

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | www.hklaw.com

Leila M. Jackson Batties  
[leila.batties@hklaw.com](mailto:leila.batties@hklaw.com)  
202.419.2583

February 11, 2015

## VIA IZIS

Zoning Commission for the  
District of Columbia  
Office of Zoning  
441 Fourth Street, NW, Suite 210-S  
Washington, DC 20001

**Re: 1333 M Street, SE, LLC | ZC Case No. 13-12  
Revised Draft Order and Request for Waiver of Time Provisions in Sec. 2403**

Dear Commission Members:

Enclosed please find a blackline version of the second revised draft order for the above-referenced Zoning Commission case. This version of the draft order reflects the comments from the Office of the Attorney General, as discussed on February 11.

In connection with this filing, we respectfully request a waiver from the timing provisions set forth in Section 2403.15 through 2403.20 of the Zoning Regulations. The Applicant was unable to comply with the time frames set forth in this section of the Regulations because, at the direction of the Zoning Commission, we continued discussions with DDOT and Ms. Karen Harris (representing the residents on the 1300 block of L Street, SE) until February 2, the date of the Applicant's second post hearing submission. Previously filed versions of the draft order and proposed proffers/conditions reflect our progress with DDOT, Ms. Harris and OP throughout the Zoning Commission process.

Thank you for your considerate attention to this matter. We remain hopeful of the Zoning Commission's favorable review of the application.

Sincerely yours,



Leila M. Jackson Batties

Atlanta | Boston | Chicago | Fort Lauderdale | Jacksonville | Lakeland | Los Angeles | Miami | New York  
Northern Virginia | Orlando | Portland | San Francisco | Tallahassee | Tampa | Washington, DC | West Palm Beach

#34685871\_v2

**ZONING COMMISSION**  
District of Columbia  
CASE NO.13-12  
EXHIBIT NO.45

Enc.

cc: Office of the Attorney General, Alan Bergstein, Esq. and Jacob D. Ritting, Esq.  
(via email)  
Office of Planning, Joel Lawson and Stephen Cochran (via email)  
District Department of Transportation, Jamie Henson and Jonathan Rodgers (via email)  
Advisory Neighborhood Commission ("ANC") 6B (via email: [office@anc6b.org](mailto:office@anc6b.org))  
Ms. Karen Harris (via email)

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 13-12**

**Z.C. Case No. 13-12**

**1333 M Street, SE, LLC**

**(First Stage PUD and Related Map Amendment and Consolidated PUD for Phase 1)**

**~~(Date of Final Action)~~ [February 23, 2015](#)**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 1, 2014, in order to consider an application from 1333 M Street, SE, LLC (the "Applicant"), the owner of Square 1025-E, Lot 82, Square 1048-S, Lots 1, 801 and 802, RES 129 and RES 299 for (1) first-stage PUD approval for 2.9 acres that will be developed in four phases, (2) related map amendment from M to C-3-C for the subject property, and (3) consolidated approval for Phase 1 of the PUD (the "Application"). The Commission considered the application 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.

**FINDINGS OF FACT**

**A. The Application, Parties, and Hearing**

1. On October 30, 2013, the Applicant filed an application with the Commission for (1) first-stage PUD approval for 2.9 acres that will be developed in four phases, (2) related map amendment from M to C-3-C for the subject property, and (3) consolidated approval for Phase 1 of the PUD on Square 1025-E, Lot 82, Square 1048-S, Lots 1, 801 and 802, RES 129 and RES 299 (the "Property") (the "Application"). The Application is marked as **Exhibits 1-5** of the record.
2. The Property has a land area of approximately 2.9 acres. It is a triangular shaped parcel bounded by M Street, theoretical Virginia Avenue, and Water Street, SE, and is currently improved with fuel pump storage facilities. The Property is designated Mixed-Use Medium Density Commercial / Institutional on the District of Columbia Comprehensive Plan Future Land Use Map (the "Land Use Map") and is presently zoned M (General Industrial District).
3. At its meeting on March 10, 2014, the Commission voted unanimously to set down the Application for public hearing. In its discussion on the Application, the Commission had questions or comments about the (i) site plan; (ii) architecture; (iii) sustainability and landscape architecture; (iv) amount of retail; (v) amount of parking; and (vi) phasing of development.
4. In its setdown report dated February 28, 2014, marked as **Exhibit 7** of the record, the Office of Planning ("OP") requested the Applicant clarify the flexibility required for the project and provide additional information on the design of

Building 1-Tower A, the timing and design of the public and open space improvements, and other details of the benefits/amenities proffers.

5. On February 27, 2014, the Applicant filed a supplement to the Application Statement, which included a description of the sustainable landscape elements for the project, architectural drawings and images related to the proposed wall and weirs along the eastern edge of the property and drawings of the roof for Building 1-Tower A. The supplemental filing is marked as **Exhibit 6** of the record.
6. On August 14, 2014, the Applicant submitted a Prehearing Statement, marked as **Exhibits 9 and 10** of the record. The Prehearing Statement addressed the issues and comments raised by the Commission and OP.
7. On November 11, 2014, the Applicant submitted a Supplemental Filing, marked as **Exhibits 16 and 17** of the record, which included (i) revised sheets (Sheets 7, 30, and 43) for the plans for the First Stage PUD, (ii) revised sheets (Sheets 7 and 41) for the Consolidated PUD and (iii) a discussion on the sustainable design features of the project.
8. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on September 12, 2014. 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") 6B. On December 1, 2014, the Commission held the public hearing on the Application.
9. The parties to the case were the Applicant and ANC 6B.
10. At the December 1 public hearing, the Applicant submitted the following items into the public record: (i) the Outline of Testimony for Steven E. Sher, marked as **Exhibit 24** of the record; (ii) a list of the PUD benefits and amenities, marked as **Exhibit 25** of the record; (iii) a copy of a solar study for the project prepared by GTM Architects, marked as **Exhibit 26** of the record; (iv) a memo dated December 1, 2014, regarding proffers of CBE Agreements for PUDs, marked as **Exhibit 27** of the record; and (v) a partial list of the proposed conditions, marked as **Exhibit 28** of the record. A copy of the Applicant's PowerPoint presentation, marked as **Exhibit 29** of the record, was also provided to the Commission.
11. Four witnesses testified at the public hearing on behalf of the Applicant: Eric Siegel of Cohen Siegel Investors, Colline Hernandez-Ayala of GTM Architects, Craig McLure of Parker Rodriguez landscape architects, and Jami Milanovich of Wells + Associates. Based upon their professional experience and qualifications, Mr. McLure was accepted by the Commission as an expert in landscape architecture and Ms. Milanovich was accepted as an expert in traffic engineering and transportation planning.
12. OP testified at the hearing in support of the Application on the basis that the project is consistent with the Comprehensive Plan Future Land Use Map, the Comprehensive Plan Generalized Policy Map and the Anacostia Waterfront

Initiative Plan, and the project includes a significant number of public benefits. OP recommended that the Applicant maintain provisions for alternative transportation modes and noted that the Applicant did not proffer a CBE Agreement as a project benefit. Finally, OP noted that the project includes private space that is accessible to the public and public areas that will be developed by the Applicant. Because the private and public areas may be indistinguishable, OP recommended that the Applicant address issues related to access of these areas through signage, restrictions on the hours of access and insurance provisions.

13. At the hearing, DDOT testified that the Applicant will continue to work with DDOT on the final design of the improvements in public space, and requested additional transportation demand measures to address possible impacts from the project.
14. Commissioner Nichole Opkins, the Single Member District Representative for ANC 6B06, testified on behalf of ANC 6B in support of the project at the public hearing.
15. Mr. Robert Ford, who is a member of Boathouse Row, testified in support of the project at the public hearing.
16. Ms. Karen Harris, who resides on the 1300 block of L Street, SE, testified in opposition to the Application. She raised several concerns about the project's impact on the residents of the 1300 block of L Street.
17. At the end of the public hearing, the Commission requested the following post-hearing submissions:
  - a. Written testimony of Karen Harris expressing her concerns about the proposed development.
  - b. Supplemental reports from OP and DDOT responding to the submissions and discussion at the public hearing.
  - c. Applicant to submit FAR calculations for the project that include and exclude the area for the private road extending between M Street and Virginia Avenue.
  - d. Applicant to submit the floor area calculations for the accessory use in the penthouse.
  - e. Applicant to provide additional drawings and details for the "Boathouse Row" marker at the top of Building 1-Tower A.
  - f. Applicant to explain the proposed phasing for the development of the project.

- g. Applicant to consider expanding its proffer of bike and car share membership services for residents of the project, in light of the DDOT report.
  - h. Applicant to provide a roof plan showing the additional setback for the penthouse on Building 1-Tower A and the type of lighting proposed for the penthouse area.
  - i. Applicant to provide a plan showing the rooftop mechanical equipment.
  - j. Applicant to provide a table listing the conditions proposed by DDOT and acceptable to the Applicant.
  - k. Applicant to give further consideration to LEED certification for the project.
  - l. Applicant to provide an updated solar study that includes the rooftop penthouse.
  - m. Applicant to provide details of the construction management plan for the project.
  - n. Clarification from DDOT on the availability of the RPP relating to the project.
  - o. Explanation by the Applicant on the improvements that are being proffered as a public benefit versus those required as mitigation for the project and the estimated value of the proposed improvements.
  - p. Applicant to provide a written response to the DDOE memorandum dated October 27, 2014.
18. The Commission took proposed action on the Application on January 12, 2015.
19. In connection with its proposed action, the Commission requested that the Applicant submit a revised lighting plan for the roof and penthouse for the Phase 1 building; revised renderings for the “Boathouse Row” marker proposed at the top of the Phase 1 building; and reach an agreement with DDOT regarding the Capital Bike Share/Car Share membership offered to residents of the project.
20. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) on \_\_\_\_\_. Pursuant to the memorandum dated \_\_\_\_\_, marked as **Exhibit** \_\_ of the record, NCPC found that the proposed PUD will not affect the federal interests.
21. The Commission took final action to approve the Application on \_\_\_\_\_.

**B. The PUD Project**

22. The proposed PUD will be constructed on three theoretical lots in four phases. Overall, the Property will be re-developed with three residential buildings housing approximately 673 dwelling units (plus or minus 10%), approximately 10,370 s.f. of retail, approximately 214 residential parking spaces and 7 retail parking spaces. The overall FAR for the PUD, including the area of the proposed private road, will be 4.14, and 4.49 excluding the area of the private road, where an FAR of 8.0 is permitted and the overall lot occupancy for the project will be 45% where 100% is permitted.
23. Theoretical Lot 1 has approximately 80,128 s.f. of land area. It will be improved with a single building ("Building 1") that has two towers that connect at the ground level. Between the two levels, Building 1 will consist of 267,216 s.f. of residential floor area, generating approximately 351 dwelling units, and 7,200 s.f. of ground floor retail. Building 1-Tower A, which will be constructed during Phase 1 of the PUD, will have 10 stories and a height of 100 feet, as measured from Virginia Avenue. Building 1-Tower B will be constructed during Phase 2 of the PUD. It will have 9 stories and a height of 90 feet, as measured from Virginia Avenue. Theoretical Lot 1 will be developed with an overall FAR of 3.4. This parcel will include 106 underground residential parking spaces, 6 retail parking spaces, and loading for the residential use only as follows: one 30-foot loading berth, one 100 s.f. loading platform and one 20' service space.
24. Theoretical Lot 2 has approximately 38,297 s.f. of land area and will be developed as Phase 3 of the project. Building 2 will be constructed on this parcel and will consist of 181,209 s.f. of residential floor area, generating 234 dwelling units, and 3,170 s.f. of ground floor retail. Building 2 will have 11 stories and a building height of 110 feet as measured from Virginia Avenue. Theoretical Lot 2 will be developed with an overall FAR of 4.73. This parcel will include 108 underground residential parking spaces and one underground retail parking space and loading for the residential use only as follows: one 30-foot loading berth, one 100 s.f. loading platform and one 20-foot service space.
25. Theoretical Lot 3 has approximately 9,074 s.f. of land area and will be developed as Phase 4 of the Project. Building 3 will be constructed on this parcel and will consist of 69,066 s.f. of residential floor area, generating 88 dwelling units. There will not be any retail uses in this building. Building 3 will be 9 stories and have a building height of 91 feet as measured from M Street. Theoretical Lot 3 will be developed with an overall FAR of 7.6. This parcel will not have any parking or loading but will rely on on-street loading for servicing the building from M Street.

**C. Phase 1 / Building 1-Tower A**

26. Phase 1 includes the construction of Building 1-Tower A, which will contain approximately 218 units and an underground parking garage with 51 spaces on Theoretical Lot 1 and 44 surface parking spaces on Theoretical Lot 2. Additional



building amenities will be located at grade level on the south side of the building fronting an exterior terrace area for gatherings and communal events. The primary pedestrian entry and access to below grade parking for the building are located along M Street. A new private street will bisect Theoretical Lot 2 to connect Virginia Avenue and M Street across the site. Loading and service functions for Building 1, as well as vehicular entry to the surface parking lot will be accessed from this area.

27. The following public space and open space improvements will be constructed during Phase 1 of the project:
  - a. On the south side of M Street, Developer shall install permeable paver parking spaces and low impact development basins with plantings and street trees for stormwater management.
  - b. Developer shall install a wildflower meadow along the Water Street right-of-way. The wildflower meadow provides an opportunity to increase plant biodiversity, create wildlife habitat, slow stormwater runoff and stabilize slopes. The meadow also preserves some of the open space quality of the existing site while reactivating it with the new proposed design and clears out the overgrown and visually impairing vegetation currently along Water Street.
  - c. Developer shall construct a public dog park where 14<sup>th</sup> Street terminates at the project.
  - d. Developer shall improve M Street and construct an extension of Virginia Avenue south of M Street as well as construct an internal north-south private street. The roadway improvements will generate new on-street public parking.
  - e. Developer shall construct a sidewalk on the south side of M Street that extends the length of the Property.

**D. Development Under Existing M Zoning**

28. The General Industry (M) Districts are designed to provide areas suitable for development as a heavy industrial site, but at the same time protect those industrial developments from the intrusion of non-industrial uses that impede the full utilization of property located in industrial sites. 11 DCMR §820.1. Except as provided in §821.2, no new residential building shall be permitted in M Districts. 11 DCMR §820.2.
29. The M District includes the following development requirements: A maximum matter-of-right height of 90 feet with no limit on the number of stories. 11 DCMR §840.1. A maximum matter-of right FAR of 6.0. 11 DCMR §841.1. A minimum



rear yard depth of 2.5 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. 11 DCMR §842.4. A side yard is not required except where a side lot line abuts a Residence District. 11 DCMR §843.1. Where an open court is provided, the width of the court shall be a minimum of 2.5 inches per foot of height of court, but not less than 6 feet side. 11 DCMR §844.2. Where a closed court is provided, it shall be a minimum of 2.5 inches per foot of height of court but not less than 12 feet wide. 11 DCMR §844.3. A closed court shall have an area at least twice the square of the width of court dimension based upon the height of court, but not less than 250 square feet. 11 DCMR §844.4.

**E. Development Under Proposed C-3-C Zoning**

30. The C-3-C District permits medium-high density development including office, retail, housing and mixed-use development. They shall be compact in area.
31. The C-3-C District includes the following development requirements:
  - A maximum matter-of-right height of 90 feet with no limit on the number of stories. (§770.1)
  - A maximum matter-of-right FAR of 6.5 which may be devoted entirely to a residential or non-residential use or a mix of uses. (§771.2)
  - A maximum lot occupancy of 100%. (§772.1)
  - A minimum rear yard depth of 2-1/2 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (§774.1)
  - If provided, a side yard at least two inches wide per foot of building height, but not less than six feet. (§775.5)
  - Where a court is provided for a building or a portion of a building devoted to non-residential uses, at any elevation in the court, the width of the court shall be a minimum of three inches per foot of height, measured from the lowest level of the court to that elevation; provided that in no case shall the width of the court be less than 12 feet. (§776.1)
  - In the case of a closed court for a building on portion of building devoted to non-residential uses, the minimum area shall be at least twice the square of the width of court based upon the height of court, but not less than 250 square feet. (§776.2)
  - Where a court is provided for a building or portion of building devoted to residential uses, at any elevation in the court, the width of court must be a

minimum of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet. (§776.3)

- In the case of a closed court for a building or portion of a building devoted to residential uses, the minimum area must be at least twice the square of the width of court based upon the height of court, but not less than 350 square feet. (§776.4)
- For an apartment house or multiple dwelling, parking is required at a ratio of one space for each 4 dwelling units. (§2101.1)
- For a retail or service establishment (except gasoline service station and repair garage), parking is required at a ratio of 1 space for each 750 s.f. of gross floor area, in excess of 3,000 s.f. (§2101.1)
- For loading, an apartment house or multiple dwelling with 50 or more units is required to have one berth at 55 feet deep, one loading platform at 200 s.f., and one service delivery space at 20 feet deep. (§2201.1)
- For loading, a retail or service establishment (other than a grocery store or drug store) with 5,000 to 20,000 s.f. of gross floor area is required to have one berth at 30 feet deep and one loading platform at 100 s.f. (§2201.1)
- A PUD in the C-3-C District shall be subject to the following provisions, in addition to those of Chapter 24 of the Zoning Regulations:
  - The permitted maximum building height increases from 90 feet to 130 feet. (§ 2405.1)
  - The maximum FAR increases from 6.0 to 8.0 (§ 2405.1)

**F. Development Flexibility**

32. *Roof Structure Requirements.* The project requires flexibility to permit multiple roof structures of unequal height on all three buildings. Additionally, flexibility is required to have rooftop structures on Building 1 – Tower B and Building 2 that do not meet the required 1:1 setback.
33. *Loading Requirements.* The project requires flexibility from Section 2201 of the Zoning Regulations, which requires each building to one 55-foot berth, one 200 s.f. platform and one service/delivery loading space is required. Under the PUD plans, Building 1 will have one 30-foot loading berth, one 100 square foot platform and one service/delivery loading space where; Building 2 will have one 30-foot loading berth, one 100 square foot platform and one service/delivery loading space; and Building 3 will not have any loading facilities.
34. *Phasing of Project.* The Applicant originally requested flexibility from Section 2407.10 of the Zoning Regulations to develop the project in phases as follows:

Phase 1: The Applicant will file for a building permit for Phase 1 within 2 years of the final PUD approval and commence construction within 3 years of the final PUD approval.

Phase 2: Within one year of obtaining the certificate of occupancy for the tower in Phase 1, the Applicant will file an application for consolidated review and approval of Phase 2. The Applicant will file an application for building permit for Phase 2 within one year of the final PUD approval for Phase 2.

Phase 3: Within one year of obtaining the certificate of occupancy for the tower in Phase 2, the Applicant will file an application for consolidated review and approval of Phase 3. The Applicant will file an application for building permit for Phase 3 within one year of the final PUD approval for Phase 3.

Phase 4: Within one year of obtaining the certificate of occupancy for the tower in Phase 3, the Applicant will file an application for consolidated review and approval of Phase 4. The Applicant will file an application for building permit for Phase 4 within one year of the final PUD approval for Phase 4.

35. *Rear yard for Building 3.* The Applicant proposes that Building 3 have a rear yard of 12'-3" where a minimum rear yard of 23' is required.
36. *Open court for Buildings 2 and 3.* The Applicant proposes that Building 2 have an open court that is 30'-1" where a minimum width of 36'-8" is required, and Building 3 have an open court that is 19'-5" where a minimum open court of 23' is required.
37. In addition, the Applicant seeks flexibility for the PUD as follows:
  - Flexibility to provide a range in the number of residential units, from 606 to 740.
  - Flexibility to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
  - Flexibility to vary the number, location and arrangement of parking spaces for the residential use, provided that the total parking is not reduced below the minimum level required under the Zoning Regulations.
  - Flexibility to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

**G. Public Benefits and Amenities**

38. The PUD will have the following benefits and amenities in the areas of urban design, architecture, landscaping and the creation or preservation of open spaces (§ 2403.9(a)):
- a. On the south side of M Street, the Applicant will install permeable paver parking spaces and low impact development basins with plantings and street trees for stormwater management. This will be done during Phase 1 of the project.
  - b. The Applicant will construct a public dog park where 14<sup>th</sup> Street terminates at the project. This will be done during Phase 1 of the project. The estimated value of this improvement is \$25,000.
  - c. The Applicant will construct a public plaza at the termination of Virginia Avenue, and a monumental staircase leading to lower plaza area that extends to Water Street across from the District Yacht Club. The public plaza is designed as an active gathering space and a connection to the waterfront. This will be done during Phase 2 of the project. The estimated value of this improvement is \$1,400,000.
  - d. During the phased development, the project will include large green space for public use. Specifically, during Phase 1 of the project, there will be a lawn area at the termination of the pedestrian promenade along Virginia Avenue. Also, during Phase 1 of the project, there will be a large triangular green space on the west side of the project where Building 2 is proposed.
39. The PUD will have the following benefits and amenities in the areas of effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c)):
- a. The Applicant will improve M Street and construct an extension of Virginia Avenue south of M Street as well as construct an internal north-south private street. The roadway improvements will generate new on-street public parking. This will be done during Phase 1 of the project.
  - b. The Applicant will construct a sidewalk on the south side of M Street that extends the length of the Subject Property. This will be done during Phase 1 of the project. The estimated value of this improvement is \$250,000.
  - c. The Applicant will construct an uninterrupted 8-foot wide, paved Anacostia Riverwalk Trail segment along the north side of M Street that connects to the traffic circle near 13<sup>th</sup> Street, SE and the existing trail at 14<sup>th</sup>

Street SE. This will be done during Phase 2 of the project. The estimated value of this improvement is \$250,000.

- d. For that portion of M Street along the frontage of the Subject Property, the Applicant will pave the entire width of the street. This will be done during Phase 2 of the project. Along with the installation of the permeable paver parking spaces and plantings, the estimated value of this improvement is \$1,000,000.
- e. The Applicant will construct a sidewalk along the north side of Water Street, extending from M Street to the lower plaza. This will be done during Phase 2 of the project. The estimated value of this improvement is \$250,000.
- f. The Applicant will run a shuttle service either individually or as a collective with other stakeholders in the Capitol Riverfront BID between the Subject Property and Navy Yard – Ball Park Metro Station. The shuttle service shall remain in operation until the Applicant and DDOT determine that there is sufficient pedestrian infrastructure and/or public transportation options such that the shuttle service is no longer warranted. The estimated value of this improvement is \$30,000 for the purchase of the shuttle vehicle and approximately \$150,000 per year to operate the shuttle service.
- g. The Applicant will implement the following transportation demand management measures in conjunction with the PUD:
  - A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information is disseminated to tenants of the building. The position may be part of other duties assigned to the individual.
  - Information on and/or links to transportation programs and services will be provided on the property management website. Such programs and services may include:
    - Capital Bikeshare
    - Car-sharing services
    - Uber
    - Ridescout
    - Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to

assist in determining which commuting options work best for commuters.

- Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency.
  - Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience.
  - DDOT's DC Bicycle Map
  - goDCgo.com
  - WMATA
- Make available at least 2 vehicle parking spaces for a carshare service if there is interest from a carshare service.
  - An electronic display will be provided in a common, shared space in the building and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location.
  - Convenient and covered secure bike parking facilities will be provided with each phase of the development with storage for a minimum of 224 bicycles for the entire development. Bike stands will also be provided for public use along the extended Virginia Avenue SE and M Street SE.
  - At initial occupancy, the Applicant will provide each residential unit either a one year Capital BikeShare membership or one year car share membership. This amenity will be provided each time a residential unit turns over for a period of five years from the date the certificate of occupancy is issued for the Phase 1 building.
  - The Applicant shall submit to DDOT a study determining whether a five-year extension of the Capital BikeShare or car share membership for the Phase 1 building is warranted. The Applicant shall meet with DDOT prior to the issuance of the certificate of occupancy for the Phase 2 building to discuss the findings and assess whether the aforementioned benefit must be extended up to a period of an additional five years, but not exceeding five years. The study shall include and

determination will be based on an evaluation as to whether additional pedestrian connectivity has been provided via the Southeast Boulevard project and whether additional transit service, such as streetcar or extension of Circulator or Metrobus routes, or the like has occurred. Additional transit service must provide stops within a quarter mile of the Property and provide minimum 15 minute headways during the AM and PM peak periods.

- A minimum of 10 bicycle helmets will be made available for use by the residents.
  - h. The Applicant commits to fund the installation of a Capital BikeShare Station adjacent to the PUD site plus one year of operating expenses for said station. The estimated value of this benefit is \$75,000.
  - i. The Applicant agrees to unbundle the parking costs for residents from the lease or purchase of the units.
40. In response to community concerns and ANC 6B's request for better lighting on M and Water Streets, during Phase 1 of the project, and in subsequent phases, the Applicant will install lighting around the perimeter of the Property.
41. The PUD will have the following benefits in the area of employment and training opportunities (§ 2403.9(e)):
- a. The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services.
42. The PUD has the following benefits and amenities in the areas of housing and affordable housing (§ 2403.9(f)):
- a. The PUD will bring approximately 673 new residential units on a site where none is required through a matter of right development under the existing zoning. The addition of such a substantial amount of market rate and affordable housing will contribute to establishing the residential character of this area of Southeast.
  - b. In response to ANC 6B's request for larger affordable units suitable for families, Developer will set aside in the Phase 1 building four two-bedroom units for households whose income does not exceed 60% of the area median income ("AMI"). The remaining affordable units -- a mix of studio and one-bedroom units -- will be for households with incomes not exceeding 80% AMI in accordance with the Inclusionary Zoning requirements. This affordable housing component will exist for the life of the project.

The subsidy required to provide two bedroom affordable dwelling units at 80% AMI as required under the Zoning Regulations amounts to \$326,000.



The subsidy required to support the two bedroom units at 60% AMI as proffered by Developer amounts to \$131,000 additional per unit. Therefore, reserving all of the two-bedroom units in Phase 1 of the PUD at 60% AMI results in additional subsidy of \$524,000 for the project. This additional affordable housing subsidy is a benefit of the PUD, as described under Section 2403.9 of the Zoning Regulations.

43. The PUD will have the following environmental benefits and amenities (§ 2403.9(f)):

- a. The plans for the project provide for the installation of a wildflower meadow along the Water Street right-of-way. The wildflower meadow provides an opportunity to increase plant biodiversity, create wildlife habitat, slow stormwater runoff and stabilize slopes. The meadow also preserves some of the open space quality of the existing site while reactivating it with the new proposed design and clears out the overgrown and visually impairing vegetation currently along Water Street. This will be done during Phase 1 of the project.
- b. The project will include a rain garden framed by masonry walls with weirs cut to allow the water to pool and cascade into the next basin facilitating slow infiltration. Excess water during large rain events will terminate in the arroyo that will consist of stone or textured precast concrete plinths. These stacked plinths create a visually intriguing basin area for a small amount of water catchment before it then drains into an overflow cistern/tank below. This cistern could be potentially used for irrigation reuse or connect back into the overall stormwater conveyance system. The plants will be typical rain garden plants, specific to the region, that can withstand drought and wet conditions, as seen on Sheet 29 of the PUD Plans. These plants will have striking seasonal variation, minimal maintenance and strong plant structure to prevent an unkempt appearance.
- c. The project will feature a water wall that uses the parking garage structure as a canvas. This wall will feature a patterned veneer showcasing an abstracted natural motif similar to the image on Sheet 27 of the PUD Plans. This will create strong imagery visible from the river, but also maintain interest at the pedestrian level. In addition to the patterned veneer, a portion of the wall will be layered with a vegetated trellis system that then will progress into an evergreen planting zone to soften the edge of the wall. The estimated value of this feature is \$750,000.
- d. The Applicant commits that the project will fulfill or exceed LEED Silver certification.
- e. The Applicant will provide at least one 240-volt electric car charging station in the Building 1 parking garage and at least one 240-volt electric car station in the Building 2 parking garage.

- f. The Applicant shall enter into an agreement with the Anacostia Watershed Society (“AWS”) whereby the Applicant agrees to donate \$500 to AWS on an annual basis for a period of five years. The donation shall be used to support the organization’s efforts/events to clean up the Anacostia River.
- g. The Applicant agrees that soil removed from the subject property will not be returned as landfill for the SE/SW Boulevard project.

**H. Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)**

- 44. The Property is included in the Mixed Use Medium Density Commercial/Institutional land use category. The Medium Density Commercial land use designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply. 10 DCMR § 225.10.
- 45. In this case, the C-3-C District is applicable because the FAR for the proposed PUD is less than the FAR for a PUD in the previously listed zone districts. The C-3-C/PUD approval is necessary only to achieve a building height above 90 feet. The additional height allows for a decrease in the lot occupancy, which is less than half of that permitted in the previously listed zone districts.
- 46. The Property is located in the Near Southeast Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Land Use Policy Map. The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. Many of the land use change areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks and civic facilities. As land use change areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods.
- 47. The proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated in the Land Use Change Area. The proposed PUD is almost entirely residential and will have a maximum density of 4.14 FAR. This project will enliven this section of the Anacostia Waterfront, in a forgotten and underutilized area of the city. In contrast, the existing M Zoning is inconsistent with the Policy Map's designation of the Property because M Districts provide sites for heavy commercial and light manufacturing activities and requiring heavy machinery, with heavy truck traffic and loading and unloading operations.

48. The PUD is consistent with the following policies of the Land Use Element of the Comprehensive Plan:
- a. *Policy H-1.1.3: Balanced Growth.* Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low and moderate density single family homes as well as the need for higher density housing.
  - b. *Policy H-1.1.4: Mixed Use Development.* Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.
49. The PUD is consistent with the following policies of the Urban Design Element of the Comprehensive Plan:
- a. *Policy UD-1.3.1: DC as a Waterfront City.* Strengthen Washington's civic identity as a waterfront city by promoting investment along the Anacostia River, creating new water-related parks, improving public access to and along the shoreline, and improving the physical and visual connections between the waterfront and adjacent neighborhoods. 10 DCMR § 905.5.
  - b. *Policy UD-1.3.2: Waterfront Public Space and Access.* Develop public gathering spaces along the waterfronts, including promenades, viewpoints, boating and swimming facilities, and parks. Such space should be designed to promote continuous public access along the rivers, and to take full advantage of site topography and waterfront views. Design treatments should vary from “hardscape” plazas in urban settings to softer, more passive open spaces that are more natural in character. 10 DCMR § 905.6.
  - c. *Policy UD-1.3.3: Excellence in Waterfront Design.* Require a high standard of design for all waterfront projects, with an emphasis on shoreline access, integration of historic features and structures, an orientation toward the water, and the creation of new water-oriented public amenities. 10 DCMR § 905.7.
  - d. *Policy UD-1.3.6: “Activating” Waterfront Spaces.* Encourage design approaches, densities, and mixes of land uses that enliven waterfront sites. Architectural and public space design should be conducive to pedestrian activity, provide a sense of safety, create visual interest, and draw people to the water. 10 DCMR § 905.11.
  - e. *Policy UD-1.3.7: Neighborhood Connectivity.* Improve the physical connections between neighborhoods and nearby waterfronts.

Where feasible, extend the existing city grid into large waterfront sites to better connect nearby developed areas to the shoreline. 10 DCMR § 905.12.

50. The PUD is consistent with the following policies of the Lower Anacostia Waterfront/Near Southwest Area Element of the Comprehensive Plan.
- a. Policy AW-2.3.1: Restoring the Urban Pattern of the Near Southeast. Encourage high-density mixed use development an open space on newly configured parcels, with new buildings designed and oriented to make the most of their waterfront or near-waterfront settings. 10 DCMR § 1913.7.
  - b. Policy AW-2.3.2: Near Southeast Shoreline Access. Improve shoreline access and movement to and through the Near Southeast by eliminating real and perceived barriers, improving public space and street corridors, reducing the amount of land occupied by surface parking and industrial uses, and encouraging new land uses that maximize public activity near the waterfront. 10 DCMR § 1913.8.
  - c. Policy AW-2.3.3: Near Southeast Housing Opportunities. Significantly increase residential land uses in the Near Southeast, particularly in the Southeast Federal Center, Capper Carrollsburg, Canal Blocks, and South Capitol Gateway areas. Consistent with the existing zoning for these areas, mixed use development that includes housing as well as commercial uses should be strongly encouraged. The mix of housing should accommodate residents of all incomes and household types. 10 DCMR § 1913.9.
  - d. Policy AW-2.3.4: M Street Southeast. Transform M Street into an attractive pedestrian-oriented thoroughfare, lined with retail shops and services, with upper story office, hotels and residential uses. The street itself should be designed as a multi-modal boulevard, accommodating pedestrians, bicycles and transit vehicles as well as cars. It should strengthen connections between the Near Southeast, Southwest, and Capitol Hill. 10 DCMR § 1913.10.
  - e. Policy AW-2.3.6: Near Southeast Urban Amenities. Leverage new development in the Near Southeast to create amenities such as parks, trails, child care facilities, civic uses, and retail space that serve the area's residents and workforce. 10 DCMR § 1913.12.

## **I. OP Reports**

51. By report dated February 28, 2014, marked as **Exhibit 7** of the record, OP recommended that the Zoning Commission set down the Application for a public hearing.

52. By report dated November 21, 2014, marked as **Exhibit 19** of the record, OP recommended the approval of the Application with two conditions: (a) the Applicant provide a one-year membership for a bike or car share service to one resident in each unit each time the lease or ownership of the unit changes hand, which is an expansion of the Applicant's original proffer and (b) the Applicant enter into a Certified Business Enterprise (CBE) Agreement.
53. OP issued a supplemental post-hearing report dated January 5, 2015, addressing comments issued by the Commission at the public hearing. The report, marked as **Exhibit 37** of the record, affirmed OP's report of the Application.

**J. DDOT Report**

54. The District Department of Transportation (DDOT) issued a report dated November 24, 2014, which is marked as **Exhibit 22** of the record. The report included a review of the Applicant's proposed mitigation measures and DDOT's recommended conditions for inclusion into the PUD.
55. DDOT issued a supplemental report, dated January 5, 2015, responding to the Applicant's revised TDM proposal and responses to DDOT's conditions included in the Post-Hearing Submission dated December 22, 2014. DDOT's supplemental report is marked as **Exhibit 38** of the record.

**K. DDOE Report**

56. The District Department of the Environment (DDOE) issued a report dated October 27, 2014, which is marked as **Exhibit 18** of the record. The report includes guidance on regulations, DDOE areas of interest and recommendations for areas where the Applicant could exceed guidelines as a public amenity or benefit.

**L. Post-Hearing Submissions**

57. On December 10, 2014, Ms. Karen Harris filed a letter and petition in opposition to the project on behalf of the homeowners and residents of the 1300 block of L Street, SE, which is marked as **Exhibit 32** of the record. The letter expressed concerns about the following aspects of the project: building heights, impact on light and air, the transient environment created with a rental project versus condominium project, transportation impacts, retail uses, length of time for construction and the construction times, proposed density, community benefits, the pedestrian bridge and Southeast Boulevard project, flooding, and noise from trains on the nearby CSX railroad tracks. Twenty-three persons residing on the 1300 block of L Street, SE signed a petition attached to Ms. Harris' letter.
58. On December 22, 2014, the Applicant filed a post-hearing submission, marked as **Exhibit 34** of the record, which included the following:

- a. FAR calculations for the project that include and exclude the area of the private road extending between M Street and Virginia Avenue.
  - b. Floor area calculations for the accessory use in the penthouse for each building.
  - c. Additional drawings and details for the "Boathouse Row" marker at the top of Building 1-Tower A.
  - d. Details on the proposed phasing of the development of the project.
  - e. A revised proffer relating to the Transportation Demand Measures.
  - f. A roof plan showing the additional setback for the penthouse on Building 1-Tower A and the type of lighting proposed for the penthouse area.
  - g. A plan for the rooftop mechanical equipment.
  - h. A table with a list of the conditions proposed by DDOT and acceptable to the Applicant.
  - i. Response to the Commission's comments regarding LEED certification for the project.
  - j. An updated solar study that includes the rooftop penthouse.
  - k. Details of the construction management plan agreed upon by ANC 6B.
  - l. Written response to the comments in the DDOE memorandum dated October 27, 2014.
  - m. An explanation of the improvements that are being proffered as a public benefit versus required mitigation for project and the estimated value of the proposed improvements.
59. On December 22, 2014, the Applicant filed a response to the letter and petition filed by Ms. Karen Harris on behalf of the residents of the 1300 block of L Street. The response is marked as **Exhibit 33** of the record. In its response, the Applicant proffered the following to address the concerns raised by Ms. Harris:
- a. Prohibit fast food national chain restaurants in the retail space for the project.
  - b. Applicant will use best efforts to attract a small grocer to the retail space for the project.

- c. Applicant agrees to contribute \$500 on an annual basis to the Anacostia Watershed Society to support the organization's effort for the "Anacostia River Clean Up Days". The annual donation shall be made for a five-year period starting from the date of the certificate of occupancy for the Phase 1 Building.
  - d. The Applicant agrees that soil removed from the subject property will not be returned as landfill for the SE/SW Boulevard project.
60. On December 23, 2014, ANC 6B filed a memorandum, marked as **Exhibit 36** of the record, in response to the Applicant's post-hearing submission and in support of the Application.
61. On February 2, 2015, the Applicant filed a second post-hearing submission, marked as **Exhibit 41** of the record, which included the following:
- a. A revised lighting plan for the Phase 1 building;
  - b. Revised renderings of the "Boathouse Row" marker proposed at the top of the Phase 1 building;
  - c. Clarification of the Applicant's proffer of a contribution to the Anacostia Watershed Society;
  - d. The agreement reached between the Applicant and DDOT related to the proffer of the Capital BikeShare/CarShare membership for residents of the project; and
  - e. A summary of the Applicant's recent discussions with Karen Harris.
62. On February 2, 2015, Ms. Harris filed a letter with the Commission, marked as **Exhibit 42** of the record, summarizing the Applicant's response to the comments and concerns raised by the residents on the 1300 block of L Street.

### **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. A comprehensive public review by the Commission of the specific development proposal is required in order to evaluate the public benefits offered in proportion to the flexibility or incentives requested, and in order to establish a basis for long-term public control over the specific use and development of the Property. 11 DCMR § 2400.3.



3. The Commission may approve a PUD application, with or without modifications. In carrying out the purposes of the Zoning Regulations, the Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts under the Zoning Regulations or elsewhere in the Zoning Regulations. 11 DCMR § 2400.5.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations, which is to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services are acceptable given the quality of the public benefits in the project.
6. The Commission finds that the Applicant's proposal to rezone the Property from M to C-3-C and to construct a mixed-use development on the Property is consistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are in proportion to the requested development flexibility.
8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 6B voted unanimously to support the Application and recommended that the Commission approve the application (**Exhibit 36**.) The Commission has given ANC 6B's recommendation great weight in approving the modification application.
10. 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) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.

11. The Application 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 first-stage application for the planned unit development for the property located at 1333 M Street, SE, and more particularly described as Square 1025-E, Lot 82, Square 1048-S, Lots 1, 801 and 802, RES 129 and RES 299, a related map amendment to rezone the Property, from the M to C-3-C District, and the consolidated planned unit development for Phase 1 of the project, subject to the following guidelines, conditions and standards. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. "During the operation of the building" means a period of time that begins when the building is first occupied, and ending when it is last occupied.

### **Project Development**

1. ***First-Stage PUD Plans.*** The overall project shall be developed in substantial accordance with the plans titled "Planned Unit Development in Four Phases" dated July 25, 2014, and prepared by GTM Architects, Inc., and marked as **Exhibit 10A1 – 10A4** of the record, as modified by Sheets 7, 30 and 43, dated 11-11-14 and marked as **Exhibit 17A** of the record (the "First Stage PUD Plans").
2. ***Phase 1 Plans.*** Phase 1 of the project shall be developed in substantial accordance with the plans entitled "Consolidated PUD Portion for Phase 1 Only | Bldg 1, Tower A" dated July 25, 2014, and prepared by GTM Architects, Inc., and marked as **Exhibit 10B1 – 10B7** of the record, as modified by Sheets 7 and 41 dated 11-11-14 and marked as **Exhibit 17B** of the record; the Phase 1 Typical Floor Plan and Roof Plan dated 12-22-14 and marked as **Exhibit 34B** of the record; the Mechanical Roof Plan dated 1-10-14 and marked as **Exhibit 34D** of the record; the Lighting Plan dated 02-02-15 and marked as **Exhibit 41A** of the record; and Option \_\_\_\_ of the "Boathouse Row Marker" as depicted on Sheet \_\_\_\_ of the architectural drawings dated 02-02-2015 and marked as **Exhibit 41B** of the record (the "Phase 1 Plans").
3. ***Overall Height & Density.*** The overall project shall be developed in four phases and include three residential buildings that will house approximately 673 residential units. The project will also have approximately 10,370 square feet of retail uses. The project will have a minimum of 221 parking spaces. The building

heights will range from 90 to 110 feet; the maximum FAR for the project shall be 4.14; and the overall lot occupancy will be 45%.

4. ***Phase 1 Height & Density.*** Phase 1 of the project includes the construction of a 10-story residential tower containing approximately 181,911 square feet generating approximately 218 dwelling units. The building will have an underground parking garage with approximately 67 spaces, and 44 surface parking spaces will be provided on what is depicted as “Theoretical Lot 2” on the Phase 1 Plans. For Phase 1 of the project, the building height will be 100 feet; the FAR will be 2.27; and the lot occupancy will be 20.6%.
5. ***Inclusionary Zoning.*** As required under Chapter 26 of the Zoning Regulations, at least 8% of the residential floor area in the Phase 1 building shall be reserved as inclusionary zoning units. Of the inclusionary zoning units, 4 will be two-bedroom units. The Applicant has agreed to set aside all of the two-bedroom units for households whose income does not exceed 60% AMI.
6. ***Construction Management Plan.*** The Applicant shall have a Construction Management Plan for the project that includes the following restrictions:
  - a. **Hours.** Developer, its tenants, and contractors will not engage in any construction activities, other than emergency repairs, before 7:00 a.m. and after 7 p.m. Monday - Friday, or before 8:00 a.m. and after 7:00 p.m. on Saturday. Developer and its contractors will not engage in any construction work on Sunday.
  - b. **Construction Worker Parking.** Developer, its tenants, and contractors will provide adequate on-site parking for construction workers during all phases of this project.
  - c. **Trash Removal.** Developer, or its tenants, will promptly remove all trash and construction debris from the public space located between the property line and the adjacent curb.
  - d. **Community Liaison.** Developer, or its tenants, will establish a Point of Contact (POC) who will serve as the Community Liaison. The POC’s duties will include, but are not limited to, answering community questions regarding the project and solving issues arising from construction. The POC’s contact information will be widely available throughout the community.
7. ***Loading Management Plan.*** The Applicant shall have a loading management plan for the project that includes the following restrictions:
  - a. Designate a member of the on-site management team as a loading coordinator.
  - b. Require all tenants to use the on-site loading facilities for move-in/move-out activities.

- c. Restrict all tenants from using trucks no longer than 30 feet.
  - d. Require all tenants to notify the loading coordinator ahead of planned loading activities.
  - e. In the event that trucks longer than 30 feet are required, emergency no parking signs from DDOT are available, if necessary.
  - f. Secure DDOT permits for oversize and overweight vehicles.
  - g. Prohibit truck idling.
  - h. A flagger will be present whenever a vehicle is entering/exiting the loading dock. The flagger will alert pedestrian/bicyclists/other vehicles to trucks that may be entering or exiting the loading facilities.
8. ***Flexibility for Roof Structures.*** The Applicant has flexibility from §§ 411 and 770.6 of the Zoning Regulations to have roof structures that are not enclosed within walls of equal height, to the extent depicted in the plans for the project.
9. ***Flexibility for Loading.*** The Applicant has flexibility from §2201 of the Zoning Regulations to provide for Buildings 1 and 2, respectively, one 30-foot loading berth, one 100-square foot loading platform and one service/delivery loading space where the Zoning Regulations require one 55-foot loading berth, one 200-square foot loading platform and one service/delivery loading space. Additionally, the Applicant has flexibility to construct Building 3 without any loading facilities where one 55-foot loading berth, one 200-square foot loading platform and one service/delivery loading space are required.
10. ***Flexibility for Phasing.*** The Applicant shall file a building permit for Phase 1 within 2 years of the final consolidated PUD approval and commence construction within 3 years of the final consolidated PUD approval. The first-stage approval of the PUD shall be valid for a period of 10 years. Within such time, the Applicant shall have filed second-stage applications for Phases 2, 3 and 4. The last stage-two application shall be filed no later than \_\_\_\_\_, 2025, unless the Commission grants an extension of said 10-year period.
11. ***Flexibility for Rear Yard, Building 3.*** The Applicant has flexibility to provide for Building 3 a rear yard of 12'-3" where a rear yard of 23' is required.
12. ***Flexibility for Open Court, Building 2.*** The Applicant has flexibility to provide for Building 2 an open court of 30'-1" where an open court of 36'-8" is required.
13. ***Flexibility for Open Court, Building 3.*** The Applicant has flexibility to provide for Building 3 an open court of 19'-5" where 23' is required.
14. ***Range in Number of Units.*** The Applicant has flexibility to have a range in the number of residential units from 606 to 740.

15. ***Flexibility for Interior Components.*** The Applicant has flexibility to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
16. ***Flexibility for Garage.*** The Applicant has flexibility to make refinements to the garage configurations, including layout, number of parking spaces, and/or other elements, as long as the project provides a minimum of 221 parking spaces.
17. ***Flexibility for Exterior Materials.*** The Applicant has flexibility to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

### **Restriction on Retail Uses**

18. The following uses, even though permitted within the C-3-C District as a matter of right or with special exception approval by the BZA, will not be permitted as part of the PUD: the sale of any pornographic material; a check-cashing establishment; a pawnbroker; a night club; national fast food chain restaurants.
19. The Applicant commits to using best efforts to attract a small grocery store in the retail space of the project.

### **Public Benefits and Project Amenities**

#### *Public Space / Open Space Improvements*

20. Prior to the issuance of a certificate of occupancy for Building 1, Tower A (Phase 1), Applicant shall install permeable paver parking spaces and low impact development basins with plantings and street trees for stormwater management on the south side of M Street. The final design of these improvements are required to comply with DDOT standards and shall be subject to review and approval by DDOT through the public space permitting process.
21. Prior to the issuance of a certificate of occupancy for Building 1, Tower A (Phase 1), Applicant shall install a wildflower meadow along the Water Street right-of-way. The wildflower meadow provides an opportunity to increase plant biodiversity, create wildlife habitat, slow stormwater runoff and stabilize slopes. The meadow also preserves some of the open space quality of the existing site while reactivating it with the new proposed design and clears out the overgrown and visually impairing vegetation currently along Water Street.

22. Prior to the issuance of a certificate of occupancy for Building 1, Tower A (Phase 1), Applicant shall construct a public dog park where 14<sup>th</sup> Street terminates at the project, as shown in the Phase 1 Plans.
23. Prior to the issuance of a certificate of occupancy for Building 1, Tower A (Phase 1), Applicant shall improve M Street and construct an extension of Virginia Avenue south of M Street as well as construct an internal north-south private street. The final design of these improvements are required to comply with DDOT standards and shall be subject to review and approval by DDOT.
24. Prior to the issuance of a certificate of occupancy for Building 1, Tower A (Phase 1), Applicant shall construct a sidewalk on the south side of M Street that extends the length of the Subject Property. The final design of the sidewalk is required to comply with DDOT standards and shall be subject to review and approval by DDOT.
25. Prior to the issuance of a certificate of occupancy for Building 1, Tower B (Phase 2), Applicant shall construct an uninterrupted 8-foot wide, paved Anacostia Riverwalk Trail segment along the north side of M Street that connects to the traffic circle near 13<sup>th</sup> Street, SE and the existing trail at 14<sup>th</sup> Street SE. The final design of the trail is required to comply with DDOT standards and shall be subject to review and approval by DDOT.
26. Prior to the issuance of a certificate of occupancy for Building 1, Tower B (Phase 2), for that portion of M Street along the frontage of the Subject Property, the Applicant shall pave the entire width of the street. This improvement shall comply with DDOT standards and shall be subject to review and approval by DDOT.
27. Prior to the issuance of a certificate of occupancy for Building 1, Tower B (Phase 2), Applicant shall construct a public plaza at the termination of Virginia Avenue, and a monumental staircase leading to lower plaza area that extends to Water Street across from the District Yacht Club, as shown in the First Stage PUD Plans. The public plaza is designed as an active gathering space and a connection to the waterfront.
28. Prior to the issuance of a certificate of occupancy for Building 1, Tower B (Phase 2), Applicant shall construct a sidewalk along the north side of Water Street, extending from M Street to the lower plaza. The final design of the sidewalk is required to comply with DDOT standards and shall be subject to review and approval by DDOT.
29. During the operation of the project, Applicant shall bear maintenance responsibility for those improvements extending from the property down to the public space at Water Street providing a connection to the Anacostia Waterfront that are outside of the property line and within the public space, including but not limited to the portion of the lower plaza and promenade paving pattern at the base of the monumental stair that are outside of the property line and within the public space.



*Affordable Housing*

30. Applicant shall set aside in the Phase 1 building four two-bedroom units for households whose income does not exceed 60% AMI. The remaining affordable units -- a mix of studio and one-bedroom units -- will be for households with incomes not exceeding 80% AMI in accordance with the Inclusionary Zoning requirements. This affordable housing component will be maintained for the life of the project.

*Sustainable Design Elements / Environmental*

31. During Phase 2 of the PUD, the Applicant shall construct a bioretention rain garden along the Water Street boundary of the Property. The rain garden will be framed by masonry walls with weirs cut to allow the water to pool and cascade into the next basin facilitating slow infiltration. Excess water during large rain events will terminate in the arroyo that will consist of stone or textured precast concrete plinths. These stacked plinths create a visually intriguing basin area for a small amount of water catchment before it then drains into an overflow cistern/tank below. This cistern could be potentially used for irrigation reuse or connect back into the overall stormwater conveyance system. The plants will be typical rain garden plants, specific to the region, which can withstand drought and wet conditions, as seen on Sheet 29 of the PUD Plans. These plants will have striking seasonal variation, minimal maintenance and strong plant structure to prevent an unkempt appearance. The water wall uses the parking garage structure as a canvas. This wall will feature a patterned veneer showcasing an abstracted natural motif similar to the image on Sheet 27 of the PUD Plans. This will create strong imagery visible from the river, but also maintain interest at the pedestrian level. In addition to the patterned veneer, a portion of the wall will be layered with a vegetated trellis system that then will progress into an evergreen planting zone to soften the edge of the wall.
32. [Prior to the issuance of a certificate of occupancy for each building phase of the PUD, the Applicant shall furnish a copy of its LEED certification application to the Green Building Certification Institute.](#) The PUD shall fulfill or exceed LEED Silver certification.
33. The Applicant shall provide at least one 240-volt electric car charging station in the Building 1 parking garage and at least one 240-volt electric car charging station in the Building 2 parking garage. The car charging stations shall be installed prior to the [issuance of the](#) certificate of occupancy for the respective buildings.
34. Prior to the issuance of a ~~building permit~~[certificate of occupancy](#) for ~~the~~ Phase ~~I1~~ [building](#), the Applicant shall ~~enter into an agreement with~~[donate \\$2500 to](#) the Anacostia Watershed Society ~~(“AWS”) whereby the Applicant agrees to donate \$500 to AWS on an annual basis for a period of five years. The donation shall be used~~ to support the organization’s efforts/events to clean up the Anacostia River.



35. The Applicant agrees that soil removed from the subject property will not be returned as landfill for the SE/SW Boulevard project. [The Applicant shall provide evidence of compliance with this condition prior to the certificate of occupancy for each building phase.](#)

*Shuttle Service*

36. Starting at the issuance of a certificate of occupancy for Phase 1 building and during the operation of the project, for as long as warranted, the Applicant shall run a shuttle service either individually or as a collective with other stakeholders in the BID between the Subject Property and Navy Yard – Ball Park Metro Station. The shuttle service may be terminated when the Applicant and DDOT determine that there is sufficient pedestrian infrastructure and/or public transportation options such that the shuttle service is no longer warranted.
37. At the outset of operation, the shuttle will have a minimum capacity of 18 seats (which meets the projected demand for Phase 1 and Phase 2). Prior to Phase 2, and each subsequent phase, the Applicant will reassess the capacity to ensure that capacity can accommodate the demand.
38. At a minimum, headways shall be between 10-15 minutes for the peak period; and at a minimum the hours of operation should be over three hours during the AM and PM peak periods, generally 7 AM to 10 AM and 4 PM to 7 PM. The shuttle pick-up/drop-off areas in public space shall be coordinated with DDOT.

*Transportation Demand Management Measures*

39. Applicant shall implement the following transportation demand management measures in conjunction with the PUD:
  - A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information is disseminated to tenants of the building. The position may be part of other duties assigned to the individual.
  - Information on and/or links to transportation programs and services will be provided on the property management website. Such programs and services may include:
    - Capital Bikeshare
    - Car-sharing services
    - Uber
    - Ridescout

- Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters.
- Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency.
- Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience.
- DDOT's DC Bicycle Map
- goDCgo.com
- WMATA
- An electronic display will be provided in a common, shared space in the building and will provide public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital BikeShare locations indicating the number of bicycles available at each location.
- [Starting with the occupancy of the Phase 1 building and for the life of the project, a minimum of 10 bicycle helmets will be made available for use by the residents of the project.](#)
- [Coordinate with local businesses and service providers to promote delivery services for residents.](#)
- [Unbundle parking costs from the price of lease or purchase of the units.](#)

### [Bicycle Parking](#)

- [40.](#) • Convenient and covered secure bike parking facilities will be provided with each phase of the development with storage for a minimum of 224 bicycles for the entire development, for the life of the project. Bike stands will also be provided for public use along the extended Virginia Avenue SE and M Street SE.

### [Bike / Car Share Memberships](#)

- [41.](#) • At initial occupancy of each unit, the Applicant will provide each residential unit either a one year Capital BikeShare membership or one year car share membership. This amenity will be provided each time a residential unit turns over for a period of five years from the date the certificate of occupancy is issued for the Phase 1 building. Prior to the issuance of a certificate of occupancy for the Phase 1

building, the Applicant shall provide a copy of the form lease agreement or similar evidence of said amenity being offered to residents.

- 42.
- Prior to the issuance of a certificate of occupancy for the Phase 2 building, the Applicant shall submit to DDOT a study assessing whether the aforementioned benefit must be extended up to a period of an additional five years, but not exceeding five years. The study shall include and determination will be based on an evaluation as to whether additional pedestrian connectivity has been provided via the Southeast Boulevard project and whether additional transit service, such as streetcar or extension of Circulator or Metrobus routes, or the like has occurred. Additional transit service must provide stops within a quarter mile of the Property and provide minimum 15 minute headways during the AM and PM peak periods.
  - ~~Starting with the occupancy of the Phase 1 building and for the life of the project, a minimum of 10 bicycle helmets will be made available for use by the residents of the project.~~

#### *Car Sharing Spaces*

- 43.
- Make available at least 2 vehicle parking spaces for a carshare service if there is interest from a carshare service. The spaces shall be reserved until the issuance of a certificate of occupancy for the Phase 2 building. At that time, if the spaces are not utilized by a carshare service, they can be released for general use by residents and guests of the project.

#### *Capital BikeShare Station*

- 44.
- Prior to the issuance of a building permit for the Phase 2 building, the Applicant shall fund the installation of a Capital BikeShare Station adjacent to the PUD site plus one year of operating expenses for said station.
  - ~~Coordinate with local businesses and service providers to promote delivery services for residents.~~
  - ~~Unbundle parking costs from the price of lease or purchase of the units.~~

#### *Lighting*

- 45.
- ~~40.~~ During Phase 1 of the project, and in subsequent phases, Applicant shall install lighting around the perimeter of the Subject Property, in response to community concerns and ANC 6B's request for better lighting on M and Water Streets. The lighting shall be installed prior to the issuance of the certificate of occupancy for the building programmed for the respective phases of development for the project.

#### *Employment*

46. ~~41.~~ Prior to the issuance of a building permit for Building 1, Tower A (Phase 1), Applicant shall enter into a First Source Employment Agreement with DOES.

**Miscellaneous**

47. ~~42.~~ No building permit shall be issued for Phase 1 of the project until the Applicant has recorded a PUD covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this Order or amendment thereof by the Commission.

48. ~~43.~~ The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the PUD covenant with the records of the Zoning Commission.

49. ~~44.~~ The approval of the consolidated PUD for Phase 1 of the project shall be valid for a period of two years from the effective date of this Order, or until \_\_\_\_\_. Within such time, an application must be filed for a building permit for Phase 1 as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order. Failure to take these actions will result in the expiration of the consolidated PUD approval for Phase 1 as of the applicable date.

50. ~~45.~~ The first-stage approval of the PUD shall be valid for a period of 10 years. Within such time, the Applicant shall have filed second-stage applications for Phases 2, 3 and 4 of the project. The last stage-two application shall be filed no later than \_\_\_\_\_, 2025, unless the Commission grants an extension of said 10-year period.

-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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On \_\_\_\_\_, upon the motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission APPROVED the Application at the conclusion of its public hearing by a vote of \_\_\_\_\_ (Anthony J. Hood, Marcie Cohen, Robert Miller, Peter G. May and Michael G. Turnbull).

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

---

**ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION**

---

**DIRECTOR  
OFFICE OF ZONING**

Document comparison by Workshare Compare on Wednesday, February 11, 2015 3:51:03 PM

Input:	
Document 1 ID	interwovenSite://HKDMS/Active/34206440/5
Description	#34206440v5<Active> - Cohen / 1333 M Street / Final Draft ZC Order 13-12
Document 2 ID	interwovenSite://HKDMS/Active/34206440/6
Description	#34206440v6<Active> - Cohen / 1333 M Street / Final Draft ZC Order 13-12
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	19
Deletions	23
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	48