony or file its letter within the timeframes established in the Zoning Regulations or by the Zoning Commission prior to the close of the public hearing on March 19th. Three forms of notice of the public hearing were provided in accordance with Section 3015 of the Zoning Regulations. The Office of Zoning published notice of the public hearing in the D.C. Register on January 23, 2008 in accordance with Section 3015.2. Also, pursuant to Section

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EXHIBIT NO. 99
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3015.3, the Office of Zoning mailed a copy of the hearing notice to the GSA on behalf of the Navy and the Marine Corps. Moreover, the Applicant posted notice of the hearing on Square 882 on February 2, 2009 in accordance with Section 3015.2. Neither the Navy nor the Marine Corps has argued that it did not have proper notice of the hearing or did not have an opportunity to participate. Therefore, there is no basis for reopening the record.

In the event the Commission decides to waive Section 3024.1 of the Zoning Regulations and accept the letters, the Applicant requests that the Zoning Commission also accept the Applicant's response to the letters, which begins on the following page.

I. Applicant's Response to Letter from Navy

The letter from the Navy states that the Applicant's proposal to increase the height of the office building to 92 feet could potentially compromise the integrity of the Washington Navy Yard Historic District, including the Latrobe Gate, and could potentially increase the opportunity for compromises to the safety and security of personnel at the Washington Navy Yard. However, as discussed in more detail below, the Zoning Commission can find that the Applicant's requested 2 foot increase¹ in the height of the office building will have no or minimal impacts based upon prior approvals for the proposed office building, the District's and the National Capital Planning Commission's ("NCPC") approval of other similar projects, and the supplemental drawings attached hereto which demonstrate that the difference between the approved 90 foot building and the proposed 92 foot building is imperceptible.

As shown on the supplemental architectural sheets attached hereto as Exhibit A, the proposed office building is over 400 feet away from the Latrobe Gate entrance, and over 103 feet away from the Navy Yard wall. Moreover, the impact of the height of proposed office building on the Washington Navy Yard Historic District, including the Latrobe Gate, has already been reviewed and approved by both the District's State Historic Preservation Officer and NCPC as part of the first stage approval. As shown on the letter attached hereto as Exhibit B, pursuant to

¹ The Navy's letter states that the current zoning limits the office building's height to 50 feet and that the Zoning Commission has issued "conditional approval" that would allow a maximum building height of 90 feet. However, Condition No. 3 of Z.C. Order No. 03-12/03-13, which was issued and became final and effective on October 8, 2004, rezoned the southern portion of Square 882 from R-5-B to CR, which permits a height of 90 feet, and Condition No. 8(b) of that order authorizes the office building to be constructed to a height of 90 feet. The Applicant has recorded the required covenant in the land records vesting its rights under the rezoning and the PUD.

the requirements of 36 CFR Part 800, Protection of Historic Properties², the State Historic Preservation Officer found in February 2003 that "the redevelopment of Arthur Capper-Carrollsborg and its environs will have no adverse effect on historic resources." Significantly, the height of the office building was proposed at 110 feet when approved by the State Historic Preservation Officer. NCPC also reviewed the project for consistency with the Preservation and Historic Features Element of the Comprehensive Plan, and as indicated on page 8 of the report regarding the overall PUD, NCPC did not object to the height of the proposed 90 foot office building. (See Exhibit C). As the Commission is aware, a representative of the U.S. Department of Defense sits on NCPC, and no objections were raised of record at that time to the 90 foot height of the office building. In addition, the Navy has had a representative on the Capper Steering Committee since the project's inception and their representative has never expressed any reservations about the development plans for Square 882.

A number of projects have been approved in the District that juxtapose taller buildings adjacent to historic districts or historic buildings. For example, the eastern wing of the U.S. Department of Transportation building is directly adjacent to the western boundary of the Washington Navy Yard Historic District, and NCPC approved construction of that wing to a height of 110 feet. NCPC even noted that this building would be adjacent to the Washington

² 36 CFR Part 800, Protection of Historic Properties, provides, in part, that:

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. *The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.*

Navy Yard Historic District, but did not object to the building's height. (See Exhibit D). In addition, Section 1803.6 of the Southeast Federal Center Overlay District regulations, which were reviewed and approved by NCPC, authorizes the Zoning Commission to approve buildings with "a height of greater than 90 feet and no more than 110 feet" on sites adjacent to the Washington Navy Yard. In approving the overlay district, NCPC specifically found that the overlay would not negatively affect the Washington Navy Yard and that the overlay's height ranges of 90 to 110 feet adjacent to the navy Yard are not out of character and would provide an appropriate transition from the Capitol Gateway and U.S. Department of Transportation projects to the Navy Yard. (See Exhibit E, page 12). Indeed, both the Zoning Commission and NCPC have approved a 110 foot building adjacent to the Washington Navy Yard and within the Washington Navy Yard Historic District. (See Z.C. Order No. 08-01). The District's Historic Preservation Review Board has also approved numerous projects in the District that juxtapose taller new construction adjacent to low-scale historic buildings, and the Applicant has attached examples of such projects as Exhibit F.

