

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



**ZONING COMMISSION ORDER NO. 06-10A
Z.C. Case No. 06-10A
The Morris & Gwendolyn Cafritz Foundation
(Modification to Approved Planned Unit Development
@ Squares 3765 and 3769 and Portions of Squares 3766, 3767, and 3768)
October 17, 2011**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 17, 2011. At that meeting, the Commission considered an application from The Morris & Gwendolyn Cafritz Foundation ("Applicant") for modification to a previously approved planned unit development ("PUD") and related Zoning Map amendment for properties in Squares 3765, 3766, 3767, 3768, and 3769 ("Property"), pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR). Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the application for modification.

FINDINGS OF FACT

1. By Z.C. Order No. 06-10, effective January 15, 2010, the Commission granted first-stage PUD approval to replace an aging complex of low-rise multifamily residential buildings and three small warehouses on the Property with a multi-phase mixed-use complex of four buildings consisting of more than 900 units of multi-family residential (including approximately 171 income-restricted units), approximately 315,000 square feet of retail uses, and approximately 300,000 square feet devoted to cultural, arts and community uses ("Project").
2. At the same time that it granted first-stage approval for the Project, the Commission granted consolidated approval for the Applicant to move forward with the first phase of the Project, referenced as "Building A" and located at the southern end of the Property. Building A was approved for a total gross floor area of 804,880 square feet, of which not more than 150,205 gross square feet was to be devoted to non-residential uses, including accessory parking. Approved non-residential uses in Building A included a grocery store of approximately 59,000 square feet, ground floor retail totaling approximately 53,000 square feet, approximately 19,210 square feet of flexible commercial space, and a child care center measuring approximately 7,250 square feet.

3. By letter dated September 13, 2011, the Applicant requested a modification to the consolidated PUD approval granted for the first phase of the Project, to grant the Applicant flexibility to relocate the proposed grocery use from Building A to "Building B" and to replace the space reserved in Building A for grocery use with other retail uses, which was originally proposed to be included in Building B. In support of this request, the Applicant noted that, given changing economic circumstances and the uncertainty associated with current market dynamics, it has been unable to conclude a lease with any interested operators for the grocery space reserved in Building A.
4. The Applicant also requested that the Commission treat the modification as minor, and therefore, consider the request pursuant to the Consent Calendar procedures of 11 DCMR § 3030.
5. The Applicant is desirous of moving forward immediately with construction of Building A, in order to complete its promised relocation of the existing residential tenants on the Property into Building A, along with the other important community-serving elements of Building A. Without that commitment from a grocery store operator to occupy the space planned for a grocery store, the Applicant cannot move forward timely to construct the space in Building A pursuant to the PUD approval.
6. Therefore, the Applicant has requested flexibility to relocate the grocery store use contemplated for Building A to Building B, which is proposed as a primarily anchor retail and museum building in the center of the Property. In exchange, the Applicant would install other retail and service uses in the 59,350 square feet of space designated as grocery on the approved plans for the Project. Further, it is the Commission's understanding that the Applicant will be filing an application with the Commission not later than January, 2012, for second-stage approval of Building B, pursuant to Z.C. Order No. 06-10.
7. The overall design of the first phase of the Project remains unchanged in terms of building envelope and appearance. The approved number of residential units, including affordable and age-restricted housing units, is still proposed. There is no change in materials proposed nor any reduction in the overall scope of the Project.
8. The Applicant served copies of the requested modification to the Lamond Riggs Citizen's Association, ANC 5A, and to ANC 4B, the other parties to Z.C. Case No. 06-10. None submitted a response to the Commission.
9. The District of Columbia Office of Zoning referred this matter to the Office of Planning for analysis and recommendation. By memorandum dated October 11, 2011, the Office of Planning stated its support for approval of the requested modification.
10. The Commission concurs that approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved PUD.

Further, the Commission concludes that approval of the requested modification is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

Approval of the modification to the approved PUD also is not inconsistent with the District of Columbia Comprehensive Plan (10 DCMR). Further, the modification does not impact material elements of the Project, including permitted use, height, gross floor area, or project amenities or benefits.

The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for modification of an approved PUD for Squares 3765, 3766, 3767, 3768, and 3769 and **ORDERS** that the following modification be made to Conditions No. 7 of Z.C. Order No. 06-10. Deletions are shown in strikethrough. Insertions are shown in underlined text:

Condition No. 7a of Z.C. Order No. 06-10 is revised as follows

- a. Building A shall have a maximum total gross floor area of 804,880 square feet (3.72 FAR) on its own site, of which not more than 150,205 gross square feet shall be devoted to non-residential uses, including accessory parking. Non-residential uses shall include ~~a grocery store of approximately 59,350 square feet, ground floor retail totaling approximately 53,000 square feet~~ retail totaling approximately 112,350 square feet, approximately 19,210 square feet of flexible commercial space, and a 7,250 square foot child care center. Building heights shall range from 55 feet (at the corner of South Dakota Avenue and the newly extended Ingraham Street) up to a maximum of approximately 74 feet. A total of approximately 681 parking spaces shall be provided in a combination of underground and structured parking, approximately 344 of which shall be devoted to residential uses. Building A shall have a maximum lot occupancy of approximately 87%;

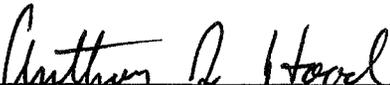
Condition No. 7b of Z.C. Order No. 06-10 is revised as follows:

- b. Building B shall be constructed as a three-story building not to exceed 60 feet in height and shall include approximately ~~203,000~~ 144,000 square feet of anchor retail and supporting retail uses, 59,000 square feet of grocery, an approximately 47,000 square foot children's museum, as well as recreational and meeting space for resident and community seniors, with a total gross floor area not to exceed 456,000 square feet, all of which would be for non-residential uses. Building B shall have a maximum lot occupancy of approximately 76% and contain approximately 1,100 parking spaces;

Pursuant to §2409.3 of the Zoning Regulations, the Applicant shall record a notice of modification of Z.C. Order No. 06-10 among the land records of the District of Columbia. After recordation of the notice of modification, the Applicant shall provide a copy of same for the records of the Office of Zoning.

On October 17, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen not present, not voting).

In accordance with the provisions of §3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 20, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-10A

JAN 19 2012

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-10A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | | | |
|----|---|-----|--|
| 1. | <i>D.C. Register</i> | 7. | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. | Wayne S. Quin, Esq.
Dennis R. Hughes, Esq.
Holland + Knight, LLP
2099 Pennsylvania, Avenue, N.W.
Washington, D.C. 20006 | 8. | Councilmember Muriel Bowser |
| 3. | ANC 5A
1322 Irving Street, N.E.
Washington, DC 20017 | 9. | DDOT (Martin Parker) |
| 4. | Commissioner Sandi Washington
ANC/SMD 5A01
32 Buchanan St., N.E.
Washington, DC 20011 | 10. | Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| 5. | ANC 4B
6856 Eastern Avenue, N.E., # 314
Washington, D.C. 20012 | 11. | Office of the Attorney General (Alan Bergstein) |
| 6. | Commissioner Douglass Sloan
ANC/SMD 4B09
313 Nicholson Avenue, N.E.
Washington, D.C. 20011 | 12. | Lamond Riggs Citizens Association
c/o Charon P.W. President
P.O. Box 60272
Washington, D.C. 20039 |

ATTESTED BY:

A handwritten signature in cursive script, reading "Sharon S. Schellin", is written over a horizontal line.

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