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VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, NW, Suite 210S
Washington, D.C. 20001

**Re: Z.C. Case No. 20-06
Submission of Final Draft of Memorandum of Understanding (“MOU”)**

Dear Members of the Commission:

On behalf of Felice Development Group, the applicant in the above-referenced case (“Applicant”), we hereby submit into the public record a final draft of the MOU being negotiated between the Applicant and the affected Advisory Neighborhood Commission (“ANC”) in this case, ANC 6B.

We hope to execute the final agreement imminently. We look forward to the Commission’s favorable consideration of this application at today’s public hearing. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contacts us.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties
Christopher S. Cohen

Attachment

cc: Commissioner Brian Ready, ANC 6B Chairperson (via e-mail)
Commissioner Corey Holman, ANC 6B06 (via e-mail)

**MEMORANDUM OF UNDERSTANDING
REGARDING 1333 M STREET, SE**

This Memorandum of Understanding (“MOU”) is made as of this ____ day of _____, 2020, by and between Felice Development Group (“Developer”), and Advisory Neighborhood Commission (“ANC”) 6B (the “ANC”). Developer and ANC 6B are together referred to herein as the “Parties.”

RECITALS

1. Developer has filed an application with the Zoning Commission of the District of Columbia (the “Zoning Commission”) for (1) a first-stage planned unit development (“PUD”), (2) consolidated PUD and (3) related Zoning Map Amendment from the PDR-4 Zone to MU-9 Zone (the “Application”), for that certain 3-acre parcel located at 1333 M Street, SE, and is more particularly described as Square 1025-E, Lot 802, Square 1048-S, Lots 1, 801, 802, RES 129 and RES 299 (the “Property”).
2. The Application has been assigned Zoning Commission Case No. 20-06.
3. Approval of the Application will facilitate the redevelopment of the Property with a mixed use development that consists of two buildings with approximately 786,160 square feet of residential floor area generating approximately 900 dwelling units, and approximately 44,000 square feet of retail/non-residential use (the “Project”). The Project will have a maximum building height of 130 feet, a maximum lot occupancy of 63.1%; and a maximum density of 6.17 FAR.
4. The Developer presented the Application to the ANC at its meeting on April 20, 2020, and has participated in subsequent ANC subcommittee meetings on June 24, July 2, July 29, and August 19. Additionally, the Applicant hosted a community meeting on May 8, and presented the Project to the Planning & Zoning Committee meeting on June 2.
5. The ANC and Developer reached agreement on all items related to the Project except the proffer for an Adult Day Center. Specifically, the ANC finds that the PUD benefits and amenities are insufficient unless the proffers are increased to include a monetary contribution of \$250,000 to support senior programming, specifically for the cost of professional services related to securing a site for an adult day care center in Ward 6.
6. As a condition of the ANC’s support of the Application, the Developer and the ANC desire to enter into this MOU upon the terms below.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Affordable Housing. The Applicant shall reserve 12% of the Project’s gross residential floor area for households with incomes not exceeding 60% of the median family income (“MFI”),

except that three (3) of the six (6) two-bedroom IZ units in the first phase of the PUD shall be reserved for households with incomes not exceeding 50% of MFI. Also, one two-bedroom unit in the second phase of the PUD shall be reserved at 50% of MFI.

2. Public Space Improvements. Prior to issuance of the first certificate of occupancy for the Project, the Applicant shall construct the following improvements in public space and/or for the use by the public.
 - a. M Street. The Applicant will relocate the Anacostia Bike Trail to the north side of M Street in order to provide a better connection to the existing trail to west. The Applicant will reconstruct the bike trail to DDOT's current standard width of 10 feet.
 - b. Virginia Avenue. The Applicant will re-establish Virginia Avenue and construct the roadway to current DDOT standards and will include bioretention facilities.
 - i. Preliminary Design Review Meeting. Applicant agrees to invite the SMD Commissioner, ANC Chair, and chair of ANC Transportation Committee (if applicable) to the PDRM meeting related to Virginia Street SE with at least one week's notice.
 - c. Arrival Plaza. The Arrival Plaza will be improved with an expansive green lawn and function as a pedestrian promenade and plaza. The Applicant shall maintain the improvements in the Arrival Plaza for the life of the project.
 - d. Waterfront Plaza. The Waterfront Plaza at the terminus of Virginia Avenue will include a monumental staircase and accessible walkways, and is designed to accommodate outdoor dining, small gatherings, art fairs, a farmers' market and other similar community activities. The Applicant shall maintain the improvements in Waterfront Plaza for the life of the project.
 - e. 14th Street Corridor Plaza. The 14th Street Corridor Plaza is designed to provide connectivity between the proposed Southeast Boulevard Pedestrian Bridge and the lower Retail Promenade and Water Street. The Applicant shall maintain the connectivity for the life of the project.
 - f. Lower Retail Promenade. The Lower Retail Promenade will be improved with a great lawn and provide access to Water Street and the Anacostia Bike Trail. The Applicant shall maintain the Lower Retail Promenade for the life of the project.
 - g. Water Street SE. Water Street SE. During permitting for the first phase of the PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE. Subject to DDOT's review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.

- c. Provide a bicycle repair station in the garage.
6. Operations
- a. The following uses, even though permitted as a matter of right, with a special exception, or with a variance in the MU-9 zone district are not permitted on the Property:
 - 1. Sexually-Oriented Business Establishment as defined in Subtitle B, Sec. 100.2;
 - 2. A check-cashing establishment;
 - 3. A pawnbroker;
 - 4. A nightclub as defined by the Alcoholic Beverage Regulation Administration; and
 - 5. Firearm Sales.
 - b. The open space and green areas on the Property adjacent to the areas identified as Waterfront Plaza, Arrival Plaza, the 14th Street Corridor Plaza, and Water Street as reflected on Sheet L-24 of the landscape plans for the Consolidated PUD, shall be accessible to the public at all times; except that public access to the open space adjacent to the Lower Level Retail Plaza, building elevators, and lobby areas may be limited to 9 a.m. to 9 p.m.
 - c. The restrooms identified on A-10 of the architecture plans for the Consolidated PUD (Exhibit 17AA) shall remain open to the public from 9:00 AM to 9:00 PM.
7. Community Liaison. Developer will establish a Point of Contact (POC) to serve as a 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.
8. Construction Committee. Developer shall establish a committee no later than issuance of the building permit that will consist of two ANC commissioners and two appointed residents of ANC 6B, meeting monthly as necessary. The committee shall be provided with all public space construction and occupancy permits for review and comment prior to approval from a District agency. The committee shall be dissolved at the issuance of the final Certificate of Occupancy for the Stage 1 building or the expiration of the public space permits, whichever comes later.
9. Construction Email Group. Before the beginning of construction and two weeks before the beginning of pile driving, applicant agrees to contact via email the Historic Anacostia Boathouse Association and Anacostia Community Boathouse Association and flyer residences and businesses on the following blocks with an estimated start date of construction or pile driving and a link to join an email group for the project. The applicant agrees to provide updates on construction progress at least once every two weeks and be responsible for monitoring discussion on the e-mail group.
- a. Potomac Avenue, SE: 800-1300 (south side)
 - b. Pennsylvania Avenue, SE: 1400-1500 (south side)
 - c. I Street, SE: 1000-1200 (south side)

- d. Ives Place, SE: 1300-1400
- e. K Street, SE: 1100-1500
- f. L Street, SE: 800-1400
- g. 9th Street, SE: 1100
- h. 10th Street, SE: 1100
- i. 11th Street, SE: 900
- j. 12th Street, SE: 900
- k. 13th Street, SE: 900-1000
- l. 14th Street, SE: 900-1000
- m. 15th Street, SE: 900-1000

10. Trash Storage and Removal. The Project shall include an indoor climate-controlled retail and residential trash storage areas, as shown on Sheets A-12 of the First-Stage PUD plans.

11. Construction Operations

- a. Pile-driving activity shall not begin before 9:30 AM and will end no later than 5:30 PM.
- b. During all phases of construction, vehicular access to the boathouses along Water Street, SE shall be maintained at all times.
- c. During all phases of construction, pedestrian and bike access adjacent to the Property shall be maintained.
- d. The Single Member District Commissioner provides approval, if required by DCRA, of after hours permit requests for Sunday and holiday work, as long as work is contained to building interiors and limited unloading, staging, and loading.
- e. Applicant will maintain at least one sign on M Street, SE directing construction traffic to use Southeast Boulevard or the 11th Street Bridge to exit the site.

12. ANC Support of Project. The terms and provisions of the MOU are further conditioned upon final approval of the Application by the Zoning Commission as evidenced by the issuance of a final written order by the Zoning Commission and the expiration of all applicable appeal periods. Further, the ANC shall support or not oppose any future applications submitted by the Developer to District agencies to entitle the Project, including but not limited to application(s) to the Zoning Commission regarding the PUD, application(s) to DDOT for public space approvals, and applications to DOEE.

13. Incorporation into PUD Order. The Parties will ask the Zoning Commission to incorporate each provision herein in an order concerning the subject property. Any provision not so incorporated by the Zoning Commission into an order concerning the Property shall be fully enforceable between the Parties (Privately-Enforceable Provisions). Any disputes arising out of or related to Privately-Enforceable Provisions shall be decided by binding arbitration between the Parties in the District of Columbia pursuant to the rules of the American

Arbitration Association. The Parties agree that they will comply with any arbitral decision within the time provided in the decision or, if no time for compliance is set therein, within 15 calendar days. The Parties agree that this Amended Agreement is intended to benefit residents of the area within the jurisdiction of ANC 6B (“ANC Residents”); accordingly, the Parties agree that any such ANC Resident is to be considered a third-party beneficiary of this Amended Agreement for the purposes of ensuring arbitral decisions arising out of or related to it (Arbitral Decisions) are enforced, and that any such ANC Resident may file suit in a Superior Court of the District of Columbia, or, if jurisdiction is otherwise proper there, in the United States District Court for the District of Columbia, to enforce an Arbitral Decision. Any ANC Resident who initiates suit to enforce an Arbitral Decision and who substantially prevails shall be entitled to an award of reasonable attorney fees. For avoidance of doubt, this Paragraph shall not authorize lawsuits by residents of ANC 6B for any purpose other than enforcing an arbitral order in favor of ANC 6B.

14. Amendment. The Parties hereto reserve the right to amend this document at any time with the written agreement of all Parties.
15. Severability. This MOU and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the District of Columbia. If any term, provision, covenant or agreement contained herein, or the application thereof to any person or circumstances, shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this MOU or the application of such term, provision, covenant or agreement to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
16. Binding Effect. This MOU is binding upon and shall inure to the benefit of the heirs, successors, assigns, parents, subsidiaries, affiliates and related entities of the Developer and ANC 6B. In the event that the boundaries of the ANC change such that the Property is no longer within ANC 6B, the provision of this MOU shall inure to the benefit of the successor ANC.
17. Authority to Execute. Each of the parties executing this MOU represents and warrants to each of the other parties hereto that: (i) it has the full power and authority to enter into this MOU and to consummate the transaction described herein without obtaining any further approvals or consents, and (ii) the entering into of the MOU will not constitute or result in a violation or breach by any such party of any judgment, order, write, injunction or decree issued against or imposed upon it or any agreement to which it is a party or by which it is bound.
18. Counterparts. This MOU may be executed in counterparts and via original or facsimile signature.

[SIGNATURE PAGE FOLLOWS]

**Advisory Neighborhood
Commission 6B**

Signature Date

Printed Name

Title

Felice Development Group

Signature Date

Printed Name

Title

