

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12P/03-13P**

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

**Capper/Carrollsbury Venture, LLC & District of Columbia Housing Authority
(Two-Year Time Extension for Planned Unit Development @ Squares 769 & 882)
September 30, 2013**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on September 30, 2013. At the meeting, the Commission approved a request on behalf of Capper Carrollsbury Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for: (a) a two-year extension of the time period to file an application for a building permit for the residential building in Square 769, such that the permit application must be filed no later than August 14, 2015, and construction must be started no later than August 14, 2016, and (b) a two-year extension of the time period to file an application for a building permit for the office building in Square 882, such that the permit application must be filed no later than August 14, 2015, and construction must be started no later than August 14, 2016, all of which were initially approved in Z.C. Order No. 03-12/03-13, received final approval pursuant to Z.C. Order No. 03-12G/03-13G, and were extended pursuant to Z.C. Order No. 03-12L/13L, 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 planned unit development ("PUD") 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.

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3. 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 will have a maximum height of 92 feet. The office building will include a minimum of 284 off-street parking spaces in the garage.
4. The Commission granted second-stage approval to construct the residential and office buildings in Order No. 03-12G/03-13G, which became effective upon publication in the *D.C. Register* on August 14, 2009. That 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.
5. The Commission approved a first time extension in Z.C. Order No. 03-12L/13L, which became effective upon publication in the *D.C. Register* on December 30, 2011. That Order requires the Applicant to file an application for a building permit for the buildings no later than August 14, 2013, with construction to begin no later than August 14, 2014.
6. By letter dated and received by the Commission on August 13, 2013, the Applicant filed a request for: (a) a second two-year extension of the time period to file an application for a building permit for the residential building in Square 769, such that the permit application must be filed no later than August 14, 2015, and construction must be started no later than August 14, 2016, and (b) a second two-year extension of the time period to file an application for a building permit for the office building in Square 882, such that the permit application must be filed no later than August 14, 2015, and construction must be started no later than August 14, 2016.
7. Other than the Applicant, the only parties to the case were Advisory Neighborhood Commission 6B ("ANC 6B") and Advisory Neighborhood Commission 6D ("ANC 6D"). On August 13, 2013, the Applicant submitted a Proof of Service, indicating that the extension request was served on ANC 6B and ANC 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:
 - Built 623 residential units, of which 386 are replacement public housing units. The completed units are comprised of a 162-unit elderly-only building, a 138-unit apartment building, and 323 units of mixed-income townhomes. The townhomes include 86 public housing units;
 - A 195-unit apartment building (which includes 39 replacement public housing units) is permitted and financing is being finalized for the northern portion of Square 882. Construction commencement is scheduled for October 2013;

- The design documents for the new Community Center on Square 881W are being finalized with the intention of applying for a building permit in the 1st quarter of 2014 and commencing construction in 2014;
 - 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;
 - Completed 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 since the PUD received final approval, the Applicant has diligently pursued financing, marketing, and development of the approved project components. However, with respect to the residential building in Square 769, the Applicant has pursued numerous financing methods, but has yet to come up with a viable financing solution given market conditions for construction financing. The Applicant indicated that multiple lenders have expressed an interest in the Square 769 site, but they require more leasing data in the area before underwriting a mixed-income transaction, and thus the Applicant has been unable to identify a lender partner that can successfully underwrite the residential project on Square 769. The Applicant also submitted a letter from EagleBank indicating that bank representatives have had many discussions with the Applicant about the residential building in Square 769, but the bank is unwilling to commit funding for the building at this point given the influx of new rental product, concerns about vacancy rates, and continued uncertainty about interest rates and the economy.
10. The Applicant submitted evidence demonstrating that it has faced great difficulty securing construction and permanent financing for the office building in Square 882. 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 “on-spec,” and lenders are now requiring buildings to be at least

50-70% pre-leased prior to making loan commitments. In addition, the Applicant indicated that it has made numerous attempts to market the office building in Square 882 to obtain a lead tenant, including outreach to potential tenants and the brokerage community, an electronic media marketing campaign and presentations to active public and private sector tenants, and responding to requests for proposals issued by tenants seeking to relocate their headquarter facilities. However, none of these efforts have been successful to date.

11. 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 two approved PUD projects from the numerous lending institutions it contacted. Thus, the projects 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 criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.
12. There has been no substantial change in any of the material facts upon which the Commission based its approval of the residential or office buildings, and the Applicant remains committed to moving forward with the projects and fully complying with the conditions and obligations imposed as part of the PUD approval.
13. The Office of Planning ("OP") submitted a report dated September 20, 2013 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. OP requested that the Applicant submit additional information about the difficulties encountered in financing the residential building in Square 769. The Applicant submitted this information by letter dated September 23, 2013.
14. ANC 6D submitted a report on September 27, 2013 in support of the requested extension. The report also noted that the Community Center, which had been promised to the original residents as the central part of their community benefits agreement with the DC Housing Authority, remains unbuilt. The ANC further noted that the Capper Carrollsburg Hope VI Project has not identified how the facility will be furnished, maintained or operated after construction. While some of the promised services will have to wait until the Center is completed, ANC 6D believed that other supportive services can begin now and suggested possible locations. The ANC also noted that other programs, such as athletic team sports, do not require walls at all.

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.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission 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 legally relevant issues and concerns. ANC 6D submitted a letter in support of the requested extension, but raised concerns regarding the still unbuilt Community Center. The Commission notes that the Community Center is not part of this time extension request, but nevertheless wishes to acknowledge the legitimacy of the ANC's concerns and to put the Applicant on notice that the Commission will not look favorably upon a third time extension request without proof of a significant outreach by the Applicant to the ANC and the community at large.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant 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 application.

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 and office buildings, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
7. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
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. 03-12P/13P such that 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, 2015, within which time an application must be filed for a building permit for each building, with construction of each building to commence no later than August 14, 2016.

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.

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On September 30, 2013, upon the motion of Commissioner Miller, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull 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 6, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING