

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION ORDER NO. 03-12Q/03-13Q**

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

**(Modifications to 1<sup>st</sup> Stage PUD @ Squares 739, 767, and 768)**

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

**DATE**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Zoning Commission") held a public hearing on January 8, 2015, to consider an application from Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively, the "Applicant") for modifications to an approved planned unit development ("PUD") in Squares 739, 767, and 768. The Zoning 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 Zoning Commission hereby approves the application.

**FINDINGS OF FACT**

**Background and Prior Capper Carrollsburg Approvals**

1. Pursuant to Z.C. Order No. 03-12/03-13, effective October 8, 2004, the Zoning 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.
2. The Zoning 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 Zoning Commission also granted a PUD related map amendment to rezone the following properties from the R-5-B District to the CR District 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 Zoning Commission has approved a number of applications since issuing Z.C. Order No. 03-12/03-13 in order to implement the overall Capper/Carrollsburg redevelopment, including:
  - a. Z.C. 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;
  - b. Z.C. 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;
  - c. Z.C. Order No. 03-12C/03-13C, correcting Condition No. 2 of Z.C. Order No. 03-12/03-13 to add Lot 30 to Square 825S;
  - d. Z.C. Order No. 03-12C2/03-13C2, granting second-stage approval for the office building at 250 M Street (Square 769);
  - e. Z.C. 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;
  - f. Z.C. 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;
  - g. Z.C. Order No. 03-12F/03-13F, approving a modification to the second stage approval for 250 M Street to increase the building height and gross floor area;
  - h. Z.C. Order No. 03-12G/03-13G, granting second-stage approval and modifications to the first stage approval for property in Squares 769 and 882;
  - i. Z.C. Order No. 03-12H/03-13H, granting modifications to the approved PUD in Squares 739, 767, 768, and S825;
  - j. Z.C. Order No. 03-12I/03-13I, granting an extension of time for the first-stage PUD and an extension of time for the Community Center approved for Square 881W;
  - k. Z.C. Order No. 03-12J/03-13J, approving a two year time extension for the Community Center in Square 881W;
  - l. Z.C. Order No. 03-12K/03-13K, approving a time extension for the office building at 250 M Street, SE (Square 769);

- m. Z.C. Order No. 03-12L/03-13L, granting a two year time extension for the office building at 250 M Street, SE (Square 769), and a two year time extension for the residential building in the northern portion of Square 882;
- n. Z.C. Order No. 03-12M/03-13M, granting a two year time extension for the Community Center in Square 881W;
- o. Z.C. Order No. 03-12N/03-13N, granting a time extension for the office building at 250 M Street, SE (Square 769);
- p. Z.C. Order No. 03-12O/03-13O, granting a minor modification to the PUD to permit Squares 767, 768, and 882 to continue to be used as a temporary parking lot accessory to the Nationals Park for five years;
- q. Z.C. Order No. 03-12P/03-13P, granting a two year time extension for the residential building in Square 769, and a two year time extension for the office building in Square 882;

4. In Z.C. Order No. 03-12H/03-13H, dated August 14, 2009, and effective on August 6, 2009, the Zoning Commission granted (i) an increase in the overall maximum number of residential units for the PUD to 1,747 units; (ii) an increase in the overall maximum office gross floor area for the PUD to 708,302 square feet (thereby increasing the overall commercial gross floor area to 759,302 square feet); (iii) an increase in the overall maximum residential density for the PUD to 2.36 floor area ratio ("FAR"); (iv) an increase in the overall maximum permitted office and retail density for the PUD to 0.87 FAR; and (v) a decrease in the overall number of parking spaces for the PUD to 1,780 off-street parking spaces.

5. Z.C. Order No. 03-12H/03-13H is the only Zoning Commission order that specifically addresses the development parameters and conditions on Squares 739, 767, and 768. Pursuant to Z.C. Order No. 03-12H/03-13H, for Square 739, the Zoning Commission approved development of a 6 to 13-story residential apartment building, having a height of 65-130 feet, 322 residential units with 98 Annual Contributions Contract ("ACC") rental units, 420,763 square feet devoted to residential use, and 9,250 square feet devoted to retail use. The Zoning Commission approved a density of 6.08 FAR and a lot occupancy of 73 percent for Square 739. For Square 767, the Zoning Commission approved development of a 6-story residential apartment building, having a height of 65 feet, 147 residential units with 66 ACC rental units, 176,210 square feet devoted to residential use, and 6,000 square feet devoted to retail use. The Zoning Commission approved a density of 4.58 FAR and a lot occupancy of 76 percent for Square 767. For Square 768, the Zoning Commission approved development of an 11-story residential apartment building, having a height of 110 feet, 295 residential units with 73 ACC rental units, 388,052 square feet devoted to residential use, and 6,000 square feet devoted to retail use. The Zoning Commission approved a density of 9.90 FAR and a lot occupancy of 76 percent for Square 768.

## **The Current Application, Parties, and Hearing**

6. On December 31, 2013, the Applicant filed an application seeking approval to modify the conditions of the first-stage approval related to the overall PUD to be developed in Squares 739, 767, and 768 (Exhibits 1-2). Specifically, the Applicant requested modifications to reallocate the location and distribution of the required public housing ACC units to provide 99 ACC units in Square 739; 48 ACC units in Square 767; 59 ACC units in Square 768; and 30 ACC units on Lot 77 in Square 737. Square 737 is not part of or subject to the approved PUD. However, the Applicant noted that the owner of Lot 77 in Square 737 (Square 737, LLC, hereinafter “Square 737 Owner”) agreed to the placement of the 30 ACC units on its property. The requested modification maintains the approved total number of 707 public housing units for the overall development. However, instead of providing 695 ACC units on the PUD site and 12 ACC units off-site, as approved, the Applicant’s modified application requested approval to provide 665 public housing units on the PUD Site and 42 ACC units off-site.
7. On December 31, 2013, the Applicant also filed 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 Z.C. Order No. 03-12/03-13, and extended in Z.C. Order No. 03-12I/03-13I (Exhibits 1-2 in Z.C. Case No. 03-12R/03-13R). The extension would require that second-stage approval for Squares 739, 767, and 768 must be filed no later than December 31, 2018.
8. On January 31, 2014, the Office of Planning (“OP”) submitted a report (Exhibit 11), recommending that the Zoning Commission schedule a public hearing on the Application.
9. At its public hearing on February 10, 2014, the Zoning Commission voted to schedule a public hearing on the application. The Zoning Commission also deferred consideration of the companion time extension request until its consideration of final action in the present case.
10. On April 29, 2014, the Applicant submitted a prehearing statement and development data information for Z.C. Case No. 03-12Q/03-13Q (Exhibit 14). The prehearing statement provided additional information regarding the ACC units proposed to be located in Square 737 and further explanation regarding the need to reallocate the distribution of the ACC units. As part of the prehearing statement, the Applicant revised its requested flexibility to reallocate the distribution and location of the remaining 206 ACC units within the undeveloped Capper Carrollsburg project boundaries in Squares 739, 767, and 768, without having to identify the number of units per square until the second-stage applications for each development.
11. On June 2, 2014, the Applicant submitted a letter from DCHA (Exhibit 16) requesting a waiver of the normal hearing fee pursuant to section 3042.2 of the Zoning Regulations, to permit the construction of a low or moderate income subsidized housing development.

12. On September 8, 2014, the Applicant submitted a letter (Exhibit 28) requesting a postponement of the Zoning Commission's public hearing to consider the application. The Zoning Commission granted the Applicant's request to postpone the hearing.
13. On December 19, 2014, the Applicant submitted a supplemental letter from Adrianne Todman, Executive Director of DCHA (Exhibit 38) requesting the Zoning Commission's support of the modification application. Todman's letter reiterated DCHA's commitment to delivering the 707 public housing units, and described the numerous factors that have led to the difficulties in financing mixed income housing projects. The letter stated that development of 30 public housing units on Square 737 would enable faster delivery of those units since Square 737 is much further along in the development process than the other squares within the PUD. Ms. Todman's letter also requested that the Zoning Commission grant flexibility to "not designate at this time the number of public housing units to be constructed on each remaining parcel, and to instead issue an order stating that each parcel shall contain a minimum of 15 percent public housing units." Ms. Todman described that this flexibility would allow the Applicant to negotiate with other partners and with financial institutions without a prescribed number of affordable units to be constructed on each square.
14. On December 29, 2014, OP submitted a supplemental report (Exhibit 39) expressing its support for the project subject to a number of conditions. With respect to locating 30 public housing units on Square 737, OP stated that, consistent with the objectives of the PUD, the 30 off-site units would be fully integrated into the market rate development and tenants would not be subject to additional costs of amenities fees. With respect to the location of the remaining 206 public housing units, OP stated that it is "satisfied that permitting the Applicant some flexibility on ACC unit location is necessary to get the units built, and that imposing a base and upper percentage of affordable units in each of the squares is an acceptable compromise for ensuring housing is built and income segregation is kept to a minimum."
15. After proper notice, the Zoning Commission held a public hearing on the application on January 8, 2015. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located.
16. David Cortiella, on behalf of DCHA, testified for the Applicant at the January 8, 2015, public hearing.
17. OP testified at the public hearing in support of the project.
18. ANC 6D submitted two letters regarding the application. By letter dated February 8, 2014, (Exhibit 12) ANC 6D expressed its concern regarding the requested modification application, particularly the Applicant's lack of appropriate community engagement and notice. ANC 6D attached a copy of a letter addressed to Adrianne Todman and dated December 10, 2013, stating that at its regularly scheduled and properly noticed public meeting on December 8, 2013, ANC 6D voted 5-0-1 to disapprove the planned sale of a portion of Square 767 as part of the Capper Carrollsburg project.

19. By letter dated August 15, 2014 (Exhibit 26), ANC 6D submitted a second letter stating that at its regularly scheduled and properly noticed public meeting on June 9, 2014, with a quorum present, ANC 6D voted 6-0 on each of the following: (i) supporting a two-year extension of the first-stage PUD to December 31, 2015 for Squares 739, 767, and 768; (ii) supporting the Applicant's request to move 30 of the required ACC units to Square 737; and (iii) opposing the Applicant's request for flexibility to move the required remaining ACC units from Squares 739, 767, and 768. Meredith Fascett, ANC 6D07 Commissioner, testified at the public hearing regarding these issues.
20. Six individuals testified in opposition to the Applicant's request for flexibility for the proposed location and distribution of the remaining 206 ACC units on Squares 739, 767, and 768. These individuals stated that the Applicant did not adequately provide the community with a plan for how it intends to distribute and integrate the ACC and market-rate units across the remaining squares, and asserted that the flexibility would allow the Applicant to concentrate the majority of the ACC units on a single square, and create buildings containing solely ACC public housing units.
21. On January 16, 2015, the Applicant submitted a list of revised conditions to approval of the application (Exhibit \_\_), based on further discussions with OP staff.
22. At its public meeting on January 26, 2015, the Zoning Commission took proposed action to approve the application.
23. The proposed action of the Zoning 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 \_\_\_\_, 2015, 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.
24. The Zoning Commission took final action to approve the application on \_\_\_\_, 2015.

### **The Requested Modifications**

#### Modification to Locate 30 ACC Units in Square 737

25. The Applicant is seeking modifications to locate 30 ACC units on Square 737. Square 737 is not part of or subject to the approved PUD; however, the Square 737 Owner agreed to the placement of the 30 ACC units on its property.
26. 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. Phase 3 is designed as a 396 unit residential building over ground floor retail.

27. The Square 737 Owner has agreed to locate the 30 ACC units in the second and third phases of development. Rents will be calculated for income-eligible households consistent with applicable public housing regulations for the appropriate household size. All 30 units will be indistinguishable from the market rate units and will be distributed throughout the buildings. Occupants of the 30 ACC units will have access to all building amenity spaces, and the 30 ACC units will include a mix of efficiency, one bedroom, and two bedroom units. 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. The Applicant shall also have the flexibility to adjust the unit mix without requiring Commission approval in order to accommodate the needs of DCHA's current and future residents, so long as a total of 30 units are located in the building(s) being developed in Square 737.
28. As set forth in the Declaration of Affordability Covenants (Exhibit 14A) the Square 737 Owner covenanted to develop, construct, operate, and maintain the 30 ACC units in accordance with all applicable public housing requirements. The Square 737 Owner 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.
29. As the Applicant testified at the public hearing, the Zoning Commission finds that 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, the Zoning Commission finds that 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.

#### Modification of the Location and Distribution of Remaining ACC Public Housing Units

30. The Applicant is also seeking flexibility to reallocate the distribution of the remaining 206 ACC units within the undeveloped Capper Carrollsburg project boundaries without having to identify the number of units per square at this time. The Applicant testified that it is committed to the one-for-one replacement of the ACC units that were previously located at the former Capper/Carrollsburg 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.
31. 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. Of the ACC units delivered to date, 162 units 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.

32. The Applicant 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. The Applicant will indicate the number of ACC units included in each remaining phase as part of the second-stage application for such phase. The Applicant 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. The Applicant will dedicate a minimum of 15 percent and a maximum of 50 percent of the units in each of Squares 739, 767, and 768 as ACC units.
33. The Zoning Commission finds that the requested flexibility will allow the Applicant 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. The Zoning Commission also finds that granting this flexibility will allow the Applicant to negotiate with other partners and with financial institutions without a prescribed number of affordable units to be constructed on each square, which will help the Applicant deliver the remaining ACC units as quickly as possible given current market conditions. Furthermore, the Zoning Commission finds that because the Applicant is committed to dedicating between 15 and 50 percent of the units in each of Squares 739, 767, and 768 as ACC units, public housing will not be overly concentrated in a single square.

### **Contested Issues**

34. ANC 6D and eight individuals raised concerns at the public hearing and/or in written testimony (Exhibits 34, 41-49). The concerns addressed two main issues that individuals feared would result if the Zoning Commission granted the flexibility to reallocate the distribution of the remaining 206 ACC units within Squares 739, 767, and 768 without identifying the number of units per square until the second-stage applications: (i) the Applicant would be permitted to concentrate the majority of the ACC units on a single square, and (ii) the Applicant could construct buildings containing solely ACC public housing units. The individuals testified that either of these options would go against the intent of the PUD of providing a vibrant, mixed-use, and mixed-income community, and would further isolate and segregate low and moderate income families within the District.
35. The Zoning Commission finds that future distribution of the remaining 206 ACC units within Squares 739, 767, and 768 will not result in the over-concentration of ACC public housing units because the Applicant will allocate a minimum of 15 percent and a maximum of 50 percent of the total housing units on each of Squares 739, 767, and 768

to ACC units. Based upon the testimony presented, the Zoning Commission finds that granting the 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. The Zoning Commission finds that granting this flexibility will enable DCHA and its development partners to have more flexibility in determining how best to deliver the remaining ACC units as quickly as possible, given current market conditions. The Zoning Commission further finds that this flexibility will permit the Applicant to more easily negotiate with financial institutions and other partners without having a prescribed number of affordable units on each square, helping to ensure that delivery of the 206 ACC units occurs at a faster rate. Finally, the Zoning Commission finds that the Applicant will have to demonstrate during each second stage application that the development does not have an over-concentration of affordable units, consistent with the PUD's overall goal of providing a vibrant, mixed-use and mixed-income community.

### **Office of Planning Report**

36. By report dated January 31, 2014, OP submitted a report (Exhibit 11), recommending that the Zoning Commission schedule a public hearing on the Application.
37. By report dated December 29, 2014, OP submitted a supplemental report (Exhibit 39) expressing its support for both requested modifications, subject to a number of conditions. In its report, OP stated that, consistent with the objectives of the PUD, the 30 off-site units would be fully integrated into the market rate development and tenants would not be subject to additional costs of amenities fees. OP also stated that it is “satisfied that permitting the Applicant some flexibility on ACC unit location is necessary to get the units built, and that imposing a base and upper percentage of affordable units in each of the squares is an acceptable compromise for ensuring housing is built and income segregation is kept to a minimum.”

### **DDOT Report**

38. By report dated December 16, 2014 (Exhibit 37), DDOT stated its determination that the proposed modifications will have no adverse effects on the travel conditions of the District's transportation network. Specifically, DDOT stated that “the reallocation of the 30 ACC units to the separate entity will not adversely impact the transportation network because there is no change to the total number of units and parking at each site, including Square 737, Lot 77.”

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Zoning Commission concludes that the Applicant's proposed modifications are consistent with the intent of Zoning Commission Order No. 03-12/03-13. The Zoning 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 the planned unit development in Squares 739, 767, and 768. Accordingly, the following conditions are hereby added to Z.C. Order No. 03-12H/03-13H:

1. The Applicant shall ensure that the development on Square 737 includes 30 ACC units, subject to the following conditions:
  - a. The Applicant shall record a covenant in the land records of the District of Columbia ensuring that no fewer than 30 ACC units shall be located throughout the building(s) being developed in Square 737 and shall be delivered for occupancy by January 31, 2021.
  - b. The ACC units on Square 737 shall include a mix of efficiency, one bedroom, and two bedroom units. However, the Applicant shall have the flexibility to adjust the unit mix without requiring Zoning Commission approval in order to accommodate the needs of DCHA's current and future residents so long as a total of 30 units are located in the building(s) being developed on Square 737.
  - c. The 30 ACC units shall be indistinguishable from the market rate units. Occupants of the 30 ACC units shall have access to all building amenity spaces.
2. The Applicant shall have the flexibility to reallocate the distribution of the remaining 206 ACC units within Squares 739, 767, and 768 provided that the percentage of ACC units within each square shall be no less than 15% of the total number of residential units on the square and no more than 50% of the total number of residential units on the square.

On January 26, 2015 upon motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission APPROVED the application at its public meeting by a vote of \_\_\_\_\_.  
\_\_\_\_\_

On DATE, 2015, upon motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission ADOPTED the Order at its public meeting by a vote of \_\_\_\_\_.  
  
*(Handwritten signatures and initials of the commissioners are placed here.)*

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 \_\_\_\_\_.