

INTRODUCED: September 9, 2024

AN ORDINANCE No. 2024-213

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Mitigation Plan Memorandum of Agreement between the City of Richmond; the Virginia Department of Historic Resources, the State Historic Preservation Office of the Commonwealth of Virginia; and Canterbury Development Group LLC, for the purpose of ensuring City compliance with that certain Programmatic Agreement between the City and the Virginia State Historic Preservation Office, dated Jun. 24, 2019, and most recently amended Jun. 18, 2024, through establishment of an agreement to mitigate an adverse effect related to the development of Swansboro Place located at 2008 Hull Street.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 23 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Mitigation Plan Memorandum of Agreement between the City of Richmond; the Virginia Department of Historic Resources, the State Historic Preservation Office of the Commonwealth of Virginia; and Canterbury Development Group LLC, for the purpose of ensuring City compliance with that certain Programmatic Agreement

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

between the City and the Virginia State Historic Preservation Office, dated June 24, 2019, and most recently amended June 18, 2024, through establishment of an agreement to mitigate an adverse effect related to the development of Swansboro Place located at 2008 Hull Street. Such Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

APPROVED AS TO FORM:



CITY ATTORNEY'S OFFICE



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-1021

File ID: Admin-2024-1021

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 2

Reference:

In Control: Planning Commission

Department: Planning and Development.Review

Cost:

File Created: 08/20/2024

Subject:

Final Action:

Title:

Internal Notes:

Code Sections:

Agenda Date: 09/09/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Ordinance AATF, Mitigation Plan - 2008 Hull Street

Enactment Number:

Contact:

Introduction Date:

Drafter: Raymond.Roakes@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
2	1	8/20/2024	Kris Daniel-Thiem - FYI	Notified - FYI	
2	2	8/20/2024	Kevin Vonck	Approve	8/27/2024
2	3	8/20/2024	Alecia Blackwell - FYI	Notified - FYI	
2	4	8/21/2024	Sharon Ebert	Approve	8/22/2024
2	5	8/21/2024	Caitlin Sedano - FYI	Notified - FYI	
2	6	8/21/2024	Jeff Gray	Approve	8/23/2024
Notes: Approved: Out of Office					
2	7	8/21/2024	Lincoln Saunders	Approve	8/23/2024
2	8	8/29/2024	Mayor Stoney	Approve	8/23/2024

History of Legislative File

Master Continued (Admin-2024-1021)

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2024-1021

City of Richmond
Intracity Correspondence

O&R Transmittal

DATE: August 20, 2024

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sharon L. Ebert, DCAO for Economic Development and Planning

FROM: Kevin J. Vonck, Director, Planning and Development Review

RE: Authorization for the Chief Administrative Officer to execute a Mitigation Plan

Memorandum of Agreement (Mitigation Plan) between the City of Richmond, the Virginia Department of Historic Resources (DHR), and Canterbury Development Group LLC for the purpose of ensuring City compliance with the Programmatic Agreement between the City and DHR for the administration of Section 106 of the NHPA.

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Mitigation Plan Memorandum of Agreement between the City of Richmond; the Virginia Department of Historic Resources, the State Historic Preservation Office of the Commonwealth of Virginia; and Canterbury Development Group LLC, for the purpose of ensuring City compliance with that certain Programmatic Agreement between the City and the Virginia State Historic Preservation Office, dated June 24, 2019 and most recently amended June 18, 2024, through establishment of an agreement to mitigate an adverse effect related to the development of Swansboro Place, 2008 Hull Street.

BACKGROUND: The City of Richmond is the administering agency for local programs receiving

federal assistance from the US Department of Housing and Urban Development (HUD), including, but not limited to the following: Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Choice Neighborhoods, HOPE VI Program, Project Based Vouchers (PBV), Section 108 Loan Guarantee Program, Community Project Funding Grants, the Self-Help Homeownership Opportunity Program (SHOP), and Lead-based Paint Abatement Program Activities. The City is thus responsible for certifying the compliance of those programs with the National Environmental Policy Act (NEPA) of 1969 and the federal regulations at 36 CFR Part 800, et seq. that implement Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. Since 1993, the City of Richmond has carried out its Section 106 responsibilities under the guidance of a Programmatic Agreement with DHR, Virginia's State Historic Preservation Office (SHPO).

Under Stipulation VI of the Programmatic Agreement, the City shall consult with the SHPO and other consulting parties to identify appropriate mitigation that is based on the degree of the adverse effect and the level of significance of the historic property. In this instance, Canterbury Development Group plans to carry out the development of Swansboro Place, 2008 Hull Street, Richmond Virginia (Undertaking) utilizing funds from the Equitable Affordable Housing Program administered by the City of Richmond and project-based vouchers issued by the Department of Housing and Urban Development. The SHPO advised the City that the size and scale of the Undertaking would have an adverse effect on the design, setting, feeling, and association of the adjacent listed and eligible historic districts. The City entered consultation with interested parties to determine appropriate mitigation measures which are contained in the Mitigation Plan.

COMMUNITY ENGAGEMENT: The City of Richmond consulted with the Historic Richmond Foundation, the Catawba Indian Nation, Delaware Nation, Pamunkey Indian tribe, Swansboro Association, and property owners within 150 feet of the project.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: The execution of the Mitigation Plan has a direct impact on the completion of the development of the Swansboro Place, 2008 Hull Street, Richmond, Virginia. Without the Mitigation Plan, construction may not proceed.

FISCAL IMPACT: None

DESIRED EFFECTIVE DATE: September 9, 2024

REQUESTED INTRODUCTION DATE: September 9, 2024

CITY COUNCIL PUBLIC HEARING DATE: September 23, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing, and Transportation
(September 17, 2024)

AFFECTED AGENCIES: Planning and Development Review, Housing and Community
Development

RELATIONSHIP TO EXISTING ORD. OR RES.: 2024-133 (authorized Programmatic
Agreement)

ATTACHMENTS: Mitigation Plan

STAFF: Kimberly M. Chen, Senior Manager - authentiCITY Studio, Planning and Development
Review, 804.646.6364

MITIGATION PLAN MEMORANDUM OF AGREEMENT

THIS MITIGATION PLAN MEMORANDUM OF AGREEMENT regarding Swansboro Place, 2008 Hull Street, Richmond Virginia (this "Mitigation Agreement") is entered into as of the ___ day of September, 2024 by and between **THE CITY OF RICHMOND, VIRGINIA** (the "City"), a municipal corporation and political subdivision of the Commonwealth of Virginia; **THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES** ("DHR"), the State Historic Preservation Office of the Commonwealth of Virginia; and CANTERBURY DEVELOPMENT GROUP LLC, a Virginia limited liability corporation (each a "Party," and collectively the "Parties").

RECITALS

WHEREAS, Canterbury Development Group LLC (the "Applicant") plans to carry out the development of Swansboro Place, 2008 Hull Street, Richmond, Virginia (the "Undertaking"), which development (the "Development") is further described in City of Richmond Ordinance No. 2024-193 (the "Ordinance"), by utilizing funds from both the Equitable Affordable Housing Program administered by the City and HUD-issued project-based vouchers; and

WHEREAS, the City administers programs receiving federal assistance from the US Department of Housing and Urban Development (HUD), including, but not limited to the following: Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Neighborhood Stabilization Program (NSP), Project Based Vouchers (PBV), Section 108 Loan Guarantee Program, and Lead-based Paint Abatement Program Activities (collectively, "HUD Program Activities"); and

WHEREAS, the City implements HUD Program Activities through relationships with community development corporations and nonprofit organizations (sub-grantees), as well as with the Richmond Redevelopment and Housing Authority (RRHA) and other development-related entities; and

WHEREAS, as the administering agency for the HUD Program Activities, and in accordance with 24 CFR Part 58.1 *et seq.*, the City is responsible for certifying that undertakings funded through HUD Program Activities are compliant with the National Environmental Policy Act (NEPA) of 1969, and with 36 CFR Part 800 of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended; and

WHEREAS, the City and DHR, which serves as the State Historic Preservation Office (the "SHPO"), and the Advisory Council on Historic Preservation (the "ACHP"), have determined that the City can more effectively carry out its Section 106 responsibilities for HUD Program Activities if a Programmatic Agreement (the "Agreement") is used to

streamline the administrative process where agreed-upon criteria and procedures are followed, which Agreement the City Council of the City of Richmond, Virginia most recently approved by City Ord. No. 2024-133; and

WHEREAS, in accordance with Stipulation IV(D) of the Agreement, the City initiated consultation with DHR on October 13, 2023, having determined that the project was an undertaking with the potential to affect historic resources because of its proximity to the National Register-listed Manchester Residential and Commercial Historic District (127-7195) and the potentially eligible Swansboro Neighborhood Historic District (127-7867) (the "Historic Districts"); and

WHEREAS, on November 14, 2023, DHR advised that the Undertaking would have an adverse effect on the Historic Districts, finding that, "The proposed approximately 74,300 square foot, four-story residential building is not compatible with the Manchester Residential and Commercial Historic District's and Swansboro Neighborhood's one- to two-story commercial and residential buildings which surround the project area. The proposed building is also not in keeping with the design, massing, and overall rhythm of Hull Street, a significant corridor. The districts' design, setting, feeling, and association will be diminished by the proposed undertaking" (the "Adverse Effect"); and

WHEREAS, revised elevations were submitted to DHR on January 3, 2024, and on January 18, 2024, DHR advised that while improved, the Undertaking would still result in the Adverse Effect and recommended consultation be initiated in accordance with Stipulation VI of the Agreement; and

WHEREAS, on March 1, 2024, the City entered consultation with Historic Richmond Foundation, the Catawba Indian Nation, Delaware Nation, Pamunkey Indian Tribe, Swansboro Association, and property owners within 150 feet of project. Each of the correspondents were given 30 days to respond; and

WHEREAS, the City received one response, which was from the Catawba Indian Nation; and

WHEREAS, on May 2, 2024, the city notified the ACHP of its finding of the Adverse Effect; and

WHEREAS, having so notified the ACHP, the City has worked with the SHPO and the Applicant in accordance with the Agreement to develop a plan to mitigate the Adverse Effect.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants and agreements hereafter set forth, the City, the SHPO, and the Applicant hereby agree as follows:

- I. Compliance with Agreement.** This Mitigation Agreement and the development thereof is and was compliant with the Agreement.
- II. Mitigation Measures.** The City and Applicant shall perform the following mitigation measures (the "Mitigation Measures"), which measures shall be appropriate and sufficient for mitigation of the Adverse Effect:
- a. Public Interpretation of Swansboro.** Applicant shall, in consultation with the City, create and install a display that depicts the history of the Swansboro neighborhood, which display shall be located in a portion of the Development that is visible to and accessible by the general public. Such display shall be reflective of the results of a "Southside Survey," to be sponsored by DHR and completed in December 2024, which survey shall include a description of the history of Swansboro and shall be shared with the Applicant and the Swansboro community. Applicant shall have completed installation of such display prior to its application for a certificate of use and occupancy, or temporary certificate of use and occupancy, for the Development.
 - b. Recognition.** The City shall request that the City's History and Culture Commission (the "HCC") consider, as part of its local historic marker program, an historic marker for Swansboro that takes inspiration from the Southside Survey for its nature and location. The City shall submit plans for any such marker to DHR for review and comment prior to HCC approval of such plans.
- III. Post-Review Discoveries.** During performance of the Undertaking, the Parties shall be subject to, shall act in accordance with, and shall ensure the performance of all applicable terms of Stipulation VII, "Post Review Discoveries," of the Agreement.
- IV. Duration.** This Mitigation Agreement shall expire, and its terms shall be null and void, if (i) the Mitigation Measures are not carried out within a period of five (5) years from the Effective Date, or (ii) the Ordinance, as amended if amended, terminates in accordance with its terms. Prior to expiration of this Mitigation Agreement, the City may consult with the other signatories hereto to reconsider the terms of this Mitigation Agreement and amend it in accordance with Section IV(a) below.
- V. Amendment and Termination.**
- a. Amendment.** This Mitigation Agreement may be amended, but only in accordance with the terms of Stipulation X(A) of the Agreement, which terms are incorporated in this Mitigation Agreement by reference.

- b. Termination.** If any signatory to this Mitigation Agreement determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Parties to attempt to develop an amendment per paragraph III(b) above. If within ninety (90) days (or a longer time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this Mitigation Agreement upon written notification to the other signatories.

In the event this Mitigation Agreement is terminated, work on the Undertaking shall cease. Prior to work continuing on the Undertaking, the City shall either (a) execute a new Mitigation Agreement with the other Parties in accordance with the Agreement, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Section 800.7. The City shall notify the signatories as to the course of action it will pursue.

VI. General Provisions.

- a. Dispute Resolution.** In response to an objection, as described in Stipulation IX(A) of the Agreement, to the Mitigation Measures, the City shall engage in a dispute resolution process in accordance with the terms of Stipulation IX of the Agreement.
- b. Signature and Counterparts.** The Parties each agree that, (a) no further approvals or consents are required and that it has full right and authority to execute this Mitigation Agreement; (b) the individual executing this Amendment on its behalf has the authority to bind it; (c) execution and delivery of this Amendment via electronic transmission or other electronic means shall be binding and enforceable the same as originals for all purposes; and (d) this Amendment may be executed in two (2) or more counterparts, all of which together shall constitute but one and the same agreement.
- c. Miscellaneous.** This Mitigation Agreement (i) shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia; (ii) shall constitute the entire agreement between the Parties relating to the subject matter hereof; (iii) shall become effective and binding upon execution and delivery by each of the Parties; (iv) shall not have the effect of, nor shall performance of any act or acts under the terms of this Mitigation Agreement have the effect of, creating between the Parties any relationship of principal and agent, partnership, or any relationship other

than the relationship established by this Mitigation Agreement; (v) is solely for the benefit of the Parties and shall not confer any rights or benefits on any person other than the Parties; (vi) shall be valid and enforceable to the fullest extent permitted by law, such that any invalid or unenforceable term of this Mitigation Agreement shall not affect the validity or enforceability of the remainder; and further, no waiver, forbearance or failure by any Party of its right to enforce any provision of this Mitigation Agreement shall constitute a waiver or estoppel of any such Party's right to enforce such provision in the future.

- d. Subject to Appropriation.** Any payments and other performance by the City under this Agreement are subject to annual appropriations by the City Council of the City of Richmond, Virginia.

[SEE NEXT PAGE FOR SIGNATURES]

**SIGNATURE PAGE
MITIGATION PLAN
BETWEEN THE CITY OF RICHMOND
AND THE
VIRGINIA DEPARTMENT OF HISTORIC RESOURCES (DHR),
THE STATE HISTORIC PRESERVATION OFFICE, AND
CANTERBURY DEVELOPMENT GROUP, LLC REGARDING
SWANSBORO PLACE, 2008 HULL STREET, RICHMOND,
VIRGINIA**

SIGNATORIES:

CANTERBURY DEVELOPMENT GROUP LLC

By: _____ Date: _____
Gerald Burr, Jr., Managing Member
Canterbury Enterprise

CITY OF RICHMOND, VIRGINIA

By: _____ Date: _____
J. E. Lincoln Saunders, Chief Administrative Officer
City of Richmond, Virginia

VIRGINIA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Julie V. Langan, Director
Virginia Department of Historic Resources and
Virginia State Historic Preservation Officer

Approved as to form:



Senior Assistant City Attorney