

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 03-12G/03-13G

As Secretary to the Commission, I hereby certify that on **AUG 10 2009** copies of this Z.C. Order No 03-12G/03-13G were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia

CASE NO. 0312/0313

EXHIBIT NO. 108

ATTESTED BY:

Sharon S. Schellin

Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12G/03-13G

Z.C. Case No. 03-12G/ 03-13G

**(Second Stage PUD Approval and Modification to the First Stage Approval for Property
Located in Squares 769 and 882) Capper/Carrollsborg Venture, LLC and DCHA
June 8, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 19, 2009, to consider an application from Capper Carrollsborg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively, the "Applicant") for second stage PUD approval and modifications to the first stage approval for property located in Squares 769 and 882 preliminarily approved by Order No. 03-12/03-13. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Background and Prior Capper Carrollsborg Approvals

1. On March 21, 2003, the Applicant filed applications seeking preliminary and consolidated approval of two PUDs for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land area.
2. In fulfillment of housing, economic and social goals on both the local and national level, the overall development will provide the one-for-one replacement and redevelopment of one of the most severely deteriorated public housing projects in the city. The project is made possible, in part, by a HOPE VI grant from the U.S. Department of Housing and Urban Development. The provision of the residential and office buildings included in this application will significantly advance the overall goals of the PUD by providing financial leverage and support for the construction of the replacement public housing.
3. The Commission consolidated the two PUD applications. Pursuant to Order No. 03-12/03-13, effective October 8, 2004, the Commission granted preliminary approval of the PUD for the following properties: Square 737, those portions of Lot 814 and Reservation 17A that lie south of the southern right-of-way line of I Street extended; Square 799, Lots

- 20, 27, 28, 29, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 803, 805, 807, 808, 809, 816, 818, 819, 825, 826, and 827; Square 800, Lots 25, 26, 27, and 28; Square 824, Lots 37, 38, and 39; Square N853, Lot 809; Square 880, Lot 24; Square W881, that part of Lot 800 within 132 feet of 5th Street; Square 882, Lot 76; and all of Squares 739, 767, 768, 769, 797, 798, 825, and S825.
4. The Commission also granted consolidated approval of the PUD for the following properties: Square 824, Lots 37, 38, and 39; Square S825, Lots 31, 32, and 33; Square 880, Lot 24; and all of Squares 797, 798, and 825. The Commission granted a PUD-related map amendment to rezone the following properties from R-5-B to CR upon completion of the second-stage approval of the PUD: Square 769, that portion lying more than 145 feet from the northern right-of-way line of M Street (including a portion of Reservation 17D); Square 882, that portion lying south of the midpoint of the Square; and all of Squares 767 and 768 (including Reservations 17B and C).
 5. Pursuant to Order No. 03-12B/03-13B, the Commission approved a minor modification to allow for construction of the multi-family building in Square 825S to a height of 48 feet, 3¾ inches.
 6. On April 29, 2005, the Applicant filed the first in a series of applications seeking second-stage approval for portions of the project preliminarily approved pursuant to Order No. 03-12/03-13. That application also sought approval to modify portions of the parking requirements for the consolidated PUD approval. The application included Lots 44, 45, 46, 47, 48, 49, 50 in Square 799; Lots 20, 25, 26, 27, 28, 816, 818, 819, and 820 in Square 800; and Square 881W, and is identified as Case No. 03-12A/03-13A. That application was approved pursuant to Order No. 03-12A/03-13A.
 7. On April 21, 2006, Square 769, LLC in conjunction with DCHA, filed the second in a series of applications seeking second-stage approval for portions of the project preliminarily approved pursuant to Order No. 03-12/03-13. That application included parts of Lots 18, 20 and 21 in Square 769 and is identified as Case No. 03-12C/03-13C. That application was approved pursuant to Order No. 03-12C/03-13C. The Commission also approved a modification to increase the building's measured building height from 110 feet to 130 feet, and to increase the gross floor area of the building from 207,785 square feet to 234,182 square feet. (Order No. 03-12F/03-13F.)
 8. The Commission approved a minor modification to change the designation of the multi-family building in Square 825S such that it is not required to be exclusively senior housing. (Order No. 03-12D/03-13D.)
 9. Pursuant to Order No. 03-12E/03-13E, the Commission approved a minor modification to allow for Squares 767, 768, and 882 to be used as temporary surface parking lot accessory to the new Nationals ballpark for a period of no more than five years.

The Current Application, Parties, and Hearing

10. This application is the third in a series of applications seeking second-stage approval for portions of the project preliminarily approved pursuant to Order No. 03-12/03-13.
11. As part of this application, the Applicant proposes to construct two multi-family dwelling buildings and an office building. Specifically, the Applicant proposes to construct: (a) a 110-foot high multi-family dwelling building on the northern portion of Square 769; (b) a 60-foot high multi-family dwelling building on the northern portion of Square 882; and (c) a 92-foot high office building on the southern portion of Square 882. This application collectively includes approximately 370,588 square feet of gross floor area devoted to residential uses, approximately 499,780 square feet of gross floor area devoted to office use, a minimum of 19,090 square feet of gross floor area devoted to retail use, and 608 off-street parking spaces. The portion of Square 769 included in this application and the entirety of Square 882 are collectively referred to in this order as the "PUD Site."
12. On July 3, 2008, the Applicant filed an application seeking second stage approval for the buildings in Squares 769 and 882, modifications to certain provisions of the prior PUD orders not affecting Squares 769 and 882, an extension of time to file the building permit for the community center building in Square 881W, and a extension of the overall PUD approval.
13. At its public meeting on September 8, 2008, the Commission instructed the Applicant to file a separate application for each of the requested actions being sought by the Applicant.
14. On September 18, 2008, the Applicant submitted separate application materials for: (1) second stage review and approval of a PUD and modifications for property located in Squares 769 and 882 (Case No. 03-12G/03-13G); (2) approval to modify conditions of the first-stage approval related to remaining portions of the overall PUD to be developed in Squares 739, 767 and 768, and conditions relating to the number of parking spaces required for the multifamily building in Square 825S (Case No. 03-12H/03-13H); and (3) an extension of time for the validity of the first-stage PUD approval, and additional time to file a building permit application and commence construction of the community center in Square 881W (Case No. 03-12I/03-13I).
15. At is public meeting on October 20, 2008, the Commission voted to schedule a public hearing on the applications.
16. On December 5, 2008, the Applicants submitted a Prehearing Statement, along with revised Architectural Plans and Elevations. (Exhibits 19 and 20.) The Prehearing Statement included clarification of the second stage components and requested modifications, clarification of the relief requested from the Zoning Regulations, and additional materials required pursuant to § 3013 of the Zoning Regulations.

17. After proper notice, the Commission held a combined public hearing on the applications on March 19, 2009. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located, and ANC 6B, the adjacent ANC.
18. Five principal witnesses testified on behalf of the Applicant at the March 19, 2009 public hearing, including David Cortiella, on behalf of the DCHA; Dan McCabe, on behalf of Capper Carrollsburg Venture, LLC; Steven Gang, on behalf of The Lessard Group, as an expert in architecture; Shalom Baranes, on behalf of Shalom Baranes Associates, as an expert in architecture; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Gang, Mr. Baranes, and Mr. Sher were qualified by the Commission as experts in their respective fields.
19. The Office of Planning ("OP") testified at the public hearing in support of the project.
20. ANC 6D submitted a letter and resolution (Exhibit 7 in Case No. 03-12I/03-13I) indicating that at a duly noticed public meeting on March 9, 2009, at which a quorum was present, ANC 6D voted 5-1-1 to support the application to extend the first stage approval and phasing of the overall PUD (Case No. 03-12I/03-13I), for the second stage approval for property in Squares 769 and 882 (Case No. 03-12G/03-13G), for modifications to the remaining portions of the overall PUD's density (Case No. 03-12H/03-13H), but only on condition that the Commission require the Applicant to file a building permit application for the community center building in Square 881W by January 1, 2010, to commence construction of the community center by January 1, 2011, complete construction of the community center by July 1, 2012, and commit to provide 50 parking spaces at 600 L Street, S.E. for certified health care workers who care for seniors in 900 5th Street, S.E. and 410 M Street, S.E. until construction commences on 600 L Street, S.E. The ANC 6D letter did not indicate that it authorized anyone to present the ANC report at the public hearing, as required pursuant to 11 DCMR § 31012.5(h).
21. ANC 6B submitted a letter (Exhibit 5 in Case No. 03-12I/03-13I) indicating that at its regularly called and properly noticed meeting on February 10, 2009, with a quorum present, ANC 6B voted unanimously (8-0) to oppose modifications, but to support the time extension for the PUD to 2013. ANC 6B indicated that it opposed the modifications because it was concerned that the amount of open, green space would be reduced; it opposed the increase in the height of the office building; and it opposed further delay in the construction of the community center building in Square 881W. The ANC 6B letter did not indicate that it authorized anyone to present the ANC report at the public hearing, as required pursuant to 11 DCMR § 31012.5(h).

22. Kenan Jarboe, an ANC 6B Commissioner, testified at the public hearing in his individual capacity, and indicated that the ANC opposed the applications, but would remove its opposition if: (1) the height of the office building in Square 882 be maintained at 90 feet and measured from the M Street side of the building; (2) the apartment building in Square 882 be reconfigured to include as much open space as would have been on that site if developed as townhomes; and (3) the community center be built at the same time as the residential units. (Exhibit 32.)
23. Robert Siegel, an ANC 6D Commissioner, testified at the public hearing in his individual capacity, and indicated that he had no objections to Case No. 03-12G/03-13G seeking second stage review and approval of modifications for property located in Squares 769 and 882. (Exhibit 33.) Mr. Siegel opposed the parking reductions requested in Case No. 03-12H/03-13H because he indicated there is a parking problem in the area. Mr. Siegel also opposed the requested extension of time to start construction of the community center building, but he supported the requested extension for the remaining portions of the development.
24. Ron McBee, an ANC 6D Commissioner, testified at the public hearing in his individual capacity, and indicted that he supported the requested increase in office building height and other modifications proposed under applications 03-12G/03-13G and 03-12H/03-13H, with the exception of the request to reduce the amount of parking, and that he opposed the requested extension of time to start construction of the community center building. (Exhibit 34.)
25. David Meadows, an individual residing at 305 K Street, S.E., testified that he did not oppose the proposal to increase the office building's height in Square 882, or to redesign the residential building in Square 882 and to increase its height, as requested pursuant to Case No. 03-12G/03-13G. (Exhibit 35.) Mr. Meadows indicated that he opposed the modifications requested pursuant to Case No. 03-12H/03-13H, and he took no position concerning Case No. 03-12I/03-13I.
26. Ms. Deborah Frazier and Ms. Olena Oliphant opposed the design of the residential building in Square 882, and also testified that DCHA has not implemented the job training and counseling portions of the Community Supportive Services Program required as part of the first stage approval.
27. On April 6, 2009, the Applicant submitted a Post-hearing Statement (Exhibits 83-90). The submission included: (a) information from DCHA indicating the actions taken to date to implement the Community Supportive Services Program for former residents of Capper Carrollsburg, including employment preparation and placement, job skills training programs, high school or equivalent education programs, childcare, and counseling programs; (b) a matrix indicating the overall number and location of market rate, workforce, Section 8 and public housing units; (c) supplemental Plan sheets and a

memorandum prepared by the architect indicating the changes made to the plans in response to the comments raised by the Zoning Commission; (d) a memorandum to the District Department of Transportation ("DDOT") indicating that the Applicant has addressed DDOT's report dated March 16, 2009; (e) information regarding programming for the senior building located in Square 880; (f) a letter from the property manager of the senior building located in Square 880 and the multi-family building in Square 825S confirming that DCHA has provided a sufficient number of parking passes for the health care professionals that work at these buildings; and (g) sheets showing the materials boards for the residential building in the northern portion of Square 769 and the residential and office buildings in Square 882.

28. At its public meeting on April 27, 2009, the Commission reopened the record to accept letters from the United States Marine Corps, Marine Barracks and the Department of the Navy, Headquarters United States Marine Corps, as well as the Applicant's response to the letters. The Navy and Marine Barracks letters expressed concern about the proposed increase in height of buildings on the northern portion of Square 882, which is located across the street from barracks facilities of the Marine Corps. The Applicant objected to reopening the record, but also responded to the letters, stating that the Marines' claim that the building heights would compromise security was unsubstantiated and that the proposed building heights would have "no or minimal impacts" given prior approvals of the office building, approval by the District and National Capital Planning Commission of similar projects, and drawings showing that "the difference between the approved 90 foot building height and the proposed 92 foot building is imperceptible."
29. At its public meeting on April 27, 2009, the Zoning Commission took proposed action to approve the application and plans that were submitted to the record.
30. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated June 4, 2009, advised the Commission that the proposed PUD would not be inconsistent with the Comprehensive Plan for the National Capital or adversely affect any other identified federal interest, subject to the Commission including in its final action the conditions set forth in letters dated June 1, 2009 from the Department of the Navy and the U.S. Marine Corps and a letter dated June 4, 2009 from the Applicant.
31. The Commission took final action to approve the application, as modified, on June 8, 2009.

The PUD Project

Site and Area Description

32. The property that is the subject of this application consists of the northern portion of Square 769 and the entirety of Square 882. Square 769 is bounded by L Street to the north, 3rd Street to the east, M Street to the south, and 2nd Street to the west. Low-rise residential units approved as part of the overall PUD are in the process of being constructed in Squares 799 and 800, which are located to the northeast of Square 769. A portion of the Canal Blocks Park is located to the immediate west of Square 769, and the recently approved 250 M Street office will be constructed in the southern portion of the square.
33. Square 882 is bounded by L Street, S.E. on the north, 7th Street, S.E. on the east, M Street, S.E. on the south, and U.S. Reservation 19-A and the Van Ness School on the west. The U.S. Marine Corps Barracks and playing fields are located across L Street to the immediate north of the property. The "Yards at Southwest Federal Center" PUD and the Washington Navy Yard are located across M Street to the immediate south of Square 882.
34. The portion of Square 769 included in this application has a land area of approximately 21,154 square feet and is zoned CR. Square 882 has a land area of 158,214 square feet. The portion lying north of the midpoint of Square 882 is zoned R-5-B and the portion lying south of the midpoint of the Square is zoned CR. The PUD Site has a combined land area of approximately 179,368 square feet.
35. The overall area surrounding the PUD Site is characterized by a mixture of uses, including new residential, office, commercial and retail uses. The newly constructed Washington Nationals baseball stadium is located to the southwest of the PUD Site. In addition, the Navy Yard Metrorail Station has entrances at the southeast corner of M and Half Streets, and the northwest corner of M Street and New Jersey Avenue.

Square 769 Residential Building

36. The Applicant is seeking approval to construct a 110-foot, multi-family building on the northern portion of Square 769. The building will include approximately 177,330 square feet of residential gross floor area and approximately 4,090 square feet of ground-floor retail area. The retail uses are located adjacent to 2nd Street and facing the Canal Blocks Park, which will help to reinforce a pedestrian friendly streetscape. A total of 152 self-park parking spaces will be provided in a two level parking garage, and loading facilities will be provided from a private drive located on the south side of the building.
37. The building will include 171 residential units, with 34 of the units (20%) dedicated to households earning less than 60% of the Area Median Income, adjusted for family size.

The building will also include 7,600 square feet of residential amenity space, including interior space and a courtyard, which will be fully accessible to all residents of the building.

38. The Applicant is also seeking modifications regarding the density and number of parking spaces for the residential building in Square 769. Specifically, the Applicant seeks to increase the number of units in this building from 107 to 171 units and to increase the overall gross floor area from 169,906 square feet to 181,420 square feet for this building. The Applicant also proposes to increase the number of parking spaces from 107 to 152 spaces in this building.

Square 882 Residential Building

39. The Applicant proposes to construct a multi-family building on the northern portion of Square 882. This building will include approximately 189,168 square feet of residential gross floor area and will be constructed to a maximum height of 60 feet. The building will include 189 residential units, with 38 units (20%) dedicated to households earning less than 60% of the Area Median Income, adjusted for family size. The building will also include approximately 5,764 square feet of residential amenity space, including four courtyards and an indoor pool and exercise room. The building amenities will be available to all residents of the building. In addition, 172 parking spaces will be located in a below-grade parking garage, and loading facilities will be provided in a private drive located on the south side of the building.
40. The Applicant is also seeking modifications regarding the design of the residential building in Square 882. Specifically, the Applicant seeks to change the development from low-rise townhomes to a mid-rise apartment house. The Applicant also proposes to increase the number of units in this building from 75 to 189 units, to increase the gross floor area from 131,288 square feet to 189,168 square feet, and to increase the number of parking spaces from 49 to 172 spaces in this building.

Square 882 Office Building

41. The third building included in this application is the proposed office building on the southern portion of Square 882. The office building will have an overall gross floor area of 499,780 square feet and a building height of 92 feet. The building will include a minimum of 15,000 square feet of retail space and 284 below-grade parking spaces.
42. The Applicant is also seeking modifications regarding the design of the building and the number of parking spaces for the office building in Square 882. The Applicant proposes to increase the building's gross floor area from 496,000 square feet to 499,780 square feet. In addition, the Applicant proposes to increase the building's height by two feet (from 90 feet to 92 feet) in order to achieve the required minimum retail ceiling height of 14 feet approved in the first stage PUD without losing one floor of the office space. The

Applicant is also seeking a modification to reduce the amount of required parking for the office building from 400 to 284 off-street parking spaces, which meets the requirement of § 2101 of the Zoning Regulations.

Matter-of-Right Development Under the Existing R-5-B and CR Zoning

43. Pursuant to the first stage approval, a portion of the PUD Site in Square 882 is zoned R-5-B and a portion in Squares 769 and 882 is zoned CR. The Applicant is not seeking to change the zoning of the PUD Site in connection with this Application.
44. The R-5 Districts are general residence districts designed to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts. The R-5 Districts also permit the construction of institutional and semi-public buildings that would be compatible with adjoining residential uses. (11 DCMR § 350.1). The R-5-B District is designed to permit moderate height and density developments. (11 DCMR § 350.1.)
45. Pursuant to § 350.4(c) of the Zoning Regulations, multiple dwelling units are permitted in R-5 Districts as a matter-of-right. Pursuant to § 400.1 of the Zoning Regulations, the height of buildings in the R-5-B District shall not exceed 50 feet, and there is no limitation on the number of stories. If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building, such roof structures are permitted above the building height for an additional eighteen feet, six inches if set back from the edge of the roof by 1:1 ratio. (11 DCMR § 400.7.) The maximum permitted floor area ratio ("FAR") in an R-5-B District for all structures is 1.8, and the maximum percentage of lot occupancy is 60%. (11 DCMR §§ 402.4, 403.2.)
46. Buildings in the R-5-B District are required to provide a rear yard with a minimum depth of four inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet. (11 DCMR § 404.1.) Pursuant to § 405.6 of the Zoning Regulations, side yards are not required in R-5-B Districts. Further, pursuant to § 406.1 of the Zoning Regulations, where a closed court is provided in a R-5-B District, the court shall have a minimum width of four inches per foot of height of court, but not less than 15 feet, and a minimum area equal to twice the square of the required width of court dimension based on the height of court, but not less than 350 square feet.
47. An apartment house or multiple dwelling in the R-5-B District must provide one parking space for each two dwelling units. (11 DCMR § 2101.1.) The off-street loading requirement for an apartment house or multiple dwelling with 50 or more dwelling units in all zone districts is one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (11 DCMR § 2201.)

48. The CR zoning classification permits office, residential, hotel, retail/service, and certain other uses. (11 DCMR § 601.1.) The maximum permitted matter-of-right height in the CR District is 90 feet. (11 DCMR § 630.1.) In the CR District, the maximum density permitted is 6.0 FAR, all of which may be residential, but of which not more than 3.0 may be used for other than residential purposes. (11 DCMR § 631.1.) This limitation does not apply to any portion of the building which is totally below-grade, and therefore not included in gross floor area.
49. Pursuant to § 633.1 of the Zoning Regulations, new developments in the CR District are required to provide an area on-site that is equivalent to 10% of the total lot area as public space at ground level. The area devoted to public spaces must: (a) be located immediately adjacent to the main entrance to the principal building or structure on the lot; (b) serve as a transitional space between the street or pedestrian right-of-way and the building or structure; (c) be open to the sky or have a minimum vertical clearance of one (1) story or ten feet (10 ft.); (d) be suitably lighted and landscaped for public use, and may be utilized for temporary commercial displays; and (e) be open and available to the general public on a continuous basis. (11 DCMR §§ 633.2 to 633.5). The on-site area devoted to public space is not charged against the gross floor area of the building. (11 DCMR § 633.6.)
50. There is no lot occupancy limitation for office or retail uses in the CR District. (11 DCMR §§ 634.2 and 634.3.) In addition, pursuant to § 636.1 of the Zoning Regulations, a rear yard is not required for non-residential buildings or structures in the CR District. No side yard is required for any structure located in the CR District. (11 DCMR § 637.1.) However, if a side yard is provided, its minimum width must be three inches per foot of building height, but not less than eight feet. (11 DCMR § 637.2.)
51. Where an open court is provided in the CR District for a non-residential building, the court must have a minimum width of two and one-half inches per foot of height of court, but not less than six feet. (11 DCMR § 638.1(b).) Where a closed court is provided in the CR District for a non-residential building, the court must have a minimum width of two and one-half inches per foot of height of court, but not less than 12 feet, and an area of twice the square of the required width of court dimension. (11 DCMR § 638.2(b).)
52. An office use in the CR District in excess of 2,000 square feet must provide one parking space for each additional 1,800 square feet of gross floor area, a retail establishment in excess of 3,000 square feet must provide one parking space for each additional 750 square feet of gross floor area, and an apartment house must provide one parking space for each three dwelling units. (11 DCMR § 2101.1.) The off-street loading requirement for an office building in the CR District with more than 200,000 square feet of gross floor area is three loading berths at 30 feet deep, three loading platforms at 100 square feet, and one service/delivery loading space at 20 feet deep. (11 DCMR § 2201.)

Flexibility From Zoning Regulations

53. The Applicants requested the following areas of flexibility from the Zoning Regulations:

- a. *Flexibility from Roof Structure Requirements.* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because the roof structure located on the residential building in Square 769 cannot be set back from all exterior walls a distance equal to its height above the roof (§§ 411.2 and 770.6(b)) due to the U-shape of the roof and the width of the residential wings, the carve-outs at portions of the building to extend the courtyard, and the height of the roof structures. The proposed roof structure is a necessary feature of the building and meets the setback requirement for all street frontages. Relief is only required for the portions of the roof structure near the court yard walls. In addition, the Applicant is providing the greatest setbacks possible given the size and shape of the roof and the internal configuration of the proposed building. The requested roof structure design will not adversely impact the light and air of adjacent buildings. Therefore, the Commission finds that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.
- b. *Flexibility from the Loading Requirements.* Pursuant to § 2201.1 of the Zoning Regulations, an apartment house or multiple dwelling with 50 or more dwelling units in any zone district is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. As shown on the site plan and development data table for the residential building in Square 769, the building will include one 38-foot-deep loading berth and one 200-square-foot loading platform. The building thus requires relief from the loading berth size requirement and the requirement to provide a service/delivery loading space.

The Applicant designed the loading facilities to meet the needs of the residents, given the number of units, the unit sizes, the anticipated infrequency of loading activity for the residential uses, and the typical size of trucks used for moving into and out of residential developments. However, the Applicant cannot provide more loading because doing so would have an adverse impact on the design and layout of the first floor of the building, such as the location of the elevator core, and would decrease the amount of proposed retail space. Moreover, as indicated in the analysis prepared by the Applicant's traffic expert, the amount and location of loading facilities will be appropriate for the residential uses and will not have an adverse impact on public space or pedestrian activity. Thus, the Commission finds that approving the project with the proposed loading facilities will not have an adverse impact on the project or the neighborhood.

- c. *Flexibility from the Public Space at Ground Level Requirements.* The residential building to be constructed in the northern portion of Square 769 will be located in the CR Zone District. Pursuant to § 633.1 of the Zoning Regulations, an area equivalent to 10% of the total lot area must be provided as public space at the ground level for all new developments in the CR zone. The residential portion of Square 769 has a lot area of approximately 21,154 square feet, and is thus required to provide 2,115 square feet of public space at the ground level. However, the Applicant requests flexibility to waive this requirement since, due to the building's footprint and proposed ground-floor retail uses, the building is not proposed to include any public space at the ground level which meets the requirements of § 633. The Commission finds that flexibility from § 663.1 is warranted since the building will include approximately 4,090 square feet of ground floor retail uses that will be available to the public and help to activate the streetscape along 2nd and M Streets. The building will also include 2,370 square feet of roof terrace space provided at the second floor level in the north-south facing courtyard. In addition, the building site is located to the immediate west of the Canal Blocks Park, which will provide active and passive recreation space for the public.
- d. *Lot Occupancy.* The Applicant is seeking flexibility from the lot occupancy requirement for the residential building in Square 882. Pursuant to § 403.2 of the Zoning Regulations, the proposed building is permitted to have a maximum lot occupancy of 60%. However, the building has a proposed lot occupancy of 68%. The proposed building cannot meet the lot occupancy limitation due to its design as an apartment building, as opposed to townhomes, and the proposed floor plates. Square 882 has a steep change in grade from east to west, which impacts the footprint of the proposed building. The Commission finds that flexibility from the lot occupancy requirement is appropriate since the building will include four open courtyards at or near grade, which will help to provide adequate light, air and ventilation for the building occupants, consistent with the underlying purposes of the lot occupancy requirement. Moreover, the residential lot occupancy for the overall PUD will not exceed 54%, which is consistent with Condition No. 9 of the First Stage Order.
- e. *Phasing of the Office Building in Square 882.* The Applicant is seeking flexibility to construct the office building in two phases in order to respond to market conditions. Given that market conditions may require the office building to be constructed in two phases, a temporary portion of the shared facade could be exposed in the interim between phases. In order to address the appearance of this facade, the Applicant has designed a stucco finish infill wall rendered in a color that will match the adjacent brick. Score patterns in the stucco will reflect the overall fenestration of the building. A "green screen" trellis, utilized in other permanent locations on the project, will be attached to the wall to provide

