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ID	Status	Register Category	Subject	Register Issue	Action Date
5429883	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12R/03-13R: Capper/Carrollsburg Venture, LLC and the D.C. Housing Authority	4/24/2015 Vol 62/17	4/14/2015 13:47:25
5429786	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12O/03-13O: Capper/Carrollsburg Venture, LLC and the D.C. Housing Authority	4/24/2015 Vol 62/17	4/14/2015 13:46:44
5411744	Confirmed	Notices, Opinions	Zoning Commission Order No. 13-14: Vision McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development	4/17/2015 Vol 62/16	4/14/2015 12:12:47
5411356	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 18925 - Hwa Golden - ANC 4A	4/17/2015 Vol 62/16	4/14/2015 12:08:52
5412229	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No's. (18735 - NH Street Partners Holdings LLC, - ANC 2A) & (18737 - Chadbourne & Parke, LLP, - ANC 2A)	4/17/2015 Vol 62/16	4/14/2015 12:07:05
5417758	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 18969 - Edward G. Fisher, M.D. - ANC 7F	4/17/2015 Vol 62/16	4/14/2015 12:02:11
5418049	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 18971 - Nicholas Nowak - ANC 6B	4/17/2015 Vol 62/16	4/14/2015 11:59:24
5429680	Submitted to ODAI	Public Hearing	Board of Zoning Adjustment - Public	4/24/2015	4/14/2015 11:53:15

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

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

**Z.C. Case No. 03-12Q/03-13Q**

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

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

**March 30, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia ("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. A total of 712 Public Housing Units were to be provided through the PUD, with 695 units being provided on-site and 12 units to be located at Kentucky Courts, 274 Kentucky Avenue, S.E., Square 1039, Lot 81.<sup>1</sup>
3. 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 the R-5-B Zone District to the CR Zone 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 17C).

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<sup>1</sup> The Order's conditions did not specify that 12 public housing units were to be located at the Kentucky Court location. This Order remedies that omission.

4. The 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, 3.75 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, S.E. (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, S.E. (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, S.E. (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, S.E. (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; and
- 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;

5. In Z.C. Order No. 03-12H/03-13H, dated August 14, 2009, and effective on August 6, 2009, the 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.

6. Finding of Fact No. 23 of Z.C. Order No. 03-12H/03-13H stated that the "new proposed distribution of uses and densities is shown on the 'Capper/Carrollsburg Overall Plan' and 'Capper/Carrollsburg Overall Analysis' sheets included in the Prehearing Statement. (Exhibit ["Ex."] 4.)

7. Sheet 1.2 of that submission included a table with site development data dated December 12, 2008. The table indicates that a building on Square 739 would include 322 residential units with 98 public housing rental units. For Square 767, the table indicated that the

building would include 147 residential units with 66 public housing rental units. For Square 768, the table indicated that the building would include 295 residential units with 73 public housing rental units. The sheet described the units as Annual Contributions Contract ("ACC") units.<sup>2</sup> All told, the three buildings would account for 230 of the 695 public housing units required to be provided within the PUD site.

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

8. 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. (Ex. 1-2.) Specifically, the Applicant requested modifications to reduce the total number of ACC units required to be constructed on Squares 739, 767, and 768 from 237 to 207 units and 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; and 59 ACC units in Square 768. The 30 units being eliminated from the three squares would be accounted for off-site on Lot 77 in Square 737. Although not part of the approved PUD, 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 30 ACC units resulted from a purchase and sales agreement dated July 26, 2011 between DCHA and the Square 737 Owner concerning two DCHA properties within the PUD site. Among the terms of the agreement was that 30 ACC units would be located on the Square 737 property.
9. 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.
10. 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 Commission granted the request at the same time it took final action to approve this

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<sup>2</sup> The regulations of the United States Department of Housing and Urban Development describe an ACC as:

a written contract between HUD and a [public housing authority (PHA)]. Under the ACC, HUD agrees to make payments to the PHA, over a specified term, for housing assistance payments to owners and for the PHA administrative fee. The ACC specifies the maximum payment over the ACC term. The PHA agrees to administer the program in accordance with HUD regulations and requirements.

application. As a result, the first-stage approval for Squares 739, 767, and 768 would be extended until December 31, 2018, by which time all applications for second-stage approvals for those properties would have to be filed.

11. On January 31, 2014, the Office of Planning (“OP”) submitted a report, recommending that the Commission schedule a public hearing on the application. (Ex.11.)
12. At its public meeting on February 10, 2014, the Commission voted to schedule a public hearing on the application. The Commission also deferred consideration of the companion time extension request until its consideration of final action in the present case.
13. On April 29, 2014, the Applicant submitted a prehearing statement and development data information for Z.C. Case No. 03-12Q/03-13Q. (Ex. 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 206 ACC units within the undeveloped Capper Carrollsburg project boundaries, without having to identify the number of units per square until the second-stage applications for each development.
14. On June 2, 2014, the Applicant submitted a letter from DCHA requesting a waiver of the normal hearing fee pursuant to § 3042.2 of the Zoning Regulations, to permit the construction of a low or moderate income subsidized housing development. (Ex. 15.) The Commission granted the request at its public meeting held June 9, 2014.
15. Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the property is located, submitted two letters regarding the application prior to the hearing.
16. By letter dated February 8, 2014, ANC 6D expressed its concern regarding the requested modification application, particularly the Applicant’s lack of appropriate community engagement and notice. (Ex. 12.) ANC 6D attached a copy of a letter addressed to Adrienne Todman Executive Director of DCHA 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.
17. By letter dated August 15, 2014, 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 (rather than the requested five 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 206 ACC units from Squares 739, 767, and 768. (Ex. 26.)

18. On September 8, 2014, the Applicant submitted a letter requesting a postponement of the Commission's public hearing to consider the application. (Ex. 28.) The Commission granted the Applicant's request to postpone the hearing.
19. On December 19, 2014, the Applicant submitted a supplemental letter from DCHA Executive Director, Adrienne Todman, requesting the Commission's support of the modification application. (Ex. 38.) Ms. 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.
20. Ms. Todman's letter further clarified that the 206 ACC units would still be located on Squares 739, 767, and 768. As to these squares, DCHA was requesting that the first-stage approval be modified so as not to designate the number of public housing units to be constructed on each square with the proviso that at least 15% of the residential units on each square would be public housing units. Ms. Todman stated 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.
21. On December 29, 2014, OP submitted a supplemental report expressing its support for the project subject to a number of conditions. (Ex. 39.) 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 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."
22. After proper notice, the Commission held a public hearing on the application on January 8, 2015. The parties to the case were the Applicant and ANC 6D.
23. David Cortiella, on behalf of DCHA, testified for the Applicant at the January 8, 2015, public hearing. OP testified at the public hearing in support of the project.
24. Six individuals testified in opposition to the Applicant's request for flexibility for the proposed location and distribution of the 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 amongst the three 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 units.

25. On January 16, 2015, the Applicant submitted a list of revised conditions to approval of the application, based on further discussions with OP staff. (Ex. 52.) To address concerns about the over concentration of public housing units on any single square, the second proposed condition included the requirement that the percentage of public housing units on any square may not exceed 50% of the total number of residential units on the square.
26. Through a letter dated January 22, 2015, the Chair of ANC 6D indicated that at a regularly scheduled and properly noticed public meeting on January 12, 2015, with a quorum being present, the ANC voted 6-0-0 in favor of requesting that ANC 6D be allowed to submit written testimony prior to final action regarding DCHA's requested modification. (Ex. 53.)
27. At its public meeting on January 26, 2015, the Commission indicated that notwithstanding the ANC's reference to final action, the Commission preferred to hear the ANC's views prior to proposed action and therefore deferred proposed action until February 23<sup>rd</sup>. The Commission established deadlines for the ANC to submit a further report and for the Applicant to respond.
28. By letter dated February 5, 2015, the Chair of ANC 6D indicated that at a regularly scheduled and properly noticed public meeting on February 9, 2015, with a quorum being present, the ANC voted 6-0-0 in opposition to the modification. (Ex. 54.) The ANC indicated that it continued to adamantly oppose a plan to construct "income-segregated buildings on these Squares as it would circumvent the theme of HOPE VI revitalization and the goal of the PUD." The ANC explained that the boundary of the minimum and maximum percentages of affordable units for each of the squares would not minimize income segregation.
29. The letter also objected to the fact that these percentages do not address the percentage of affordable units on a per building basis and contended that basing percentages on the total number of residential units per square rather than the total number of required replacement ACC units also could result in a higher concentration of ACC units on a single square. An attached spread sheet indicated that if the relief were granted Square 739 could have as many as 140 public housing units, while Squares 767 and 768 could respectively have as few as 22 and 44 such units.

30. The Applicant responded in a letter dated February 19, 2015. (Ex. 55.) The Applicant restated its commitment to creating a vibrant mixed-income community including public housing and workforce and market-rate housing (both rental and homeownership). The Applicant pointed to the mix of housing already provided and asserted that a true mixed-income community is not defined by a particular square but rather by the overall mix of uses throughout the project. The letter stressed that the flexibility requested was essential to the Applicant's ability to negotiate the financing needed to deliver the remaining 206 units and that the Commission will have an opportunity at each subsequent second-stage proceeding to determine whether the design and unit distribution of each building is consistent with the purposes of the PUD.
31. The Commission took proposed action to approve the application on February 23, 2015.
32. 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. Through delegated action dated March 10, 2015, the NCPC Executive Director found that the proposed modification to the PUD would not be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 58.)
33. The Commission took final action to approve the application on March 30, 2015.

### **The Requested Modifications**

#### **Modification to Locate 30 ACC Units in Square 737, Lot 77.**

34. The Applicant is seeking a modification to the first stage approval to locate an additional 30 public housing units off-site. The units would be located on Sqaure 737, Lot 77. As noted, although this property is not part of or subject to the approved PUD; the Square 737 Owner agreed that the 30 ACC units it is separately required to construct on its property may be included among the PUD's public housing requirement. The ACC units were required as part of a purchase sale agreement involving a portion of the PUD site, and therefore the ACC units are properly viewed as being a product of this PUD.
35. 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.
36. The Square 737 Owner has agreed to locate the 30 ACC units in the second and third phases of development. As part of its prior agreement with DCHA, the Square 737 Owner has further agreed that 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. DCHA will have the right to reasonably approve the design and development plans for the 30 ACC units. The Square 737 Owner will 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.

37. As set forth in the Declaration of Affordability Covenants, the Square 737 Owner covenanted to develop, construct, operate, and maintain the 30 ACC units in accordance with all applicable public housing requirements. (Ex. 14A.) 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.
38. The 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 Capitol South TDR Receiving Zone and therefore has no affordable housing requirements under the Inclusionary Zoning requirements of the Zoning Regulations. Moreover, the 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 206 ACC Public Housing Units**

39. As a result of the relocation of the 30 ACC units off-site, the number of ACC units to be provided on within Squares 739, 767, and 768 has been reduced to 206. The Applicant is seeking flexibility to reallocate the distribution of these 206 ACC units within Squares 739, 767, and 768 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.

40. 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.
41. The Commission finds that the requested flexibility will allow the Applicant to explore multiple financing options for the delivery of the required 206 ACC units within Squares 739, 767, and 768 without having to file a modification of this first-stage approval should a second-stage application call for a different allocation of the ACC units. This Order also includes the Applicant's agreed to condition that ACC units will comprise at least 15%, but no more than 50% of residential units on each square, thereby establishing firm parameters. The 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 206 ACC units as quickly as possible given current market conditions. The precise number of ACC units per building will of course be identified in each second-stage PUD application.

### **Contested Issues**

42. ANC 6D and eight individuals raised concerns at the public hearing and/or in written testimony. (Ex. 34, 41-49.) Specifically, these witnesses expressed concern that not requiring the Applicant to identify the precise allocation of the 206 ACC units within Squares 739, 767, and 768 until the second-stage applications would allow the Applicant to: (i) concentrate the majority of the ACC units on a single square, and (ii) 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.
43. In response to these concerns, the Applicant has proffered a condition limiting public housing units to not more than 50% of the total housing units on each of Squares 739, 767, and 768 to ACC units. Further, the Applicant has agreed to 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 Commission is adding this requirement as a condition to the first-stage approval.

The Commission concludes that the two conditions will ensure that there will not be an over concentration of ACC units within any of the three squares. Further, as will be explained in the Commission's specific response to the issues and concerns raised by ANC 6D, the goal of the PUD is to create a vibrant mixed-use and mixed-income project within the entire site and this goal has been achieved. The fact that public housing units may be concentrated on one or more squares will not necessarily affect this dynamic. To the extent that such a possibility exists, the Applicant will be required in each second stage application to specify the precise number of ACC units to be constructed and demonstrate 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. *See* revised condition 6 (a) (ii)(B).

### **Office of Planning Report**

44. On January 31, 2014, OP submitted a report, recommending that the Commission schedule a public hearing on the application. (Ex. 11.)
45. On December 29, 2014, OP submitted a supplemental report expressing its support for both requested modifications, subject to a number of conditions. (Ex. 39.) 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**

46. By report dated December 16, 2014, DDOT stated its determination that the proposed modifications will have no adverse effects on the travel conditions of the District's transportation network. (Ex. 37.) 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 Commission concludes that the Applicant's proposed modifications are consistent with the intent of Z.C. Order No. 03-12/03-13. The Commission concludes that the proposed modifications are in the best interests 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.

The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC.

As noted, ANC 6D submitted three reports regarding the application. By letter dated February 8, 2014, ANC 6D expressed its concern regarding the requested modification application, particularly the Applicant's lack of appropriate community engagement and notice and attached a letter concerning an unrelated matter. (Ex. 12.) By letter dated August 15, 2014, ANC 6D stated its support for the Applicant's request to move 30 of the required ACC units to Square 737; and its opposition to the Applicant's request for flexibility to move the required 206 ACC units from Squares 739, 767, and 768. (Ex. 26.) By letter dated February 5, 2015, the Chair of ANC 6D reiterated the ANC's opposition to the first-stage PUD no longer specifying the precise allocation of ACC units, stating that the proposed condition imposing per square minimum and maximum affordable unit requirements would not prevent the over concentration of public housing units on a particular square. (Ex. 56.)

As to the ANC's initial concerns, the Commission finds that the Applicant has engaged in the extent of community outreach expected of an applicant and that the Applicant has clarified that the remaining 206 public housing units would continue to be located on the same square. With respect to the ANC's concern than an over concentration of affordable housing units will result, the Commission agrees with the Applicant that the goal of the PUD of creating a vibrant mixed-use and mixed-income community is not defined on a square-by-square basis. Rather the impact of any given project on this goal is to be judged on the basis of the entire PUD site.

In fact, the Applicant's efforts have resulted in the creation of a vibrant mixed-use and mixed-income development and its proper focus should be on the construction of the remaining public housing units. The state of the current financing market requires the Commission to grant the type of flexibility requested by the Applicant. At each second-stage application for these squares, the Applicant will be required to specify the precise number of ACC units to be constructed. To ensure that the proposed unit mix will not diminish the vibrancy of the existing development, the Applicant will be required to demonstrate 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. (See revised condition 6 (a)(ii)(B).) For these reasons, the Commission does not find ANC 6D's advice to deny the requested flexibility to be persuasive.

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. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.

## **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 a modification to a first-stage planned unit development in Squares 739, 767, and 768.

Condition No. 6 of Z.C. Order No. 03-12/03-13, as modified by Z.C. Order No. 03-12D/03-13D and Z.C. Order No. 03-12H/03-13H, is amended to read as follows with new text shown in bold and underlined font:

6. A minimum of ~~695~~ **707** of the residential units shall be devoted to public housing **as follows:**

**(a) 665 of the public units shall be located within the PUD Site** including:

**(i) 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; and**

**(ii) 206 public housing units located in Squares 739, 767, and 768, provided:**

**(A) The percentage of public housing 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; and**

**(B) The Applicant shall 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;**

**(b) 30 of the public housing units shall be located in Square 737, Lot 77 and shall be delivered by January 31, 2021. As part of each second-stage application filed, the Applicant shall update the Zoning Commission on the progress being made in the delivery of the units; and**

**(c) 12 of the public housing units shall be located at Kentucky Courts, 274 Kentucky Avenue, S.E., Square 1039, Lot 81.**

On February 23, 2015, upon motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 30, 2015, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Miller, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

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 April 24, 2015.