

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 03-12W/03-13W
Z.C. Case No. 03-12W/03-13W
District of Columbia Housing Authority
(Modification of Consequence for Consolidated PUD @ Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 882, Lot 77)
June 10, 2019

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on June 10, 2019 at which the Commission considered the application of the District of Columbia Housing Authority (“DCHA”) for a Modification of Consequence (the “Application”) of the consolidated planned unit development (a “PUD”) approved by Z.C. Order No. 03-12/03-13 (the “Original Order”), as amended by Z.C. Order Nos. 03-12E/03-13E and Z.C. Case No. 03-12O/03-13O (collectively, the “Amended Order”), for Square 767, Lots 44-47, Square 768, Lots 19-22, and Square 882, Lot 77 (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

1. By the Original Order, effective on October 8, 2004, the Commission granted Capper/Carrollsborg Venture, LLC, DCHA, and Square 769, LLC (collectively, the “Applicant”) preliminary and consolidated approval for a PUD (the “Approved PUD”) for multiple properties located in the southeast quadrant of Washington, D.C., including the Property (the “PUD Site”), as established by the Original Order.
2. The Approved PUD included a related map amendment that rezoned the Property, among other properties, from the R-5-B Zone District (now the RA-2 zone) to the CR Zone District (now the MU-10 zone) effective upon completion of the second-stage approval of the PUD (Condition 3 of the Original Order) and the recordation of a covenant binding the development and use of the rezoned property to that authorized by the Original Order per § 2408.15 of the 1958 Zoning Regulations then in effect.
3. Condition 27 of the Original Order established that second-stage applications for the preliminary PUD could be sought in more than one application, with the first second-stage application required to be filed by April 8, 2006, 18 months after the October 8, 2004 effective date of the Original Order and all remaining second-stage applications required to be filed by October 8, 2008, four years after the effective date of the Original Order.

4. The Applicant filed its first second-stage PUD application in Z.C. Case 03-12A/03-13A on April 29, 2005, within the 18-month period required by Condition 27 of the Original Order.

Square 882, Lot 77

5. On July 3, 2008, the Applicant filed a second-stage application for various parcels within the PUD, including Square 882, Lot 77, in Z.C. Case No. 03-12G/03-13G, prior to the October 8, 2008 deadline imposed by the Original Order.
6. On June 8, 2009, the Commission approved a second-stage PUD for Square 882, Lot 77, among other properties, in Z.C. Order No. 03-12G/03-13G, with a deadline to file a building permit of August 14, 2011, with construction to start within the following year.
7. On December 30, 2011, the Commission approved a two-year extension of this deadline to file a building permit to August 14, 2013, with construction to start within the following year, in Z.C. Order No. 03-12L/03-13L.
8. On December 6, 2013, the Commission approved a further two-year extension of this deadline to file a building permit to August 14, 2015, with construction to start within the following year, in Z.C. Order No. 03-12P/03-13P.
9. On September 12, 2016, the Commission approved a six-month extension of the deadline to start construction to February 14, 2017 in Z.C. Order No. 03-12T/03-13T as the Applicant had already satisfied the August 14, 2015 deadline to file a building permit.
10. On December 16, 2013, DCHA recorded a covenant binding the development of Square 882, Lot 77, and the other properties subject to Z.C. Order No. 03-12G/03-13G, as extended, in conformance with Z.C. Order No. 03-12G/03-13G (Recorder of Deeds # 2013137604). The recording of this covenant, as required by § 2408.15 of the 1958 Zoning Regulations then in effect, together with the completion of the second-stage PUD approval of Z.C. Order No. 03-12G/03-13G, as extended, made effective the rezoning of Square 882, Lot 77, and the other properties subject to that second-stage PUD approval, from the R-5-B Zone District (now RA-2 zone) zone to the CR Zone District (now MU-10 zone).

