

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, ZONING
COMMISSION ORDER NO. 03-12C2/03-13C2**

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

**Second-stage Approval of a Planned Unit Development for an Office Building
at 250 M Street, S.E. – Square 769, LLC and the District of Columbia Housing Authority
(Square 769, parts of Lots 18, 20, and 21)**

July 9, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 7, 2006 to consider an application from Square 769, LLC and the District of Columbia Housing Authority (“DCHA”) (collectively the “Applicants”) for second-stage review and approval of a planned unit development (“PUD”) for parts of Lots 18, 20, and 21 in Square 769 pursuant to Zoning Commission Order Number 03-12/03-13. The Commission considered the application pursuant to Chapters 24 and 30 of the D.C. 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 Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On March 21, 2003, the Applicants, in conjunction with Capper Carrollsburg Venture LLC, filed an application seeking approval of a PUD and a related Zoning Map amendment for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. The overall PUD site consists of 33 acres of land.
2. Pursuant to Z.C. Order No. 03-12/03-13, dated October 8, 2004, the 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.

3. By Z.C. Order No. 03-12/03-13, 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 granted a PUD-related map amendment to rezone the following properties from R-5-B to CR 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).
4. On October 3, 2005, the Commission issued Z.C. Corrected Order No. 03-12C/03-13C to correct Condition No. 2 of Z.C. Order No. 03-12/03-13 to add Lot 30 to Square S825 of property included in the consolidated approval.
5. On April 29, 2005, Capper/Carrollsborg Venture, LLC, in conjunction with DCHA, filed an application seeking final approval for the first phase ("Phase I") of the PUD and modifications to the preliminary and consolidated approvals issued pursuant to Z.C. Order No. 03-12/03-13. The April 29, 2005 application submitted by Capper/Carrollsborg Venture, LLC and DCHA was the first second-stage application filed in a series of applications seeking second-stage approval for portions of the project preliminarily approved pursuant to Z.C. Order No. 03-12/03-13. That application also sought approval to modify portions of the parking requirements for the consolidated PUD approval. That application included 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 is identified as Zoning Commission Case Nos. 03-12A/03-13A. The property that was the subject of that application consisted of 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. The property that was the subject of that application consisted of approximately 122,610 square feet of land and was zoned R-5-B. Capper/Carrollsborg Venture, LLC and DCHA did not seek an amendment to the Zoning Map in connection with that application. On September 15, 2006, the Zoning Commission issued Z.C. Order No. 03-12A/03-13A which approved that application.
6. On April 21, 2006, the Applicants filed their application seeking second-stage approval for portions of the preliminary PUD approved pursuant to Z.C. Order No. 03-12/03-13. This application is the second in a series of second-stage applications to be filed to complete the entire PUD project.
7. The Applicants are Square 769, LLC and DCHA. Square 769, LLC is a joint venture that includes DCHA and William C. Smith & Co. William C. Smith & Co. will serve as the developer of the office building at 250 M Street, S.E.
8. The property that is the subject of this application consists of parts of Lots 18, 20, and 21 in Square 769 (the "PUD Site"). The boundaries of Square 769 are L Street, S.E. on the

north; 3rd Street, S.E. on the east; M Street, S.E. on the south; and 2nd Street, S.E. on the west. The PUD Site consists of approximately 27,960 square feet of land and is zoned CG/C-3-C. The Applicants did not seek an amendment to the Zoning Map in connection with this application.

9. The Applicants intend to construct a nine-story office building with ground-floor retail on the PUD Site. The office building will be constructed to a maximum height of 110 feet. The project will have a floor area ratio ("FAR") of approximately 7.43. There will be 197 complying, accessible parking spaces provided in this development.
10. The purpose of the PUD is to implement a portion of the revitalization plan at the site of the Arthur Capper/Carrollburg Dwellings, a public housing community owned by DCHA.
11. After proper notice, the Commission held a hearing on the application on December 7, 2006. The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located. No written report was submitted by ANC 6D and no representative of ANC 6D appeared at the hearing on the case.
12. At the hearing on the application, the Commission requested that the Applicant provide supplemental materials, including renderings of the 2nd Street façade without the trees along 2nd Street; perspective drawings showing the relationship between the ground-floor of the building along 2nd Street and the Canal Blocks Park; an explanation of the elements of the application that exemplify superior architecture; a clarification of the employment plan in the First Source Employment Agreement submitted with the Applicants' August 4, 2006 pre-hearing statement; and the identification of surfaces to be used for the Pepco vaults located on the property.
13. On May 3, 2007, the Applicants filed their post-hearing submission, which provided the supplemental materials requested by the Commission.
14. At its public meeting on May 14, 2007, the Commission took proposed action by a vote of 5-0-0 to approve the application and plans that were submitted to the record.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by report dated June 19, 2007, found that the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