an armature for vegetation to climb from planters located at the base of the screen. The design of the temporary wall condition will be similar for either phase of the building. Although it is only temporary in nature, the Applicant believes the design of this wall will be an attractive visual composition which will contribute positively to the greenscape of the project and the neighborhood. The Commission finds that phasing of the office building in Square 882 will not have any adverse impacts.

- f. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
- (a) To be able to increase or decrease the number of units by five percent within the maximum gross floor area specified for each residential building.
 - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
 - (c) To vary the number, location and arrangement of parking spaces, provided that the total number of parking spaces is not reduced below the minimum level required.
 - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Construction Code or that are otherwise necessary to obtain a final building permit.
 - (e) For the office building in Square 882, in the event the building has a single tenant, or the loading facilities can be shared among tenants, to provide a minimum of three loading berths at 30 feet deep, three loading platforms at 100 square feet, and one service/delivery space at 20 feet deep, provided that the total amount of loading facilities is not reduced below the minimum level required.
 - (f) For the office building in Square 882, in the event the building has a single tenant, or if the owner determines that a single garage entrance can be shared among tenants, to be able to remove the parking garage entrance located on 7th Street.

Office of Planning Report

54. By report dated August 29, 2008, OP recommended that the Commission schedule a public hearing on the applications. (Exhibit 12).
55. By report dated October 10, 2008, OP indicated that the Applicant submitted the information requested by the Commission at the September 8, 2008 public meeting, and that after reviewing the additional materials, OP continued to recommend that the Commission schedule a public hearing on the applications. (Exhibit 17.)
56. By report dated March 9, 2009, OP recommended approval of the application. (Exhibit 25.) OP reviewed in detail each portion of the applications and recommended that the Commission approve the residential buildings in Squares 769 and 882 and the office building in Square 882 in accordance with the proposed modifications requested by the Applicant. OP also requested that the Applicant: (a) submit information regarding the relationship between the requested parking reductions to the supply of on-street parking; (b) clarify the parking reductions or increases being requested for individual buildings and the overall net reduction requested; (c) provide a LEED checklist for both residential buildings; (d) provide a specific range for the number of residential units for which flexibility is being requested in Squares 882 and 769; (e) provide a trash storage and hauling plan that is acceptable to DDOT for the residential building in Square 769; and (f) present revised façade drawings for all sides of the residential building in Square 769.
57. The Commission finds that the Applicant has met these conditions. The Applicant testified at the hearing and submitted traffic reports and exhibits which demonstrate the relationship between the requested parking reductions to the supply of on-street parking, and clarified the parking reductions or increases being requested for individual buildings and the overall net reduction requested. The Applicant also submitted at that hearing a LEED checklist for both residential buildings, and confirmed that it is seeking flexibility to increase or decrease the number of units by five percent within the maximum gross floor area specified for the residential buildings in Squares 769 and 882. The Applicant also submitted at the hearing a trash storage and hauling plan for the residential building in Square 769 and revised elevations for each side of the residential building in Square 769.

DDOT Report

58. By report dated March 16, 2009, DDOT indicated that it supported the requested parking reductions based upon the site's proximity to rail and bus transit service and that the reduction is consistent with DDOT's parking management goals. (Exhibit 8 of Case No. 03-12I/-3-13I.) DDOT also requested that the Applicant submit information confirming that the delivery and trash service traffic operations would not negatively impact pedestrian, bike and vehicle operations when entering and exiting the alley. DDOT also recommend that the Applicant restrict freight delivery and trash removal to designated

hours, and that the Applicant provide personnel to oversee freight, delivery, trash, and building related operations.