Square 767, Lots 44-47, and Square 768, Lots 19-22

11. On June 26, 2009, the Commission extended the October 8, 2008 deadline to seek second-stage approval for Squares 767 and 768, among other properties, to December 31, 2013 in Z.C. Order No. 03-12I/03-13I.
12. On April 24, 2015, the Commission further extended the December 31, 2013 deadline to seek second-stage approval for Squares 767 and 768, among other properties, to December 18, 2018 in Z.C. Order No. 03-12R/03-13R.

13. On January 28, 2019, the Commission further extended the December 18, 2018 deadline to seek second-stage PUD approval for Squares 767 and 768, among other properties, to December 18, 2023 in Z.C. Order No. 03-12X/03-13X.
14. As the Commission has not yet approved a second-stage PUD for Square 767, Lots 44-47, and Square 768, Lots 19-22, the rezoning to the CR (now MU-10) zone adopted by the Original Order has not yet occurred, and these properties remain in the R-5-B Zone District (now RA-2 zone).

Text Amendment Authorization of Temporary Surface Parking Lot Use

15. On July 30, 2007, the Commission took final action on a text amendment to add a new § 2110, with conforming amendments, to the 1958 Zoning Regulations then in effect to authorize the temporary surface parking lot use on the Property, among other properties, in Z.C. Order No. 07-08, with an expiration of April 1, 2013.
16. On December 10, 2012, the Commission took final action on a text amendment to amend § 2110 of the 1958 Zoning Regulations then in effect to extend the expiration of the authorization for the temporary surface parking lot use on the Property, among other properties, in Z.C. Order No. 07-08B, by five years to April 1, 2018.
17. On September 6, 2016, the current Zoning Regulations took effect pursuant to Z.C. Order No. 08-06A and the authorization of this temporary surface parking lot use of former § 2110 was converted to the current Subtitle C § 718.
18. On June 10, 2019, the Commission took final action on a text amendment to amend Subtitle C § 718 to further extend the expiration of the authorization for the temporary surface parking lot use on the Property, among other properties, in Z.C. Order No. 07-08C, by five years to April 1, 2023.

Approved PUD's Authorization for Temporary Surface Parking Lot Use

19. By Z.C. Order No. 03-12E/03-13E, effective October 26, 2007, the Commission approved a Minor Modification to the Original Order to add a new Condition 30 authorizing the temporary surface parking lot use of the Property accessory to the ballpark at South Capitol and N Streets, S.E., for a five-year period through April 1, 2013, as permitted by § 601.1(dd) (now Subtitle U § 517.1(c)) and as authorized by § 2110 of the 1958 Zoning Regulations then in effect (now Subtitle C §718).
20. By Z.C. Order No. 03-12O/03-13O, effective March 1, 2013, the Commission approved a Minor Modification to the Amended Order to extend the expiration of Condition 30 by five years through April 1, 2018.

The Application

21. On October 23, 2018, the Applicant filed an application for a Minor Modification to the Amended Order to revise Condition 30 to further extend the authorization for the temporary surface parking lot use of the Property for another five-year period, through April 1, 2023 (the Application).

22. The Application justified the requested extension due to delays to the development authorized by the Approved PUD caused by the loss of its designation as a *Difficult Development Area* for Low-Income Housing Tax Credit purposes, which eliminated a 30% equity boost previously available to incentivize investment in the Property. The Application asserted that extending the temporary surface parking lot use for another five years would allow the Property to be used instead of remaining vacant while the development financing is completed, to the benefit of the neighboring community. (Exhibit [“Ex.”] 3, 7.)
23. The Applicant served the only other parties to the Original Order, Advisory Neighborhood Commissions (“ANC”) 6B and 6D, as attested by the Certificate of Service submitted with the Application. (Ex. 8.)
24. The Office of Planning (“OP”) submitted a report (the “OP Report”) on November 9, 2018, stating that the Application should be classified as a Modification of Consequence and that OP had no objections to the Application with the note that the Application should be corrected to include the correct square references. (Ex. 5.)
25. DCHA submitted an amended and restated Application requesting a Modification of Consequence and including the correct square references as noted in the OP Report. (Ex. 7.)
26. ANC 6D submitted a written report (the “ANC 6D Report”) stating that, at a regularly scheduled and duly noticed meeting held on December 10, 2018, with a quorum present, ANC 6D voted to support the Application. (Ex. 9). The ANC 6D Report expressed concerns at the slow pace of the development of the Property, and the design and uses of the future building to be constructed on the portion of the Property in Square 767. The ANC 6D Report requested that this extension of the temporary surface parking lot use be the last one approved by the Commission.
27. ANC 6B submitted a written report (the “ANC 6B Report”) stating that, at a regularly scheduled and duly noticed meeting held on December 14, 2018, with a quorum present, ANC 6B voted to support the Application. (Ex. 11). The ANC 6B Report expressed the concerns that DCHA include as many affordable housing units in the eventual development of the Property and requested that this extension of the temporary surface parking lot use be the last one approved by the Commission.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”

3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as it is a request to modify Condition 30 of the Amended Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
5. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 6B and 6D.
6. The Commission concludes that because ANCs 6B and 6D, the only parties other than the Applicant to the Approved PUD, had filed responses to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and so the Commission could consider the merits of the Application at the June 10, 2019 public meeting.
7. The Commission concludes that the modification proposed by the Applicant is consistent with the Approved PUD because the Application does not change the project amenities and public benefits of the Approved PUD, nor create unacceptable impacts and is not inconsistent with the Comprehensive Plan. Instead the Application only proposes to extend the expiration of the authority for the temporary surface parking lot use on the Property while the Applicant finalizes the outstanding procedures to start construction on the Property, specifically obtaining second-stage approval for Square 767, Lots 44-47 and Square 768, Lots 19-22, and construction financing and any necessary modification of the second-stage approval of Z.C. Order No. 03-12G/03-13G, as extended, for Square 882, Lot 77.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report. The Commission finds OP’s recommendation that the Application qualified as a Modification of Consequence and lack of objection to the Application persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

9. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z § 406.2 require the Commission to give “great weight” to the issues and concerns contained in the written report of an affected ANC. The Commission notes the concerns expressed by the ANC 6B and 6D Reports about the pace and specifics of the future development of the Property under the Approved PUD and finds the support of ANCs 6B and 6D for the Application persuasive and concurs in that judgment.

DECISION

At its public meeting on June 10, 2019, in consideration of the case record and Findings of Fact and Conclusions of Law herein, upon the motion of Chairman Hood, as seconded by Vice Chair Miller, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a Modification of Consequence to revise Condition 30 of Z.C. Order No. 03-12/03-13, as amended by Z.C. Order Nos. 03-12E/03-13E and 03-12O/03-13O, by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

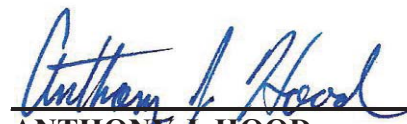
The conditions in Z.C. Order 03-12/03-13, as amended by Z.C. Order Nos. 03-12E/03-13E and 03-12O/03-13O, remain unchanged, except that Condition No. 30 is revised to read as follows (additions in **bold and underline** text; deletions in **~~bold and strikeout~~** text):

30. Notwithstanding anything to the contrary, Squares 767, 768, and 882 may be used as a temporary surface parking lot accessory to the Ballpark as permitted by ~~11 DCMR § 601.1(dd) and in accordance with 11 DCMR § 2110~~ **Subtitle C § 718 and Subtitle U §§ 401.1(g), 509.1(n)(1), and 517.1(c)(1)** of the Zoning Regulations (**Title 11 of the DCMR**) through and until April 1, ~~2018~~ **2023**. **Such use shall be consistent with the plans submitted as Exhibit 1 (pages 44-46) to the Commission record in Z.C. Case No. 03-12E/03-13E on March 30, 2007.**


In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 23, 2019.

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING