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July 24, 2003

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MEMORANDUM

TO: Zoning Commission for the District of Columbia

FROM: Holland & Knight LLP

RE: Capper/Carrollsburg PUD and Map Amendment
Z.C. Case Nos. 03-12 and 03-13

This memorandum responds to an issue raised by the Zoning Commission at the "set-down" hearing for the above-referenced cases regarding compliance with the area requirements of the Planned Unit Development ("PUD") provisions of the D.C. Zoning Regulations. The Commission questioned whether Square 882 at the eastern end of the PUD submitted for preliminary approval met the requirement of section 2401.3 of the Zoning Regulations regarding contiguity with the other property in the PUD boundary. Square 881, which is directly north of Square 882, is also located within the PUD, but only its western portion. As a result, these two parcels in Square 881 and 882 are located diagonally across L Street from one another, instead of directly across the street from one another.

The purpose of section 2401, as the heading establishes, is to set minimum area requirements in order to file for a PUD. There is no separate language that explains the rationale for the contiguity requirement. Section 2401.3 provides that "[a]ll of the property included in a PUD shall be *contiguous*, except that the property may be separated only by a public street, alley or right-of-way." While articulated differently over the years, this contiguity requirement dates back to amendments enacted in 1969. Codified under former Article 75, the contiguity requirement initially stated that "[t]he project may be situated in a single tract, or may be located in all or part of one or more contiguous squares including the area of any street or alley within the planned unit development or bounding the

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development which is proposed to be closed." *See* Zoning Commission Order No. 3 (Case No. 68-63) dated January 29, 1969 at 3 (copy attached).

Unfortunately, the early proceedings of the Zoning Commission are not extensively documented and the rationale for this provision is not readily available. Research efforts are still ongoing. It is generally understood, however, that this requirement was to ensure against an applicant piecing together several disparate properties that would not otherwise meet the minimum area requirements for a PUD. In that manner, virtually any area, by knitting together separate parcels, could qualify for PUD treatment. At the time this provision was adopted, the minimum area requirement was three acres, or a minimum of one acre for the R-5-D, SP, C-2-B, C-3-B, C-4 or C-M-3 Districts.

Here, the entire project includes almost 33 acres, including public space, well in excess of the required amount of land area for a PUD in any District. Square 882 consists of 158,000 square feet of land area, or more than 3.5 times the required land area of one acre in the R-5-B District. Additionally, while not located directly across L Street from one another, the parcels in Square 881 and 882 are diagonally across from one another, thereby meeting the spirit, if not the technical requirement of the regulation. Moreover, Square 882 is an integral element in providing the necessary commercial office space to subsidize the HOPE VI housing objectives of the PUD.

If the Zoning Commission is concerned that the preliminary PUD would languish without the vesting of the consolidated PUD area, Applicants have no objection to conditioning the second phase of the preliminary PUD upon the vesting of the consolidated PUD. Alternatively, if the Zoning Commission determines that Square 882 does not meet the strict application of the contiguity requirement, the Applicant requests the flexibility to develop this site as a separate PUD as part of the final approval process. Because the density requirements for the entire project are distributed over a greater area under the current plan, under a new PUD the Applicant would need to increase the area to be rezoned to the CR District in Square 882 in order to support the commercial office building planned for that site.

ORDERED:

That after public notice and hearing as prescribed by law (Z.C. Case 68-63), the following text change established by the Zoning Commission of the District of Columbia, as shown in the Zoning Regulations, is hereby modified, amended and supersedes Section 7501 through subsection 7501.113.

SECTION 7501 - PLANNED UNIT DEVELOPMENTS FOR RESIDENTIAL COMPLEXES, SHOPPING CENTERS, INDUSTRIAL PARKS, INSTITUTIONS, AND URBAN RENEWAL PROJECTS

7501.1: PURPOSES OF PLANNED UNIT DEVELOPMENT - The purpose of this section is to encourage, in the various zoning districts in keeping with the intent and purpose of each district, the development of well-planned residential, institutional and commercial developments, industrial parks, urban renewal projects, or a combination thereof, which will offer a variety of building types with more attractive and efficient overall planning and design without sacrificing creative and imaginative planning.

The procedures and standards established herein are intended to permit, with Zoning Commission approval, diversification in the use, size, type, and location of buildings and structures, and to improve circulation and site facilities while at the same time insuring adequate standards relating to public health, safety, welfare and convenience in the use and occupancy of buildings, structures, and other facilities, in planned building groups consistent with the spirit, intent and purpose of the Zoning Regulations.

While providing for flexibility in design, a planned unit development (including sectional development plan) should not be used to circumvent the intent and purpose of the general provisions of the Zoning Regulations. Increases in building height and density are permitted as an incentive to allow flexibility of development; however, such increases should not be granted when (a) in conflict with the development plans and policies of the District of Columbia; (b) they do not enhance the neighborhood; or (c) they do not provide future occupants of planned unit developments with a living and/or working environment and amenities superior to those which can be achieved by applying the general provisions of the Zoning Regulations.

7501.2: PROCEDURE FOR FILING APPLICATIONS AND MINIMUM STANDARDS FOR DEVELOPMENT - Each application for a planned unit development shall be filed in the office of the Zoning Commission and shall meet the requirements of this subsection before it can be accepted. An application for a planned unit development or a sectional development plan may be filed in conjunction with a change in zoning for the property involved. The Zoning Commission in its initial approval under Section 7501.38 shall specify the zoning classification which properly should apply to the property. The new zoning classification shall be adopted only upon completion of the Article 75 process and upon filing with the District of Columbia a covenant insuring compliance with submitted plans; except as provided in paragraph 7501.394.

7501.21: Application for a planned unit development may include property of one or more owners, provided the owners of all land involved shall agree to follow the plan if approved. The owner or owners may be either public or private or both provided, however, a sectional development plan need not require the consent of all property owners.

7501.22: The names and addresses of all owners of property included in the area to be developed shall be designated and listed in the application filed.

7501.23: Each application shall certify that the minimum area of land included within the project is at least three acres except as modified in subparagraphs a and b of this paragraph.

a. In an R-5-D, SP, C-2-B, C-3-B, C-4, or C-M-3 District, or when not less than 75 percent of the project area is in one or more such districts the area required may be reduced to not less than one acre.

b. That, in any case where the area to be included is within an area for which a sectional development plan has been adopted such lot or lots may be developed on an individual basis, regardless of size, if the improvements conform to the provisions of the sectional development plan within such area as determined by the Zoning Commission in accordance with the requirements of subsection 7501.39.

c. When the Zoning Commission with the concurrence of the National Capital Planning Commission and after public hearing finds that a preliminary application for a planned unit development is of exceptional merit and in the best interests of

the city or the country, then the Zoning Commission may approve said planned unit development in accordance with the requirements and procedures of this section even though the application does not meet with the area requirements of this subsection.

d. The project may be situated in a single tract, or may be located in all or part of one or more contiguous squares including the area of any street or alley within the planned unit development or bounding the development which is proposed to be closed.

7501.24: The following subparagraphs contain standards for planned unit developments. These standards represent the maximum relaxation of the standards in the Zoning Regulations for the district in which a planned unit development is to be located. For any planned unit development, the Zoning Commission may, in its discretion, establish more stringent standards than those set forth herein. An application for a planned unit development shall not be approved if, in the judgment of the Zoning Commission, a primary purpose of the application is to circumvent the standards of the Zoning Regulations for the districts in which the planned unit development is to be located.

a. No building or structure shall exceed the maximum height permitted in the least restrictive district within the project area provided that for the purpose of this section the maximum height of buildings or structures in each district may be established as follows:

Zone District	Maximum Height
R-1-A, R-1-B, R-2, R-3, C-1	40 feet
R-4, R-5-A, C-2-A, C-M-1	60 feet
R-5-B, R-5-C, R-5-D, C-2-B, C-3-A, C-M-2, C-M-3, M	90 feet
C-3-B, SP, C-4	130 feet

b. The floor area of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several districts included within the project area provided that for the purpose of this section the maximum permitted floor area ratios may be as follows:

