

APPLICANT'S DRAFT ORDER

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-03N**

Z.C. Case No. 11-03N

Wharf Phase 3 REIT Leaseholder LLC

**(Modification with Hearing to a Second-Stage Planned Unit Development @ Square 473,
Lot 1008)**

December 18, 2025

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on November 17, 2025 to consider the application (the “Modification”) of Wharf Phase 3 REIT Leaseholder LLC (the “Applicant”) for review and approval of a Modification with Hearing to the Second-Stage Planned Unit Development (“PUD”) for Lot 1008 in Square 473 (the “Property”) approved in Z.C. Order No. 11-03J(1). The Applicant proposed to modify a portion of the PUD known as M Street Landing to authorize the construction of an enclosable canopy structure over an outdoor bar cafe (the “Pavilion”) on the Property.

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Modification.

FINDINGS OF FACT

BACKGROUND

OVERALL PUD SITE, PROPERTY, AND PRIOR APPROVALS AND ACTIONS

1. Pursuant to Z.C. Order No. 11-03, effective December 16, 2011 (the “**First-Stage PUD Order**”), the Zoning Commission approved a first-stage PUD and related amendment to the Zoning Map (“**First-Stage PUD**”) for the area formerly known as the Southwest Waterfront and now known as the Wharf (the “**Overall PUD**”). The Property was included within the Application.
2. The Overall PUD is a large 27-acre mixed-use development divided into 11 primary parcels as well as a number of ancillary landside and waterside structures, four major plazas, a large park, a waterfront promenade, and public and private piers.
3. The Property consists of approximately 1,634 square feet of land area; it is a small part of the urban plaza known as “M Street Landing,” which is located between Parcel 9 (a mixed-

use residential and retail building) and Parcel 10 (a mixed-use office and retail building), at the intersection of Maine Avenue SW and M Street SW.

4. Pursuant to Z.C. Order Nos. 11-03J(1)-(3), the Zoning Commission approved a Second-Stage PUD to permit the construction of “Phase 2” of the Wharf, which included Parcels 6 through 10, certain waterside buildings and the marina, underground garages, and a number open spaces, including M Street Landing (“**Second-Stage PUD**”). The open spaces including M Street Landing were approved pursuant to Z.C. Order No. 11-03J(1) (“**Second-Stage PUD Order**”). (Other portions of the Second-Stage PUD were approved in Z.C. Order Nos. 11-03J(2) and 11-03J(3).)
5. The First-Stage PUD called for two 20-foot tall retail pavilions within M Street Landing, including one in the approximate location of the Property. The Second-Stage PUD organized M Street Landing into a series of hardscaped outdoor rooms defined by surrounding landscaped area. The Second-Stage PUD no longer included the retail pavilions but called for outdoor café seating both within M Street Landing and in the areas adjacent to the Parcel 9 and Parcel 10 buildings that faced M Street Landing.
6. Pursuant to the PUD approvals, the Applicant sought and received permits to establish an outdoor bar and café at the Property in connection with the build-out of tenant space associated with a restaurant located within the adjacent Parcel 9 building. The permits included approval for the Pavilion. During the review of a third supplemental permit to review the structural design of the Pavilion, the Zoning Administrator flagged the Pavilion’s operable roof louvers and pull-down mesh curtains as “enclosing elements” triggering a requirement for approval of the Pavilion as a modification to the approved PUD. The Zoning Administrator approved the supplemental permit so that construction of the previously-approved Pavilion could commence, on the condition that the enclosing elements for the Pavilion not be used until the Commission approved a modification to the PUD allowing the enclosing elements.
7. In Z.C. Case No. 11-03M, the Applicant’s tenant filed an application for a modification without hearing¹ to approve the Pavilion in April 2024. After considering input from the Office of Planning and Advisory Neighborhood Commissions (“ANC”) 6D, the Zoning Commission directed the request be refiled as a modification with hearing so that the Commission could hear testimony regarding the request.
8. Z.C. Case Nos. 11-03A through 11-03I as well as 11-03K involved first-stage PUD modifications, second-stage PUD approvals, and subsequent modifications for “Phase 1” of the PUD and are not germane to this application.
9. In Z.C. Case No. 11-03L, the Commission approved an enclosure for another café seating area with a retractable roof and operable windows adjacent to the Parcel 6/7 office building

¹ At the time, a modification without hearing was known as a “modification of consequence.”

located within Phase 2 of the Wharf as a modification without hearing to another portion of the Second-Stage PUD that was approved in Z.C. Order No. 11-03J(3).

PARTIES

10. Pursuant to Subtitle Z § 403.5(a), the Applicant is automatically a party to the Modification.
11. Pursuant to Subtitle Z §§ 101.8 and 403.5(b), ANC 6D is automatically a party to the Modification. ANC 6D is the ANC in which the Property is located.
12. The Tiber Island Condominium, Tiber Island Cooperative Homes, Gangplank Slipholders Association, and 525 Water Street Condominium Association (the “Second-Stage PUD Parties”) were all parties to the Second-Stage PUD and thus were served with copies of the Modification.
13. The Commission did not receive any requests for party status.

NOTICE AND SETDOWN

14. Pursuant to Subtitle Z §§ 300.7 and 300.8, on April 4, 2025, the Applicant mailed to the owners of all property within 200 feet of the Property, the tenant within the structure involved in the Modification, the Second-Stage PUD Parties, and ANC 6D, a “Notice of Intent to File a Zoning Application” pertaining to the Modification. (Ex. 3C.)
15. Pursuant to Subtitle Z § 300.9 prior to filing the Modification with the Commission, the Applicant presented the Modification to ANC 6D at its May 19, 2025 public meeting. (Ex. 3C.)
16. Pursuant to Subtitle Z §§ 400.9-400.12, on July 31, 2025, at its duly-noticed public meeting, the Commission considered the Modification and voted to set the case down for a public hearing.
17. Pursuant to Subtitle Z §§ 402.1-402.2 and 402.6, on August 21, 2025, the Office of Zoning (“OZ”) sent notice of the November 17, 2025 public hearing concerning the Modification to:
 - (a) The Applicant;
 - (b) ANC 6D;
 - (c) The ANC 6D06 Single Member District Commissioner, whose district includes the Property;
 - (d) The ANC 6D01 Single Member District Commissioner;
 - (e) The Office of the ANCs;
 - (f) The Ward 6 Councilmember, in whose district the Property is located;
 - (g) The Office of Planning (“OP”);
 - (h) The District Department of Transportation (“DDOT”);

- (i) The Department of Buildings (“DOB”);
 - (j) The Department of Energy and Environment (“DOEE”);
 - (k) The Office of Zoning Legal Division;
 - (l) The Chair and At-Large Members of the D.C. Council;
 - (m) The owners of property within 200 feet of the Property;
 - (n) The tenant of the Property; and
 - (o) The Second-Stage PUD Parties.
- (Ex. 15.)

- 18. Pursuant to Subtitle Z § 402.1(a), OZ published notice of the November 17, 2025 public hearing concerning the Modification in the August 29, 2025 issue of the *D.C. Register* (72 DCR 009281-009284) as well as on the calendar on OZ’s website. (Ex. 13.)
- 19. Pursuant to Subtitle Z §§ 402.3-402.4, 402.8-402.10, on October 7, 2025, the Applicant submitted evidence that it had posted notices of the public hearing on the Property and on November 13, 2025 submitted evidence that it had thereafter maintained such notices. (Ex. 16 and 19.)

CURRENT ZONING

- 20. Pursuant to the Overall PUD, the Property is zoned C-3-C under the 1958 Zoning Regulations in effect at the time of approval, which is now designated as the MU-9B Zone District under the current (2016) Zoning Regulations. The Property was previously in the W-1 (now MU-12) zone.

THE APPLICATION

THE PROJECT

- 21. The Pavilion is an oval pergola supported by aluminum posts providing shade and cover for the proposed bar and café seating for approximately 40 patrons. The Pavilion includes motorized wood-finished overhead roof louvers and roll-up side shades composed of a tightly-woven mesh-like material that allow for the Pavilion to be secured when not in use and can also allow for the use of the Pavilion during inclement weather. The entrance to the Pavilion is located on Wharf Street, across from Parcel 9. (Ex. 3, 3H, 3I.)
- 22. The bar café within the Pavilion has been leased to and will be operated by the same tenant that occupies the ground-floor restaurant space in Parcel 9 across from the Pavilion. Both establishments will share certain operational features, including kitchens, restrooms, and use of the Parcel 9 loading dock. (Ex. 3, 23.)
- 23. The Pavilion has been constructed in accordance with the approved permits but the tenant has not commenced operation of the Pavilion, pending approval of this Modification.

APPLICANT'S SUBMISSIONS, REVISIONS, AND TESTIMONY

24. Initial Application. On June 9, 2025, the Applicant filed its initial application materials, which included a statement of support of the Modification as well as justifications relating to the PUD evaluation criteria; a set of architectural plans and elevations; an analysis of the Comprehensive Plan as viewed through a racial equity lens; and procedural materials as required by Zoning Regulations. (Ex. 1-3, 3A-3P.)
25. Prehearing Submission. On August 4, 2025, the Applicant filed a prehearing submission containing its outlines of witness testimony and resume of its expert witness. (Ex. 12, 12A-12C)
26. Applicant's Supplemental Submission. On November 16, 2025, the Applicant filed a supplemental submission that responded to concerns about the impacts of the Pavilion and its associated bar café raised by the Amaris, the residential high-rise condominium located within the adjacent Parcel 9 building. (Ex. 23.) The Applicant explained that many of the concerns regarding noise, security, loading, and parking were either already addressed by existing operations at the Wharf, covered by the Cooperative Agreement associated with the establishment's alcohol license, or otherwise not germane to the Modification itself, and the Applicant proffered two conditions prohibiting live music and addressing loading operations to further address the Amaris' concerns.
27. Applicant's Direct Presentation. In advance of the November 17, 2025 public hearing for the Application, the Applicant filed a presentation. (Ex. 24.) At the public hearing, the Applicant presented the Application and addressed questions and objections raised by the Commission and others who testified.
 - (a) The Applicant provided testimony from two witnesses:
 - (i) Andrew Son, Chief Executive Officer, District Wharf Properties, as a representative of the Applicant; and
 - (ii) Shane Dettman of Goulston and Storrs, as the Applicant's land use planner, admitted as an expert.
 - (b) Mr. Son testified to the efforts the Applicant has taken to maintain the Wharf as an active and safe destination, support its tenants amid turbulence in the local economy, and engage with ANC 6D and other stakeholders on issues of mutual concerns. (Tr. Nov. 17, 2025 at 9-12.)
 - (c) Mr. Dettman provided an evaluation of the Application against the PUD standards and consistency with the Comprehensive Plan, concluding that the Modification remained consistent with the prior PUD approvals and the Comprehensive Plan and would have no material impact on the site plan, character, use, views, and circulation around M Street Landing. (Tr. Nov. 17 at 16-20.)

28. Applicant’s Post-Hearing Submission. On December 1, 2025, the Applicant filed a post-hearing submission with responses to the full report submitted by ANC 6D after the close of the hearing and to post-hearing material submitted by the Amaris and by a resident of the Amaris. (Ex. 30)
29. Draft Findings of Fact and Conclusions of Law. Pursuant to Subtitle Z § 601.1, on _____, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. __.)

JUSTIFICATION FOR RELIEF

RELIEF REQUESTED

30. The Applicant requested the Commission approve a Modification with Hearing to the approved Second-Stage PUD for the Property to authorize the construction of the Pavilion as described in more detail above in Findings of Fact (“FF”) Nos. 28-29. No other flexibility was requested as a part of the Modification.

CONSISTENCY WITH PRIOR PUD APPROVALS (SUBTITLE Z § 704.4)

31. Pursuant to Subtitle Z § 704.4, the scope of a hearing for a “Modification with Hearing” “shall be limited to impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”
32. The Applicant asserted that the Modification only modified the Second-Stage PUD because the proposed Pavilion does not impact the elements approved in the First-Stage PUD such as appropriateness, character, scale, height, mix of uses, proposed rezoning, or consistency of the proposed development with the Comprehensive Plan. The Applicant further asserted that the Modification satisfies the standard for approval as a modification because the Pavilion is consistent with the parameters of the prior First-Stage and Second-Stage PUD approvals and thus has limited impact on those approvals. (Ex 3.)
 - (a) M Street Landing Program and Design. The location of the Pavilion within M Street Landing is consistent with the First-Stage PUD, which expressly approved two 20-foot tall retail pavilions within the “new urban plaza” that would become M Street Landing. Further, the location is consistent with the Second-Stage PUD, which approved hardscaped areas with active commercial activity within and surrounding M Street Landing, including café seating for a future tenant within M Street Landing opposite the Amaris building and proximate to its main entrance. The Commission notes that the area where the Pavilion is located was previously constructed as a hardscaped pad within a landscaped form, as shown on the existing plans included in the application materials. (Ex. 3G, Ex. 3I.) For these reasons, the Commission concludes that the location of the pavilion and associated bar café use is consistent with the prior PUD approvals and buildout of M Street Landing.
 - (b) M Street Landing Views. As part of the First-Stage PUD, the Commission expressly concluded that the design of M Street Landing, including the conceptual

20-foot retail pavilions, would not adversely impact viewsheds, and the Commission expressly approved other features, such as trees and a canopy over the parking garage entrance, in the Second-Stage PUD that are of a similar height to the Pavilion within M Street Landing. In its report, OP confirmed that the Pavilion as constructed has low visibility due to robust landscaping as well as the 3.5-foot change in grade from Maine Avenue to the Property. (Ex. 18.) Therefore, the Pavilion has no greater impact on views than other existing improvements already deemed acceptable by the Commission.

- (c) Storefront Design Guidelines and Enclosure of Café Seating. Outdoor food and beverage use within M Street Landing is consistent with the Second-Stage PUD, which approved café seating areas that would extend beyond the building plane not only adjacent to primary buildings but also along Wharf Street and within M Street Landing. The Storefront Design Guidelines approved as part of the Second-Stage PUD also expressly contemplated the construction of projecting structures over these outdoor dining areas as well as features such as wind breaks and outdoor heating systems that would extend the use of these spaces. As the Commission previously found in Z.C. Order No. 11-03L, enclosing structures are consistent with the PUD goals for extending use of outdoor café areas and activating the public spaces within the PUD.
- (d) Pavilion Siting and Design. The height of the design is consistent with the heights of other structures within M Street Landing, the additional density gained by the enclosure of the Pavilion is de minimis against the overall density approved in the PUD, the oval design of the Pavilion complements the curvilinear forms of M Street Landing and the Amaris, and the location of the Pavilion is inset into a landscaped area and thus does not intrude on Wharf Street or other hardscaped areas within M Street Landing.

PUD BALANCING TEST (SUBTITLE X § 304.3)

- 33. In affirming that the Modification has limited impact on the approved PUD, the Applicant asserted that the PUD as modified continues to satisfy the PUD balancing test because it remains consistent with the District of Columbia Comprehensive Plan (“Comp Plan”), does not materially affect the prior approved development incentives to trigger a need to rebalance the relative value of the public benefits with those development incentives, and does not materially alter the impacts of the PUD. (Ex. 3.)

Consistency with the Comprehensive Plan and Other Adopted Public Policies Related to the Property (Subtitle X § 304.4(a))

- 34. Pursuant to Subtitle X § 302.2(a), a First-Stage PUD involves “a general review of [a] site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of [] uses proposed; and the compatibility of the

proposed development with the [Comp Plan], and city-wide, ward, and area plans of the District of Columbia, and the other goals of [a] project.” [Emphasis added].

35. The Commission’s initial review and approval of the Overall PUD occurred when the 2006 Comp Plan was in effect. Pursuant to the First-Stage PUD Order, the Commission concluded that the Overall PUD was not inconsistent with the Comp Plan and with other adopted public policies and active programs related to the subject site. (First-Stage PUD Order at Findings of Fact (“FF”) 51.) In drawing this conclusion, the Commission concluded the Overall PUD significantly advanced planning goals and objectives for the Southwest Waterfront through a detailed evaluation of consistency with many elements of the Comp Plan including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), Land Use Element, and Lower Anacostia Waterfront Element. (First-Stage PUD Order at FF 52-79.)
36. Pursuant to Subtitle X § 302.2(b), a Second-Stage PUD involves “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and [the Zoning Regulations].”
37. During the review of the Second-Stage PUD in 2017, the Commission confirmed that its evaluation of consistency with the Comp Plan took place as a part of the First-Stage PUD in accordance with the requirements of the Zoning Regulations but, out of an abundance of caution, reaffirmed its findings that the Overall PUD remained consistent with the Comp Plan. (Second-Stage PUD Order at FF 152-53.)
38. Here, consistent with the limited scope of the Commission’s review of a PUD modification under Subtitle Z § 704.4, the Applicant reaffirmed the evaluation of consistency with the Comp Plan that took place as part of the First-Stage PUD but, as it had with the Second-Stage PUD, provided a further evaluation of the Modification. Both the Applicant and OP provided detailed evaluations under the current 2021 Comp Plan that considered the consistency of the Pavilion with the FLUM, GPM, applicable Comp Plan policies, and potential Comp Plan inconsistencies. These evaluations found the Pavilion to be not inconsistent with the Comp Plan, and that the Overall PUD will remain not inconsistent with the Comp Plan when read as a whole and when viewed through a racial equity lens. The proposed Pavilion will advance several policies contained within the Land Use, Economic Development, Parks & Recreation, and Urban Design Elements of the Comp Plan. The Comp Plan evaluations did not identify any instances where the Pavilion would be inconsistent with any applicable Comp Plan policies. (Ex. 3; Ex. 10.)
39. The Property is located within a Regional Center on the GPM. This is an update from the “Land Use Change” area designation that existed when the Overall PUD was approved under the 2006 Comp Plan and reflects the completion of the development of the Wharf in accordance with the Overall PUD. The Framework Element describes a Regional Center as likely to have “concentrations of restaurants, movies, and other leisure or entertainment facilities.” (10-A DCMR § 225.19.) The proposed Pavilion is consistent with this designation.

40. The Property is located within an area that is designated for a mix of Low Density Commercial and Parks, Recreation, and Open space use on the FLUM. Under the First-Stage PUD Order, the Commission determined that the Overall PUD, including plans for M Street Landing that called for a mix of open space and retail pavilions, was not inconsistent with the 2006 Comp Plan FLUM. The Pavilion remains consistent with this designation.
41. The District Elements of the Comp Plan include the following policies that are relevant to the Modification:
- (a) Land Use Element: Policies that call for new high-density urban mixed-use neighborhoods with housing, retail, and open space uses, among others, in accordance with the FLUM and with their designation as regional centers on the GPM (10-A DCMR §§ 305.11, 306.8, 313.11, 313.12) as well as policies that expressly call for bars to be located in entertainment districts rather than in neighborhood commercial districts, and call for mitigation of unreasonable and unexpected impacts from commercial uses (10-A DCMR §§ 312.4, 313.15).
 - (b) Economic Development Element: Policies that call for support and growth of the hospitality and food services industries, particularly on large development sites to promote economic diversity, job growth, and tourism benefits. (10-A DCMR §§ 703.12, 703.17, 703.18, 709.14)
 - (c) Parks, Recreation, and Open Space Element: Policies that call for improved public access to the waterfront as well as the development of high-quality multifunctional outdoor plazas. (10-A DCMR §§ 813.3 – 813.7, 819.4)
 - (d) Urban Design Element: Policies that call for public gathering spaces along the waterfront, including hardscaped plazas with a mix of land uses such as café seating to enliven such sites in urban settings (10-A DCMR §§ 905.6, 915.5)
42. The Property is located within the Lower Anacostia / Near Southwest Area Element (“AW Area Element”). The AW Area Element includes the following policies that are relevant to the Modification:
- (a) Create new mixed-use neighborhoods at large contiguous publicly-owned waterfront sites such as the Southwest Waterfront with a substantial amount of new housing and commercial space. (10-A DCMR § 1907.3)
 - (b) Encourage commercial development along the waterfront in a manner that is consistent with the FLUM. (10-A DCMR § 1907.8)
 - (c) Redevelop the Southwest Waterfront with, among other uses, commercial uses and improved open spaces, in a manner that makes the most of the waterfront location,

preserves views, and enhances access to and along the shoreline. (10-A DCMR § 1910.8.)

- (d) Create new public spaces and plazas at the Southwest waterfront, including public piers that extend from each of the major terminating streets, providing views and public access to the water. (10-A DCMR § 1910.9.)

No Unacceptable Project Impacts on the Surrounding Area or the Operation of City Services (Subtitle X § 304.4(b))

43. The Applicant asserted that the Modification would not result in unacceptable impacts on the surrounding area or on city services, and that any potentially adverse impacts will be mitigated or acceptable given the public benefits of the Overall PUD. In approving the First-Stage PUD and the Second-Stage PUD, the Commission previously found that the impact of the Overall PUD as well as the design of M Street Landing was not unacceptable given the quality of the public benefits provided, and it further found that the impact of the Overall PUD and the design of M Street Landing on the surrounding area and the operation of city services was capable of being mitigated or was favorable. Since the Pavilion will not materially change the impacts of the Overall PUD or the design of M Street Landing, the impacts of the Overall PUD, including the modification to M Street Landing, will continue to be not unacceptable, capable of being mitigated, or favorable.

- (a) Pavilion Use and Design. As discussed above, the Pavilion is located within a bustling and active retail and entertainment area with high-density office, hotel, and residential uses. While the Pavilion structure would allow for an extended use of the outdoor bar café into shoulder seasons, such extended use is consistent with the goals of the PUD and its previously-approved Storefront Design Guidelines. (Ex. 3; Ex. 18; Ex. 23.)
- (b) Views. Both the Applicant and OP found that the Pavilion would not create unacceptable impacts on views, as discussed in greater detail above. (Ex. 3; Ex. 18.)
- (c) Noise. The Applicant submitted a copy of a Cooperative Agreement between the tenant and ANC 6D with specific limitations on hours of operation, amplified music, and other operational limits to mitigate the potential impacts of noise from the establishment within the Pavilion—including more restrictive provisions than similar limitations on the outdoor café seating associated with tenant’s primary restaurant establishment within the Amaris—which was entered into in connection with the approval of its liquor license by the District of Columbia Alcoholic Beverage and Cannabis Administration (“ABCA”). Of particular note, the Cooperative Agreement limits the hours of operation for the Pavilion to midnight on Sunday to Thursday nights and 1:00 AM on Friday and Saturday nights, which is two hours earlier than the hours for the restaurant. The Applicant further agreed

to prohibit live music within the Pavilion. (Ex. 3P; Ex. 18; Ex. 23; Tr. Dec. 18, 2025 at 64-67.)

- (d) Security. The Applicant affirmed that the sitewide security team for the District Wharf Community Association provides full-time 24-hours a day, 7-days a week security coverage for the Wharf, with active use of over 500 security cameras as well as on-site personnel and coordination with the Metropolitan Police Department. MPD’s cited response time to The Wharf is currently 3-5 minutes, in part because they often have a presence on site. The Cooperative Agreement also calls for site-specific security cameras that cover the Pavilion. (Ex. 23.)
- (e) Loading. The Applicant confirmed that service and deliveries for the Pavilion would take place within the existing loading dock within Parcel 9, through the associated restaurant. The Applicant further confirmed that such activity would be subject to the same Loading Management Plan approved in Z.C. Order No. 11-03J(2) (the second-stage PUD order that governs Parcel 9). Related service and delivery activity between the restaurant and the Pavilion would be minor given the limited size and activities of the outdoor bar café, since only beverages would be prepared within the Pavilion; food would be prepared inside the restaurant. (Ex. 23; Tr. at 62.)
- (f) Vehicular Circulation and Parking. The Pavilion is small, with seats for only approximately 40 patrons and thus is unlikely have a material impact on vehicular traffic, parking, and circulation given the overall scale of activity at the Wharf. The Wharf contains an extensive underground parking garage with over 2,300 spaces, sufficient to accommodate any modest parking demand associated with the establishment in the Pavilion. (Ex. 23.)

Public Benefits and Project Amenities (Subtitle X § 304.4(c))

- 44. The Application did not propose any material changes to the approved public benefits and project amenities, and the public benefits and project amenities from the Overall PUD would be unaffected. The minor loss of the area occupied by the Pavilion and its associated outdoor bar café as part of a passive landscaped berm is offset by the increased plaza area around the fountain for public gathering, thus enhancing the benefit of this primary “room” within M Street Landing, and the use in the Pavilion complements the hardscaped event plaza that is most proximate to the Pavilion and thus enhances the benefit of this portion of M Street Landing. (Ex. 3.)

RESPONSES TO THE APPLICATION

OP

- 45. On July 18, 2025 OP filed a report recommending that the Commission set the Application down for a public hearing. (Ex. 10, the “OP Setdown Report”). The OP Setdown Report analyzed the Application under the Comprehensive Plan, including evaluating it through a

racial equity lens, and concluded that the Application is not inconsistent with the Comprehensive Plan's maps or policies. Regarding racial equity, in response to Part 3 of the Racial Equity Tool, the OP Setdown Report concluded that the action was unlikely to have negative impacts and could in fact have modest positive impacts through additional job opportunities. OP also concluded that the PUD was not inconsistent with the general intent of PUD approval and that such a small alteration was not likely to lead to a significant change in impacts. (Ex. 10.)

46. On October 29, 2025, OP filed a hearing report recommending that the Commission approve the Application. OP reaffirmed its prior conclusions regarding consistency with the Comp Plan and the intent of the Overall PUD. OP also specifically evaluated the impact of the use and design of the Pavilion against prior policy guidance for M Street Landing and concluded "this particular design, given its scale, the significant surrounding landscaping, the change in grade, and other view-obstructing structures, does not impair the intent of the original PUD, nor change the facts upon which the Commission made its original decision to a degree that would alter its original conclusions." (Ex. 18.)
47. At the November 17, 2025 public hearing, OP testified in support of the Application and summarized its comments in its prior reports. (Tr. at 39-40.)

ANC 6D

48. On November 14, 2025, the single-member district representative for ANC 6D06, the single-member district in which the Property is located, submitted a letter ("SMD Letter") stating that he did not oppose the Modification based on discussions and actions by the Applicant in response to ANC 6D's concerns, including measures taken to address pedestrian safety and access at The Wharf. The letter further acknowledged that while he believed that the construction of the Pavilion should have been discussed with the ANC prior to seeking permits, the authorization of its completion by the Modification would not exacerbate the impacts of the Pavilion, provided the Cooperative Agreement is followed. (Ex. 20.)
49. On November 20, 2025, ANC 6D filed a report ("ANC 6D Report") stating that, at a duly-noticed public meeting, with a quorum present, ANC 6D voted 5-0 to endorse the views set forth in the SMD Letter and thus did not oppose the Modification. (Ex. 29.)

ORGANIZATIONS AND INDIVIDUALS IN SUPPORT

50. Two residents of the Wharf testified in support of the Modification. These residents expressed support for the outdoor dining use in the Pavilion and how it will complement the adjacent public gathering spaces. They also expressed support for the enclosing elements of the Pavilion and stated that they thought the scale and location was appropriate and would not impact views or circulation. (Tr. Nov. 17 at 42-45.)

ORGANIZATIONS AND INDIVIDUALS IN OPPOSITION

51. A representative of the Amaris condominium testified in opposition to the Modification raising concerns about the impacts of the proposed “late-night” establishment and recommending certain measures to mitigate noise, security, loading, and parking impacts from the use of the Pavilion. Specifically, the Amaris:
- (a) Requested the installation of sound-absorbing noise materials, limits on hours of operation beyond those set forth in the Cooperative Agreement, requirements for real-time noise monitoring equipment, and prohibitions on outdoor speakers, TVs, and live music;
 - (b) Requested on-site security during all operating hours, with a security plan developed in coordination with local police including rapid response protocols;
 - (c) Requested a prohibition on loading activity in front of the Pavilion as well as concerns regarding movement of materials between the Pavilion and the associated restaurant; and
 - (d) Requested real-time updates and signage to direct drivers to parking spaces and use of cameras to enforce parking rules.
- (Ex. 21; Tr. Nov. 17 at 53-56.) At the hearing, the representative of the Amaris acknowledged that the Applicant’s proposed loading condition addressed its concern regarding loading activity in front of the Pavilion. (Tr. Nov. 17 at 54.)
52. One individual resident of the Amaris also testified in opposition to the Modification and raised concerns about increased noise and late night disturbance, safety and security risks, negative impacts on property values and quality of life. (Tr. Nov. 17 at 47-49.)
53. No other persons, agencies or organizations filed written comments in the record or testified at the public hearing.

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and a modification with hearing pursuant to Subtitle X, Chapter 3 and Subtitle Z § 704.
2. **PUD Purpose.** Pursuant to Subtitle X §§ 300.1 and 300.2, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a building superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits and project amenities; (c) protects and advances the public health, safety, welfare, and convenience; and (d) does not circumvent the intent and purposes of the Zoning Regulations.

3. Comprehensive Plan. Pursuant to Subtitle X §§ 300.1, 300.2, and 304.4, the Commission must find that the PUD “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission is directed to review the Application against the Comprehensive Plan “as a whole.”² The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the Comprehensive Plan’s purposes are:
 - (a) To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;
 - (b) To guide executive and legislative decisions on matters affecting the District and its citizens;
 - (c) To promote economic growth and jobs for District residents;
 - (d) To guide private and public development in order to achieve District and community goals;
 - (e) To maintain and enhance the natural and architectural assets of the District; and
 - (f) To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.
4. Impacts. Pursuant to Subtitle X § 304.4(b), the Commission must find the PUD “does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.”
5. Benefits and Amenities. Pursuant to Subtitle X § 304.4(c), the Commission must find the PUD “[i]ncludes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” Pursuant to Subtitle X §§ 305.2, 305.3, 305.4, and 305.12, the PUD’s benefits and amenities must “benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions,” in majority part “relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed,” and “meet the following criteria: (a) Benefits shall be tangible and quantifiable items; (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need.” Moreover, a PUD “may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.”
6. PUD Balancing Test. Pursuant to Subtitle X § 304.3, in reviewing a PUD application, the Commission must: “Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” Pursuant to

² *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).

Subtitle X §§ 303.11 and 303.12: “The amount of flexibility from all other development standards not addressed by this section shall be at the discretion of the Zoning Commission”, and “[a] PUD-related zoning map amendment shall be considered flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”

7. Second-Stage PUD. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two parts: (1) The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and (2) The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” Pursuant to Subtitle X § 309.2, if the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission’s decision.
8. Modification Standards. Pursuant to Subtitle Z § 704.3, an application for a modification of a second-stage PUD “shall meet the requirements for, and be processed as, a second-stage PUD application.” Pursuant to Subtitle Z § 704.4, the scope of the Commission’s hearing to evaluate a modification with hearing “shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision.”
9. Evidentiary and Evaluative Standards. Pursuant to Subtitle X § 308.6, “the applicant shall carry the burden of justifying” the Application according to the applicable standards. Moreover, “the Commission must address each material contested issue of fact.”³

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND OTHER ADOPTED PUBLIC POLICIES RELATED TO THE PROPERTY (SUBTITLE X § 304.4(A))

10. For the reasons explained in the above Findings of Fact, and based on OP’s analysis in the OP Setdown Report and OP Hearing Report, the Commission concludes that, pursuant to Subtitle X §§ 300.1, 300.2, and 304.4(a), the Application, when viewed through a racial equity lens, is not inconsistent with the Comprehensive Plan and with other public policies and active programs, when the Comprehensive Plan is considered as a whole.
11. The Modification is not inconsistent with the Comprehensive Plan. The Modification complies with the GPM and FLUM designations for the Property, as discussed above, and achieves the objectives of the Land Use Element. The Commission gives OP’s analysis great weight on this issue. The Commission concludes that the Applicant and OP have

³ *Barry Farm Tenants and Allies Ass’n. v. D.C. Zoning Comm’n.*, 182 A.3d 1214, 1224 (D.C. 2018).

presented compelling evidence that the Pavilion is not inconsistent with a reading of the Comp Plan together with other public policies as a whole.

PROJECT IMPACTS – FAVORABLE, MITIGATED, OR ACCEPTABLE (SUBTITLE X § 304.4(B))

12. Based on the case record and the Findings of Facts above, the Commission concludes that for the reasons given below, the Pavilion will not result in any unacceptable impacts on the surrounding area or District services or facilities that cannot be mitigated or that are not acceptable given the Overall PUD’s benefits and amenities.

13. The Commission previously found that impacts of the Overall PUD were acceptable given the quality of the public benefits provided, the impacts of the Overall PUD on the surrounding area and operation of city services were not unacceptable, and approved the PUD with conditions to ensure that any potential adverse effects on the surrounding area from the development would be mitigated. The Modification seeks approval for the construction of the Pavilion, a small enclosure for an outdoor bar café. As described above, the height, density, and location of the Pavilion does not materially deviate from the approved First-Stage PUD or Second-Stage PUD approval parameters. Accordingly, the Commission finds that the impacts of the Pavilion will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities.
 - (a) Location and Use. The Commission concludes that the enclosure of the outdoor bar café use is consistent with the intent of the PUD, which expressly approved outdoor café seating within M Street Landing across from the Amaris. All the Pavilion does is allow for the extended use of the establishment during inclement weather and in shoulder seasons. Further, the impacts of a small 40-seat establishment must be considered against the context of the Overall PUD as well as the immediate area around the Amaris, which includes similar outdoor café spaces surrounding the Amaris as well as across M Street Landing in front of Parcel 10. As noted by both the Applicant and OP, the impacts of extended use of the bar café establishment would be unlikely to rise to an undue level given the location within an active mixed-use regional entertainment designation.

 - (b) Views. The Commission credits the testimony of both the Applicant and OP and concludes that the Pavilion will not impose adverse impacts on view corridors from M Street and Maine Avenue based on the low-scale height of the Pavilion, the change in grade, and the presence of extensive landscaping and other features of a similar height.

 - (c) Noise. The Commission concludes that the Pavilion will not generate unacceptable noise impacts. Both the Property and the adjacent Amaris condominium are located within a high-density mixed-use neighborhood that was expressly zoned and design to allow significant retail and entertainment activity, and the approved PUD expressly calls for outdoor café seating around and across from the Amaris. The Cooperative Agreement includes measures to limit the hours of operation and other

noise-generating equipment within the Pavilion, and the hours of operation for the Pavilion are more restrictive than the associated restaurant. Further, in response to the concerns raised by the Amaris, the Applicant has agreed to prohibit live music within the Pavilion as an additional measure. The Commission is not persuaded that real-time noise monitoring is necessary given the small size and limited hours of the establishment. Similarly, the Commission does not see a need to install sound-absorbing materials on the Pavilion, particularly since it will typically be operated as an open-air establishment and so the materials would be of little effect.

- (d) Security. The Commission concludes that the Wharf's security management and MPD coordination provide effective on-site security and response protocols during all hours of operation, thus effectively addressing the Amaris' concerns.
 - (e) Loading. The Commission concludes that the Applicant's agreement to use the Parcel 9 loading dock for service and deliveries in accordance with the approved Loading Management Plan effectively addresses the Amaris' concerns. The Commission concludes that given the limited on-site service within the bar café, additional measures to address service activity between the restaurant and bar are unnecessary.
 - (f) Vehicle Circulation and Parking. The Commission concludes that the issues raised by the Amaris are not specific to the Modification and, to the extent the Pavilion generates any dropoff or parking demand, such activity is small and can be easily accommodated within the overall scale of the Wharf's parking operations.
14. Finally, the Commission observes that the Cooperative Agreement already addresses these issues and reiterates that the ABCA process is the "more appropriate process to deal with a lot of the issues the neighbors have raised here," especially as the ABCA licensing process requires renewal every three years, which provides an opportunity for neighbors to assess impacts and require the establishment to adjust operations. (Tr. Nov. 17 at 41-42; Tr. Dec. 18 at 67.)
15. The Commission therefore finds that the Modification will not result in a material change to the potential adverse impacts of the Overall PUD that the Commission previously considered, and any new potential impacts will be mitigated or will be acceptable given the quality of the public benefits and amenities.

PUD BALANCING AGAINST BENEFITS AND AMENITIES (SUBTITLE X §§ 304.3, 304.4(C))

16. The Commission previously determined that the Overall PUD included significant public benefits and project amenities. The Modification does not propose any changes to the approved public benefits, and the Modification seeks approval for a small enclosure of a 40-seat outdoor bar café that falls within the already-approved height and density within the Overall PUD. Therefore, the Commission continues to find that the Overall PUD

includes significant public benefits and amenities that considerably outweigh its development incentives and warrant approval of the Modification.

17. The Commission concludes that the Applicant has carried its burden of justifying the request set forth in the Modification by providing substantial evidence, reasonably acceptable, as to each element of the Commission's review of the Modification as set forth above. The Commission concludes that the plans and drawings filed by the Applicant as well as the testimony provided by the Applicant's land use planning expert are credible.
18. In addition, the Commission has made findings on "each material contested issue of fact." In particular, the Commission notes that its function is to evaluate whether the Modification satisfies the applicable standards (including whether it "results in unacceptable project impacts on the surrounding area" and that, for a modification with hearing, the Commission's evaluation "shall be limited to impact of the modification on the subject of the original application"). The Commission has made findings regarding contested issues involving the Modification's potential impacts and the interpretation and application of various applicable provisions of the Comprehensive Plan and Zoning Regulations.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

19. The Commission is required to give "great weight" to the recommendation of OP pursuant to 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 (2018 Repl.) and Subtitle Z § 405.8. See *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
20. The Commission finds OP's detailed analysis of the Modification, its overall conclusion that the Modification satisfies the PUD modification requirements and is not inconsistent with the Comprehensive Plan when viewed through a racial equity lens, and its ultimate recommendation to approve the Modification persuasive and concurs with OP's recommendation.

GREAT WEIGHT TO THE WRITTEN REPORT OF ANC 6D

21. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANCs pursuant to Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass'n*, 141 A.3d at 1087. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

22. The Commission acknowledges ANC 6D’s Report and conclusion that it does not oppose the Modification. The Commission notes that ANC 6D acknowledged improved efforts by the Applicant to respond to concerns at the Wharf, such as pedestrian access and safety, and also credits ANC 6D’s conclusion that the Cooperative Agreement will manage the impacts of the establishment in the Pavilion.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Modification with Hearing to an approved Second-Stage PUD for M Street Landing at The Wharf and authorizes the construction of the Pavilion as shown on the plans and elevations included as Exhibits 3H and 3I, subject to the conditions below. To the extent there are conflicts between the conditions contained in this Order No. 11-03N and Order Nos. 11-03 and 11-03J(1), the conditions contained in this Order shall govern; all other provisions of said prior Orders shall remain in effect.

1. Noise: Live music will not be permitted within the Pavilion.
2. Loading: Deliveries to the Pavilion will utilize the same loading facilities within Parcel 9 as the associated restaurant and shall be subject to the same Loading Management Plan, which is set forth in Condition C.2 of Z.C. Order No. 11-03J(2) (the Second-Stage Order that governs Parcel 9).

Vote (December 18, 2025): **3-0-2** (Anthony J. Hood, Robert E. Miller, and Gwen Wright to APPROVE; Tammy Stidham and Joseph S. Imamura not present, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall be final and effective upon publication in the *D.C. Register*; that is, on _____.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

SARA BARDIN
DIRECTOR
OFFICE OF ZONING