59. As part of its Post-hearing Statement submitted on April 6, 2009 (Exhibit 87), the Applicant submitted a memo in response to DDOT's report indicating that it agreed to restrict freight delivery and trash removal to between 7am and 9pm (as set forth in § 2806.2 of the D.C. Noise Regulations) for the residential building in the northern portion of Square 769, the residential building in the northern portion of Square 882, and the office building in the southern portion of Square 882. The Applicant also indicated that it will work with DDOT in the future to determine whether these hours need to be adjusted once the buildings in Squares 769 and 882 are constructed and the Applicant obtained input/data from the occupants. In addition, the Applicant agreed that the residential building in the northern portion of Square 769 and both buildings in Square 882 will each have a property management company or other person on-site to coordinate freight, delivery, trash and building related operations, and that the contact information for these people will be provided for building occupants. The Commission finds that the Applicant has adequately responded to DDOT.

Contested Issues

60. The primary concerns raised by ANC 6D, ANC 6B, and the persons in opposition concerning the current application were: (a) the increase in the height of the office building in Square 882; (b) the revised design of the residential building in Square 882, including its height, amount of open space and multi-family, as opposed to townhouse, design; (c) the requested parking reduction; and (d) implementation of the Community Supportive Services Program required as part of the first stage approval.
61. The Commission makes the following findings:
- a. *Increased Height of Office Building.* The Commission finds that the requested two-foot increase in the height of the office building in Square 882 will not have an adverse impact on views in the area. As discussed by the Applicant, and as detailed in the March 9, 2009 OP report, the office building is legally permitted to, and has always been shown to, determine and measure its zoning height from 7th Street, on which the eastern wing will have frontage. Measured from 7th Street, the proposed building will measure 92 feet. The Commission's original decision reduced the height of the proposed office building from the initially proposed height of 110 feet, as permitted in the CR District, to 90 feet. At that time, the Applicant was not able to analyze the reduction's impact on floor-to-floor heights. The Applicant has presented evidence indicating that the two-foot height increase is intended to accommodate the required 14-foot-clear ground floor retail spaces without reducing one floor of the office space. The Commission's initial height reduction from 110 feet to 90 feet was intended to: 1) ensure that building heights on M Street stepped down closer to the Navy Yard

gates at 8th Street; and 2) to reduce the marked difference between the height of the office building and the residences in Square 882. The requested two-foot increase in building height will respect these objectives while enabling the Applicant to provide the required retail ceiling height and still provide commercial space to help defray the cost of the one-for-one replacement of the public housing units.

- b. *Revised Design of Residential Building in Square 882.* The Commission finds that the revised design of the residential building in Square 882 will not have any adverse impacts. During the first stage application process, the Commission expressed concern about the difference between the scale of the office building and that of the townhouses proposed to the north. Accordingly, the Commission reduced the height of the office building. However, the Commission finds that increasing the height of the residential building, and revising its design to a multi-family building, is consistent with the urban fabric in the neighborhood and will further bring it into scale with the office building. With respect to open space, the Applicant testified that the first stage schematic plans approved by the Commission included approximately 12,500 square feet of open space. The current design includes approximately 8,800 square feet of courtyards and 14,750 square feet of private patios at upper levels of the building as a substitute for reduced open space at the ground level. The Commission finds that these proposed changes will not have any negative impacts on the office building to the south or to the Marine Barracks to the north, nor would they result in a substantially negative impact on the Zoning Regulations.
- c. *Requested Parking Reduction.* This application requested a reduction in the number of parking spaces in the office building from 400 to 284 parking spaces. The proposed 284 parking spaces will meet the amount of parking required for the building pursuant to § 2101.1. Moreover, the requested reduction is consistent with OP and DDOT policies, particularly for sites proximate to Metro stations, and both OP and DDOT recommend that the requested reduction be approved.
- d. *Implementation of the Community Supportive Services Program.* As part of its Post-hearing Statement submitted on April 6, 2009 (Exhibit 84), the Applicant submitted information from DCHA indicating the actions taken to date to implement the Community Supportive Services Program for former residents of Capper Carrollsburg, including employment preparation and placement, job skills training programs, high school or equivalent education programs, childcare, and counseling programs. Based upon the information submitted, the Commission finds that the Applicant has implemented the Community Supportive Services Program required as part of the first stage approval.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD is generally within the applicable height, bulk and density standards approved by the Commission pursuant to Order No. 03-12/03-13, and the height and density will not cause a significant adverse effect on any nearby properties.
5. The Applicant's request for flexibility from the Zoning Regulations, modifications to the original approval, and flexibility from the conditions of the preliminary approval are consistent with the intent of the original PUD.
6. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, this phase of the development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
7. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has reviewed the ANCs' positions, and has included detailed Findings of Fact (Nos. 59 and 60) regarding the ANCs' positions.
8. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for second stage PUD approval and modifications to the first stage approval for property located in Squares 769 and 882 preliminarily approved by Zoning Commission Order Number 03-12/03-13. This approval is subject to the following guidelines, conditions, and standards:

1. The final approval of this phase of the PUD shall apply to the northern portion of Square 769 and the entirety of Square 882.
2. The PUD shall be developed substantially in accordance with the plans dated December 1, 2008, marked as Exhibit 20 in the record (the "Plans"); as modified by the supplemental sheets submitted on April 6, 2009 and marked as Exhibit 86; and as further modified by the guidelines, conditions, and standards herein.
3. The residential building in Square 769 shall: (a) have a maximum gross floor area 181,420 square feet; (b) have a maximum height of 110 feet; (c) include a minimum of 152 striped off-street parking spaces in the garage; and (d) include a minimum of 34 affordable units dedicated to households earning less than 60% of the Area Median Income, adjusted for family size, in the locations shown on Exhibit 86.
4. The residential building in Square 882 shall: (a) have a maximum gross floor area of 189,168 square feet; (b) have a maximum height of 60 feet; (c) include a minimum of 172 striped off-street parking spaces in the garage; and (d) include a minimum of 38 affordable units dedicated to households earning less than 60% of the Area Median Income, adjusted for family size, in the locations shown on Exhibit 86.
5. The office building in Square 882 shall: (a) have a maximum gross floor area of 499,780 square feet; (b) have a maximum height of 92 feet; and (c) include a minimum of 284 striped off-street parking spaces in the garage.
6. The Applicant is granted flexibility to phase construction of the office building in Square 882, and flexibility from the parking (§ 2101.1), loading (§ 2201.1 and § 2203.3), lot occupancy (§ 403.2), and roof structure number and setback requirements (§ 411 and § 770), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
7. The Applicant shall also have flexibility with the design of the PUD in the following areas:

- a. To be able to increase or decrease the number of units by five percent within the maximum gross floor area specified for each residential building;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the number, location and arrangement of parking spaces, provided that the total number of parking spaces is not reduced below the minimum level required;
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Construction Code or that are otherwise necessary to obtain a final building permit;
 - e. For the office building in Square 882, to provide a minimum of three loading berths at 30 feet deep, three loading platforms at 100 square feet, and one service/delivery space at 20 feet deep; and
 - f. For the office building in Square 882, to be able to remove the parking garage entrance located on 7th Street.
8. An individual Applicant shall be responsible for carrying out those conditions of this Order that are applicable to each specific property and shall not be responsible for the obligations or requirements of the other Applicants.
9. The Applicant shall incorporate the following measures into the development and operation of the proposed office and residential buildings in Square 882:
 - a. At the Navy's sole expense, the Applicant shall permit the Navy to install surveillance cameras on the roof of the office building and to connect such cameras to the Navy's surveillance system. At the Marines' sole expense, the Applicant shall permit the Marines to install surveillance cameras on the roof of the residential building and to connect such cameras to the Marines' surveillance system. The cameras installed by the Navy shall transmit wirelessly and be monitored by Navy personnel, and the cameras installed by the Marines shall transmit wirelessly and be monitored by Marines personnel. The location and design of the cameras shall be coordinated with the Applicant and shall not delay preparation of design documents and/or the receipt of permits for the building.

Maintenance of the cameras shall be at the sole expense of the Navy and Marines and access for maintenance must be coordinated and approved through the building's property manager, which access will not be unreasonably withheld or delayed;

- b. During construction of the office building, the Applicant shall supply the Navy the contact information for the building's construction supervisors to coordinate and facilitate installation of the Navy's equipment;
- c. During construction of the residential building, the Applicant shall supply the Marines the contact information for the building's construction supervisors to coordinate and facilitate installation of the Marines' equipment;
- d. Upon completion of construction of the office building, the Applicant shall provide to the Navy and the Marines contact information for the office building's property manager to facilitate the coordination of efforts to address any security concerns that may arise once the office building is constructed. The Applicant shall also provide written notice to the Navy of the proposed rooftop maintenance schedule once determined;
- e. Upon completion of construction of the residential building, the Applicant shall provide to the Marines the contact information for the building's property manager to facilitate the coordination of efforts to address any security concerns that may arise once the residential building is constructed. The Applicant shall also provide written notice to the Marines of the building's exterior maintenance schedule once determined;
- f. As the office building becomes occupied, the Applicant shall provide to the Navy a list of tenant organizations (not individuals) from the fourth through eighth floors of the building. The Applicant shall provide an updated list whenever a tenant moves into or out of the office building. This provision shall not be deemed to grant the Navy any right to approve or disapprove of any tenants in the office building;
- g. The Applicant shall provide the Navy and Marines 48-hour notice prior to any large events on the roof of the office building. The Applicant shall limit access to the roof of the office building during specific ceremonial events held at the Washington Navy Yard. The Navy shall provide to the office building's property manager notification of the scheduling of events in a timely manner and, at a minimum, seven days prior to such event to the building's property manager;

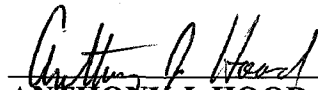
- h. The Applicant and the Marines shall provide notice of, and coordinate the scheduling of, any large events or assemblies in the common courtyard areas of the residential building or on the Marines' grounds; and
 - i. All notifications listed herein from the Applicant to the Navy and/or Marines are for informational purposes only and do not in any way require any type of approval from the Navy and/or Marines of any item in any notification.
- 10. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use the Subject Property in accordance with this Order or amendment thereof by the Zoning Commission.
- 11. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
- 12. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On April 27, 2009, upon the motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Gregory N. Jeffries, and Peter G. May to approve; William W. Keating, III, not having participated, not voting; Michael G. Turnbull, not present, not voting).

On Jun 8, 2009, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J.

Hood, Peter G. May, and Michael G. Turnbull to adopt; William W. Keating, III and Konrad Schlater, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 14, 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING