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4206131	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12N/03-13N (Square 769, LLC & DCHA)	3/1/2013 Vol 60/5	2/21/2013 18:07:27
4206034	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12M/03-13M (Capper/Carrollburg Venture, LLC & DCHA)	3/1/2013 Vol 60/5	2/21/2013 18:06:38
4205937	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 08-34A (Center Place Holdings, LLC)	3/1/2013 Vol 60/9	2/21/2013 18:01:45
4193327	Confirmed	Notices, Opinions	Zoning Adjustment, Board of - Order No. 18436 - David Benson - ANC 1B	2/22/2013 Vol 60/3	2/20/2013 16:26:11
4190029	Confirmed	Public Hearing	Zoning Commission Notice of Public Hearing: Case No. 02-26B (George Washington University)	2/22/2013 Vol 60/6	2/20/2013 15:17:41
4197207	Confirmed	Public Hearing	Board of Zoning Adjustment - Public Hearing Notice - April 30, 2013	2/22/2013 Vol 60/6	2/20/2013 14:31:06
4139932	Confirmed	Public Hearing	Board of Zoning Adjustment - Public Hearing Notice - April 23, 2013	2/22/2013 Vol 60/6	2/20/2013 14:18:53
4196140	Confirmed	Proposed Rulemaking	Zoning Commission Second Notice of Proposed Rulemaking: Case No. 04-33F (Text Amendments: PUDs & Inclusionary Zoning - Termination of Affordability Controls upon Foreclosure)	2/22/2013 Vol 60/5	2/20/2013 13:00:15

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ZONING COMMISSION
District of Columbia

CASE NO. 03-12/03-B

EXHIBIT NO. 9

ZONING COMMISSION
District of Columbia
CASE NO. 03-12M/03-13M
EXHIBIT NO. 9

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12M/03-13M
Z.C. Case No. 03-12M/03-13M
Capper/Carrollsbury Venture, LLC & DCHA
(Two-Year PUD Time Extension @ Square 881W)
July 9, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 9, 2012. At the meeting, the Commission approved a request on behalf of Capper Carrollsbury Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for a two-year extension of the time period in which to file a building permit for the construction of a community center in Square 881W, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A, 03-12I/03-13I, and 03-12J/03-13J pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval of a planned unit development ("PUD") for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street 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. The approved overall project will include a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and a community center building to be constructed on Square 881W. The approved community center will include a total gross floor area of approximately 28,500 square feet for a child development center and recreation center uses. The building will be constructed to a maximum height of 35 feet, and will have an overall density of 0.78 floor area ratio ("FAR") and an overall lot occupancy of 48%.
2. Condition 20 of that order provided that:

The Applicants shall file an application for a building permit for the community center building in Square W881 (also known as Reservation 19) by July 1, 2005, subject to review by the National Park Service of the proposed uses. Plans shall be submitted to the Zoning Commission as part of a second-stage application with sufficient lead time to allow this deadline to be met. Construction shall start on the community center no later than 180 days after the issuance of the building permit.
3. Second-Stage PUD approval for the community center was granted in Z.C. Order No. 03-12A/03-13A. Condition No. 5, as stated in that order, read:

The Applicants shall file an application for a building permit for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application.

4. The order became effective on September 15, 2006, so that the Applicant was required to file for a building permit to construct the community center no later than September 15, 2008.
5. On July 3, 2008, the Applicant filed an application seeking, among other things, an extension of the first-stage approval and overall phasing of the PUD and an extension of the period in which to file a building permit application and to commence construction on the community center. The requests were granted in Z.C. Order No. 03-12I/03-13I, which became effective upon publication in the *D.C. Register* on June 26, 2009. The order modified Condition No. 5 of Z.C. Order No. 03-12A/03-13A to provide that the Applicant must file an application for a building permit for the community center no later than July 1, 2010 and must commence construction of the community center no later than July 1, 2011.
6. Pursuant to Z.C. Order No. 03-12J/03-13J, the Commission approved the Applicant's extension request stating that an application for a building permit for the community center building must be filed no later than July 1, 2012, with construction to begin no later than July 1, 2013.
7. By letter dated and received by the Commission on May 9, 2012, the Applicant filed a request for an extension of the time period in which to file a building permit for the construction of a community center in Square 88IW such that an application for a building permit for the community center building must be filed no later than July 1, 2014, with construction to begin no later than July 1, 2015.
8. The Office of Planning ("OP") submitted a report dated June 1, 2012 indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit ["Ex."] 4.)
9. On June 14, 2012, Advisory Neighborhood Commission ("ANC") 6B submitted a letter indicating that at the regularly scheduled meeting they voted 10-0 in support of the requested extension. (Ex. 6.)
10. On July 5, 2012, the Arthur Capper Carrollsborg HOPE VI Steering Committee submitted a letter in support of the requested extension. (Ex. 7.)

11. On May 30, 2012, ANC 6D submitted a letter that requesting that the Commission delay consideration of the current extension request in order to provide ANC 6D additional time to review the application. (Ex. 5.)
12. On July 9, 2012, ANC 6D submitted a letter in support of the requested extension. (Ex. 8.)
13. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. DCHA indicated that it has been unable to issue the necessary bonds that will be used to help construct the community center building given the current market conditions. DCHA also indicated that the overall project funds which it has received thus far have either been restricted to certain uses, or otherwise used to pay off outstanding private financing that the agency had to undertake to keep the project moving forward, with the remaining portions used for constructing infrastructure improvements also necessary for the overall project to move forward. Thus, the community center building cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.
14. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe downturn in financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to issue the PILOT bonds necessary for construction of the community center building at this time, or otherwise secure project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Commission finds that the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission further finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent, good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

- (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
 3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
 4. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the community center building, following the Applicant's diligent, good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
 5. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
 6. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
 7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.
 8. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Zoning Commission give "great weight" to the issues and concerns raised in the written recommendations of the affected ANC. For this request, the affected ANCs are ANCs 6B and 6D. ANC 6B and ANC 6D both submitted letters in support of the requested extension. The Commission considered the ANCs' recommendations in its deliberations, concurs with their recommendations, and has given them the great weight they are entitled.
 10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant met the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. (Exhibit 4.) The

Commission considered OP's report, and has given OP's recommendation great weight in approving this application.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a community center in Square 88IW, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A, 03-12I/03-13I, and 03-12J/03-13J. The approval of the community center building by the Commission shall be valid until July 1, 2014, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than July 1, 2015.

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 which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 9, 2012, upon the motion made by Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 1, 2013.