16. The Commission took final action to approve the application on July 9, 2007 by a vote of 5-0-0.

The PUD Project

Overview

17. The Applicants seek approval of a nine-story office building with ground-floor retail, containing 207,785 square feet of gross floor area. The inclusion of ground-floor retail space in the office building will advance the overall goals of the PUD by providing financial leverage for the construction of the replacement public housing in the Capper/Carrollsborg project.

Site Location and Description of Surrounding Area

18. The PUD Site is located in the Southeast quadrant of the District, near the Navy Yard Metro Station in the Anacostia Waterfront area.
19. A portion of Square 769 is currently improved with a parking lot, while the remaining portion of Square 769 is unimproved land. The portions of Square 769 described in this application are located in the medium-high density commercial land use category in the Generalized Land Use Map of the Comprehensive Plan. The predominant use in medium-high density commercial land use categories is a shopping and service area that generally offers the largest concentration and variety of goods and services outside the Central Employment Area.
20. The area surrounding the PUD Site is characterized by a mixture of uses. To the south, east, and west are new office buildings: the headquarters of the U.S. Department of Transportation, the 300 M Street building, and the Federal Gateway Building at 1100 New Jersey Avenue. Also located to the south of the PUD site will be the new Washington Nationals baseball stadium. Immediately to the west of the PUD site is the location of the proposed Canal Blocks Park. Two blocks to the west is the Navy Yard Metrorail Station, located across the street from the Federal Gateway Building. The northern portion of Square 769 will be improved by a proposed residential project.

Project Design

21. The Applicants proposed to construct a nine-story office building with ground-floor retail and below-grade parking. The proposed project was designed to work in concert with the existing building at 1100 New Jersey Avenue to create a gateway from M Street to the proposed Canal Blocks Park and the Capper/Carrollsborg neighborhood. In addition to functioning as a visual point of entry, the proposed project will serve as a commercial and retail gateway that will help bring vitality to the mixed-use Southeast M Street urban

- corridor. The design of the office building will harmonize with both the existing and proposed scales of its urban surroundings.
22. The building will have a height of 110 feet and will incorporate components that meet LEED criteria. The building facades along M and 2nd Streets will consist of a glass curtain wall treatment with pre-cast concrete at featured areas. The organization of the general massing will permit the building to address the different existing and proposed scales of the surrounding neighborhood. The building's main entrance will be located on M Street, with retail entrances along both M and 2nd Streets. At the street level, the landscape and streetscape designs were articulated in a manner to promote pedestrian movement and activity. The design included a metal cornice treatment along 2nd Street, which will emphasize the importance of the Canal Blocks Park and provide compositional relief to the building façade along 2nd Street.
 23. The ground-floor retail space will occupy more than 50 percent of the building's first floor. A two-foot glass canopy along 2nd Street will float above each retail bay, serving to reduce the overall height of the building to a scale that will promote pedestrian-friendly activity at the ground floor.
 24. A 25-foot service drive along the building's north side will provide access to both loading berths and garage entries. The Pepco vaults, which were originally located on 2nd Street, have been relocated to the service drive in order to accommodate greater retail use at the corner of 2nd and M Streets, S.E. and create a more pedestrian-friendly streetscape at that corner.
 25. The below-grade parking garage will consist of four levels and will accommodate 197 parking spaces, satisfying the minimum requirement of 150 parking spaces stated in Z.C. Order No. 03-12/03-13.

