

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12J/03-13J
Z.C. Case No. 03-12J/03-13J
(Capper/Carrollsbury Venture, LLC & DCHA - Two-Year PUD
Time Extension @ Square 881W)
July 12, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 12, 2010. At the meeting, the Commission approved a request on behalf of Capper Carrollsbury Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for a two-year extension of the time period in which to file a building permit for the construction of a community center in Square 881W, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A and 03-12I/03-13I, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval of a planned unit development ("PUD") 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 property consists of approximately 927,000 square feet of land area. The approved overall project will include a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and a community center building to be constructed on Square 881W. The approved community center will include a total gross floor area of approximately 28,500 square feet for a child development center and recreation center uses. The building will be constructed to a maximum height of 35 feet, and will have an overall density of 0.78 floor area ratio ("FAR") and an overall lot occupancy of 48%.

2. Condition 20 of that order provided that:

The Applicants shall file an application for a building permit for the community center building in Square W881 (also known as Reservation 19) by July 1, 2005, subject to review by the National Park Service of the proposed uses. Plans shall be submitted to the Zoning Commission as part of a second-stage application with sufficient lead time to allow this

deadline to be met. Construction shall start on the community center no later than 180 days after the issuance of the building permit.

3. Second-Stage PUD approval for the community center was granted in Z.C. Order No. 03-12A/03-13A. Condition No. 5, as stated in that order, read:

The Applicants shall file an application for a building permit for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application.

4. The order became effective on September 15, 2006, so that the Applicant was required to file for a building permit to construct the community center no later than September 15, 2008.
5. On July 3, 2008, the Applicant filed an application seeking, among other things, an extension of the first-stage approval and overall phasing of the PUD and an extension of the period in which to file a building permit application and to commence construction on the community center. DCHA indicated that the issuance of a Payment in Lieu of Taxes ("PILOT") bond is directly dependent on the development activity on the Capper Carrollsburg site, access to the capital markets, and sufficient real estate tax revenues to pay debt service on the bonds. DCHA further indicated that the economic downturn had dramatically impacted each of these components, preventing DCHA from moving forward with the PILOT bond issuance at that time.
6. The requests were granted in Z.C. Order No. 03-12I/03-13I, which became effective upon publication in the *D.C. Register* on June 26, 2009. The order modified Condition No. 5 of Z.C. Order No. 03-12A/03-13A to read as follows:

The Applicants shall file an application for a building permit for the community center no later than July 1, 2010 and shall commence construction of the community center no later than July 1, 2011.

7. By letter dated and received by the Commission on May 28, 2010, the Applicant filed a request for an extension of the time period in which to file a building permit for the construction of a community center in Square 881W. The request, if approved, would require that an application for a building permit for the community center building must be filed no later than July 1, 2012, with construction to begin no later than July 1, 2013. The Applicant's request was supported by a letter from Adrienne Todman, the Interim Executive Director of DCHA, setting forth details of the Applicant's inability to obtain sufficient financing at this time, as discussed in Finding No. 14.

8. ANC 6B submitted a letter that expressed support of the requested extension upon “written documentation by the applicants to the Zoning Commission that the \$7.5 million needed for construction of the community center will be part of the second phase of the Pilot Bond submission and written documentation to the Zoning Commission on the timeline for that submission; and to support the efforts of ANC 6D in this regard.” (Exhibit 7.)
9. ANC 6D also submitted a letter in support of the requested extension, “...provided that the developers hold an open community meeting before July 12, 2010, coordinated with Commissioners McBee and Siegel and the office of DC Councilmember Tommy Wells (D-Ward Six).” (Exhibit 10.) The ANC report went on to indicate that, “[t]he developer held a community meeting on June 29th, and therefore ... met this condition.” *Id.*
10. ANC 6D also stated that the Applicant has agreed to the following terms in an effort to keep ANC 6D and the overall community abreast of the project's status: (1) the Applicant/DCHA will provide ANC 6D copies of any future public reports regarding the status of the project; (2) the Applicant/DCHA will provide ANC 6D adequate notice of any project meetings or updates open to the public; (3) the Applicant/DCHA will meet with ANC 6D and ANC 6B representatives and Councilmember Wells' office within the next 60 days to discuss the overall project timing, benchmarks, and schedule for the community center building; and (4) the Applicant/DCHA will work with ANC 6D, D.C. Department of Parks and Recreation, and the Marine Corps to implement the agreement governing use of the Marine Corps' playing fields for the community.
11. The Office of Planning ("OP") submitted a report dated July 2, 2010 (Exhibit 8.) indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension.
12. The Friends & Residents of Affordable Housing and Arthur Capper/Carrollsbury Resident Council submitted a letter dated July 7, 2010 (Exhibit 9), indicating the need for recreational facilities in the immediate neighborhood, and requested that the Commission seek some form of assurance that the community center building would not be the last building developed in the project.
13. In response to the letter, the Applicant indicated that it would convert some existing space on the first floor of the senior building on Square 880 into a computer room which will include at least three computers and wireless Internet access for the use of the residents of that building. Moreover, as outlined in ANC 6D's letter, the Applicant has agreed to work with the ANC, D.C. Department of Parks and Recreation, and the Marine Corps to implement the agreement governing use of the Marine Corps' playing fields for the community.

14. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. DCHA indicated that it has been unable to issue the necessary bonds that will be used to help construct the community center building given the current market conditions. DCHA also indicated that the overall project funds which it has received thus far have either been restricted to certain uses, or otherwise used to pay off outstanding private financing that the agency had to undertake to keep the project moving forward, with the remaining portions used for constructing infrastructure improvements also necessary for the overall project to move forward. Thus, the community center building cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.
15. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to issue the PILOT bonds necessary for construction of the community center building at this time, or otherwise secure project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Commission finds that the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission further finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent, good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the community center building, following the Applicant's diligent, good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
5. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
6. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.
8. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Zoning Commission's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC.
9. For this request, the affected ANCs are ANCs 6B and 6D. As to the latter, it supported the extension, subject to the satisfaction of a condition that has been met. *See* Finding of Fact No. 9.
10. As to ANC 6B, its support was made contingent upon:
 - Documentation by the Applicant to the Commission that the \$7.5 million needed for construction of the community center will be part of the second phase of the PILOT Bond submission;
 - Written documentation to the Commission on the timeline for that submission; and
 - The Applicant's supporting the efforts of ANC 6D in this regard.

11. At its public meeting held July 12, 2010, the Commission requested that counsel for the Applicant come forward to respond to the ANC's first two areas of concern. The Commission was advised that the cost of the community center is budgeted at \$7.2 million (not the \$7.5 million suggested by the ANC) and that the Council of the District of Columbia had authorized an increase in bond issuance authority to \$55 million, of which \$29 million would be used to retire debt, with the remainder available for the construction of improvements, including the community center.
12. Through a letter to the Commission dated August 20, 2010, counsel for the Applicant submitted correspondence from Ms. Todman indicating that DCHA had already spent \$467,530 of design work on the center. The letter also attached an updated DCHA budget that included the remainder of the \$6,733,000 needed for the completion of the project. (Exhibit 12.)
13. On August 30th, counsel for the Applicant provided the Commission with a copy of the Arthur Capper/Carrollsborg Public Improvements Revenue Bonds Approval Amendment Act of 2008, effective March 20, 2008 (D.C. Law 17-1008; 55 DCR 1461). (Exhibit 13.) That act amended § 202(a)(1) of the PILOT Authorization Increase and Arthur Capper/Carrollsborg Public Improvements Revenue Bonds Approval Act of 2006, effective March 8, 2007 (D.C. Law 16-244; 54 DCR 609) to read as follows:
 - (a) Pursuant to § 490 of the Home Rule Act, the Mayor is authorized to issue bonds in an aggregate amount not to exceed \$55 million as follows:
 - (1) The bond proceeds shall be used as follows:
 - (A) An amount not to exceed \$11 million may be used to pay the financing costs incurred by the District and by or on behalf of DCHA and to fund capitalized interest and required reserves; and
 - (B) An amount not to exceed \$11 million may be used for development costs of the Capper/Carrollsborg Public Improvements.
14. As to ANC 6B's intent that the Applicant commit to support the efforts of ANC 6D to assure that this funding is obtained, the Commission notes the Applicant's commitment in that regard, as reflected in ANC 6D's letter of support. *See* Finding of Fact No. 10.
15. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore

recommended that the Commission approve the requested extension. (Exhibit 8.) The Commission has given OP's recommendation great weight in approving this application.

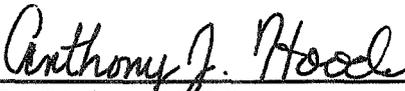
DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a community center in Square 881W, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A and 03-12I/03-13I. The approval of the community center building by the Commission shall be valid until July 1, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than July 1, 2013.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender 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 which 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.

On July 12, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to approve; Konrad S. Schlater, not present, not voting; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on October 22, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

OCT 21 2010

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

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ATTESTED BY:

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