ARNOLD & PORTER

Memorandum

To: Zoning Commission Members

From: Cynthia A. Giordano

Date: March 20, 2003

Re: Waterfront PUD; Follow-Up Summary of Phasing, Second-Stage Application Schedule

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The following is a summary of the Applicant's proposal for the extended build-out and phasing of the Waterfront PUD project including requested flexibility from the typical two-stage PUD process.

In summary, the applicant is requesting flexibility to file multiple second-stage applications and to obtain a first-stage approval which will be valid for a period of at least three years and will fully vest upon the filing of the first of the multiple second-stage applications.

Typically, a PUD project entails a first-stage application followed by a single stage-two application. Also typically, a first-stage approval is valid for a period of one year prior to expiration. A second-stage application must be filed prior to such expiration or the first-stage approval will lapse. However, Section 2407.10 of the Zoning Regulations provides that the Commission may specify that a first-stage approval shall be valid for a longer period than one year. For the reasons set forth below, the Waterfront PUD will require at least three second-stage applications and the first-stage approval will need to be valid for at least three years.

ZONING COMMISSION
District of Columbia
Case 02-38
Exhibit 83

ZONING COMMISSION
District of Columbia
CASE NO.02-38
EXHIBIT NO.83

Overall Rationale for Flexibility Requested

Multiple second-stage applications and an extended first-stage approval are necessary due to the large size of the project and the substantial office component, which cannot be built-out on a speculative basis and which will require a longer time to prelease than a typical 100,00 – 200,00 square foot office PUD project. Further, the design and construction of 4th Street through the site will have to precede the design and development of the buildings which front on it. Finally, portions of the existing improvements (i.e. the existing Safeway and CVS stores) are encumbered by long-term leases which effectively preclude redevelopment until many years hence. For all of these reasons, the Applicant will not be in a position to commence with the design of the buildings in later development phases until these buildings can be marketed, leased, and/or developed.

Multiple Stage-Two Applications

As indicated above, the Applicant envisions that a total of three second-stage PUD applications will be required. A portion of the development will also be developed as a matter-of-right. Matter-of-right development includes the renovation of general existing buildings and the construction of one additional floor on an existing building (within matter-of-right height standards). These projects will not require second-stage PUD review or approval. Most of them are interim projects which will be razed and replaced with new buildings which will require stage-two PUD review.

The following is a description of the three stage-two applications envisioned by the Applicant. A plan depicting each of the three PUD phases is attached hereto for reference.

The first, two-stage application will consist of the redevelopment of two new buildings which will flank 4th Street (i.e. the "East 4th Street and "West 4th Street Buildings"). These buildings cannot be fully designed until the design of 4th Street is completed and they cannot be constructed until 4th Street is substantially under construction or completed. As a result, the Applicant does not anticipate being in a position to file a second-stage application for these buildings until approximately three years from the first stage approval.

The second, stage-two application will include two buildings (1): a new residential building(s) located in the Northwest corner of the site ("N.W. Building(s)"), (2) and a new office building located on the Southwest corner of the site, fronting on M Street ("S.W. Building"). The applicant will not be required to build the N.W. Building(s), until 1.6 million square feet office space is developed. The economics of project also dictate that the residential component cannot be constructed until this amount of new office space is provided. With respect to the S.W. Building on M Street, this building will replace an existing building which is leased to CVS until 2008. Therefore, it cannot be developed until the expiration of CVS's lease. The Applicant anticipates that it will be ready to design these new buildings and file a second-stage application for them within approximately five years after the first stage approval.

The final, and third, stage-two application will include a new office building located on the northeast corner of the site (the "N.E. Building") and a new office building located on the southeast corner of the site fronting on M Street (the "S.E. Building"). The N.E. Building entails the demolition of an office building which was renovated and expanded with an additional floor, as a matter-of-right, in the first phase of the

development program. The redevelopment of this site is therefore reserved for the last development phase, after the renovated building has served a useful life. The S.E. Building cannot proceed until a later phase because it entails the demolition and redevelopment of a building which is subject to a twenty-year lease held by Safeway. The applicant anticipates that this final, second-stage application will be filed approximately 17 years from the first-stage approval.

Extended Validity of First-Stage Approval

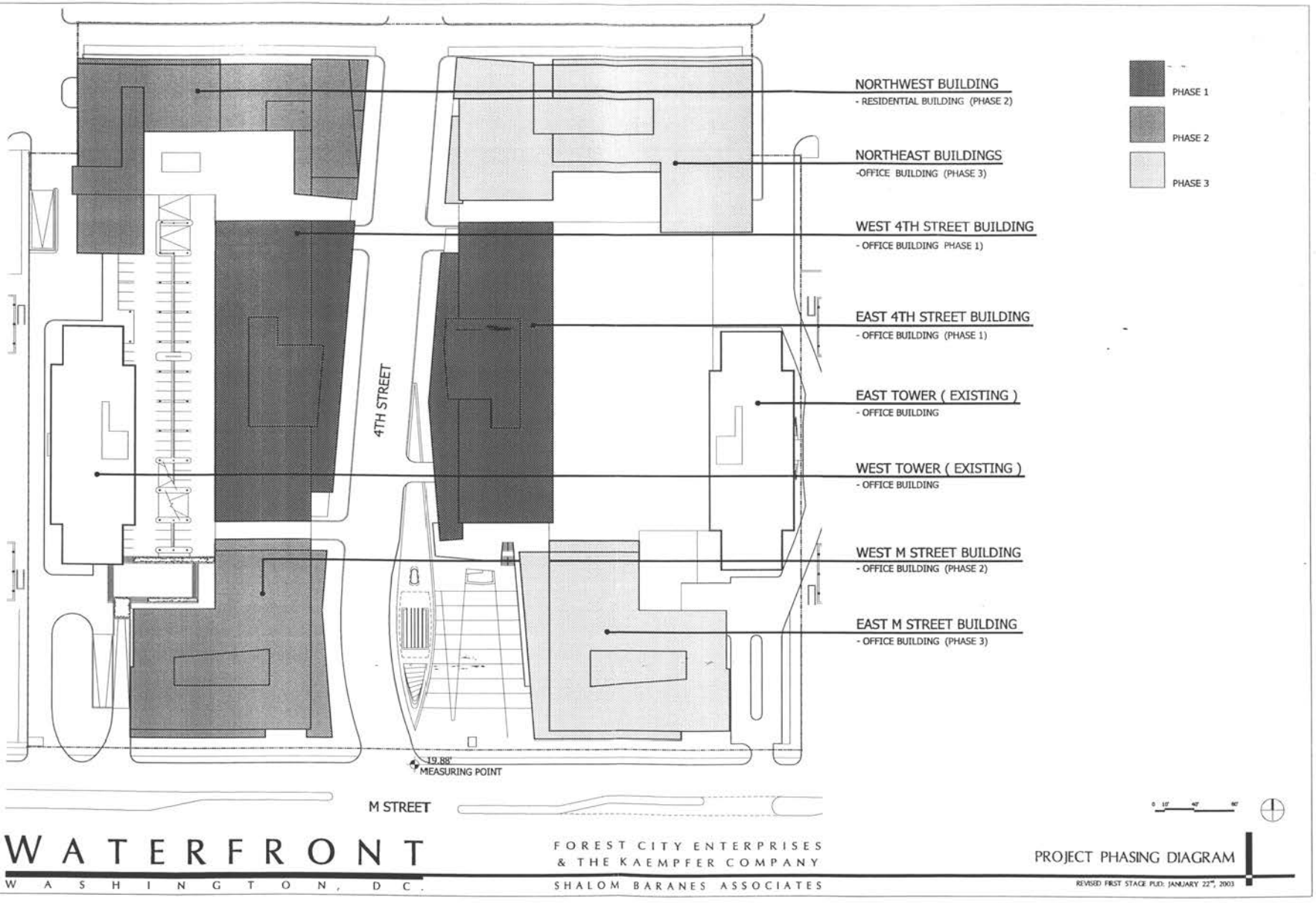
In addition to requiring multiple stage-two applications, the Applicant will also need the first-stage approval to be valid for a period of at least three years – the amount of time that the Applicant estimates will be required to complete the design work and funding agreement for 4th Street. Further, in order to ensure that the first-stage approval does not lapse with respect to the project components that will be the subject of the second and third stage-two PUD applications (which will not be filed until 5-17 years subsequent to the first-stage approval), the first-stage approval should state that it fully vests upon the filing of the first stage-two application.

Summary Timeline for Submission of Stage Two PUD Applications

The following timeline indicates in summary form when each of the PUD components will be processed:

> **Year 2006**: submission of stage-two PUD for East and West 4th Street Buildings.
>
> **Year 2008**: submission of stage-two for N.W. Tower (residential building) and S.W. Tower.
>
> **Year 2020**: submission of stage-two PUD for N.E. Tower and S.E. Tower.

It is our goal to commence construction on all of the aforementioned buildings as soon as the applicable stage-two PUD applications are approved and building permits are issued.



WATERFRONT

WASHINGTON, DC.

FOREST CITY ENTERPRISES
& THE KAEMPFER COMPANY

SHALOM BARANES ASSOCIATES

PROJECT PHASING DIAGRAM

REVISED FIRST STAGE PUD: JANUARY 22nd, 2003