

# Holland & Knight

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April 29, 2014

## HAND DELIVERY

District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, NW  
Second Floor  
Washington, DC 20001

Re: Z.C. Case No. 03-12Q/03-13Q - Prehearing Statement in Support of  
Request for Modification of Zoning Commission Order No. 03-12H/03-13H  
(Squares 739, 767, and 768)

Dear Members of the Zoning Commission:

On behalf of Capper/Carrollsborg Venture, LLC, together with the District of Columbia Housing Authority ("DCHA"), collectively the "Applicant" in the above-referenced application, we submit this prehearing submission in support of the Applicant's request for a modification to the first-stage PUD and zoning map amendment approved for Squares 739, 767, and 768 and the portions of Square 737 that include Lot 814 and Reservation 17A, pursuant to Zoning Commission Order No. 03-12/03-13, as modified by 03-12H/03-13H.

The Applicant will also file a separate submission in support of its request for a five-year extension of the first-stage approval for Squares 739, 767, and 768, which were preliminarily approved in Zoning Commission Order No. 03-12/03-13, and extended in Z.C. Order No. 03-12I/03-13I. This extension request, if approved, would require that second-stage approval for Squares 739, 767, and 768 must be filed no later than December 31, 2018.

Attached please find a completed Form 116, which calculates the hearing fee as \$1,300.00. A check for that amount is enclosed.

### **A. Factual Background**

As discussed in more detail in the Applicant's letter submitted to the Zoning Commission on December 31, 2013, the Applicant is seeking a modification to change the conditions of the

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EXHIBIT NO.14

first-stage approval related to the overall PUD to be developed in Squares 739, 767, and 768. Specifically, the Applicant seeks flexibility regarding the location and distribution of the remaining required Annual Contribution Contract ("ACC") public housing units, and approval to locate 30 ACC units on Square 737. Square 737 is not part of or subject to the approved PUD; however, the owner of Lot 77 in Square 737 (Square 737, LLC, hereinafter the "Square 737 Owner") has agreed to the placement of the 30 ACC units on its property, as indicated in the Declaration of Affordability Covenants, attached hereto as Exhibit A.

The Office of Planning report, dated January 31, 2014, recommended that the Commission schedule a public hearing on the application. The Commission voted at its public meeting on February 10, 2014, to set the application down for a public hearing. During the public meeting, the Commission requested that the Applicant provide: (i) additional information regarding the ACC units proposed to be located on Square 737; and (ii) more information regarding the need to reallocate the distribution of the ACC units. The following responds to the questions raised by the Commission and the Office of Planning.

## **B. Responses to Comments from The Zoning Commission and the Office of Planning**

### **1. ACC Units in Square 737**

Square 737 is a multi-phased, matter-of-right development designed with three separate residential buildings, all under the control of the Square 737 Owner. Square 737 is adjacent to the western portion of the PUD Site. Phase 1 is currently under construction. Phase 2 is a 336 unit residential building with a grocery store located on the ground floor. Construction of Phase 2 is anticipated to begin in June, 2014, with units delivering in the first quarter of 2017. Phase 3 is designed as a 396 unit residential building over ground floor retail. It is anticipated that Phase 3 will begin after 2017 and take approximately 30 months to construct.

The Square 737 Owner has agreed to locate the 30 ACC units in the second and third phases of development, with 15 units in each building. Rents will be calculated for income-eligible households consistent with applicable public housing regulations for the appropriate household size. Fees for use of amenity spaces within the buildings, to the extent that they are charged, will be waived for the 30 units. Unit typology will include eight efficiencies averaging approximately 480 square feet; 15 one-bedroom units averaging 730 square feet; and seven two-bedroom units averaging 1,030 square feet. All 30 units will be indistinguishable from market rate units and will be distributed throughout the buildings. In addition, the ACC units will include two units constructed in accordance with the Uniform Federal Accessibility Standards ("UFAS"). DCHA will have the right to reasonably approve the design and development plans for the 30 ACC units.

As set forth in the Declaration of Affordability Covenants, attached hereto as Exhibit A, the Square 737 Owner has covenanted to develop, construct, operate, and maintain the 30 ACC units in accordance with all applicable public housing requirements. The Square 737 Owner has agreed to sign with DCHA the Annual Contributions Contract and amendments thereto for the 30 units, abide by any HUD declarations, if required, and administer the 30 units consistent with all pertinent Federal statutory, executive order, and regulatory requirements, as those may be amended from time to time.

Reallocating the 30 ACC units on Square 737 is consistent with the District's goals of expanding the supply of public housing, and will provide a legitimate public off-site benefit for the PUD, especially since Square 737 is in the South Capital TDR Receiving Zone and therefore has no affordable housing requirements under the Inclusionary Zoning requirements of the Zoning Regulations. Moreover, delivery of the 30 ACC units by the Square 737 Owner will be enforced consistent with the provisions in the recorded Declaration of Affordability Covenants, attached hereto as Exhibit A.

