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September 28, 2007

ZONING COMMISSION
District of Columbia

CASE NO. 02-38A

EXHIBIT NO. 100

RECEIVED
DC OFFICE OF ZONING
SEP 29 AM 11:33

BY HAND & U.S. MAIL

District of Columbia Zoning Commission
c/o Secretary
414 4th Street, N.W., Suite 210
Washington, DC 20001

**Re: "Waterfront" PUD, First Stage PUD Modification and Partial
Second Stage PUD Application, Z.C. Case No. 02-38A**

Dear Members of the Commission:

Tiber Island Cooperative Homes, Inc. (TICH) submits the attached proposed Order and Decision as a result of the September 17, 2007 Public Hearing and the record having been re-opened to accept the filing of the alternative M Street plan by the Applicant in the above-referenced case. The attached Order and Decision supports the revised height and massing – including a maximum height of 127 feet for the buildings on M Street, S.W. We understand the overall floor area of the M Street buildings will not change and the additional height will allow set backs of approximately 45 feet generally along the east-west axis of the buildings (except for the first two floors of the structure) as shown on the plan. Similarly, our support for the increased height for the north buildings assumes that the density of these structures will not be increased, but the additional floor will result in the buildings being reduced along their east-west axis, providing improved visual sight lines into the interior of the property.

While TICH generally supports the project, it requests that the previously approved 22' setback (sidewalk) along M Street, S.W., not be changed from the setback already approved by the Commission in the earlier PUD case. The Southwest community (including notably ANC 6-D) consistently has advocated wider sidewalks along the M Street boulevard, especially as the street approaches Arena Stage and the Washington Channel to the west. We request that the Waterfront sidewalk setback already approved by the Commission (22') remain unchanged, and that the Commission *sua sponte* require that the same 22' setback be applied to the pending Marina View Towers PUD application in Case No. 05-38. As the Commission may recall, TICH was refused party status during the Marina View Towers proceeding which would have provided

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the opportunity to explore the sidewalk setback issue more fully, but this request for party status was denied.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael B. McGovern", with a long horizontal flourish extending to the right.

Michael B. McGovern
Counsel for
Tiber Island Cooperative Homes, Inc.

Enclosure

cc: Waterfront Associates LLC
(c/o Whayne S. Quin, Esquire)
Carrollsborg Square Condominium
(c/o Henry Baker, President)
ANC-6D (c/o Max Skolnik, Chair)
Tiber Island Cooperative Homes, Inc.
(c/o Paul Greenberg, President)

**DRAFT BY TIBER ISLAND COOPERATIVE HOMES, INC.
(of selected Paragraphs of Applicant's Proposed Order)**

**PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38A**

Case No. 02-38A

**(Modification to a First-Stage Planned Unit Development, a Second-Stage Planned Unit
Development Application and a Zoning Map Amendment
for Waterfront)**

_____, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on June 7, 2007, June 14, 2007, and September 17, 2007, to consider applications from Waterfront Associates, LLC, on behalf of and in conjunction with RLA Revitalization Corporation ("RLARC"), the owner of the property (collectively, the "Applicant"), in support of the applications to the Zoning Commission for the District of Columbia for a modification to a first stage Planned Unit Development ("First-Stage PUD") for property located at 401 M Street, SW (Lot 89, Square 542) (the "Site"), second-stage review and approval of a Planned Unit Development ("PUD") for the central portion of the Site, and a change to the District of Columbia Zoning Map under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR (February 2003), as amended ("Zoning Regulations") (collectively, the "Applications"). The Zoning Commission considered the Applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title II of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of II DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Applications.

M Street Set-Back, Height and Bulk

1. The record was re-opened at the September 17, 2007 Public Hearing to accept the filing of the alternative M Street plan by the Applicant. The revised height and massing, including a maximum height of 127 feet for the buildings on M Street, S.W., is now proposed by the Applicant and all parties to this case are in support.
2. The overall floor area of the M Street buildings will not change and the additional height will allow set backs of approximately 45 feet generally along the east-west axis of the buildings (except for the first two floors of the structure) as shown on the plans. Similarly, the increased height for the north buildings will not change the overall floor area of these structures, but the additional floor will result in the buildings being reduced along their east-west axis, providing improved visual sight lines into the interior of the property.

- 3.. In Order No. 02-38, the First-Stage PUD, in 2003, the Commission approved buildings fronting on M Street including a setback from the face of the curb to the face of the building of approximately 22 feet. The Applicant's request to reduce the M Street setback to 18 feet 9 inches is not consistent with the Commission's prior approval.
4. The Applicant testified the reason it requested a reduction in the width of the sidewalk setback to 18' 9" was to maintain a setback consistent with the adjacent Marina View Towers property, Case No. 05-38, where the applicant in that case had proposed the shorter setback dimension which this Commission is presently considering. (Though Tiber Island Cooperative Homes, Inc., was denied party status in the Marina View Towers case, it sought a 22 foot setback for Marina View Towers' building on M Street to be consistent with the previously approved 22 foot setback in this case).
5. ANC 6D, Tiber Island and Carrollsburg Square, as well as several individuals testifying at the hearing, expressed concern that the proposed setback was not sufficient and the 22 foot setback from M Street, S.W. should remain as previously approved in the First Stage PUD.

CONCLUSIONS OF LAW

1. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6D's stated issues and concerns and must give great weight to the ANC-6D's testimony, especially that the prior approved 22 foot setback on M Street, S.W. should not be reduced to 18 feet 9 inches.
2. The revised height and massing requested by the Applicant, including a maximum height of 127 feet for the buildings on M Street, S.W., as now proposed by the Applicant, as to which all parties to this case and the Office of Planning are in support, are proper..
3. The Commission should adhere to the 22 feet setbacks from M Street previously approved, and may not arbitrarily reduce the setback to 18 feet 9 inches just because of the pending Marina View Towers application in Case No. 05-38 seeks this relief as that application should be denied as well..

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission orders APPROVAL of the application for a modification to the First-Stage PUD approval in Zoning Commission Case No. 02-38, second-stage PUD approval for the center portion of the Site, and for a Zoning Map amendment to rezone the Site from C-3-B to C-3-C.

This approval is subject to the following guidelines, conditions and standards:

1. The 22 feet setbacks from the curb on M Street, S.W. previously approved in Case No. 02-38 should not be changed,

2. The maximum height of the Northeast and Northwest Buildings shall be 127 feet, as shown on the revised First-Stage Plans submitted and accepted in the record at the Public Hearing on September 17, 2007.
3. The First-Stage Plans had shown a maximum height for the East and West M Street Office Buildings at 114 feet. The Applicant shall increase this maximum height for the East and West M Street Office Buildings to 127 feet as a result of an agreement with ANC-6D and the other parties to this case. No additional density is approved, and to compensate for the additional approved height, there will set backs of approximately 45 feet generally as shown on the Applicant's revised plan which reduce the massing of the M Street buildings.

Vote of the Zoning Commission taken at its public meeting held on September __, 2007: (in favor __, in opposition __, Carol Mitten and Gregory Jeffries, not participating and not voting in the case).

The Order was adopted by the Zoning Commission at its public meeting on __, 2007 by a vote of _____ (), 2007.

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the D.C. Register; that is on ____, 2007.

CAROL J. MITTEN
Chairman, Zoning Commission

JERRILY R. KRESS, FAIA
Director, Office of Zoning