Finally, NCPC reviewed the height of the proposed office building in Square 882 as part of its review of the overall PUD and, as indicated on pages 5, 8 and 13 of its report, found that:

- the new development will not adversely affect the Washington Navy Yard, Southeast Federal Center, or new Department of Transportation Headquarters, but would complement the existing and planned federal facilities in these locations by helping to create a street wall for M Street, by providing housing and related commercial uses within walking distance of federal workplaces, and by adding vitality to this area;
- the project is consistent with the Federal Elements of the Comprehensive Plan for the National Capital regarding federal employment; and
- the proposed first stage PUD and related map amendment from R-5-B to CR and the consolidated PUD would not adversely affect the identified federal interests and that the

project is consistent with the Federal Elements of the Comprehensive Plan for the National Capital, with the exception of a building not in Square 882.

See Exhibit C. Thus, the Zoning Commission can find that the proposed 2 foot increase in the office building's height will have no or minimal impact on the Navy Yard.

II. Applicant's Response to Letter from Marine Corps

The letter from the Marine Corps states that the Applicant's proposal to increase the height of the residential building on Square 882 from 45 feet to 60 feet and to increase the office building "height of 50 feet to a height of 92 feet" will compromise the Marine Corps' ability to secure its barracks facilities. However, the Marine Corps has not submitted any evidence to substantiate this claim, and as discussed in more detail below, the Zoning Commission can find that the height of the proposed office and residential buildings will not have any adverse impacts on the surrounding buildings, including the Marine Corps' barracks facilities.

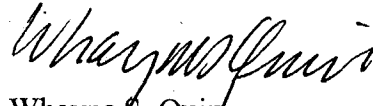
The Marine Corps' constructed its barracks facilities at a point when Square 882 was improved with a 9-story building and never raised the height of that building as a security concern. As shown on the aerial photograph submitted at the hearing (Exhibit G) and the Sanborn Plat included as part of the initial PUD application (Exhibit H), Square 882 was improved with a 9-story senior housing building when the Marine Corps constructed its barracks facilities. Thus, the height of the proposed 60 foot residential building is substantially less than what was previously constructed on the square. Moreover, the height of the proposed office building, which is proposed to be increased from 90 feet (as approved pursuant to Condition No. 8(b) of Z.C. Order No. 03-12/03-13) to 92 feet, is comparable to the height of the prior building on the site. Indeed, the NCPC report approving the construction of the Marine Corps' facility

specifically noted on page 4 that "[l]ocating the new BEQ across the street from the existing elderly housing on L Street strengthens the residential character of this portion of the street." (Exhibit I).

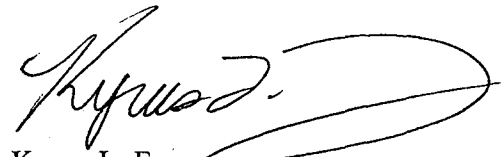
The height and design of the proposed residential and office buildings are also consistent with the urban character of the neighborhood, and incorporate a number of step-downs and set-backs to help mitigate any potential adverse impacts on the barracks facilities. The sections attached hereto as Exhibit J show that the 5th level of the residential building is set-back approximately 5 feet from the edge of the building and the 8th level of the office building includes an approximate 5 foot set-back on the north elevation help to reduce views of the barracks facilities. The proposed residential building is approximately 146 feet away from the face of the barracks facility which also helps to provide a large buffer between the buildings. In addition, portions of the residential building are set-back approximately 40 feet from the property line in order to create four separate courtyard areas. Moreover, due to the slope of the site, the residential building steps down from a height of 60 feet at 7th Street to a height of approximately 45 feet at 6th Street, and as shown on the supplemental sheets attached hereto as Exhibit A, the 6th Street elevation of the barracks facility is taller than the Applicant's proposed building. Therefore, the Zoning Commission can also find that the height of the proposed office and residential buildings will have no or minimal impact on the Marine Corps' barracks facilities.

Thank you for your consideration of this matter. The Applicant looks forward to the Zoning Commission's favorable consideration of this application.

Sincerely,



Whayne S. Quin



Kyrus L. Freeman

Attachments

cc: A.H. Smith, United States Marine Corps
John A. Sears III, Department of the Navy
Office of Advisory Neighborhood Commission 6D
Single Member District ANC 6D07 Commissioner Robert Siegel
Office of Advisory Neighborhood Commission 6B
Steve Cochran, D.C. Office of Planning

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