Zone District	F.A.R.
R-1-A, R-1-B, R-2	0.4
R-3	0.6
R-4, R-5-A, C-1	1.0
R-5-B, C-2-A	2.0
C-M-1	3.0
R-5-C, C-3-A, C-M-2	4.0
R-5-D, SP, C-2-B, C-M-3, M	6.0
C-3-B	7.0
C-4	10.0

c. The maximum permitted percentage of lot occupancy shall be as otherwise prescribed in these regulations.

d. Yards and courts shall be as approved by the Zoning Commission.

e. Off-street parking spaces and loading berth facilities should normally be provided as otherwise prescribed in these regulations provided, however, that the Zoning Commission may reduce or increase the amount of such facilities depending on the uses and the location of the project.

f. Whenever the application filed with the Zoning Commission as provided for in subparagraph 7501.23b shall show that all of the buildings or structures in the sectional development plan are entirely within a C-4 District which abuts a street 160 feet in width, that pursuant to the Act of June 1, 1910, (36. Stat. 452) the height of the buildings does not exceed 160 feet, that the floor area ratio does not exeed 12.0 on any one lot, that the floor area ratio for the overall bulk of the total planned development project does not exceed 10.0 and all of the buildings and structures in said planned development project comply with the

yard, court, off-street loading and off-street parking requirements applicable in a C-4 District, then the extension of the area and bulk limitations in Section 5301.22 may be permitted or required, and where such buildings or structures face or abut a street, the buildings or structures may in the discretion of the Zoning Commission, be extended above 110 feet without set-backs as required by subparagraph 5201.22(b).

g. Notwithstanding the floor area ratio limitations for any one lot as contained in subparagraph 7501.24f development pursuant to the provisions of subparagraph 7501.21b shall not exceed a floor area ratio of 10.0 in any one lot.

7501.3: REVIEW BY ZONING COMMISSION

7501.31: The applicant for a planned unit development shall submit a preliminary application to the Zoning Commission containing the information hereinafter set forth in subparagraphs a through e. The Zoning Commission shall refer the application and accompanying documents to the Zoning Advisory Council, the National Capital Planning Commission and any other appropriate agency for their review and report within 10 (ten) days of the receipt of the preliminary application:

a. A map showing the location of the proposed project and surrounding zoning.

b. A statement of objectives including the proposed form of development.

c. An outline of the proposed land uses.

d. The approximate number and type of units to be included.

e. Any other information needed to understand the unique character and problems of developing this specific planned unit development project.

7501.32: In reviewing each preliminary application for approval, the National Capital Planning Commission and the Zoning Advisory Council shall give consideration to:

a. The suitability of the site for use as a planned unit development or sectional development plan under this Section.

b. The plans for the development are consistent with the comprehensive plan for the City as a whole.

c. The appropriateness of the uses proposed for the development.

d. The appropriateness of the height, density and bulk characteristics proposed for the project.

e. The appropriateness of the location of public streets and alleys that are to be opened, closed or relocated and the location and use of public and private rights-of-way and easements.

f. Any deviation from the use, height, area, density or bulk provisions of the general zoning regulations will not have any adverse affect on the use of neighboring property.

7501.33: Prior to the submission of its report to the Zoning Commission, the reporting agency may require the applicant to provide additional information deemed necessary for an understanding of the initial application. These may be submitted directly to the reporting agency provided a copy of each is also filed with the office of the Zoning Commission.

7501.34: In the case of an existing Urban Renewal Plan which has already been approved by both the National Capital Planning Commission and the City Council and which has been submitted for processing under this Section, no additional report shall be required from the National Capital Planning Commission or from the City Council.

7501.35: In the case of a new or revised Urban Renewal Plan which has not been approved by the National Capital Planning Commission, the Zoning Commission may accept the report of the National Capital Planning Commission prepared for the Redevelopment Land Agency as meeting the requirements of subparagraphs 7501.31 and 7501.32.

