

Memorandum from ANC-6D

TO: Members of the Zoning Commission, District of Columbia

FROM: Advisory Neighborhood Commission 6-D

DATE: July 9, 2018

RE: **Response of ANC-6D Applicant's Post Hearing Submission in ZC Case 02-381, the Second Stage PUD concerning 375 and 425 M St, SW at Waterfront**

Dear Commissioners:

Since the last Zoning Hearing on this matter held on May 10, 2018 ANC-6D has met several times with the Applicant and their agents in attempts to further clarify terms and seek consensus about the issues that still separate us. In between, the ANC has traded written and verbal communications with the Applicant. It is clear, however, that not all of these issues have been resolved. There are numerous points in their filing of July 2 that contravene what the ANC had understood to be so. Indeed, there are also a few significant items in the filing that are simply, themselves, contradictory and without the opportunity to respond would leave things adrift. That may be optimal for lawyers but not for the sake of clarity or for the execution of a Final Order that addresses these issues with any finality.

The Applicant's post hearing submission Exhibit B provides the applicant's response to a memo that the ANC sent them on July 1. However, the Applicant has conflated or simply misstated the ANC's concerns – or simply left them off the response. The ANC has continued to negotiate in good faith with the Applicant. We feel the need to restate with neither interpretation nor excerpt by Holland & Knight what is our expectation.

Accordingly, in an attempt to nail down as many of these items in writing as clearly as possible, on behalf of Advisory Neighborhood Commission 6-D, please let this serve as our response to

the Applicant's post hearing submission in the Zoning Case 02-381 in the matter concerning 375 and 425 M Street, SW.

1. RESIDENTIAL MEANS RESIDENTIAL

The Applicant has requested a major modification of their First Stage PUD to enable them to dramatically alter a project -- after more than fifteen years -- to provide residential apartment dwellings instead of two office buildings. While the ANC had initially opposed even a set down for this project, over time we had been largely persuaded by the Applicant's argument that having two new residential buildings in the neighborhood could yield positive benefit. That is until now.

ANC-6D has discovered that Forest City Washington intends to continue and grow their program of providing short term, hotel-like rentals at Waterfront (as they now currently provide at The Eliot) to vacationers and business travelers at each of their two *new* buildings. ANC-6D believes that this practice is a violation of trust. When the ANC provided its report on the PUDs for these residential buildings, there was no mention of a hotel-like use. The ANC provided its report with the expectation that a residential building would be comprised of residents with a typical initial rental lease of one year. Further, when ANC 6D residents sign leases in these buildings, they have the reasonable expectation that the other inhabitants of the building are residents who are also signing a typical initial rental lease of one year.

The ANC supports policies and practices that foster the development of a thriving community of neighbors who are invested in the well-being of the community, support the local civic infrastructure, volunteer their time and talents, support local businesses, advocate for high quality city services, etc. The ANC believes that hotel guests, even those staying for a few months, do not interact with their neighbors or the neighborhood in the same way as residents. Further, there are more than enough short and long term hotel options currently available in Southwest and Navy Yard -- and soon, Buzzard Point -- to more than adequately meet this need. The ANC believes that by imbedding hotels within residential buildings, the property owners are eroding the sense of community within a residential building, which then deteriorates residents' sense of connection to the larger neighborhood community.

The ANC believes that it is unsound urban planning to allow the impromptu conversion of residential units to hotel units in PUD projects. Every day, ANCs, the Zoning Commission, the

Office of Planning, and other District agencies make policy and planning decisions based on known and projected numbers of residential units. We aim to right-size our schools, our emergency services, our political boundaries, etc. based on these numbers. We make determinations about the mix of market rate and affordable housing units based on the known and projected numbers of residential units. The District needs to know in a timely fashion if a property owner plans to change the number of residential units in a PUD-approved building.

Apparently, the Applicant does not concur. In their curt response to the ANC's strenuous objections to hotel-like short term rentals at Waterfront, they stated "... the Applicant confirms that the M Street buildings will only be leased to tenants in accordance with the definitions of residential use in Subtitle B 200.2(bb), which provides for a 'use offering habitation on a continuous basis of at least thirty (30) days.'"

What the Applicant has not stated is that they will in any way limit the number of units that they will lease short term at either of these two buildings. That gives us great pause. And while it may be their interpretation that such an approach complies with the regs – and we don't agree -- it is not what our ANC is ready to accept as a consequence of our embrace of this project. If they wanted a hotel, they should have sought a designation for a hotel. We are not prepared to wait until some later date when the ANC needs to take this up in another context. **Our support for this project is conditional. And this is a condition.**

THEREFORE: ANC-6D would want a covenant in any agreement to ensure that neither Forest City itself nor any party under its control or direction will engage in any short term rentals at either 375 or 425 M Street for the length of the project term. As a consequence of our support of this PUD, ANC-6D seeks to ensure that short term leases of any kind by any provider will be strictly prohibited at both 375 and 425 M Street.

2. THE SW COMMUNITY CENTER

In their June 15, 2018 memorandum to the ANC, the Applicant clearly states:

"C. Payment of Electricity Fees

The Applicant will pay 100% of all rent, utility, and building maintenance fees associated with the community center operation for a period of 30 years following issuance of the first certificate of occupancy issued for the East M Street Building. The major systems for the community center (e.g. heating, cooling, kitchen appliances) will be via electric power, and there will be no gas utility charges past to the Operator.”

ANC-6D believes that this resolves the point. 100% is 100%, by the Applicant’s own words.

However, in their very next paragraph the Applicant constructs a definition of what they *perceive* will provide the requisite 100% payment for electricity costs based upon their own estimation of the cost of electricity over the next 30 years. In the interest clarity, the ANC asserts that no legal construct or contortion is required to provide a definition of 100% -- that is, unless it is the intention that it might be used at some future time in an attempt to cloud intent and extricate the Applicant from what is a very clearly written proffer.

THEREFORE: *ANC-6D, as a consequence of its support for this PUD, accepts that the Applicant will pay 100% of all rent, utility costs, and building maintenance fees associated with the SW Community Center operation for a period of 30 (thirty) years following issuance of the first certificate of occupancy issued for the East M Street (375 M Street) Building. The major systems for the Community Center (e.g. heating, cooling, kitchen appliances) will be via electric power, and there will be no gas utility charges passed to the Operator.*

3. COMMUNITY SERVING RETAIL

When Waterside Mall closed in 2002, Southwest lost more than 25 small and local merchants who served our community with a variety of goods and services few of which have replaced in any of the new buildings at Waterfront. ANC-6D has a continuing concern that individual square footage space currently suggested by the Applicant for provision of retail establishments (as demonstrated in drawings on p. 10 of the Supplemental Post-Hearing Submission) are too large as to support the contention of the Applicant that they will seek to provide a range of goods and services provided by smaller merchants.

ANC-6D understands how challenging it is to curate neighborhood-serving retail. But that is the Applicant’s particular charge. They are a national real estate concern fully capable of creating a SW Town Center. Further, they are majority owners of the entire Waterfront project. Forest

City Washington has from the beginning accepted the responsibility of recreating a Southwest Neighborhood Town Center populated by offerings that support our burgeoning community. Although the ANC recognizes that there will be more retail provided as a consequence of this particular PUD than in the First Stage, we are concerned that the total amount of square footage that the Applicant provides for any particular retail establishment will likely determine what kind of retail will actually fill that space. Or not.

It is telling that with 39,000 square feet of retail space in these two buildings, the Applicant originally sought permission for “no more 20,000 square feet” per operator. Now, the Applicant promises – at the ANCs insistence – to hold the line at no more than 10,000 square feet, allowing significantly larger retail establishment(s) than we’ve been led to believe will optimally provide local services. A neighborhood town center won’t be created with mega restaurants or junior big box store offerings. It will require considerable thought and planning not just the ease of obtaining a long term lease.

In Exhibit F. the Applicant conflated the ANCs request in our memorandum to them of July 1. Instead of providing an array of retail sizes **up to** 1,000 square foot that would contribute to a greater mix of offerings, the Applicant has promised to “... dedicate a minimum of 1,000 **total** square feet in the M Street buildings to small and local business as part of its compliance with Condition No. 14 from the ZC Order No. 02-38A.”

This is not compliance, it’s “Go away kid, you bother me”

The ANC is not willing to wait until the NE parcel at Waterfront finally comes before Zoning to provide the last best hope of fulfilling the long made promise of reestablishing community retail on these 11 acres. That would be a complete abrogation of our responsibility. If the ANC is to support these two new residential buildings, we expect that the Applicant will step up to the challenge **now** and be more locally focused in what they will provide and complement rather than compete with nearby destination retail and entertainment.

These two new buildings will comprise the heart of SW’s neighborhood commercial core. ANC-6D needs to be assured (as per TC.3 of the SW Small Area Plan) that the Applicant will “... pursue a neighborhood focused retail attraction and retention strategy that provides an array of locally serving shopping, services and dining to residents and the daytime office workers. In new retail

development, consider allowing for different formats and sizes of spaces so that the variety of retail tenants, including small business, may lease space.”

THEREFORE: *ANC-6D suggests that no fewer than 25% of the total retail space in **each** building – so that the Applicant doesn’t kick the can down the road until 425 M Street is constructed – be developed to provide an array of retail sizes up to 1,000 square foot **each** so as to contribute to a greater mix of offerings, goods and services to the people of Southwest at our new Town Center. The SW Community Center space is not to be included as part of this percentage.*

4. INDEPENDENT SAFETY STUDY OF FOURTH AND M STREETS, SW

First, it is clear that DDOT would not have asked for such a study had they not believed that there was no need for one. This is not a sop to squelch minimal concern. This is a big deal. Second, the only entity that has stated that there is no issue at our neighborhoods most dangerous intersection as a consequence of this PUD is the Applicant’s transportation consultant. Big surprise!

THEREFORE: *ANC-6D still contends that we are putting the cart before the horse and requests that the PUD not move forward until the completion of DDOT supervised safety study of the intersection at Fourth and M.*

5. ENVIRONMENTAL BENEFITS

ANC-6D appreciates that the M Street Buildings have been designed to incorporate sustainable features and have now included solar panels on the roofs of the two buildings. However, ANC-6D is still convinced that the Applicant’s “endeavor” to seek LEED Silver certification means that is simply isn’t likely to occur. We find this wording unfortunate since it otherwise extricates the Applicant from what is considered a rather bottom line expectation by most of the developers who’ve come before our ANC. LEED Silver ought not to be such a difficult reach for a company that has received the 2018 ENERGY STAR Partner of the Year Award by EPA and the U.S. Energy Department for outstanding efforts in energy management.

THEREFORE: *ANC-6D requests that the Commission **require** LEED Silver certification as a consequence of the granting of this PUD.*

6. THE FREE STANDING BUS SHELTER

The Applicant's Exhibit A. 5. Addresses the request ANC's request to ensure that there is sufficient public space along M Street that will allow for the construction of a bus shelter to serve the SW Community, replacing one that had been removed several years ago by WMATA. What their response specifically does not include is that such public space for the bus shelter will also be sufficient to make it an *accessible* bus shelter so that all residents of the community may avail themselves of this benefit.

Further, in a phone discussion on July 2, 2018 with the Applicant (Abe Naparstek while at National Airport) they acknowledged that leaving out the accessibility portion of the ANC's request was an oversight that would be corrected. He also responded to the ANC's request in our July 1 memo that and agreed that (1) Forest City Washington would pay for the cost of replacing the shelter to ensure to ensure that WMATA is not otherwise unduly burdened financially, and (2) to erect that shelter as quickly as possible in front of the 425 M Street property so that it can be used by the community while 375 is under construction and until such time as 425 is built.

THEREFORE: *The Applicant agrees that they have had discussions with DDOT that would allow for the construction and placement of an accessible bus shelter within the public realm at M Street and that their current PUD plans will in no way inhibit the construction of such an accessible bus shelter within the public realm and will also allow free pedestrian movement around said shelter. The Applicant agrees to pay for the replacement and construction of an accessible bus shelter along M Street to encourage WMATA and DDOT to move more quickly on this project. The Applicant commits to make every effort to construct this shelter as quickly as possible and prior to commencement of construction of the 375 M Street building.*

7. RESTRICTION OF RPP

The Applicant acknowledges that neither of these two buildings are eligible for RPP. Neither the Applicant nor their agents will apply for RPP for either building. The Applicant agrees to include a rider in all residential leases that restricts residential tenants of either M Street building from obtaining RPPs.