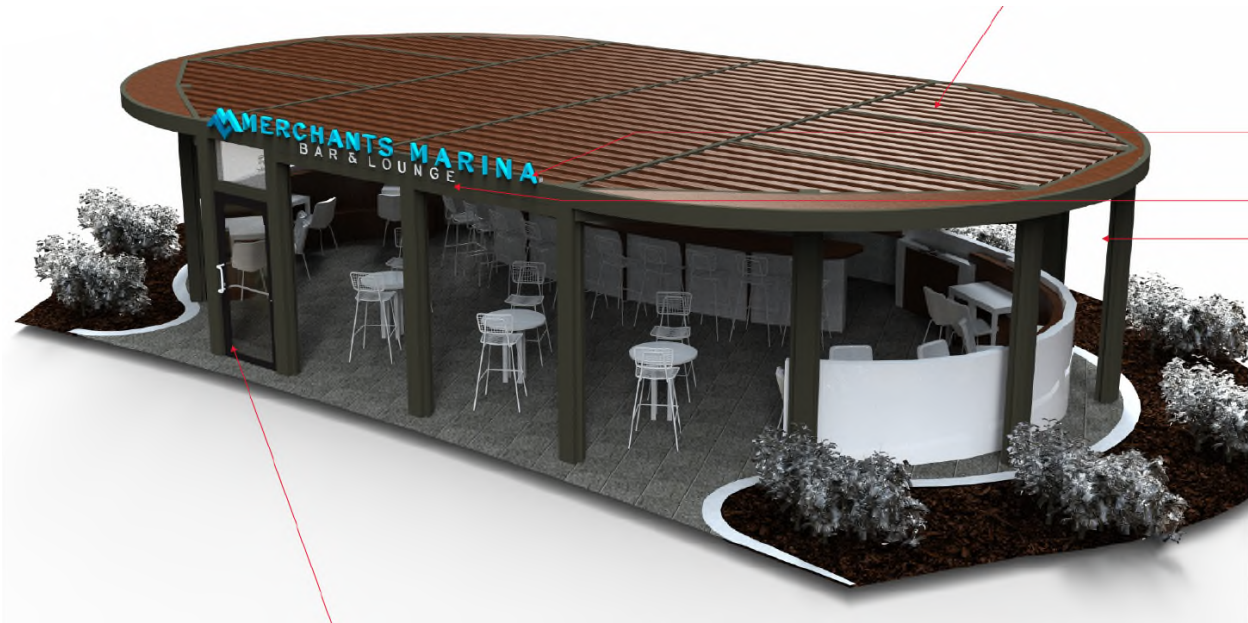


Merchants Marina Pavilion

635 Wharf Street SW

By Wharf Phase 3 REIT Leaseholder LLC



APPLICATION TO THE DISTRICT OF COLUMBIA ZONING COMMISSION FOR
APPROVAL OF A MODIFICATION WITH HEARING TO A
SECOND-STAGE PLANNED UNIT DEVELOPMENT

Square 473, Lot 1008

June 9, 2025

DEVELOPMENT TEAM

Applicant

Wharf Phase 3 REIT Leaseholder LLC
c/o District Wharf Properties
Attn: President
760 Maine Avenue SW
Washington, DC 20024

Land Use Counsel

Goulston & Storrs
1999 K St. NW, Suite 500
Washington, DC 20006

EXHIBITS

<u>Description</u>	<u>Exhibit</u>
Application Signature Form	A
Authorization Letter	B
Certificate of Notice of Intent to File Modification of Second-Stage PUD	C
Property Owner List	D
Z.C. Order No. 11-03J(1)	E
Surveyor's Plat of Property	F
Map of Location of Property and Photographs of Existing Conditions	G
Plans Depicting Proposed Pavilion (from B Permit)	H
Plans Depicting Proposed Pavilion (from Revised TL Permit)	I
Approved First-Stage PUD Plan for M Street Landing	J
Approved Second-Stage PUD Plans for M Street Landing	K
Planning Analysis of M Street Landing	L
Approved Permits TL2200133, TL2300042, and B2310006	M
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Executed Operational Agreement regarding Building Permit	O
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I. INTRODUCTION

A. Background

Wharf Phase 3 REIT Leaseholder LLC (the “**Applicant**”) hereby submits this application (the “**Application**”) to the District of Columbia Zoning Commission (the “**Z.C.**” or “**Commission**”) for approval of a Modification with Hearing to a Second-Stage Planned Unit Development (“**PUD**”). The Application involves a modification to the approved plan for M Street Landing, a large open gathering space constructed as a part of Phase 2 of the Wharf Planned Unit Development, which was approved pursuant to Z.C. Order No. 11-03J(1) (the “**Order**”). A copy of the Order is attached as Exhibit E. The specific property that is subject to the proposed PUD modification is Lot 1008 in Square 0473 (the “**Property**”), as shown on the plat included as Exhibit F.

The Applicant seeks modification to the approved Second-Stage PUD to authorize a retail pavilion containing an eating and drinking establishment (the “**Pavilion**”) that has been constructed on the Property (the “**Project**” or “**Modification**”). The Pavilion will offer food and beverage service that is associated with an existing restaurant tenant within ground-floor retail space at the adjacent Parcel 9. The Pavilion contains operable roof louvers and roll-up side shades which allow for the enclosure of the Pavilion during inclement weather, during shoulder season months, and when not in use.

B. The Applicant and Purpose of the Application

The Applicant owns the Property and leases both it and the ground-floor dining establishment located in Parcel 9 to Philippe DC, LLC (the “**Tenant**”). Since the completion of Phase 2, the Applicant’s leasing team has worked to attract a vibrant mix of retail and restaurant tenants to expand upon the success of Wharf Phase 1 as well as the Wharf’s purpose as an active mixed-use neighborhood and entertainment area. Outdoor dining along Wharf Street and adjacent

to the waterfront has become a major draw of the Wharf, and restaurant tenants have embraced the opportunity to create outdoor dining spaces that are flexible and can extend the outdoor dining experience during shoulder seasons and in the event of inclement weather. Accordingly, these tenants have pursued café enclosures with operable windows and roofs that allow for the temporary enclosure of such spaces when needed. Such enclosures provide restaurant tenants and their employees with predictability and stability in their ability to seat patrons and meet demand regardless of weather conditions.

Café enclosures are often located in public space or on by-right buildings so they do not typically come before the Commission. Further, even for Commission-approved projects, such enclosures are often permitted under design flexibility and storefront design guidelines without further Commission review, similar to other minor ancillary structures such as canopies and awnings, so long as they are designed to be primarily open on the sides and to the sky, and so long as they do not enclose café space more than 180 days per year.

Notwithstanding this past approach, the ZA requested review of the Pavilion by the Commission because the Pavilion includes Enclosing Elements. Accordingly, on April 5, 2024, the Tenant filed an application for a Modification of Consequence¹ requesting approval of the Pavilion. At its June 27, 2024, public meeting, the Commission instructed that the application be re-filed as a Modification with Hearing so that it could evaluate the Pavilion² at a public hearing with participation from members of the community, and the Commission directed the scope of the modification be limited to the Pavilion. *See*, Tr. June 27, 2024, at 12, 14-17 and 19.³ The Applicant

¹ Now known as a Modification Without Hearing.

² Previously referred to as the “canopy.”

³ The Applicant asks that the previous record of this Z.C. Case No. 11-03M be incorporated into the record of this case.

hereby submits this Application and requests that the Commission set the Application down for a public hearing at its earliest convenience.

II. SITE AND AREA DESCRIPTION

A. Property Location and Current Use

M Street Landing is located at the southern end of the second phase of the Wharf (“**Phase 2**”). It is located at the terminus of M Street SW and functions as a plaza and gathering space for both active and passive activities. It is improved with a mix of hardscaped plaza and landscaped beds with a mix of fixed and flexible seating, a fountain, and other ancillary structures providing shade and cover. M Street Landing is bounded by Parcel 9 (a mixed-use residential and retail building), Parcel 10 (a mixed-use office and retail building), Washington Channel, and the intersection of M Street and Maine Avenue. Arena Stage is located across Maine Avenue to the east.

Parcel 9 is adjacent to M Street Landing and is improved with a mixed-use building known as Amaris which contains ground-floor retail and dining establishments on both the Maine Avenue and waterfront sides as well as condominium units above. The waterfront-facing retail space is occupied by a restaurant known as Philippe Chow, and it has café seating along the perimeter of the building, adjacent to the restaurant. The establishment within the Pavilion, which will be known as Merchants Marina, is associated with Philippe Chow and located across Wharf Street from Philippe Chow. A map showing the location of the Pavilion relative to the restaurant is shown on Exhibit G.

B. Surrounding Area and Background Regarding Approved PUD

The Property is part of the larger Wharf PUD that is generally bounded by the pierhead line of the Washington Channel of the Potomac River on the southwest and Maine Avenue on the northeast between 6th and 11th Streets, SE (the “**Overall PUD Site**”). The Maine Avenue Municipal

Fish Market is located immediately northwest of the Overall PUD Site. In total, the Overall PUD Site contains approximately 991,113 square feet (22.75 acres) of land area, and approximately 167,393 square feet (3.8 acres) of piers and docks located within the adjacent riparian area.

The Zoning Commission approved a First-Stage PUD for the Wharf pursuant to Z.C. Order No. 11-03 (the “**First-Stage PUD Order**”). Under the First-Stage PUD Order, the Commission approved a maximum landside density of 3.87 FAR with a combined gross floor area (“**GFA**”) of approximately 3,165,000 square feet. The Commission further approved a maximum waterside density of 0.68 FAR, or 114,000 square feet of GFA. As part of the approved First-Stage PUD, the Commission approved a PUD-related zoning map amendment to C-3-C (now MU-9), with the exception of Parcel 11 of the Wharf, which was rezoned to R-5-B (now RA-2), and Parcel 10 of the Wharf, which remained zoned W-1 (now MU-12). Additionally, the Commission extended the W-1 (MU-12) zone to the pierheads in the Washington Channel. Pursuant to the First-Stage PUD Order, the Commission approved the Wharf to be constructed in phases.

Accordingly, the Wharf was constructed in two phases. The first phase (“**Phase 1**”) involved Parcels 1 – 5 and various adjacent landside plazas, parks, and open spaces; Pier 4; and various waterside improvements, including Transit Pier, District Pier, 7th Street Recreation Pier, and Capital Yacht Club (the “**Phase 1 PUD Approval**”).⁴

Phase 2 was approved as a First-Stage PUD modification of significance⁵ and Second-Stage PUD by the Commission pursuant to Z.C. Case No. 11-03J(1)-(3) (the “**Phase 2 PUD Approval**”).⁶ The Phase 2 PUD Approval includes Parcels 6 – 10 and various adjacent landside

⁴ The following orders govern Phase 1 of the Wharf: Parcel 1: Z.C. Order No. 11-03C; Parcels 2 – 4: Z.C. Order No. 11-03A(1)-(4), as modified by Z.C. Order Nos. 11-03A(4A), 11-03G, 11-03H; Parcel 5: Z.C. Order No. 11-03B, as modified by Z.C. Order Nos. 11-03D and 11-03I; Pier 4: Z.C. Order No. 11-03F; 7th Street Recreation Pier: Z.C. Order No. 11-03E

⁵ The First-Stage PUD modification involved changing the permitted uses on Parcel 8 to allow hotel use.

⁶ The following orders govern Phase 2 of the Wharf: Parcels 6 – 10: Z.C. Order No. 11-03J(1)-(3), as modified by Z.C. Order No. 11-03L.

plazas, parks, and open spaces; Water Building 1; Water Building 2; and various waterside improvements, including Wharf Marina. The M Street Landing was constructed in accordance with the plans approved under the Order.

III. THE PROJECT

A. Project Description

The Pavilion is a modest structure covering approximately 754 square feet of area. The Pavilion consists of an oval pergola supported by aluminum posts with motorized wood-finished overhead roof louvers and roll-up side shades comprised of a tightly-woven mesh-like material (i.e. the “Enclosing Elements”). The Enclosing Elements will secure the Pavilion when not in use and can also allow for the enclosure of the Pavilion during inclement weather. The shape of the Pavilion, which follows the shape of the existing paved area within M Street Landing, complements the curvilinear design of the Landing and helps define the southern terminus of bustling Wharf Street. The Pavilion will contain a bar and café seating totalling approximately 40 seats. Plans depicting the Pavilion are included in Exhibit H (from the building permit) and Exhibit I (from the revised tenant layout permit). Photographs of the fully-constructed Pavilion along with a plan showing the location of the Pavilion within M Street Landing are included in Exhibit G.

The Pavilion has been constructed pursuant to a series of permits.

- Permit TL2200133, issued in June 2022 (“**First Permit**”), first approved the use of the Property and the construction of a canopy structure over the Property, both as part of the buildout of the adjacent Philippe Chow restaurant within Parcel 9. The plans and building plat associated with the First Permit depict the use as well as a pavilion structure over the use, and the face of the permit describes the use at issue in this modification: “Additional Summer Garden Bar and Seating with canopy structure, 517 sq. ft., 40 seats, 74 occ. load.”
- Permit TL2300042, issued in January 2023 (“**Second Permit**”), approved revisions to the First Permit that reflect the final design and configuration of the Pavilion. Again,

the plans and plat associated with the Second Permit show the Pavilion as it has been constructed and continue to note the use as an “exterior summer garden bar and seating area” with a “canopy structure.”

- Permit B2310006, issued in April 2024 (“**Third Permit**”), approved the structural design of the Pavilion. After securing the first two permits and preparing to start construction, the Tenant was directed by DOB to apply for this permit so that DOB could review its structural design.

During DOB’s review, the Third Permit was referred to the Office of the Zoning Administrator, and the Zoning Administrator flagged the Enclosing Elements as triggering a requirement for approval by the Zoning Commission. Ultimately, the ZA agreed to sign off on the permit so that construction of the previously-approved Pavilion could proceed provided that:

- (1) the Tenant applied for a modification of consequence to secure Zoning Commission approval of the Enclosing Elements, and
- (2) the Tenant agreed that it would not operate the Enclosing Elements during operating hours until such time as the Commission approves these elements.

As directed, the Tenant filed the modification of consequence application and submitted a letter to the ZA affirming its agreement with the restrictions on operation of the Enclosing Elements, a copy of which is attached as Exhibit O. DOB then issued the Third Permit, and the Tenant proceeded to complete construction of the Pavilion. The Pavilion is currently not in use pending approval of this Modification.

B. Project Goals and Objectives of Using the PUD Process

The primary goals of the Wharf PUD involve revitalization and activation of the Southwest Waterfront with a mix of uses and year-round activity that support dynamic parks and open spaces. *See* Order at FOF 37. The Phase 2 PUD Approval furthered these goals through an extensive, programmed retail environment at street level that included not only ground-level retail, service, and restaurant spaces within five major Phase 2 buildings, but also through a series of water-side

buildings, kiosks, and seating areas (café, fixed, and flexible) that would activate the unique pedestrian network and open spaces throughout the Wharf. The design of Phase 2 supports these goals through the creation of “mixed-use zones” and other café seating areas that accommodate café activity beyond the building storefronts and, in some locations, into and within the public open space areas such as M Street Landing.

C. Outreach Efforts and Status of Discussions with ANC 6D

Advisory Neighborhood Commission (“ANC”) 6D has been engaged in the process surrounding the Philippe Chow and Merchant Marina uses for over two years. The Tenant first secured its liquor license in 2022. Although ANC 6D did not participate in the approval process for the original liquor license, the information provided to ANC included plans for the Pavilion and a description of its use. Subsequently, at ANC 6D’s request, the Tenant voluntarily agreed to negotiate a “cooperative agreement” with the ANC regarding both its Philippe Chow restaurant and the Pavilion’s bar use, Merchants Marina. Presentations—including plans for the Pavilion—took place 2 years ago in Spring 2023, and representatives of the Applicant addressed questions about the Pavilion’s use and structure at that time. In response to ANC 6D’s concerns about the impact of the proposed use, a cooperative agreement was negotiated and eventually signed in April 2024 (the “**Cooperative Agreement**”). A copy of the Cooperative Agreement is attached as Exhibit P. The Cooperative Agreement explicitly acknowledges the Pavilion as a “freestanding outdoor bar café concept” and also calls for “reasonable architectural improvements” to limit noise impacts. The proposed Enclosing Elements will do just that.

With this Modification—which is now being sought by the Applicant rather than the Tenant—the Applicant has and will continue to actively engage the ANC, both through continued discussion at formal ANC meetings and through informal meetings and discussions with the Commissioners. These conversations will also provide the Applicant, in its capacity as the operator

of the Wharf, with an opportunity to establish new avenues for ongoing communication with the ANC and other neighborhood stakeholders on not only concerns surrounding the operation of the Wharf but also on issues of mutual concern.

IV. THE MODIFICATION SATISFIES THE EVALUATION CRITERIA

The Commission previously reviewed and approved the First-Stage PUD and the Second-Stage PUD in accordance with the applicable requirements. To this end, after thorough and extensive proceedings, the Commission concluded that the PUD:

- Judged, balanced, and reconciled the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects;
- Is not inconsistent with the Comprehensive Plan as well as other adopted public policies and active programs related to the subject site;
- Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits; and
- Includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

11-X DCMR §§ 304.3 and 304.4. The Commission also concluded that the PUD met the minimum area requirement. 11-X DCMR § 301.

The Modification continues to satisfy the criteria by which the Commission must evaluate a PUD pursuant to Subtitle X § 304. Pursuant to Subtitle Z § 704.4, the review of the modification is “limited to impact of the modification on the subject of the original application” and it is intended that the Commission not “revisit its original decision” in a PUD modification. In reviewing a Modification with Hearing of an approved PUD, the Zoning Commission must find that the modification is not inconsistent with the above evaluation standards. Therefore, any reconsideration of the above conclusions regarding the balancing of benefits and development

incentives, project impacts, and consistency with the Comprehensive Plan is also limited solely to impact of the Modification on continued compliance with these requirements. As set forth below, the Project is consistent with the approved PUD and satisfies the PUD evaluation criteria, as applicable to the Modification.

A. Consistency with Prior PUD Approvals

The Project is consistent with the parameters of the First-Stage PUD and Second-Stage PUD, which approved active ground-floor restaurant and café seating throughout the Wharf, including within M Street Landing, acknowledged the importance of lengthening the comfortable use of outdoor spaces into shoulder seasons through use of enclosing elements and outdoor heating systems, and concluded that low-scale structures within M Street Landing would not occlude view corridors. A visual summary of this analysis is included as Exhibit L.

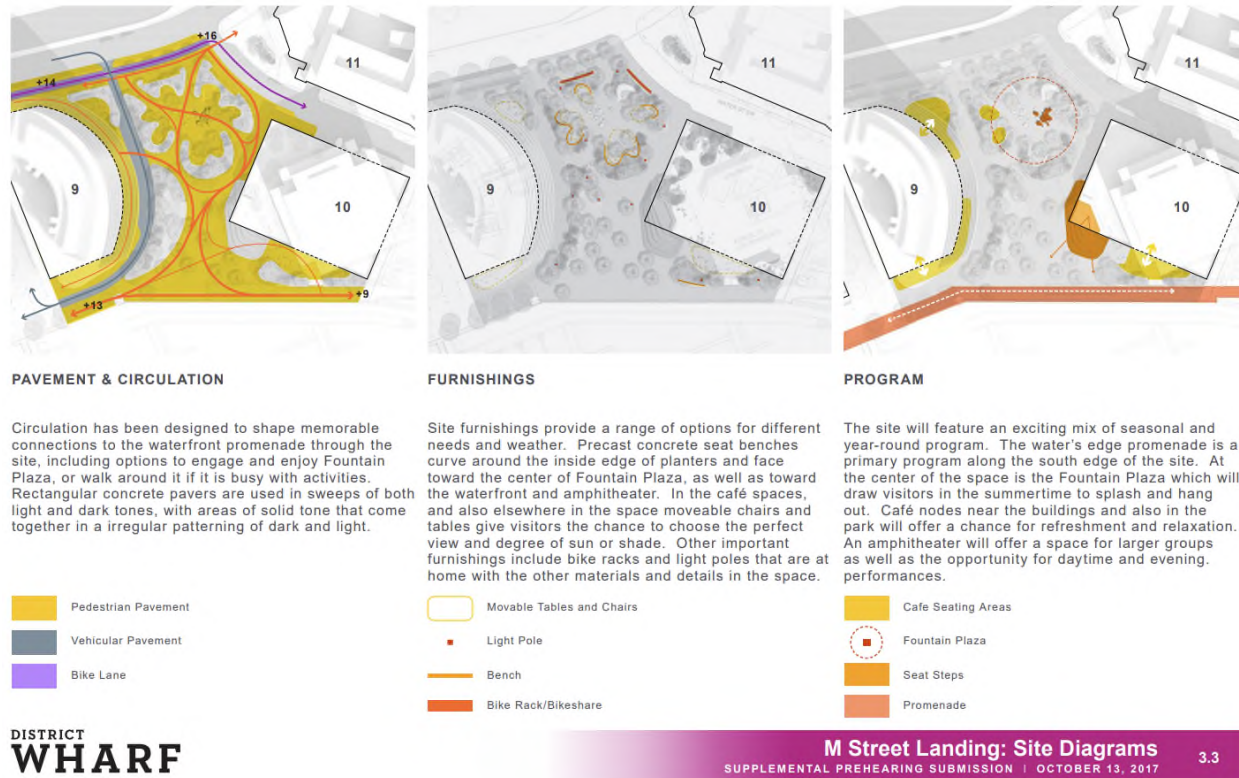
1. M Street Landing Program and Design

The PUD approvals have always called for activating uses such retail and concession structures in M Street Landing. Z.C. Order No. 11-03J(1), FOF 62. The approved First-Stage PUD describes M Street Landing as a “a new urban plaza” and states that it will have two 20-foot tall “retail pavilions.” The First-Stage PUD site plan for M Street Landing is attached as Exhibit J.

In the Second-Stage PUD, M Street Landing continued to serve as a major gathering space. The space was designed with a series of curvilinear landscaped and hardscaped areas organized into a series of “outdoor rooms,” and while the site plan evolved from the First-Stage PUD it was still intended to support both passive recreation and active uses. Z.C. Order No. 11-03J(1), FOF 62. The Second-Stage PUD site plan is attached as Exhibit K.

Among other uses, M Street Landing was specifically designed to accommodate café seating associated with nearby street-level restaurant uses, which would spill out across pedestrian streets and into the adjacent open spaces, as shown and described in Figure 1.

Figure 1: Approved Program for M Street Landing⁷



2. M Street Landing View Impacts

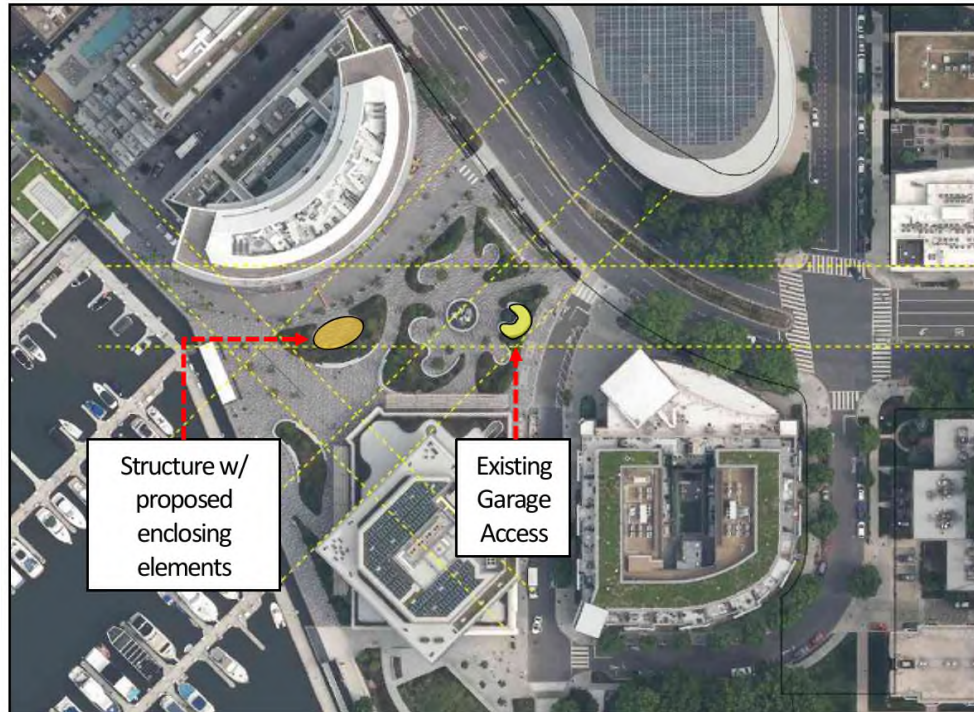
In approving the First-Stage PUD, the Commission explicitly concluded that structures within M Street Landing would not impact view sheds along the M Street view corridor because of both mature trees and the road configuration.⁸ Z.C. Order No. 11-03, FOF 20 and 38. The final design of M Street Landing approved in the Second-Stage PUD, which included not only mature trees but also a large fountain and a canopy over an entrance to the underground parking area, would continue to occupy space within the view corridors, leading the Office of Planning to conclude that M Street Landing would form a “view terminus for the M Street corridor. Z.C. Case

⁷ Page 3.3 of the “Overall Plan Elements” component of the approved Phase 2 PUD Plans (Exhibit 21A of the record in Z.C. Case No. 11-03J).

⁸ “The Commission further finds that the views west along M Street toward the water are adequately preserved...the Applicant proposes through the PUD to provide an enhanced vista toward the water that will exist all year round.” Z.C. Order No. 11-03, FOF COL 12.

No. 11-03J, Exhibit 33 (OP Hearing Report dated Oct. 27, 2017). The Pavilion sits within these same view corridors, as shown below in Figure 2, and, with a height that is comparable to surrounding vegetation and structures, has no greater impact on views than the other existing improvements.

Figure 2: View Corridors

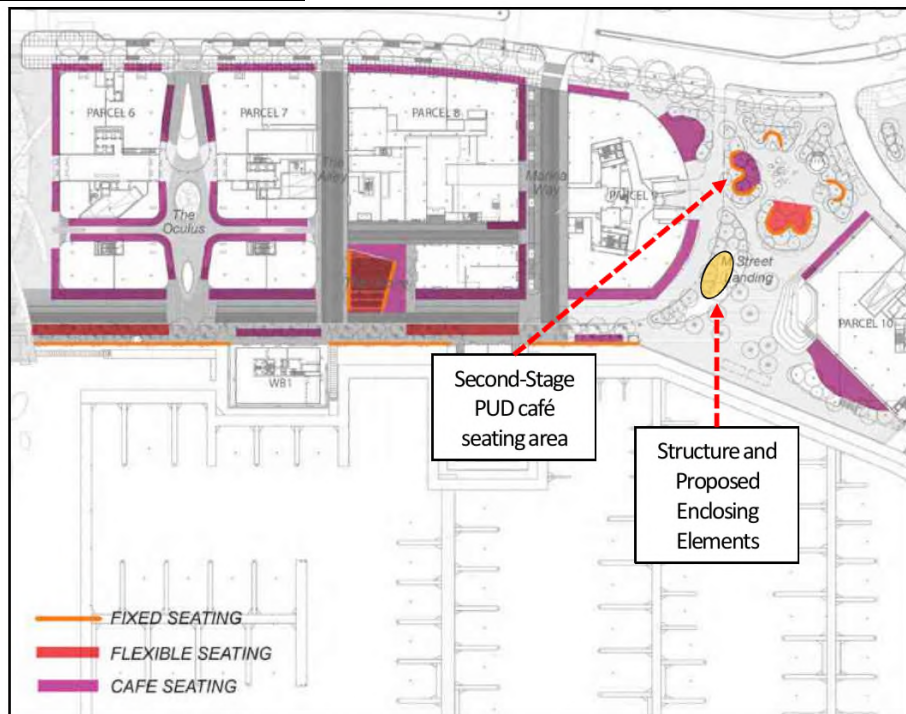


3. M Street Landing Café Seating

While the approved Second-Stage PUD plans no longer included the retail pavilions that were shown in the First Stage PUD, the plan for M Street Landing continued to include café seating areas. Z.C. Order No. 11-03J, FOF 62. Like other café seating areas throughout the Wharf, the café seating areas within M Street Landing were distinguished from other “fixed” and “flexible” seating areas shown in the approved plans because they were intended to be limited to use by a retail tenant. As shown in Figure 3 below, one such café seating area for a future tenant was shown opposite the Amaris building, across Wharf Street and near the fountain on the Approved Plans. During construction of M Street Landing, the café seating space was moved approximately 115

feet to the west—basically from one side of the building entrance to the other. This allowed the café seating to align with the adjacent ground-floor space now occupied by the Philippe restaurant, improving the ability for the restaurant and outdoor Pavilion use to share operational features such as restrooms.

Figure 3: Café Seating



Fixed, Flexible, and Café Seating Diagram from Second-Stage PUD

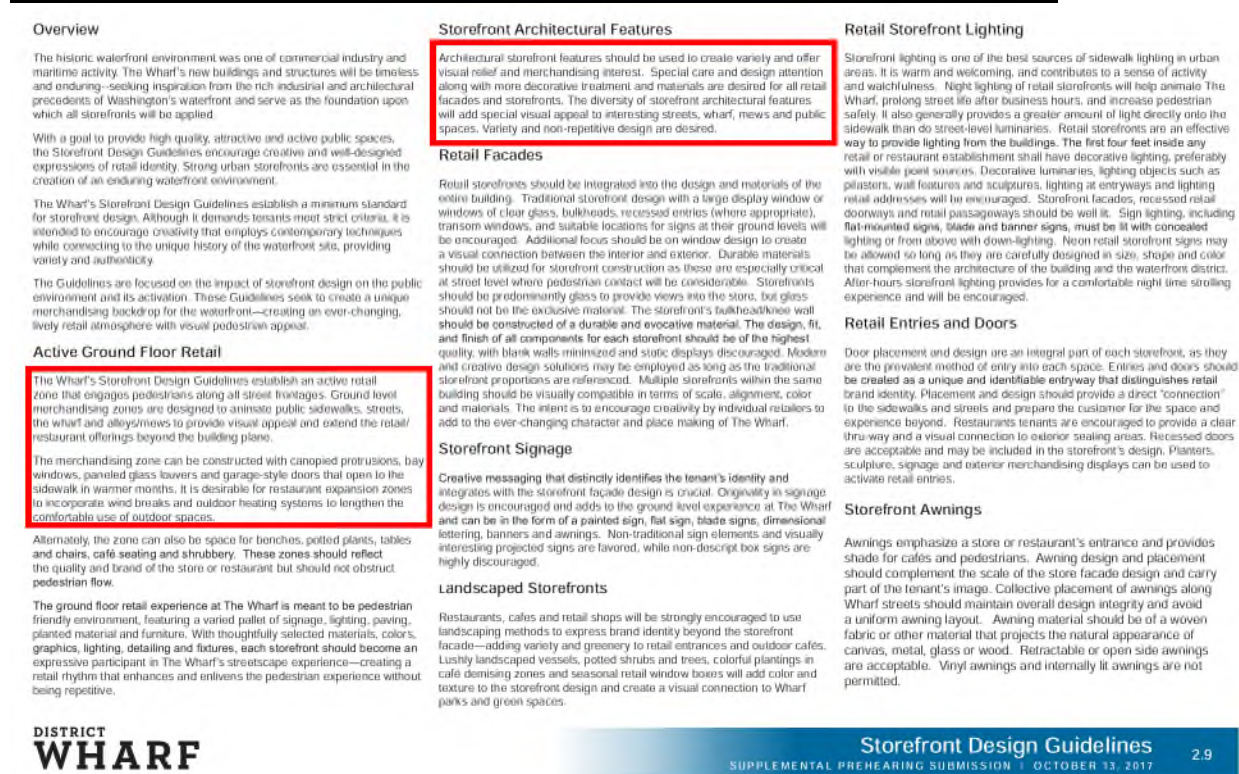
Z.C. Order No. 11-03J, Exhibit 21A3, Sheet 2.5

* Annotation added for clarity

4. Storefront Design Guidelines and Enclosure of Café Seating

The Storefront Design Guidelines of the approved Second-Stage PUD plans intended for outdoor café spaces to “extend retail/restaurant offerings beyond the building plane” not only adjacent to the primary buildings but also within waterside buildings and kiosks on the west side of Wharf Street and the Promenade and within M Street Landing. As highlighted in Figure 4 below, the Storefront Design Guidelines also envisioned the construction of projecting canopies and other structures over such outdoor dining areas as well as other measures such as “wind breaks and outdoor heating systems to lengthen the comfortable use of outdoor spaces.”

Figure 4: Excerpt from approved Phase 2 PUD Plans, Overall Plan Elements⁹



5. Analysis

Here, the Pavilion and its Enclosing Elements, which facilitate the extension of café activity into M Street Landing and the use of the space even during less-than-ideal weather conditions, is consistent with the intent of the PUD approvals, which expressly called for café seating within M Street Landing as a part of its overall program. The Pavilion and its Enclosing Elements also follow a rhythm of similar structures and enclosures that have already been constructed for other establishments along Wharf Street, providing shade, wind breaks, and temporary conditioning consistent with the Storefront Guidelines and Café Seating Diagram approved in the PUD, as shown on [Figure 3](#) and [Figure 4](#) above. Importantly, the proposed

⁹ Page 2.9 of the “Overall Plan Elements” component of the approved Phase 2 PUD Plans (Exhibit 21A of the record in Z.C. Case No. 11-03J).

Enclosing Elements are not a full enclosure; rather, they only seek to provide an operable cover to provide shade and shelter.

The Pavilion does not adversely affect other aspects of the PUD.

- Location: The location of the Pavilion maintains ample room for pedestrian flow, as it does not project out into Wharf Street. Furthermore, it nestles into the landscaped area that is off axis from Wharf Street and thus does not interrupt the viewshed along Wharf Street.
- Design: The design of the Pavilion complements the curvilinear forms of M Street Landing and Amaris approved in the PUD.
- Height: At just under 11 feet, 3 inches tall, the Pavilion is significantly shorter in height than the 20-foot retail pavilions called for in the First-Stage PUD.
- Density: When fully enclosed, the Pavilion adds approximately 754 square feet of gross floor area to the PUD, which falls within the excess density that remains available within the overall density approved in the First-Stage PUD.

Finally, the Project does not result in a reduction in the amount of public gathering space within M Street Landing. Indeed, the adjustment to the location of the café seating within M Street Landing away from the area around the central fountain and down within the landscaped crescent, closer to the water, increases the area around the fountain that is available for public gathering distinct from café seating areas associated with restaurant establishments that line Wharf Street.

B. The Application is Properly Considered as a Modification to the Second-Stage PUD

The Modification at issue is limited to the approval of the Pavilion. Such a modest structure is properly evaluated as a change to the approved Second-Stage PUD. The Pavilion does not impact the elements that were approved in the First-Stage PUD, such as appropriateness, character, scale, height, mix of uses, proposed rezoning, or consistency of the proposed development with the Comprehensive Plan, and so those aspects should not be revisited in the Modification.

C. The Modification Satisfies the Evaluation Criteria

1. Balancing of Public Benefits and Development Incentives

The Commission previously found the public benefits provided in the Wharf PUD to be commendable and commensurate with the requested flexibility, as detailed in the First-Stage PUD Order, the Phase 1 PUD Approval, and the Phase 2 PUD Approval. Café seating within M Street Landing was already expressly approved as a part of the PUD, and the modest amount of GFA within the Pavilion structure is within the landside density approved under the First Stage PUD. Thus, the Modification does not materially affect the prior approved development incentives or trigger the need for the Commission to rebalance the relative value of the public benefits with the degree of development incentives requested.

2. Evaluation of Impacts

The Commission already concluded that the uses within the approved PUD—again, including café seating within M Street Landing—were either favorable, capable of being mitigated, or acceptable given the benefits and amenities of the PUD. Here, the Modification is consistent with these prior conclusions for the reasons discussed below and shown on the Planning Analysis attached as Exhibit L. The modest Pavilion structure will allow the Tenant to utilize the proposed eating and drinking establishment space within M Street Landing for much of the year, consistent with the goals of the PUD’s previously approved Storefront Guidelines. The Modification will also not result in adverse impacts on the other contemplated uses in M Street Landing as the Project will not infringe upon the green spaces, plaza spaces, or publicly available seating areas within M Street Landing. Instead, it will complement and enhance these spaces by locating café seating closer to the active retail corridor along Wharf Street and away from the more contemplative fountain area. Finally, the Pavilion will not have unacceptable adverse impacts given the purpose and context of the PUD, which is a dynamic urban environment with a year-

round mix of daytime and nighttime uses. Z.C. Order No. 11-03J(1) at FOF 37-38. The modest amount of additional café seating at the Property will have minimal impacts given the overall level of activity throughout the Wharf, including within ground-floor establishments at the Amaris and extensive activity through M Street Landing.

3. Consistency with the Comprehensive Plan

The Commission undertook a thorough 10-page evaluation of the consistency of the PUD—including active retail uses throughout the Wharf and within M Street Landing—with the Comprehensive Plan and other planning studies during its evaluation of the First-Stage PUD, which is the stage at which the Commission ordinarily considers the compatibility of a proposed PUD with the Comprehensive Plan. Z.C. Order No. 11-03 at 51-79; Z.C. Order No. 11-03J(1) FOF 152-153. Nevertheless, as it did during the review of the Second-Stage PUD, the Applicant provides an analysis of the Modification’s consistency with the Comprehensive Plan.



Racial Equity and the Comprehensive Plan

As part of its Comp Plan analysis, the Commission considers the Application through a racial equity lens. 10-A DCMR § 2501.8. Equity is a primary focus of the Comp Plan, especially in the context of zoning where certain priorities stand out, including affordable housing, avoiding displacement of existing residents, and creating / increasing access to opportunity. Equity is both an outcome and a process, and the Commission considers racial equity as an integral part of its evaluation of to whether a proposed zoning action is “not inconsistent” with the Comp Plan. 10A DCMR § 2501.8. Much like the Comp Plan evaluation itself, the focus of the racial equity lens depends upon the type and scope of zoning action being sought, among other factors. In this case, the proposed zoning action is a modification to a previously approved PUD that has already gone through extensive community engagement during the initial PUD proceeding and so any evaluation is limited to the specific aspects of the proposed PUD modification.

Evaluation of Comprehensive Plan Policy Guidance

Per Part I (Racial Equity Analysis Submissions – Guidance Regarding the Comprehensive Plan) of the Commission’s Racial Equity Tool, the Applicant evaluated the Application’s consistency with relevant policies of the Comp Plan. Overall, the Applicant finds the proposed modifications to the Approved PUD to be not inconsistent with the Comp Plan. Regarding racial equity, the Applicant finds that the potential impacts and outcomes of the proposed modification will largely be neutral as they relate to racial equity, with the potential for modest positive outcomes in access to economic opportunity.

In accordance with guidance provided by the D.C. Court of Appeals, the Applicant was careful to identify any instances where the proposal may be viewed as being inconsistent with certain Comp Plan policies. Upon review, the Applicant did not identify any potential inconsistencies between the proposed modifications and applicable Comp Plan policies that would warrant a balancing against Comp Plan consistencies.

<u>Future Land Use Map</u>	<u>Generalized Policy Map</u>
	

- Future Land Use Map. The Property is located on land that is designated for a mix of Low Density Commercial and Parks, Recreation, and Open Space use. The proposed use and

scale of the Pavilion is expressly consistent with this designation. Adjacent property to the northwest is located within land designated for a mix of High Density Residential and High Density Commercial use, and the proposed eating and drinking space is modest compared to the scale and mix of uses within that area.

- Generalized Policy Map. The Property is located within a Regional Center. Such areas are likely to have “concentrations of restaurants, movies, and other leisure or entertainment facilities,” and the proposed Pavilion furthers these goals.
- Lower Anacostia / Near Southwest Area Element. The Pavilion will further goals for the Anacostia Waterfront Area Element, including the development of new neighborhoods with substantial amounts of commercial space that is consistent with the Future Land Use Map and focused along Maine Avenue and M Street. AW-1.1.2; AW-1.1.7; AW-2.1.1. The Pavilion is not inconsistent with Policy AW-2.1.1 and Policy AW-2.1.2 with respect to views, waterfront access, and public spaces and plazas; as detailed above, the Pavilion does not adversely affect viewsheds given the scale of trees and other elements within M Street Landing, the Pavilion does not obstruct Wharf Street, and the Pavilion has been located away from the other major outdoor “rooms”—the area around the fountain and the large plaza in front of Parcel 10.
- Land Use Element. The Pavilion furthers the development of the Wharf as a mixed-use regional center that combines high-density residential, successful retail, and open space uses, consistent with the Future Land Use Map and Area Element guidance. LU-1.2.4; LU-1.3.2; LU-2.4.4. The Pavilion is also not inconsistent with Policy LU-2.3.2, because it facilitates a modest amount of commercial use in an area already planned for such use within the broader context of an active regional entertainment center. Indeed, the location of Merchants Marina within an established entertainment district is expressly consistent with Policy LU-2.4.7.
- Economic Development Element. The Pavilion will facilitate the development of an expanded eating and drinking establishment use at the Property, which supports the continued contribution of the Wharf to tourism, hospitality, and food services, one of the District’s core industries. ED-1.1.1; ED-1.1.6; ED-1.1.7; ED-2.2.5; ED-2.3.10.
- Parks, Recreation, and Open Space Element. As with similar policies in the Lower Anacostia / Near Southwest Area Element, the Modification is not inconsistent with Policies PROS-3.2.1 through 3.2.4 that call for maintaining public access to the waterfront. As the Commission has already recognized, low-scale improvements within M Street Landing do not block views to the water, and the Pavilion will not impinge on pedestrian access networks to the water, either. Indeed, the Pavilion enhances the operation of M

Street Landing as a high-quality, multifunctional outdoor plaza, in furtherance of Policy PROS-4.3.2.

- Urban Design Element. The Pavilion furthers goals for hardscaped plazas in urban settings as public gathering spaces along the waterfront because it provides café-style seating that will enliven the site with pedestrian activity, provide eyes on the street to create a sense of safety, create visual interest, and draw activity toward the water. UD-1.3.2; UD-3.3.3. The Pavilion also furthers Policy UD-3.3.4, which calls for the integration of elements to provide shade and wind protection to allow use notwithstanding weather conditions. As discussed above, the Pavilion is not inconsistent with urban design policies that encourage visual and pedestrian access to the water. (Indeed, Figure 9.11, which otherwise identifies neighborhood street connections to the river, does not even identify M Street Landing as one such connection.)

Racial Equity as a Process

The Commission’s Racial Equity Tool emphasizes community outreach and engagement, which are expected to begin at the inception of any proposed zoning action. The information contained in **Table 1** addresses the questions set forth in **Part II (Community Outreach and Engagement)** of the Racial Equity Tool, which outline efforts taken by applicants to engage the community early in the zoning process.. The Applicant has and will continue to engage during the PUD modification process.

Table 1: Community Outreach and Engagement
Description of affected community (including defining characteristics).
The immediately affected community is the Wharf, which is operated and managed by the Applicant. ANC 6D represents the Wharf as well as other surrounding neighborhoods, and the Applicant has engaged primarily with representatives of ANC 6D regarding the Project.
Characteristics of the affected community that influenced outreach plan / efforts.
ANC 6D’s elected leaders reflect a broad range of constituents from a diverse series of perspectives; some representatives have served on the ANC for many years and are familiar with prior discussions regarding the PUD, while other representatives bring fresh perspectives and viewpoints to the discussion.
Community outreach timeframe / dates of major meetings and points of engagement
The Applicant and its Tenant have been engaged in discussions with ANC 6D for a number of years regarding the Project. These discussions date back to at least early 2023, where the compatibility of the Pavilion with the approved PUD was discussed as a part of the liquor license process. More focused discussions regarding the Pavilion and its Enclosing Elements took place at multiple meetings in Spring 2024 during the consideration of the “modification of consequence”

application. More recently, the Applicant has stepped in to handle the Application and has engaged in a series of informal conversations with ANC Commissioners regarding overall operations at the Wharf and including the Pavilion. These conversations led to a “re-introduction” of the Project at ANC 6D’s recent May meetings. While the ANC and the Applicant still remain at odds regarding the Pavilion, both parties have continued to engage in dialogue, and the Applicant will provide further updates as the process continues.
Members of the affected community that would potentially benefit by the proposed zoning action.
Some residents will benefit from the further growth of the variety of eating and drinking establishments at the Wharf, and other residents may benefit from additional entry-level job opportunities.
Members of the affected community that would potentially be burdened by the proposed zoning action.
Residents who live at the Amaris may be burdened by the incremental additional impacts associated with the use of the Pavilion.
Potential positive outcomes of the proposed zoning action identified by the affected community.
None.
Potential negative outcomes of the proposed zoning action identified by the affected community.
ANC 6D members have raised concerns about potential visual impacts, impacts on pedestrian access and walkways, reduction in open space, and noise and other operational impacts of the proposed use.
Changes / modifications made to the proposed zoning action that incorporate / respond to input received from the affected community.
No changes have been made to the Pavilion.
Input received from the affected community not incorporated into the proposed zoning action.
Discussed above.
Efforts taken to mitigate potential negative outcomes identified by the affected community.
Through the zoning process, the Applicant has endeavored to demonstrate that the visual and pedestrian impact concerns are unfounded. As a result of last spring’s discussions regarding the Pavilion, the Applicant also removed a nearby Airstream trailer that was intended to facilitate a temporary eating and drinking establishment. Potential negative impacts associated with the use and operation of the Pavilion have been addressed through the Settlement Agreement.

Racial Equity as an Outcome

As an outcome, racial equity is achieved when race no longer determines one’s socioeconomic outcomes, and when everyone has what they need to thrive no matter where they live or their socioeconomic status. 10-A DCMR § 213.9. **Table 2** considers the proposed PUD

modification relative to any anticipated positive and negative impacts and/or outcomes to racial equity. Upon consideration, any impacts / outcomes resulting from the proposed PUD modification are largely anticipated to be neutral as they relate to racial equity, with the potential for modest positive outcomes in the physical environment and access to economic opportunity.

Table 2: Evaluation of Zoning Action Through a Racial Equity Lens	
Direct Displacement	No impact
Indirect Displacement (Economic and Cultural)	No impact
Housing	No impact
Physical	The Modification will facilitate modestly positive outcomes in the physical built environment by further distancing café seating from M Street Landing’s landscaped fountain zone, adding an additional active use to enliven M Street Landing’s open plaza spaces, and creating additional eyes on the street to improve safety.
Access to Opportunity	The Modification will facilitate modestly positive outcomes through additional job opportunities at a transit-accessible location.
Community	Neutral impact

V. CONCLUSION

For the foregoing reasons, the Applicant submits that the Application meets the standards of Chapter 3 of Subtitle X, and Chapters 3 and 7 of Subtitle Z of the Zoning Regulations for a modification to the Approved PUD, and thus respectfully requests approval of this Modification with Hearing. The request is consistent with the intent of the Commission in approving the Approved PUD and will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map or affect neighboring properties. Accordingly, approval of the Modification with Hearing is appropriate, and the Applicant respectfully requires the Commission to set the Application down for a public hearing at its earliest convenience.

Respectfully submitted,

GOULSTON & STORRS PC

/s/

David M. Avitabile

/s/

Olivia K. Torres*

**Admitted in N.Y. only. Application submitted for admission to the D.C. Bar. Supervised by members of the D.C. Bar.*

Date: June 9, 2025