## 2. Reallocation of ACC Units

DCHA is committed to the one-for-one replacement of the ACC units that were previously located at the former Capper/Carrollsborg public housing family and elderly communities. To date, DCHA has constructed 398 of the 707 ACC units that DCHA is required to replace. DCHA also has under construction an additional 39 ACC units on Square 882N. The units currently under construction on Squares 882N, together with those that have already been constructed, total 437 of the total 707 ACC units. (See Figure 1)

**Figure 1: Approved, Constructed, and Proposed Public Housing Units**

Square	Public Housing Units Approved	Public Housing Units Constructed	Public Housing Units Proposed
737	Not Within PUD	0	30
739	98	0	* Flexibility Requested
767	66	0	* Flexibility Requested
768	73	0	* Flexibility Requested
769A	34	0	34
769B	Office	N/A	N/A
797	11	11	0
798	17	17	0
799	9	9	0
800	21	21	0
824	11	11	0
825	14	14	0
825-A	3	3	0

825-B	138	138	0
N853 (Part)	School	N/A	N/A
880	162	162	0
881-W	Community Center	N/A	N/A
882-A	38	39 Under Construction	0
882-B	Office	N/A	N/A
Kentucky Courts	12	12	0
<b>TOTAL</b>	<b>707</b>	<b>437 (including units under construction)</b>	<b>270</b>

\* To deliver 206 total units among these three squares.

The residential units delivered to date provide a variety of unit/product types on various squares, including, for example, two affordable housing buildings, mixed-income rental units, and mixed-income for-sale and rental units. 162 of the ACC units delivered to date are located in buildings devoted entirely to public housing for seniors. This mix of unit types and income ranges has resulted in the creation of a true mixed-income community that is not defined by an individual square, but rather by the overall mix of uses across the project.

DCHA is committed to constructing the remaining 270 ACC units, with 30 ACC units to be constructed on Square 737, 34 units to be constructed on the northern portion of Squares 769, and the remaining 206 units to be constructed on the undeveloped squares within the Capper project boundaries. As part of this application, DCHA is seeking flexibility to reallocate the distribution of the remaining 206 ACC units within the undeveloped Capper project boundaries without having to identify the number of units per square at this time. Given current market and financing conditions, as well as the fact that each of the remaining squares will have to go before the Zoning Commission for second-stage approval, DCHA is seeking the flexibility to indicate the number of ACC units included in each remaining phase as part of the second-stage application for such phase. Ultimately, the Zoning Commission will have assurance that the overall 707 ACC units will be provided, since DCHA will indicate the number of ACC units provided in each subsequent Zoning Commission application. Moreover, DCHA will demonstrate during each second-stage application that the overall project and distribution of uses is consistent with the PUD's overall goal of providing a vibrant, mixed-use and mixed-income community.

Granting this flexibility will allow DCHA to explore multiple financing options for the delivery of the remaining 206 ACC units within the PUD boundaries without having to file a PUD modification for any proposed relocation of ACC units. Granting this flexibility will also enable DCHA and its development partners to have more flexibility in determining how best to deliver the remaining 206 ACC units as quickly as possible given current market conditions.

DCHA reaffirms its firm commitment to produce the 707 ACC units on this site. The U.S. Department of Housing and Urban Development made the one-for-one replacement a condition in the original HOPE VI grant for Capper and has continued to reiterate this condition upon granting approval for each subsequent component. The requested flexibility will enable DCHA to pursue its commitment in a flexible and efficient manner.

**C. Compliance with the Requirements of Section 3013**

The following attached documents provide the applicable information required pursuant to Section 3103 of the Zoning Regulations:

1. A check in the amount of \$1,300.00 made payable to the D.C. Treasurer for the required hearing fee;
2. A completed Form 116 - Hearing Fee Calculator (Exhibit B)
3. A list of witnesses prepared to testify on behalf of the Applicant (Sec. 3013(b)) and an estimate of time required for the presentation of the Applicant's case (Sec. 3013.1(g)) (Exhibit C);
4. A summary of testimony of witnesses (Sec. 3013.1(c)) (Exhibit D);
5. A list of maps, plans or other documents readily available (Sec. 3013.1(f)) (Exhibit E);
6. A list of the names and addresses of the owners of all property located within 200 feet of the site (Sec. 3013.6) (Exhibit F); and
7. Certification of Compliance with Section 3013 of the Zoning Regulations (Exhibit G).

**D. Conclusion**

For all of the reasons stated in the Applicant's modification request and supporting documents filed with the Commission on December 31, 2013, the Applicant respectfully requests that the Commission schedule a public hearing on this application and grant the requested modifications as expeditiously as possible.

Sincerely,



Kyrus L. Freeman  
Jessica R. Bloomfield\*

cc: Advisory Neighborhood Commission 6D  
Advisory Neighborhood Commission 6B  
Steve Cochran, D.C. Office of Planning

\*Admitted to practice in Pennsylvania. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8).