7501.36: Reporting agencies shall submit their recommendations to the Zoning Commission in writing within 40 (forty) days of receipt of the application from the Zoning Commission. Such period of time may be extended for an additional period upon the agreement of the Zoning Commission and the reporting agencies involved, otherwise failure to file a report within the period of time allowed shall be considered by the Zoning Commission as a recommendation of approval by the agency.

7501.37: Following receipt of all reports or the expiration of 40 (forty) calendar days, the Zoning Commission shall hold a public hearing on the application. Notice of such public hearing for all applications shall be given in the same manner as is required for consideration of proposed amendments to these regulations and maps. Provided, however, that in the case of a new or revised Urban Renewal Plan which has not been approved by the City Council, the Zoning Commission may hold a public hearing concurrently with the hearing held by the City Council provided further that it is separately advertised as a Zoning Commission hearing.

7501.38: Following the public hearing, the Zoning Commission shall either reject or give preliminary approval to the application. The Zoning Commission's preliminary approval shall set forth the appropriate zoning classification pursuant to subsection 7501.2 and state in detail the elements and guidelines which shall be followed by the developer in his final application. It is the intention of the Zoning Commission that any final application substantially in accordance with the elements and guidelines of said preliminary approval will be granted a public hearing and that any subsequent modifications to the final planned unit development will not change the elements and guidelines established in the Zoning Commission's preliminary approval.

7501.381: The preliminary application as approved by the Zoning Commission shall be valid for one year.

7501.382: Within one year of the approval of the preliminary application, the applicant shall submit a final application with supporting documents for review by the Zoning Commission.

7501.39: A final application for approval of a planned unit development shall be filed with the office of the Zoning Commission in accordance with the administrative rules promulgated by the Zoning Commission governing such submission. No application shall be processed unless the certification required by paragraph 7501.23 is attached and unless it contains the following information.

a. A certification that all information submitted is in accordance with the elements and guidelines contained in the Zoning Commission's preliminary approval under Section 7501.38.

b. The proposed use, location, dimensions, number of stories, and approximate height of each building and structure and finished grades.

c. The approximate area and dimension of each lot proposed for each building and the exact area of the total site.

d. The approximate lot occupancy of the building on each lot and the approximate floor area ratio of each building.

e. The approximate location and number of all off-street parking spaces and loading berths.

f. The existing topography of the development area and the elevations of streets and alleys bounding the site.

g. The location of existing or proposed public and private rights-of-way and easements bounding and traversing the project area, and indications as to which of the rights-of-way or easements are to be continued, relocated or abandoned.

h. The location and approximate number, size, and type of stores, offices, residential units and commercial adjuncts.

i. All other maps and documents required under Section 9101 for an amendment to these regulations.

7501.391: Following the receipt of an acceptable final application for a planned unit development the Zoning Commission shall hold a public hearing on the final application. Notice of such public hearing shall be given in the same manner as is required for consideration of proposed amendments to these regulations and maps. Provided, however, that in the case of an Urban Renewal Plan, revised subsequent to preliminary submission which has not been approved by the City Council, the Zoning Commission may hold a public hearing concurrently with the hearing held by the City Council provided said hearing is separately advertised as a Zoning Commission hearing.

7501.392: If found to be in harmony with the intent and purpose of the zoning map and regulations, a Planned Unit Development approved by the Zoning Commission will be a general approval of a designated plan only; but such guides, standards, conditions and limitations that the Zoning Commission may impose, will be made a part of the approving Order. The Order shall not become final unless submitted to the Board of Zoning Adjustment as provided by Paragraph 7501.4 except as modified by subparagraph 7501.394.

7501.393: The final Planned Unit Development approved in general by the Zoning Commission shall be valid for a period of two years unless extended by the Zoning Commission. Within such period an application for further processing should be filed with the Board of Zoning Adjustment as provided in subsection 7501.4 except as modified by subparagraph 7501.394.