Matter of Right Development Under Current Zoning

26. The PUD Site is zoned CG/C-3-C. The Capitol Gateway (CG) Overlay District applies to the Buzzard Point and Capitol Gateway areas, which are designated for mixed-use development in the Comprehensive Plan for the National Capital. (11 DCMR §1600.1.) Two purposes of the CG Overlay District are: (1) to assure development of the area with a mixture of residential and commercial uses and with a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies for the area; and (2) to encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel uses. To accomplish the purposes of the CG Overlay District, any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E., is subject to review and approval by the Commission. An applicant requesting approval of a building in the CG Overlay District must prove that the proposed building's architectural design, site plan, landscaping, and sidewalk treatment are of a superior quality. The streetwall of each new

building must be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street, S.E. Each new building must devote not less than 35 percent of the gross floor area of the ground floor to retail, service, entertainment, or arts uses. (11 DCMR § 1604.4.) Pursuant to § 1604.6, not less than 50 percent of the surface area of the streetwall of any new building along M Street must be devoted to display windows having clear or low-emissivity glass, except for decorative accent, and to entrances to commercial uses or the building. No driveway may be constructed or used from M Street to the required parking spaces or loading berths in or adjacent to a new building.

27. The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District, and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR § 740.2.) The C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development. The C-3-C District permits a maximum height of 90 feet, with no limitation on the number of stories, and a maximum density of 6.5 FAR for all structures.

Flexibility from the Zoning Regulations

28. The Applicants requested flexibility from the roof structure requirements of the C-3-C District; specifically, the requirement set forth in § 411.5 of the Zoning Regulations that the enclosing walls of a roof structure must be of equal height.
29. As provided in § 2400.2 of the Zoning Regulations, the PUD process was created to allow greater flexibility in planning and design than may otherwise be possible under conventional zoning procedures. As permitted under § 2405.8, the Commission may grant such flexibility without the need for special exception approval from the Board of Zoning Adjustment or compliance with the special exception standards that might otherwise apply.
30. In this case, strict compliance with § 411.5 would be unreasonable and impractical because of conditions relating to the building and surrounding area. As shown on the plans, the project will include a roof structure that will have enclosing walls of unequal height. The structure will slope from eighteen feet, six inches at its east end to thirteen feet, eight inches at its west end. The design of the roof structure responds to a number of conditions relating to both the building and the surrounding area. The slope of the structure will help to achieve an intimate area on the roof to shelter users of the rooftop terrace from the sun and rain. The decreased height of the structure near the eastern edge of the building will help to minimize the height of the penthouse as experienced along Canal Park. The proposed roof structure will screen the rooftop equipment, stairways, and the elevator penthouse from neighboring views. A portion of the structure must have a height of eighteen feet, six inches to enclose the mechanical and elevator equipment. However, requiring the entire penthouse to have enclosing walls of eighteen feet, six

inches would be unreasonable in light of the conditions of the surrounding area and the objective of minimizing views of roof structures.

31. The roof structure will meet all requirements other than § 411.5. The proposed setbacks will exceed the one-to-one requirement. The proposed roof structure will have a density of 0.23 FAR (6,376 square feet), less than the permissible density of 0.37 FAR (10,345 square feet). The enclosed portion of the roof structure will be used only to provide access to the roof and roof terraces, and to house mechanical, elevator, and other utility equipment.

Office of Planning Report

32. By report dated November 27, 2006 and through testimony presented at the public hearing, the Office of Planning (“OP”) recommended approval of the application. OP evaluated the Applicants’ request for flexibility from the roof structure requirements and concluded that the requested flexibility was consistent with the Comprehensive Plan, Zoning Regulations, and the intent of Z.C. Order No. 03-12/03-13.
33. OP recommended approval of the application subject to the provision of a countersigned LSDBE Agreement prior to final action in the case.
34. The Applicants submitted their request for countersignature of the LSDBE Agreement to the Department of Small and Local Business Development on December 5, 2006. In their post-hearing submission, dated May 3, 2007, the Applicants stated that the Department of Small and Local Business Development would not execute the LSDBE Agreement without a final budget for the project. The Applicants explained that the budget for the project would not be finalized until after the Zoning Commission order on the project was issued. The Commission will require, as a condition of approval of the application that, before the issuance of a building permit, the Applicants must submit the final budget for the proposed project to the Department of Small and Local Business Development and obtain a signed LSDBE Agreement.

Anacostia Waterfront Corporation

35. The Anacostia Waterfront Corporation submitted a letter in support of the Applicants’ revised sidewalk and landscape plan.

District Department of Transportation

36. By letter dated December 6, 2006, the District’s Department of Transportation expressed its support of the Applicants’ revised sidewalk and landscape plan.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. The Commission finds that the application is in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval. The Commission may grant approval of the second-stage application with guidelines, conditions, and standards necessary to carry out the Commission’s decision.
3. The building proposed in this application is generally within the applicable height, bulk, and density standards approved by the Commission in Z.C. Order No. 03-12/03-13, and the height and density will not cause adverse effects on any nearby properties. Office use is appropriate for the site, which is located within the medium-high density commercial land use category in the Generalized Land Use Map of the Comprehensive Plan. The impact of the project on the surrounding area is not unacceptable.
4. The Applicants’ requested flexibility from the Zoning Regulations is consistent with the Comprehensive Plan and the intent of the original PUD.
5. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, this phase of the development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
6. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns of the affected ANC. ANC 6D did not submit a report or offer testimony at the public hearing.
7. The application is subject to D.C. Law 2-38, the Human Rights Act of 1977.

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 final approval of a planned unit development for portions of Lots 18, 20, and 21 in Square 769 in Zoning Commission Case No. 03-12C/03-13C. This approval is subject to the following guidelines, conditions, and standards:


1. The PUD shall be developed in accordance with the plans prepared by Hickok Cole Architects, submitted May 3, 2007, marked as Exhibit 40 in the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. Square 769, LLC shall contribute \$46,000 to the Canal Park Development Association for use in making improvements to the Canal Blocks Park, prior to the issuance of a building permit.
3. The Applicant shall comply with the conditions set forth in Z.C. Order No. 03-12/03-13, dated February 6, 2004, effective October 8, 2004.
4. The building shall have a maximum height of 110 feet.
5. The building shall have a maximum density of 7.43 FAR and a gross floor area of approximately 207,785 square feet.
6. The landscape and sidewalk plans shall be as shown in the Architectural Plans and Elevations dated May 3, 2007.
7. In order to obtain a building permit, Square 769, LLC must record a covenant between Square 769, LLC and the District of Columbia, in the land records of the District of Columbia, to the satisfaction of the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs.
8. The Applicants shall submit the final budget for the proposed project to the Department of Small and Local Business Development and obtain a signed LSDBE Agreement before issuance of a building permit.
9. The Applicants shall comply with the terms of the final Memorandum of Understanding with the Department of Small and Local Business Development, which will be executed and submitted to the Office of Zoning before issuance of a building permit, to achieve, at a minimum, the goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD.
10. The Applicants and its general contractor shall comply with the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing D.C. residents for at least 51 percent of the jobs created by the PUD project. The Applicants shall give residents from the Near Southeast community special consideration for employment.

11. The Applicants shall 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.*, (2001) (the "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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, 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. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.


On May 14, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve).

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 AUG 10 2007.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12F/03-13F
Z.C. Case No. 03-12F/03-13F**

**Modification to the Second-Stage Approval of a Planned Unit Development
for an Office Building at 250 M Street, S.E.
Square 769, LLC and the District of Columbia Housing Authority
(Square 769, parts of Lots 18, 20, and 21)
July 14, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 28, 2008, to consider an application from Square 769, LLC and the District of Columbia Housing Authority (collectively, the "Applicant"), for a modification to the second-stage approval of a planned unit development for parts of Lots 18, 20 and 21 in Square 769, approved pursuant to Order Number 03-12C2/03-13C2. The Commission considered the application pursuant to Chapters 24 and 30 of the D.C. 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 Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On May 14, 2007, the Commission voted 5-0-0 to approve Case No. 03-12C/03-13C, granting second-stage approval to an application submitted by Applicant for an office building with ground floor retail at 250 M Street, S.E. Z.C. Order No. 03-12C2/03-13C2 allows the Applicant to develop Lots 18, 20, and 21 in Square 769 (the "Property") with an office building built to a height of 110 feet (plus roof structure of an additional 18 feet, 6 inches) with a gross floor area of 207,785 square feet and a density of 7.20 FAR. The original overall Capper/Carrollsborg planned unit development approved pursuant to Z.C. Order No. 03-12/03-13 provided for a maximum building height of 110 feet and a maximum gross floor area of 236,000 square feet for the Property.
2. On December 28, 2007, the Applicant filed the instant application requesting a modification to the PUD approved pursuant to Z.C. Order No. 03-12C2/03-13C2. The Applicant requested to: (1) increase the measured building height from 110 feet to 130 feet; and (2) increase the gross floor area of the approved building from 207,785 square feet to 234,182 square feet. The Office of Planning ("OP") provided its report on January 7, 2008. The Commission voted at its February 11, 2008 public meeting to set the application down for a public hearing.

3. By letter dated March 7, 2008, the Applicant submitted a prehearing statement in support of its application. The Applicant's submission included supplemental architectural plan and elevation sheets, outlines of witness testimony, and a list of names and addresses of all property owners within 200 feet of the Property.
4. By letter dated May 8, 2008, the Applicant provided supplemental prehearing information pursuant to § 3013.8 of the Zoning Regulations. The Applicant's supplemental materials indicated that the building's design has been further refined to enhance its overall composition and articulation. The materials included a LEED scorecard indicating that the Applicant is committed to achieving a minimum of 37 points, revised architectural drawings, which superseded all sets previously filed, and the resumes of Michael E. Hickok and Brad Fennell, both of whom testified as experts at the May 28, 2008 public hearing.
5. After proper notice, the Commission held a public hearing on the application on May 28, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. No written official report was submitted by ANC 6D and no representative of ANC 6D appeared at the hearing on the case. However, the Applicant submitted a Memorandum of Agreement signed by four ANC members in their individual capacity. (Exhibit 26)
6. At its public hearing on May 28, 2008, the Commission took proposed action by a vote of 5-0-0 to approve the requested application.
7. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by report dated July 10, 2008, advised "that the proposal would be adverse to the federal interest because it does not conform to the requirements of [An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 601.09)("Height Act")]" as it exceeds the maximum allowable height of 110 feet" and recommended "that the Zoning Commission require the applicant to modify the project design to reduce the building height by 20 feet to bring the design into compliance with the Height Act." The Commission took final action to approve the requested modification by a vote of 5-0-0. Prior to doing so, the Commission noted the NCPC report, but declined to interpret the Height Act issue presented, believing that it was up to the Zoning Administrator, not the Commission, to do so. While the Commission would be reluctant to approve plans that clearly violated the Height Act, no such clear cut infraction is present here. Rather, the question of whether the maximum allowable height for the project is 110 feet instead of 130 feet, which relates to the width of Second Street, is best left to judgment of the Zoning Administrator and the Surveyor of the District of Columbia. Nevertheless, neither the Zoning Administrator nor the Surveyor should view the Commission's approval of this modification as obviating the need to resolve the street width question presented.

PUD Site and Area

8. The subject property is located on the north side of M Street between 2nd and 3rd Streets, S.E. The property contains approximately 27,960 square feet of land. The PUD is zoned CG/C-3-C. The PUD is located in the southeast quadrant of the District, near the Navy Yard Metro Station in the Anacostia Waterfront area.
9. A portion of Square 769 is currently improved with a parking lot, while the remaining portion of Square 769 is unimproved land. The portions of Square 769 described in this application are located in the medium-high density commercial land use category in the Generalized Land Use Map of the Comprehensive Plan. The predominant use in medium-high density commercial land use categories is a shopping and service area that generally offers the largest concentration and variety of goods and services outside the Central Employment Area.
10. The area surrounding the PUD is characterized by a mixture of uses. To the south, east and west are new office buildings: the headquarters of the U.S. Department of Transportation, the 300 M Street building, and the Federal Gateway Building at 1100 New Jersey Avenue. Also located to the south of the PUD site is the new Washington Nationals' baseball stadium. Immediately to the west of the PUD site is the proposed Canal Blocks Park. Two blocks to the west is the Navy Yard Metrorail Station, located across the street from the Federal Gateway building. Z.C. Order No. 03-12/03-13 indicates that the northern portion of Square 769 will be improved by a proposed residential project.
11. The Council of the District of Columbia has approved legislation reopening the portion of 2nd Street between K and M Streets which was closed in 1965. The legislation designates that portion of the Street to be known as 2nd Place. The reopened street follows the width and alignment of 2nd Street as it existed prior to the closing. Reservation 17D lies between the two portions of 2nd Street. The total width of the two portions of 2nd Street is more than 150 feet and the total distance from the eastern right-of-way line of 2nd Street to the western right-of-way line of 2nd Street is more than 250 feet.

Approved Building

12. The project approved by the Commission in Z.C. Case No. 03-12C/03-13C is to be a nine-story office building with ground floor retail and below-grade parking. The proposed project is designed to work in concert with the existing building at 1100 New Jersey Avenue to create a gateway from M Street to the proposed Canal Blocks Park and Capper/Carrollsbury neighborhood. In addition to functioning as a visual gateway, the proposed project will serve as a commercial and retail gateway that will help bring vitality to the mixed-use Southeast M Street urban corridor. As a result, the design of the office building will harmonize with both the existing and proposed scales of its urban surroundings.

13. The building was approved with a height of 110 feet, with a roof structure above that height having a maximum additional height of 18 feet, six inches enclosed within a sloping roof. The building has been designed in accordance with LEED criteria. The building facades along M and 2nd Streets consist of a glass wall curtain treatment with pre-cast concrete at featured areas. The organization of the general massing permits the building to address the different existing and proposed urban scales of the surrounding neighborhood. The building's main entrance will be located on M Street, with retail entrances along M and 2nd Streets. At the street level, the landscape and streetscape designs are articulated in a manner to promote pedestrian movement and activity, two essential components of urban vitality.
14. The ground floor retail space will occupy more than 50% of the building's first floor.
15. To the building's north is a 25-foot service drive that will provide access to both loading berths and garage entries. The PEPCO vaults are located in the service drive, in order to accommodate greater retail use at the corner of 2nd and M Streets, S.E., and create a more pedestrian-friendly streetscape at that corner.
16. The below-grade parking garage will consist of four levels and will accommodate 197 complying accessible parking spaces, satisfying the minimum requirement of 150 parking spaces stated in Z.C. Order No. 03-12/03-13.

Proposed Building

17. The Applicant seeks approval of revisions to the building to increase the height and the gross floor area. In order to increase the gross floor area closer to the number originally approved in the overall PUD, the applicant proposes to add two floors to the building and increase the measured height of the building to 130 feet.
18. The west side of the 11th floor will be devoted to occupiable space as conference and office space. The east side of the 11th floor will be devoted to a mechanical penthouse, which is therefore located on the 10th floor roof. The mechanical penthouse has a height of 18 feet, six inches and is set back one-to-one from each exterior wall of the roof upon which it is located.
19. A small portion of the penthouse will extend approximately five feet above the 130 foot height limit, to accommodate the elevator override for the building. The roof over the top floor and the penthouse will continue to slope in the same manner as in the approved design. Notwithstanding that the measured height to the top of the main roof increases by 20 feet, the overall height of the building to the top of the penthouse increases by only seven feet, 10 inches.
20. The gross floor area of the proposed building is approximately 234,182 square feet. This is an increase of approximately 26,400 square feet, but it is still less than the 236,000

square feet approved for this site in the overall PUD. The income stream from the 750,000 square feet of office space in the overall PUD is a key component in funding the one-to-one replacement of the approximately 695 public housing units formerly located on the Capper/Carrollsborg site.

21. The design of the proposed building has been modified slightly from the plans first approved. The building continues the same basic architectural design as originally presented and will continue to match the building at 1100 New Jersey Avenue so as to form the gateway to the Canal Blocks Park.
22. Studies submitted by the Applicant confirm that the building as proposed would have negligible impact on the Canal Blocks Park and other surrounding property.
23. The building as proposed will comply with all of the requirements of the CG/C-3-C zoning and of Chapter 24.
24. All of the amenities and benefits contemplated in the overall PUD and all of the specific components of the project approved for this site will be provided in the project as now proposed.
25. OP, by report dated May 16, 2008, recommended that the application be approved. The OP's comments concerning the design of the doors at the eastern end of the penthouse were addressed by the Applicant in revised plans submitted to the Commission at the hearing.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned

developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD is generally within the applicable, bulk and density standards for the Capper/Carrollsborg redevelopment approved by the Commission pursuant to Z.C. Order No. 03-12/03-13. Due to the Applicant's design of the building, the increase in height to 130 feet represents only a small overall increase in the height of the building, and the height and density will not cause a significant adverse effect on any nearby properties.
5. Approval of this modification to the PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, this phase of the development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
7. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. In the present case, the ANC did not submit a report nor did the ANC offer testimony at the public hearing. For these reasons, the Commission has not given great weight to the affected ANC. The Commission notes the memorandum of agreement signed by four of the ANC members in their individual capacities and will include appropriate conditions in its decision.
8. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the modifications to (1) increase the measured building height from 110 feet to 130 feet, and (2) increase the gross floor area of the approved building from 207,785 square feet to 234,182 square feet. For purposes of these conditions, the term "Square 769, LLC," shall mean any entity owning fee simple title or a ground lease interest in the Property. This approval is subject to the following guidelines, conditions, and standards:

1. Square 769, LLC shall comply with the conditions set forth in Z.C. Order No. 03-12/03-13, effective October 8, 2004, and Order No. Z.C. 03-12C2/03-13C2, effective, August 10, 2007, as modified herein.
2. The PUD shall be developed in accordance with the plans prepared by Hickok Cole Architects, submitted May 8, 2008, marked as Exhibit 21, as amended by the plans submitted on May 28, 2008, marked as Exhibit 27 of the record.

3. The building may have a maximum height of 130 feet, not including roof structures.
4. The building may have a maximum gross floor area of 234,182 square feet.
5. Square 769, LLC shall make a good-faith effort to secure LEED "silver" certification for the building from the U.S. Green Building Council.
6. To the extent permitted under Federal and District of Columbia law regarding fair employment practices, and subject to any agreements executed between the Square 769, LLC and the District of Columbia regarding the Property prior to May 27, 2008, the Applicant shall develop a program that applies to themselves and their subcontractors for this project, including:
 - a) recruitment of construction workers from ANC 6D by purchasing quarterly ads in the Southwester;
 - b) an overall 20% first-source employment goal for qualified ANC 6D residents; and
 - c) providing tie-breaking preferences, as to:
 - i. subcontractors headquartered in ANC 6D; and
 - ii. qualified construction workers residing in ANC 6D.
7. Square 769, LLC (or its designee) shall provide an annual report to ANC 6D beginning in the month marking the first-year anniversary of the execution of the benefits covered by the Memorandum of Agreement entered into on May 28, 2008, between Square 769, LLC and ANC 6D, and until completion of the building's construction. Square 769, LLC has the discretion to provide the report orally, in writing, or both.
8. Square 769, LLC shall also have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 28 points;

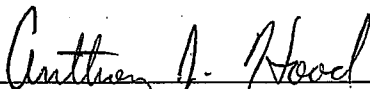
- c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, provided the number of striped parking spaces is not reduced below 150 spaces; and
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code, or that are otherwise necessary to obtain a final building permit.
9. The PUD approved by the Zoning Commission, as modified herein, shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
10. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On May 28, 2008, the Commission **APPROVED** the application by a vote of **5-0-0** (Michael G. Turnbull, Curtis L. Etherly, Jr., Anthony J. Hood, Gregory N. Jeffries, and Peter G. May to approve).


The order was **ADOPTED** by the Zoning Commission at its public meeting on July 14, 2008, by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May to adopt by absentee ballot).

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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 SEP 26 2008.



ANTHONY H. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO *J.*
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 03-12F/03-13F

As Secretary to the Commission, I hereby certify that on SEP 24 2008 copies of this Z.C. Order No. 03-12F/03-13F were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Wayne Quin, Esq.
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Washington, D.C. 20006
3. Robert Moffatt, Chair
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Washington, DC 20024
4. Commissioner Robert Siegel
ANC/SMD 6D07
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Washington, DC 20003
5. Gottlieb Simon
ANC
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6. Councilmember Tommy Wells
7. Office of Planning (Harriet Tregoning)
8. Ken Laden, DDOT
9. Acting Zoning Administrator (Matt LeGrant)
10. Office of the Attorney General
(Alan Bergstein)
11. General Counsel – DCRA
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Washington, D.C. 20002

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning