

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 11-03C

Z.C Case No. 11-03E

Wharf District Master Developer, LLC

(Second-Stage PUD @ Southwest Waterfront, 7th Street Recreation Pier)

[DATE]

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 2, 2016, to consider an application for a second-stage Planned Unit Development (“PUD”) filed by Wharf District Master Developer LLC (“Applicant”) on behalf of the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development, the current owner of the property. The subject property consists of the 7th Street Recreation Pier (“Pier”) of the Southwest Waterfront redevelopment project which is located on Lot 884 of Square 473, a recorded assessment and taxation lot extending over a portion of the Washington Channel, and is generally bounded by Parcel 5 and 7th Street Park of the Southwest Waterfront redevelopment project on the northeast, the Capitol Yacht Club docks on the northwest, and the Gangplank Marina on the southeast. The Commission considered this second-stage PUD application for the 7th Street Recreation Pier pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application for 7th Street Recreation Pier.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On November 20, 2015, the Applicant filed an application with the Commission for review and approval of a second-stage PUD for Lot 884 in Square 473, consisting of approximately 96,805 square feet (the “Property”) (Exhibits [“Ex”] 1 - 2). The Applicant intends to develop the Property consistent with the approved plans and development parameters of the first-stage PUD Order (Z.C. Order No. 11-03, effective date December 16, 2011).
2. By report dated January 15, 2016, the Office of Planning (“OP”) recommended that the application be set down for a public hearing (Ex.10). At its public meeting held on February 8, 2016, the Commission voted to schedule a public hearing on the application.
3. On March 4, 2016, the Applicant submitted its pre-hearing statement, and on May 13, 2016, submitted its supplemental information for the project, including updated sets of architectural

plans and drawings to respond to issues raised by the Commission and the Office of Planning (Ex. 14-14H, 20-20B).

4. A description of the proposed development and the notice of the public hearing for this matter were published in the D.C. Register on April 8, 2016. The notice of public hearing was mailed to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commission (“ANC”) 6D. On June 2, 2016, the Commission held a public hearing to consider the second-stage PUD.
5. The parties in support of the proceeding were the Applicant, ANC 6D, and the Capital Yacht Club (“CYC”), which was represented at the public hearing by Freddi Lipstein, CYC Commodore.
6. At the May 26, 2016, public hearing, the Applicant presented five witnesses in support of its application: Shawn Seaman and Matthew Steenhoek on behalf of Wharf District Master Developer LLC; Michael Vergason, landscape architect, Michael Vergason Landscape Architects, LTD, Patrick Graney, civil and structural engineer, Moffatt & Nichol; and Shane Dettman, Holland & Knight LLP, land use planner. Based upon their professional experience and qualifications, Mr. Vergason was qualified as an expert in landscape architecture, Mr. Graney was qualified as an expert in engineering, and Mr. Dettman was qualified as an expert in land use planning.
7. Matthew Jesick, Development Review Specialist at OP, testified in support of the application.
8. At its March 14, 2016, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 6D voted 6-0-0 to support the application.
9. On March 22, 2016, ANC 6D submitted a report in support of the second-stage PUD (Ex. 15). Commissioner Andy Litsky, SMD 6D04, attended the public hearing on behalf of ANC 6D and testified in support of the application.
10. The following persons testified in support of the second-Stage PUD: Andrew Lightman; Kelly Simon, Gangplank Slipholders Association (“GPSA”); and Jason Kopp, Southwest Neighborhood Assembly (“SWNA”). The Commission also received letters in support from GPSA and Mr. Lightman (Ex. 11 and 27).
11. Philip Johnson testified as a person in opposition. Mr. Johnson’s concerns had to do with the need for a broader District-wide harbor safety study to address the increase in motorized and non-motorized boat traffic that will result from the redevelopment project and the potential impacts this could have on boater safety along the Washington Channel and other waterways in the District of Columbia.
12. At the conclusion of the hearing on this matter the Commission took proposed action to approve the second-stage PUD by vote of 5-0-0, and requested the Applicant to submit the

following: (i) example images of piers, docks, and waterfront promenades that do not have railings, (ii) information regarding the operational safety plan currently being developed by the Applicant, and (iii) general information related to the process for establishing and modifying pier operating hours and monitoring/enforcement of pier rules and regulations. In addition, during the public hearing the Commission commented on the low-railing edge restraint proposed along the northern portion of the Pier to delineate the slope between the upper variable walkway and the lower fixed walkway, and requested the Applicant to further evaluate this element to ensure accessibility for all users of the Pier, including having the proposed design reviewed by an expert in Americans with Disabilities Act (ADA) compliance. The Applicant submitted the requested information to the Commission on June 16, 2016. (Ex. 36).

13. To address the Commission's comments regarding the low-railing edge restraint, the Applicant sought input from an expert in ADA compliance, who reviewed the proposed design of the Pier, and specifically the proposed low-railing edge restraint, and provided a set of observations and recommendations (the "ADA report") (Ex. 36C). According to the ADA Report, since the running slope of the upper walkway does not exceed 5%, it is not considered a ramp, and thus does not require edge protection. Rather, based on the proposed design, the ADA Report recommends that use of truncated domes, designed in accordance with the 2010 ADA technical specifications, is a more appropriate method to alert pedestrians of the slope between the upper and lower walkways. Based on the recommendations provided in the ADA Report, the Applicant revised the proposed design of this particular element of the Pier which is reflected in the plans and drawings submitted as part of the post-hearing submission.
14. The application was referred to the National Capital Planning Commission ("NCPC") for review for any adverse impacts on the federal interest, as defined in the Federal Elements of the Comprehensive Plan for the National Capital. On July 7, 2016, NCPC recommended to the Commission that the second-stage PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. _____)
15. The Zoning Commission took final action to approve the second-stage PUD on [DATE], by a vote of ____ - ____ - ____.

The Applicant and Development Team

16. The master developer of the overall Southwest Waterfront PUD is Hoffman-Struever Waterfront, L.L.C, doing business as Hoffman-Madison Waterfront, LLC ("Hoffman-Madison"). The Applicant for the second-stage PUD is Wharf District Master Developer LLC, an affiliate of Hoffman-Madison, which is processing this application on behalf of the Office of Deputy Mayor for Planning and Economic Development. The Applicant's team includes the District-based Certified Local, Small, and Disadvantaged Business Enterprises of E.R. Bacon Development, Paramount Development, and Triden Development, as well as District-based and CBE-certified CityPartners.

The Southwest Waterfront Redevelopment Project

17. The Southwest Waterfront redevelopment project is a public-private partnership between the District of Columbia and Hoffman-Struever Waterfront, L.L.C., which entered into a land disposition agreement (the "LDA") for redevelopment of the Southwest Waterfront, which is generally bounded by the Washington Channel of the Potomac River and Maine Avenue between 6th and 11th Streets, S.W., and consists of approximately 991,113 square feet of land area (22.75 acres) and approximately 167,393 square feet of piers and docks in the adjacent riparian area (the "PUD Site").

Overview of the Southwest Waterfront PUD

18. Pursuant to Z.C. Order No. 11-03, which took effective on December 16, 2011, the Commission approved the first-stage PUD for the Southwest Waterfront redevelopment project. Since approving the first-stage PUD, the Commission has approved a second-stage PUD application for Phase 1 of the redevelopment project, consisting of Parcels 2, 3, 4, and 11, the Capital Yacht Club, and the public open spaces known as the Wharf, the Transit Pier, the District Pier, the Yacht Club Piazza, the Mews, Jazz Alley, 7th Street Park and Waterfront Park, as well as temporary uses on Parcel 1 (Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3), and 11-03A(4), *effective* February 15, 2013). In addition, the Commission has approved a second-stage PUD for Parcel 5 (Z.C. Order No. 11-03B, *effective* June 21, 2013), and a minor modification to the previously approved Parcel 5 plans (Z.C. Order No. 11-03D, *effective* January 15, 2016). Finally, the Commission approved a second-stage PUD for Parcel 1 (Z.C. Order No. 11-03C, *effective* May 13, 2016).
19. The primary objective of the Southwest Waterfront PUD is to reunite the city with the water's edge and activate it with a mix of uses and year-round activity. This objective will be achieved by integrating the city's unique urban qualities, such as dynamic parks and open spaces that are defined by consistent street walls, with aspects that recall the character of the thriving commercial warehouse district and maritime activities that once lined the Washington Channel and connected the upland city streets to the maritime edge.
20. As described during the first-stage PUD, the Southwest Waterfront PUD will provide a mix of uses to ensure an active waterfront throughout the year, day and night. Rather than a collection of individual projects, the overall redevelopment has been designed as a series of "places" that integrate architecture and landscape design to create inviting and memorable public environments. There will be a variety of gathering places to cater to every interest, ranging from actively programmed places to simple promenades and parks for passive enjoyment of the water and its environs.
21. The design of the waterside development has been fully integrated with the landside development, and will include four new public-use piers along the Washington Channel. The District Pier, the largest of the piers, is intended to be the primary waterside entrance to the project and the host for the District's waterside events. Several new tour boats, tall ships, and maritime vessels, such as water taxis, will be added to the existing recreational maritime

activities to provide increased activity and several more options for the public to use the waterfront and engage in water sports and activities.

Approved Stage 1 PUD Development Parameters

22. Pursuant to the first-stage PUD approval, the Commission approved the development parameters for the overall Southwest Waterfront PUD, as shown on the architectural plans submitted to the record. Overall, the Commission approved a maximum landside floor area ratio (FAR) of 3.87, excluding private rights-of-way, and a combined gross floor area of approximately 3,165,000 square feet. Waterside uses were approved for a maximum potential density of 0.68 FAR, or approximately 114,000 gross square feet (*See* Z.C. Order No. 11-03, Condition Nos. A-1 and A-2 at p. 33).
23. The overall Southwest Waterfront PUD will include up to approximately 1,400 mixed-income and market rate residential units, with approximately 160,000 square feet of residential gross floor area (GFA) set aside for households earning no more than 30 percent and 60 percent of the Washington–Arlington–Alexandria, DC–VA–MD–WV Metropolitan Statistical Area Median Income (“AMI”); approximately 925,000 gross square of office uses; a luxury hotel with approximately 278 guest rooms, and two additional hotels with approximately 405 rooms; approximately 300,000 gross square feet of retail/service uses; a minimum of 100,000 gross square feet devoted to cultural activities; and more than ten acres of parks and open space. The riparian area will feature four new public-use piers as well as approximately 114,000 square feet of maritime-related commercial, recreational, and service development.
24. Under the first-stage PUD, the Pier is described as a narrow quay for enjoying views of the water and the monuments that will also have a lower floating pier that will house various rental activities and other water-based recreational programs (Z.C. Order No. 11-03, Finding of Fact 40 at p. 10).
25. With respect to parking facilities for the overall Southwest Waterfront redevelopment project, the Commission authorized the construction of one or more below grade parking structures on two to three levels that are required to provide spaces for approximately 2,100-2,650 vehicles. The redevelopment project is also required to provide parking or storage for 1,500-2,200 bicycles onsite, and sufficient loading facilities to accommodate the mix of uses on the PUD site. The precise amount of parking and loading is to be determined in each stage two PUD application (*Id.*, Condition No. A-4 at p. 33)
26. As part of the first-stage PUD approval, the Commission granted flexibility from the lot occupancy requirements for the proposed development on Parcel 11, and in the precise mix of uses provided in the Southwest Waterfront PUD because of the time it would take to build out the entire redevelopment project. (*Id.*, Finding of Fact 48 at p. 12).
27. The Commission also authorized the Applicant to construct the Southwest Waterfront PUD in phases. At the time of the first-stage PUD, the 7th Street Recreation Pier was part of Phase

3 of the redevelopment project (Z.C. Order No. 11-03, Finding of Fact 40 at p. 10). The Applicant is now pursuing construction of the Pier as part of Phase 1 in order to deliver this public amenity concurrently with the completion 7th Street Park and the rest of Phase 1, and to maintain continuity of the GPSA liveaboard community while delivering the public dock facilities ahead of schedule.

7th Street Recreation Pier Proposed Development

28. The Pier will be located at the terminus of 7th Street, SW, an important north-south corridor that runs through the District, and is situated immediately south of the 7th Street Park, a planned one acre open space that received final Commission approval in January 2013 pursuant to Z.C. Order No. 11-03A(3).
29. Since the first-stage PUD, the Applicant has further developed the design of the Pier, partially in response to the final approved design for 7th Street Park.
30. The proposed Pier is crescent shaped, corresponding directly to the geometry of the curvilinear pathways of 7th Street Park, and will consist of a main fixed portion and a lower floating dock.
31. The Pier will extend approximately 432 feet into the Washington Channel, as measured perpendicular from the bulkhead to the furthest point of the lower floating dock. The width of the main fixed portion of the Pier will range between approximately 42 feet and 140 feet. The lower floating dock will be approximately 25 feet wide.
32. The Pier will be primarily constructed of Kebony, a highly-durable natural wood material, subject to availability at the time of construction. Kebony decking is being used in a number of other pier and public space applications that have received final Commission approval throughout Phase 1 of the Southwest Waterfront redevelopment project.
33. The surface elevation of the main fixed portion of the Pier will vary. At the north end, where the Pier meets the bulkhead, the Pier will have two elevations with a higher portion that is level with the bulkhead and a lower portion that sits at a fixed elevation below the level of the bulkhead.
34. The higher portion of the Pier will descend in elevation to a low point, or saddle. From the low point, the Pier will rise to its terminus, or belvedere. At the saddle, the main fixed portion of the Pier will connect to the lower floating dock via a straight metal gangway. A second straight metal gangway connection will be provided further down the Pier closer to the belvedere.
35. The Pier will primarily be a flexible open space that can accommodate a wide range of activities and types of programming. Where the Pier connects to 7th Street Park and the Wharf promenade, there will be a gathering area that is covered with a large shade structure and contains a small retail kiosk and overlook.

36. The shade structure will be “L-shaped,” and have a modern, wavy expression.
37. Below the shade structure, there will be a one-story kiosk that will house a retail or service use. The design of the kiosk is similar to other open space structures that have already received final Commission approval throughout the Southwest Waterfront redevelopment project. The footprint of the kiosk will be approximately 10 feet by 20 feet, or approximately 200 square feet, and have a height of approximately 10 feet. The kiosk will be constructed of a mixture of painted steel on its upper portion and wood bulkhead below the counter. Fixed and movable seating will also be located below the shade structure near the kiosk.
38. Along the western edge of the Pier, there will be a series of wooden benches, swings, and light fixtures that follow the alignment of the Pier as it gradually slopes toward the saddle and then rises again to the belvedere. The swings will consist of a U-Shaped painted steel frame. The light fixtures will be placed at regular intervals along this edge of the Pier. Finally, a guardrail consisting primarily of steel posts and flexible mesh will extend along this edge and around the Pier terminus. The guardrail will be capped with a wood top rail.
39. The Pier will have a lower edge along its eastern side which will offer a range of views and has been designed to facilitate engagement with the water. Instead of a continuous guardrail, the Pier design includes a series of benches that will visually mark the edge of the pier, while still allowing access to the pier edge. The bench design has been adapted to the edge condition by incorporating a sloped face oriented toward the water which will function as a backrest.
40. A raised “fire feature” is proposed at the terminus of the Pier. The fire feature will consist of a stainless steel sculptural screen composed of several rods of varying length that are arranged and welded together in a manner that is evocative of an actual bonfire. The fire feature will be surrounded by a seat wall.
41. A series of floating wetlands will be located on the east side of the Pier near the bulkhead. In addition to providing visual interest for pedestrians and recreational boaters, the wetlands will help dissipate and filter water from the storm water interceptor located at 7th Street and the Wharf, and offer opportunities for wildlife habitat and aquatic vegetation.

Parking and Loading Facilities

42. As required under the approved first-stage PUD, the Applicant submitted an updated transportation study that provides an overview of the transportation elements of the second-stage PUD and a preliminary trip generation estimate for the Pier (Ex. 20B).
43. According to the transportation study, the Pier is not anticipated to generate any additional parking, loading, or trip generation impacts in and of itself, and thus will not require dedicated parking or loading facilities. Any parking and loading demand associated with the Pier would be negligible, and easily accommodated within the parking and loading facilities

constructed for the Southwest Waterfront redevelopment project in general.

Updated Dock and Pier Relocation and Construction Plan

44. As part of its supplemental prehearing statement, the Applicant submitted an updated dock and pier relocation and construction plan (Ex. 20A2, Sheets 3.1 – 3.14) which reflects changes that are necessary to the dock relocation plan approved as part of the second-stage PUD for Phase 1 of the Southwest Waterfront redevelopment project (See Order No. 11-03A(1), Finding of Fact 38 at p.10)
45. The updated dock and pier relocation and construction plan was prepared in coordination with GPSA, and is necessary to permit construction of the Pier while ensuring that any approved, existing GPSA liveaboards affected by the construction of the Pier will be relocated within the new Wharf marina.

Project Benefits and Amenities

46. The Applicant was required by condition C.3 of Z.C. Order No. 11-03 to provide, for each second-stage PUD application, a detailed implementation plan for the public benefits and project amenities enumerated in Exhibit No. 60 and in Conditions Nos. B-3 through B-6 that identifies the benefits and amenities proposed for that particular stage- two application, the benefits and amenities that have already been implemented, the benefits and amenities yet to be implemented, and an overall status update and timetable for implementation. The Applicant provided this plan for this application. (Ex. 2E).
47. The public benefits and project amenities associated with the second-stage PUD are part of the substantial number of public benefits and project amenities approved as part of the first-stage PUD, at which time the Commission considered the balance between the public benefits and project amenities offered, including the amount of affordable housing, and the degree of development incentives requested and any potential adverse effects of the first-stage PUD. The Commission found then, as it does now, that the public benefits and project amenities of the first-stage PUD are adequate to support the second-stage PUD.

Sustainable (LEED) Development

48. In keeping with the approved first-stage PUD, the overall Southwest Waterfront PUD will be designed to achieve the LEED-ND (v2009) certification at the Gold level or higher, and each new building of the Southwest Waterfront PUD will be designed to achieve LEED-NC (v2009) or LEED-CS (v2009) Silver rating or higher. The Applicant has developed guidelines to ensure that the second-stage PUD has been designed in accordance with LEED-ND (v2009) Gold objectives in order to meet individual certification requirements and to comply with the overall larger framework of LEED-ND (v2009) criteria.

Project Association

49. In accordance with the LDA, the Applicant will create and manage a project association for the PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks, and signage, within the PUD Site (the "Project Association"). The Applicant will manage and operate the Project Association during the "developer control period," as defined in the Applicant's Declaration of Covenants with the District of Columbia. The developer control period begins upon the effective date of the Declaration of Covenants and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit. The Project Association will fund maintenance and programming of the common elements of the Southwest Waterfront PUD through a Common Area Maintenance ("CAM") assessment charge to each development component within the Southwest Waterfront. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site.

Certified Business Enterprises

50. The Applicant has entered into a Certified Business Enterprise ("CBE") Agreement, with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, a 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the overall Southwest Waterfront PUD.
51. Furthermore, under the LDA, the Applicant has committed that 20% of the retail space throughout the Southwest Waterfront PUD will be set aside for "unique" and/or "local" businesses, which will include CBEs. As defined under the LDA, a "local" business is a retailer that is either a CBE or a retailer headquartered in the District of Columbia. A "unique" business is a retailer owning or operating fewer than eight retail outlets in the aggregate at the time such retailer enters into a retail lease at the PUD Site (inclusive of such retail outlet at the PUD Site). The Applicant will work collaboratively with business and community organizations throughout the District to identify and, where possible, mentor potential small restaurateurs and retailers to help them lease and successfully operate these retail spaces. The Applicant will also have kiosks along the promenades, and in parks and other public spaces, where even smaller local businesses can try out their retail concepts on a low-risk basis. Those kiosk operators who are successful may have the opportunity to move indoors, into one of the spaces reserved for unique and local business enterprises, thereby growing their business.

First Source Employment Opportunity

52. The Applicant has executed a First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the overall Southwest Waterfront PUD. (See Exhibit 209 in Z.C. Case No. 11-03A.) Prior to issuance of a building permit for construction of the 7th Street

recreation Pier, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant's First Source Employment Agreement has provisions that 20% of new jobs will be filled by Ward 8 residents, and that good faith diligent efforts will be made to hire residents of Southwest Washington. In addition, 30% of apprenticeship opportunities shall be filled by residents residing east of the Anacostia River. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in phases of construction of the Southwest Waterfront PUD.

Workforce Intermediary Program

53. As required under the approved first-stage PUD benefits and amenities, the Applicant has contributed \$1 million to the District's Workforce Intermediary Program.

Development Incentives

54. No development incentives or technical zoning relief was requested as part of the second-stage PUD.

Design Flexibility

55. The Applicant requested flexibility with the design of the Pier in the following areas:
- a. To make refinements to exterior building details and dimensions, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit; and
 - b. To vary the final selection of the exterior building and shade structure materials within the color ranges and material types as proposed, based on availability at the time of construction; and
 - c. To vary the final selection of materials for pier components including the oversized swings; gangways; railings; and the structure, anchoring, and plant palette of the floating wetlands, within the color ranges and material types as proposed. The Kebony material proposed for the surface of the Pier shall be used subject to availability at the time of construction.
 - d. To vary the final design, details, and material of the truncated/indicator domes proposed along a portion of the center of the Pier to provide pedestrians a detectable warning that marks the slope between the upper walkway and lower walkway.

Office of Planning Report

56. By report dated May 23, 2016, OP recommended approval of the second-stage PUD application, noting that the second-stage PUD would not be inconsistent with the first-stage PUD, the Comprehensive Plan, or the Zoning Regulation. (Ex. 23).
57. OP did not object to the Applicant's request for flexibility for those aspects of the design of the Pier that are enumerated above.
58. Based on the analysis provided in the OP Report, the Commission finds the second-stage PUD to be consistent with the first-stage PUD; not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map; and consistent with the Zoning Regulations.

DDOT Report

59. DDOT submitted a memorandum, dated May 23, 2016, in support of the second-stage PUD (Ex. 24). DDOT found that after a review of the case materials submitted by the Applicant, the proposed retail kiosk would not change the development program contemplated during the first-stage PUD, and thus should not substantially affect transportation needs. In addition, DDOT noted that the Pier would generate very few peak period trips, would have negligible loading and trash removal demands, and did not have dedicated vehicle access. As a result of its analysis, DDOT concluded that the second-stage PUD will not impose a significant burden on the existing neighborhood transportation system.

ANC Report

60. On March 14, 2016, ANC 6D voted 6-0-0 to support the second-stage PUD. The report of the ANC was submitted to the case record on March 22, 2016 (Ex. 15).
61. In its report, the ANC states its support for the construction of the Pier, and associated floating docks and floating wetlands, and recognized the recreational value that the pier will bring to the neighborhood, the District, and the region. The ANC further states that the Pier "will be a positive addition to the array of attractions that will make The Wharf the most exciting development in the District of Columbia."
62. At the public hearing, the ANC reiterated its support for the second-stage PUD, and in particular the amenities and features that will be provided along the length of the Pier and the direct access to the water that will be afforded by the lower floating dock and kayak launch. The ANC encouraged the Commission to request the Applicant to continue working with GPSA, CYC, and the SWNA throughout construction of the Pier, and during preparation of any regulations that may be developed regarding access, use, and operation of the Pier.
63. The Commission accords great weight to the views of the ANC and finds that the Applicant has responded appropriately to the ANC's comments.

Metropolitan Police Department

64. By letter dated May 24, 2016, the Metropolitan Police Department (“MPD”) submitted comments on the second-stage PUD (Ex. 31). As part of its comments, MPD recommended that a designated area on the Pier be reserved for responding Harbor Patrol vessels and Fireboats in the case of emergency.
65. In response to MPDs comments, the Applicant testified that there are two locations within the redevelopment project that will provide access for MPD vessels: one at Transit Pier and the other at the Market Pier day docks. With respect to the Pier, the Applicant stated that emergency response vessels will be able to “tie off” at the Gangplank Marina and access the Pier via the Wharf promenade. Finally, the Applicant confirmed that fire truck access will be provided landside along the length of Wharf Street, SW. Based on the Applicant’s testimony, the Commission finds that the Applicant has adequately addressed MPD’s comments.

Commission of Fine Arts

66. At its July 16, 2015, meeting, the U.S. Commission of Fine Arts (“CFA”) reviewed and granted concept approval to the Pier (Ex. 2G).

Capital Yacht Club

67. The CYC registered as a party in support. However, CYC did raise several issues about the second-stage PUD. First, they expressed concerns over the potential for excessive noise and light, as well as late-night activity on the Pier that could disturb CYC members’ enjoyment while spending time on their boats. Second, CYC stated concerns regarding potential adverse impacts to traffic patterns and safety caused by the introduction of additional motorized and nonmotorized vessels along the Washington Channel, some perhaps operated by inexperienced users. According to CYC, this increase in the number of vessels utilizing the Washington Channel could make it difficult for members to maneuver their boats in and out of the CYC docks and fairways. CYC also sought assurances as to how the Applicant would inform those renting non-motorized vessels from the Pier would be informed of where they can and cannot go within the Washington Channel. In addition, CYC commented that it had not received any assurances from the Applicant that access to the CYC marina would remain unimpeded throughout the entire Pier construction period. Ultimately, CYC stated they desired to see a comprehensive plan prepared among all stakeholders that would regulate motorized and non-motorized boat use and safety within the Washington Channel.
68. With respect to access to the CYC marina during construction of the Pier, the Applicant confirmed that access to the CYC marina would remain open throughout the entire construction period. The specifics regarding marina access during construction would be clearly described in the construction staging plan which can only be developed once the Applicant selects a contractor. The Applicant stated that development of the Pier construction staging plan will be coordinated with all interested stakeholders, including the CYC, through the ongoing monthly construction management meetings that are held for the Southwest

Waterfront redevelopment project. The Commission finds this to be an acceptable approach to addressing this particular CYC concern.

69. In response to CYC stated concerns regarding noise and activity on the Pier, the Applicant provided testimony regarding the measures it has already taken to address these issues through the design and programming of the Pier, and as part of its onsite security program. These measures are reiterated in the Applicant's post-hearing submission. In addition, as requested by the Commission, the Applicant acknowledged in its post-hearing submission that there are potential additional steps that, if needed, could be implemented to properly regulate activities on the Pier. These additional steps could include, among others, the posting of signage informing visitors to be aware of their surroundings and to exercise courtesy during early-morning and late evening hours, and the establishment and enforcement of specified operating hours on the Pier.
70. As to the concerns expressed by CYC regarding adverse impacts to traffic patterns and safety along the Washington Channel caused by the increased use of the Channel by operators of motorized and non-motorized vessels, the Commission finds that regulation of the Channel is not the responsibility of the Applicant. Rather, based on the discussion held at the public hearing the authority to regulate the operation of vessels in the Washington Channel is held by the District's Harbor Master, a position within MPD's Harbor Patrol unit.
71. As to the interest expressed by CYC, and other persons and organizations testifying in support and opposition at the public hearing, of the need for a comprehensive safety plan for the Washington Channel, while the Applicant agreed that safety for all users of the Channel is of utmost importance, and stated its intent to be an active participant in the development of a safety plan if one was to be prepared, the Commission does not view the responsibility of leading the development of such safety plan as resting with the Applicant.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD modification and second-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions that would otherwise require approval by the District of Columbia Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. Both the PUD site and the Property meet the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. This second-stage PUD is substantially in accordance with the elements, guidelines, and conditions of the first-stage PUD, and thus, should be granted second-stage PUD approval. Pursuant to Section 2408.6, if the Commission finds the second-stage PUD application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage PUD approval, the Commission shall approve the second-stage PUD, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. As set forth above, the Commission so finds.
6. The second-stage PUD does not require any technical relief from the Zoning Regulations, and the Applicant's request for flexibility for certain design aspects of the second-stage PUD are appropriate. Moreover, the project benefits and amenities are reasonable trade-offs for the requested design flexibility.
7. The second-stage PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the PUD guidelines, and the parameters of the first-stage PUD. The impacts of the second-stage PUD on the surrounding area are not unacceptable. Accordingly, the second-stage PUD should be approved.
8. Approval of the Second-Stage PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan for the National Capital. In addition, the proposed development will promote the orderly development of the Property, and PUD Site, in conformity with the entirety of the Zone Plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and its oral testimony at the hearing. As explained in this decision, the Commission finds OP's recommendation to grant the application persuasive.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 6D's recommendation for approval, and finds that the Applicant has successfully addressed all of the comments and questions raised at the public hearing.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS APPROVAL of the application for approval of the second-stage PUD for 7th Street Recreation Pier of the Southwest Waterfront redevelopment project, subject to the guidelines, conditions and standards set forth below.

A. Project Development

1. The second-stage PUD shall be developed in accordance with the plans and drawings submitted by the Applicant dated May 13, 2016, and marked as Exhibits 20A1 - 20A2 in the case record, as updated/revised by the Applicant as part of its post-hearing submission, dated June 15, 2016, marked as Exhibits 36B1 – 36B2 (collectively, the “Plans”), and as modified by the guidelines, conditions and standards herein.
2. The Applicant shall have flexibility with the design of the second-stage PUD in the following areas:
 - a. To make refinements to exterior building details and dimensions, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit; and
 - b. To vary the final selection of the exterior building and shade structure materials within the color ranges and material types as proposed, based on availability at the time of construction; and
 - c. To vary the final selection of materials for pier components including the oversized swings; gangways; railings; and the structure, anchoring, and plant palette of the floating wetlands, within the color ranges and material types as proposed. The Kebony material proposed for the surface of the Pier shall be used subject to availability at the time of construction.
 - d. To vary the final design, details, and material of the truncated/indicator domes proposed along a portion of the center of the Pier to provide pedestrians a detectable warning that marks the slope between the upper walkway and lower walkway.

B. Public Benefits

1. *Prior to issuance of a certificate of occupancy*, the Applicant shall establish the Project Association for the Southwest Waterfront PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks and signage within the PUD Site. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site. The Project Association will fund maintenance and programming elements of the common elements

of the Southwest Waterfront PUD through a Common Area Maintenance (CAM) assessment charge to each development component within the Southwest Waterfront PUD. The Applicant shall create, manage and operate the Project Association during the "developer control period," which begins on the effective date of the Declaration of Covenants between the District of Columbia and the Applicant and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit.

2. *During construction of the Southwest Waterfront PUD*, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District residents for at least 51 percent of the new jobs created by the Southwest Waterfront PUD. Prior to issuance of a building permit for the construction of the Pier, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in the training and apprenticeship opportunities in the overall Southwest Waterfront PUD.
3. *During the life of the project*, in accordance with the LDA, the Applicant shall abide by the executed CBE Agreement with the Department of Small and Local Business Development to achieve, at a minimum, 35 percent participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the overall Southwest Waterfront PUD. (ZC Case No. 11-03, Exhibit No. 4-J) The Applicant shall comply with the LDA requirement to lease 20 percent of the retail space throughout the Wharf to "unique" and/or "local" businesses, which will include CBEs.

C. Miscellaneous

1. No building permit shall be issued for the second-stage PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The second-stage PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 11-03E. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three (3) years of the effective date of Zoning Commission Order No. 11-03E.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 11, 2016, upon the motion of _____, as seconded by _____, the Zoning Commission **APPROVED** the application by a vote of ____ - ____ - ____ (_____).

On [DATE], upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order by the Zoning Commission by a vote of ____ - ____ - ____ (_____).

In accordance with the provision of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *DC Register*, that is on [DATE].

ANTHONY J. HOOD
Chairman
Zoning Commission

SARA A. BARDIN
Director
Office of Zoning