

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 03-12L/13L

Z.C. CASE NO. 03-12L/13L

**Capper/Carrrollsburg Venture, LLC & District of Columbia Housing Authority
(Two-Year Time Extension for Planned Unit Development @ Square 769 and 882)**

September 26, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on September 26, 2011. At the meeting, the Commission approved a request on behalf of Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for: (a) a two-year extension of the time period in which to file a building permit for the construction of a residential building in Square 769 and an office building in the southern portion of Square 882, and (b) a two-year extension of the time period in which to begin construction of the residential building in the northern portion of Square 882, all of which were initially approved in Z.C. Order No. 03-12/03-13, and received final approval pursuant to Z.C. Order No. 03-12G/03-13G, 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. Pursuant to Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th 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.
2. The approved residential building in Square 769 that is the subject of this request will include a total gross floor area of approximately 181,420 square feet; have a maximum height of 110 feet; and include a minimum of 152 off-street parking spaces in the garage. The building will include a minimum of 34 affordable units dedicated to households earning less than 60% of the Area Median Income ("AMI").
3. The approved residential building in the northern portion of Square 882 that is the subject of this request will have a maximum gross floor area of 189,168 square feet; have a maximum height of 60 feet; and include at least 172 off-street parking spaces in the garage. The building will include a minimum of 38 affordable units dedicated to households earning less than 60% of the AMI.
4. The approved office building in the southern portion of Square 882 that is the subject of this request will have a maximum gross floor area of 499,780 square feet and have a maximum height of 92 feet. The office building will include a minimum of 284 off-street parking spaces in the garage.

5. The Commission approved the last order affecting these buildings in Z.C. Order No. 03-12G/03-13G, which became effective upon publication in the *D.C. Register* on August 14, 2009. The Order requires the Applicant to file an application for a building permit for the buildings no later than August 14, 2011, with construction to begin no later than August 14, 2012.
6. By letter dated and received by the Commission on July 18, 2011, the Applicant filed a request for: (a) a two-year extension of the time period in which to file a building permit for the construction of the residential building in Square 769 and the office building in the southern portion of Square 882; and (b) a two-year extension of the time period in which to begin construction of the residential building in the northern portion of Square 882. The request, if approved, would require that: (a) an application for a building permit for the residential building in Square 769 and the office building in Square 882 must be filed no later than August 14, 2013, with construction to start no later than August 14, 2014; and (b) construction of the residential building in Square 882 must start no later than August 14, 2014.
7. Other than the Applicant, the only parties to the case were Advisory Neighborhood Commission ("ANC") 6B and ANC 6D. On July 18, 2011, the Applicant submitted a Proof of Service, indicating that the extension request was served on ANCs 6B and 6D.
8. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant has taken many steps to move forward with the overall project including:
 - Subdivided a number of the prior existing lots into new, consolidated single lots of record;
 - Created assessment and taxation lots for a number of the properties included in the overall development;
 - Applied for, and obtained, raze permits to demolish a number of structures within the overall project boundaries;
 - Built 460 residential units (of which 339 are replacement public housing units);
 - Gone through the Commission process and received second-stage approvals and modifications for large portions of the development, as outlined above;
 - Invested approximately \$12,827,146.14 in infrastructure improvements to enable the overall development to move forward. Over half of the public infrastructure improvements that are associated with the development have been completed; and

- Invested a significant amount in preparing construction drawings and filing a building permit application for the residential building in Square 882.
9. The Applicant indicated that it submitted an application for Fair Housing Act financing under the Build America Bonds subsidy program, but the project was ultimately turned down for financing. In the past eight months, the Applicant has continued to pursue numerous alternative construction financing methods for the residential buildings in Squares 769 and 882, but has not been able to secure any financing, given the reluctance of lenders to lend for residential projects. Further, the Applicant indicated that it has contacted several banks, including Bank of America, Bank of New York, and PNC, but no lender thus far has been interested in financing the proposed office building. In addition, the Applicant's leasing broker has made numerous attempts to market the office building in Square 882 in order to obtain a lead tenant and secure financing, including outreach to the brokerage community, providing marketing materials, presentations to large public and private sector tenants and inclusion of the project on pertinent websites.
 10. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions it contacted. Thus, 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 finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.
 11. There has been no substantial change in any of the material facts upon which the Commission based its approval of the buildings, and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.
 12. The Office of Planning ("OP") submitted a report dated September 2, 2011 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.
 13. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

14. Based on the OP report and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the request should not be granted.

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 Zoning 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.) Section 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 request 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 is required under § 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)) to give great weight to the affected ANC's recommendations. ANCs 6B and 6D each submitted a letter in support of the requested extension. The Commission has given ANC 6B's and ANC 6D's recommendations great weight in approving this request.
5. 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 meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore

recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this request.

6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the approved residential buildings and office building, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
7. Section 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.
8. 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.
9. 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.

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 Z.C. Case No. 03-12L/13L such that:

- (a) The approval of the residential building in the northern portion of Square 769 and the office building in the southern portion of Square 882 shall be valid until August 14, 2013, within which time an application must be filed for a building permit, with construction to commence no later than August 14, 2014; and
- (b) The approval of the residential building in the northern portion of Square 882 shall be valid until August 14, 2014, within which time construction must commence.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family

responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 26, 2011, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Michael G. Turnbull, and Peter G. May to adopt).

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 December 30, 2011.