7501.394: In the case of a Sectional Development Plan the final approval of the Zoning Commission shall become effective immediately.

7501.4: REVIEW BY THE BOARD OF ZONING ADJUSTMENT - The owner of property situated within an approved sectional development plan or an applicant whose planned unit development has been approved by the Zoning Commission, may file for further processing before the Board of Zoning Adjustment; and unless modified or exempted elsewhere in this section, all other rules governing Board procedure, including public hearing and notice shall apply.

7501.41: In addition to the citation of the formal record of proceedings before the Zoning Commission the applicant shall at the time of filing submit:

a. Typical floor plans and architectural elevations for each building;

b. Roof plans and architectural elevation of all roof structures for each building;

c. The final grading and drainage plan for the development area;

d. The planting and landscaping plan for the development area;

e. The finished site plan with lot areas and dimensions, showing all buildings and noting precisely any difference in their locations as approved by the Zoning Commission and details of all other structures not classed as buildings and the location, details and grades of all driveways and curb cuts; and

f. As part of the site plan or on a separate drawing, the detailed parking plans, including circulation, screening and lighting and the relationship between separate compounds, garage facilities and street access.

7501.42: A planned unit development or sectional development plan approved by the Zoning Commission may be submitted for further processing to the Board of Zoning Adjustment in one or more sections regardless of the ownership of the individual parcels involved or of the use; but unless modified or exempted elsewhere in this section, all other rules governing Board procedure, including public hearing and notice, shall apply.

7501.43: It shall be the duty and responsibility of the Board of Zoning Adjustment to implement the planned unit development as finally approved by the Zoning Commission. Toward that objective the Board shall not have the power to amend the approved planned unit development by changing the use of any building or by changing any of the following:

a. The approved number of buildings or number of stories in any building;

b. The approved height, bulk, lot occupancy or gross floor area of any building by an increase of more than 5 percent; provided, however, the Board may at the request of the applicant make greater reductions;

c. The approved number of apartment units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses by an increase of more than 5 percent; provided, however, the Board may at the request of the applicant make greater reductions;

d. The approved number of off-street parking spaces or loading berths by a reduction of more than 5 percent; provided, however, the Board may at the request of the applicant grant a greater increase.

7501.44: If in the opinion of the Board, the development plan is in harmony with the objectives of this section and in accord with the intent of the Zoning Commission's approving Order, the Board may permit:

a. The relocating of any building within its lot lines as originally approved by the Zoning Commission, in order to retain the flexibility of design desirable hereunder, or for reason of unforeseen subsoil conditions or adverse topography;

b. The construction including type and design of retaining walls, screening or decorative walls or other structures not classed as buildings, and not shown or detailed on the plan approved by the Zoning Commission; and,

c. Limitations on the use of signs, and may determine and fix their number, size, color, scope, type and location.

7501.45: The Board shall also consider and:

a. Fix the location and size of hotel and apartment house adjuncts authorized by the Zoning Commission;

b. Determine where not specified the type of stores, service outlets, and accessory uses and within the maximum limits of the Zoning Commission approved plan, adjust their size to fit the needs of the proposed tenants;

c. Determine the adequacy of landscaping, planting, screening and drainage plans; and,

d. Take all other actions necessary to effect the plan approved by the Zoning Commission.

7501.46: The Board shall retain its jurisdiction over roof structures and, in addition, shall have jurisdiction over roof structures normally approvable by the administrative process.

7501.47: Before approval of the final development plan, the Board shall make findings related to the requirements of paragraph 7501.39.

7501.48: The Order of the Board authorizing construction within a development plan shall be valid for a period of 18 (eighteen) months. Within such period the plans therefor shall be filed for the purpose of securing a building permit. After filing, general Board rules shall apply.

7501.49: The Board shall retain jurisdiction to interpret and apply the terms and conditions of its orders and to make plan corrections and minor modifications of such plans; but no modification of the plans as finally approved by the Zoning Commission shall be permitted unless processed as a new application in accordance with the procedures set forth in paragraph 7501.39; or unless, after construction of the development plan is completed, in accordance with the provisions of subparagraph 7501.54.

7501.5: IMPLEMENTATION - Following the approval of the application by the Board of Zoning Adjustment, the applicant shall comply with the following regulations:

7501.51: The entire development may be completed simultaneously or the development may be constructed in stages in which case the Board of Zoning Adjustment shall approve the order of construction and shall

specify the time limit and conditions for completion of the entire project, but at least partial work on the development shall be started within the time limits specified by this section, and all work so begun shall proceed to completion in accordance with the terms of the permit. Failure to begin any of the approved development within the time limit specified by this section shall void all rights thereunder unless for good cause shown the Zoning Commission authorizes an extension thereof. Such extension may be authorized without public hearing.

7501.52: Failure to complete the approved development plan in its entirety shall not operate to prevent the use of a completed building for the purposes designated in said plan, but before the Board Order of approval for any portion of the project shall be effective and before a permit for any building or structure may be issued, the owners shall agree by covenant that unless the entire development plan is completed within the time specified by this section, or within the time specified by the Board of Zoning Adjustment, or within any extended period of time approved by the Zoning Commission, the Commissioner of the District of Columbia may after written notice of not less than 30 (thirty) calendar days to such owner declare him in default and may assign the job of completing the development plan to such other builder or developer deemed qualified to carry out the terms of the approval order. This agreement which shall run with the land shall also recite that such owner agrees to sell all land within the approved development plan on which construction has not been started in accordance with such plan at its fair market value existing at the time of notice of default by the said Commissioner, that fair market value shall be determined by the average of appraisals from three real estate experts selected by the said Commissioner; and that all costs caused by default shall be assessed against the property defaulted.

7501.53: All conditions imposed by the Zoning Commission and the Board of Zoning Adjustment, including those the performance of which are conditions precedent to the issuance of any permit necessary for the development of any part of the entire site, shall run with the land and shall not lapse or be waived as

a result of any subsequent change in the tenancy or ownership of any or all of said area. Such conditions shall be a part of any certificate of occupancy issued for any use or structure in such development.

7501.54: The orders of the Zoning Commission and Board of Zoning Adjustment issued in accordance with the provisions of this section 7501 shall have all the force of the Zoning Regulations and violations shall be prosecuted in accordance with the provisions of Section 8105.

7501.55: After completion of a planned development in toto and after occupancy in whole or in part for a reasonable period and from time to time thereafter, adjustment of the facilities approved under the plan may be made if approved by the Board of Zoning Adjustment upon application filed and processed in accordance with general Board procedures.

7501.551: The Board shall not have the power to authorize additions to existing buildings, nor to authorize construction of any new buildings.

7501.552: The Board at the request of the applicant, may, due to change of neighborhood conditions or for other good cause shown in harmony with the objectives of this section and the approved plan permit:

a. Extension or reduction of commercial facilities, apartment units, hotel rooms, or institutional facilities in specific buildings;

b. Increase or reduction of required off-street parking spaces consistent with any action approved under subparagraph a above; and

c. Adjustment of controlled sign requirements.

7501.56: Before approval of any changes permitted by paragraph 7501.55 the Board shall submit the application to the National Capital Planning Commission for review and report.

Amend Section 1202--Definitions, by adding the following:

Planned unit development: A plan for the development of residential, institutional, and commercial developments, industrial parks, urban renewal projects, or a combination thereof, on land of a minimum area in one or more districts irrespective of restrictions imposed by the general provisions of the Zoning Regulations, as more specifically set forth in Section 7501.

Sectional development plan: A planned unit development prepared by an agency of the District of Columbia, or the Federal Government for a specific area of the city; submitted to the National Capital Planning Commission for review and report; and adopted by the Zoning Commission in accordance with the applicable provisions of Section 7501 and which establishes for such area, uses, floor area ratios, height of buildings and structures, open spaces and other details of design. The area may include property owned by the public, private persons, or organizations, or a combination of these, and further, the area may be developed in one or more sections regardless of the property ownership.

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