

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of Zoning**



**Z.C. CASE NO.: 03-12H/03-13H**

As Secretary to the Commission, I hereby certify that on AUG - 6 2009 copies of this Z.C. Order No 03-12H/03-13H were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |                                                                                                             |                                                                                                              |
|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1. <i>D.C. Register</i>                                                                                     | 6. Commissioner Kirsten Oldenburg<br>ANC 6B04<br>423 12 <sup>th</sup> Street, S.E.<br>Washington, D.C. 20003 |
| 2. Wayne S. Quin, Esq.<br>Holland & Knight, LLP<br>2099 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20006 | 7. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                         |
| 3. Andy Litsky, Chair<br>ANC 6D<br>P.O. Box 71156<br>Washington, D.C. 20024                                 | 8. Councilmember Tommy Wells                                                                                 |
| 4. Commissioner Robert Siegel<br>ANC/SMD 6D07<br>919 5 <sup>th</sup> Street, S.E.<br>Washington, D.C. 20003 | 9. DDOT (Karina Ricks)                                                                                       |
| 5. David Garrison, Chair<br>ANC 6B<br>921 Pennsylvania Avenue, S.E.<br>Washington, D.C. 20003               | 10. General Counsel - DCRA<br>941 North Capitol Street, N.E.<br>Suite 9400<br>Washington, D.C. 20002         |
|                                                                                                             | 11. Office of the Attorney General<br>(Alan Bergstein)                                                       |

ZONING COMMISSION  
District of Columbia

CASE NO. 03-12/03B

EXHIBIT NO. 31

ATTESTED BY: Sharon S. Schellin

**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/03-13H**

**Z.C. Case Nos. 03-12H and 03-13H**

**(Modifications to Approved PUD in Squares 739, 767, 768, and S825)**

**Capper/Carrollsbury Venture, LLC and the D.C. Housing Authority**

**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 Carrollsbury Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively, the "Applicant") for modifications to an approved planned unit development in Squares 739, 767, 768, and S825. 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 Carrollsbury Approvals**

1. 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 5<sup>th</sup> Street; Square 882, Lot 76; and all of Squares 739, 767, 768, 769, 797, 798, 825, and S825.
2. 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 also 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).

3. The Commission has approved a number of applications since issuing Order No. 03-12/03-13 in order to implement the redevelopment, including:
- Order No. 03-12B/03-13B approving a minor modification to allow for construction of the multi-family building in Square 825S to a height of 48 feet, 3¾ inches;
  - Order No. 03-12A/03-13A granting second-stage approval for Lots 44, 45, 46, 47, 48, 49, 50 in Square 799, Lots 20, 25, 26, 27, 28, 816, 818, 819, 820 in Square 800, and Square 881W and modifying portions of the parking requirements for the consolidated PUD approval;
  - Order No. 03-12F/03-13F granting second-stage approval for parts of Lots 18, 20 and 21 in Square 769 to construct an office building, and Order No. 03-12F/03-13F approving 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. 03-12D/03-13D approving 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 and requiring off-site parking; and
  - Order No. 03-12E/03-13E approving 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**

4. On July 3, 2008, the Applicant filed an application seeking, among other things, 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.
5. 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.
6. 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).

7. At its public meeting on October 20, 2008, the Commission voted to schedule a public hearing on the application.
8. On December 5, 2008, the Applicant submitted a Prehearing Statement and development data information for Case No. 03-12H/03-13H (Exhibits 3 and 4), clarifying the requested modifications to the prior orders and proposed overall development parameters.
9. 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.
10. Three 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; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP. Based upon his professional experience, as evidenced by the resume submitted for the record, Mr. Sher was qualified by the Commission as an expert in land use and zoning.
11. The Office of Planning ("OP") testified at the public hearing in support of the project.
12. 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) and 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 5<sup>th</sup> 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).
13. 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).

14. 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 was 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).
15. 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).
16. Ron McBee, an ANC 6D Commissioner, testified at the public hearing in his individual capacity, and indicated 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).
17. David Meadows, an individual residing at 305 K Street, S.E., testified that he opposed the modifications requested pursuant to Case No. 03-12H/03-13H.
18. 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.
19. 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.
20. 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 Zoning 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.

21. The Commission took final action to approve the application on June 8, 2009.

**The Requested Modifications**

**Modification of Conditions Regarding Number of Units and Density**

22. The Applicant is seeking modifications to increase the overall density of the project. Specifically, the Applicant proposes to increase the overall maximum number of residential units from 1,645 units to 1,747 units; to increase the overall maximum office gross floor area from 702,000 square feet to 708,302 square feet (thereby increasing the overall commercial gross floor area from 753,000 to 759,302 square feet); to increase the overall maximum residential density from a floor area ratio ("FAR") of 2.34 to 2.36; to increase the overall maximum permitted office and retail density from 0.80 FAR to 0.87 FAR across the project as a whole; and to decrease the overall number of parking spaces from 1,845 to 1,780 off-street parking spaces.
23. The new proposed distribution of uses and densities is shown on the "Capper/Carrollsborg Overall Plan" and "Capper/Carrollsborg Overall Analysis" sheets included in the Prehearing Statement. (Exhibit 4.)
24. The Applicant testified, and the Commission finds, that due to deteriorating economic conditions, it is necessary to increase the density of the project in order to supplement funds needed to cover the replacement costs of the public housing units. The increased revenue projected from the sale or rental of these additional market rate units and increased commercial area will help to offset falling real estate values, increased financing costs, increased construction costs and decreasing land values, and help to make the construction of the remaining public housing units feasible. Moreover, the requested density increases are attributable in part to the design of the buildings in Square 769 and 882 approved in Case 03-12G/03-13G.

**Modification of Conditions Regarding Number of Parking Spaces**

25. The Applicant is also seeking a modification to reduce the overall amount of parking required for the PUD.
26. Pursuant to Condition No. 11 of Order No. 03-12/03-13, the overall project is required to include a minimum of 1,980 off-street parking spaces, and the distribution of the spaces must be as shown on the Parking Plan, Sheet T-3.0 of the Preliminary Plans. The Parking Plan indicates that 1,396 off-street parking spaces would be provided for the residential portion of the development and 604 off-street parking spaces would be provided for the commercial portion. However, pursuant to Condition 10 of Order No. 03-12A/03-13A the number of required parking spaces for the residential portion of the project was reduced to 1,241 off-street parking spaces. Thus, the overall project is currently required to include a minimum of 1,845 off-street parking spaces.

27. The Applicant proposes to provide 1,346 parking spaces for the residential portion of the development, which exceeds the requirement of providing 1,241 residential parking spaces. The proposed parking spaces will be spread throughout the development. However, the Applicant is seeking a modification to reduce the number of required off-street parking spaces for the commercial portion of the development from 604 to 434 spaces.
28. The proposed commercial reduction occurs from decreasing the number of parking spaces for the office building in Square 882 from 400 to 284 off-street parking spaces, which meets the requirement of § 2101 of the Zoning Regulations. By providing the minimum requirement of § 2101 of the Zoning Regulations, the Applicant believes it can successfully serve the needs of building occupants. Moreover, as indicated in the analysis prepared by the Applicant's traffic expert, reducing the number of parking spaces will not have an adverse impact on the project or the area. The Commission finds that the requested parking reduction is consistent with the District's current policy goals of reducing parking and the demand for vehicles in areas adequately served by Metro facilities.

**Modification of Condition Regarding Parking for Multifamily Building in Square S825**

29. The Applicant is also seeking a modification to reduce the overall number of parking spaces required for the building in Square 825S to 33 spaces. Z.C. Order No. 03-12D/03-13D 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 and the Applicant was required to provide 70 parking spaces for the multi-family building in Square 825S by providing additional parking spaces throughout the development.
30. The Applicant has permanently reserved 33 parking spaces in the multi-family building in Square 825S for the exclusive use of residents of that building or their guests. However, the Applicant is seeking approval to eliminate the other requirements to provide off-site parking since the amount of on-site parking provided for the building is sufficient to meet the actual demand for that building. As indicated in the analysis prepared by the Applicant's traffic expert, actual experience since the building was occupied indicates that the existing on-site parking garage is not fully-utilized by the current residents or their guests and there is currently no present and likely will be no future demand for off-site parking.

**Office of Planning Report**

31. By report dated August 29, 2008, OP recommended that the Commission schedule a public hearing on the applications. (Exhibit 12.)
32. By report dated October 10, 2008, OP indicated that the Applicant submitted the information requested by the Commission at the September 8, 2008 public hearing, and

that after reviewing the additional materials, OP continued to recommend that the Commission schedule a public hearing on the applications. (Exhibit 17.)

33. By report dated March 9, 2009, OP recommended final approval of the application. (Exhibit 25 o Case No. 03-12G/03-13G.) OP indicated that the PUD's market rate units and commercial space are intended to cross-subsidize the below-market rate units. OP also indicated that construction costs are considerably higher now than when the PUD was approved in 2004, and the ability to finance projects has become exceptionally challenging. Thus, OP concluded that the requested market rate unit increase, plus the increase in commercial space, would generate additional revenue for the below-market rate units' cross-subsidy and would put the applicant on firmer ground when seeking financing.

### **DDOT Report**

34. By report dated March 16, 2009, the District Department of Transportation ("DDOT") indicated that it supported the requested parking reductions based upon the site's proximity to rail and bus transit service and since the reduction is consistent with DDOT's parking management goals. (Exhibit 8 of Case No. 03-12I/-3-13I).

### **CONCLUSIONS OF LAW**

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications are consistent with the intent of Zoning Commission Order No. 03-12/03-13. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia, and not inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act. The approval of the modifications is not inconsistent with the Comprehensive Plan. Further, the requested modifications will not affect any of the other conditions of the approved PUD.

### **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 modifications to the planned unit development in Squares 739, 767, 768, and S825. Accordingly, the following conditions are hereby revised to read as follows (deleted text shown in strikethrough):

1. Condition No. 5 of Order No. 03-12/03-13 shall read as follows:

The project in its entirety shall include a maximum of 1,747 ~~1,645~~ residential units, a maximum of 708,302 ~~702,000~~ square feet of gross floor area of office space, a maximum of 51,000 square feet of gross floor area of retail space, and a community center including approximately 18,000 square feet of gross floor area. The distribution of uses and densities shall be as shown on the

"Capper/Carrollsborg Overall Plan" and "Capper/Carrollsborg Overall Analysis" sheets included with the Prehearing Statement and marked as Exhibit 4 in the record of Case No. 03-12G and 03-12H. ~~and Site Plan Development Data, Sheet S-3.1 of the Preliminary Plans.~~

2. Condition No. 7 of Order No. 03-12/03-13 shall read as follows:

The overall maximum permitted ~~residential~~ density shall be 3.32 ~~2.24~~ FAR across the project as a whole, for a maximum permitted gross floor area of 2,889,517 ~~2,092,084~~ square feet, including the community center. The overall maximum permitted office and retail density shall be 0.87 ~~0.80~~ FAR across the project as a whole, ~~(1.87 FAR based on the land area to be zoned C-3-C and CR),~~ for a maximum permitted commercial gross floor area of 759,302 ~~753,000~~ square feet. The project shall also include the density currently contained on the Van Ness Elementary School site in Square 853N.

3. Condition No. 11 of Order No. 03-12/03-13 shall read as follows:

The project shall include a minimum of 1,780 ~~1,980~~ off-street parking spaces. The distribution of the spaces shall be as shown on the "Capper/Carrollsborg Overall Plan" and "Capper/Carrollsborg Overall Analysis" sheets included with the Prehearing Statement and marked as Exhibit 4 in the record of Case No. 03-12G and 03-12H. ~~Parking Plan, Sheet T-3.0 of the Preliminary Plans.~~

4. Condition No. 9 of Order No. 03-12A/03-13A shall read as follows:

The overall maximum permitted residential density shall be 2.39 ~~2.34~~ FAR across the project as a whole, for a maximum permitted gross floor area of 2,070,315 ~~2,138,431~~ square feet, including the community center.

5. Condition No. 6 of Order No. 03-12/03-13 and the Decision section of Order No. 03-12D/03-13D shall read as follows:

A minimum of 695 of the residential units shall be devoted to public housing, including 162 units in Senior Building 1 devoted exclusively to senior public housing units and the building constructed in the northern portion of Square 825S devoted to both senior housing, and workforce public housing units for households earning between 30% and 60% of the Area Median Income. A minimum of 50 units shall be home-ownership Section 8 units under the HUD program. ~~In addition, the Applicant shall provide 70 parking spaces for the building by taking the following measures:~~

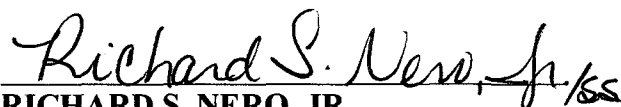
- ~~a. Permanently reserving thirty three (33) 24 hour spaces in the Building formerly known as Senior Building Number 2 in Square 825S for the exclusive use of residents of that building, or their guests;~~
- ~~b. Reserving, on an interim basis until parking noted in Points "c and d", below, can be provided, no fewer than thirty seven (37) 24 hour parking spaces on surface parking lots to be located on Squares 767, 768 and/or 769 (land owned by the applicant) for the exclusive use of residents of the building formerly known as Senior Building 2, or their guests;~~
- ~~c. Reserving on a permanent basis, twenty one (21) 24 hour spaces within three blocks of the subject building for the exclusive use of residents of the building formerly known as Senior Building 2, or their guests;~~
- ~~d. Entering into a phased, shared parking arrangement with office buildings in Squares 769 and/or 882 to provide no fewer than sixteen (16) parking spaces, between the hours of 5:30 p.m. and 8:30 a.m. and 24 hours on federal holidays and weekends, for the exclusive use of residents of the building formerly known as Senior Building 2, or their guests; and~~
- ~~e. Provide a minimum of 2 car sharing spaces within 3 blocks of the subject building, and enter into an agreement with a car sharing provider to offer membership at discounted rates to occupants of the building.~~

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

On June 8, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; William W. Keating, III and Konrad W. 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