

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14D

Z.C. Case No. 04-14D

Florida Rock Properties, Inc. and Riverfront Holdings I, LLC
(Second-Stage PUD – RiverFront on the Anacostia – Phase II)

February 13, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on January 23, 2017, to consider an application of Florida Rock Properties, Inc. and Riverfront Holdings I, LLC (collectively, the “Applicant”) for the review and approval of the second stage of an approved PUD and PUD-related map amendment. The Commission considered the application pursuant to Chapter 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”), effective May 12, 1958, as amended through September 5, 2016 (the “1958 Zoning Regulations”). The application also requested approval of the design review required for the marina pursuant to Chapter 16 of the 1958 Regulations. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4 of the 2016 District of Columbia Zoning Regulations, Title 11 of the DCMR, effective September 6, 2016, as amended (the “2016 Zoning Regulations”). The Commission approves the application, including the design review, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the application is comprised of a portion of Lot 14 in Square 708 and includes the adjacent riparian area (the “Property”). (Exhibit [“Ex.”] 1, 19.)
2. In June 2016, the Applicant submitted an application for second-stage PUD approval for Phase II of the Stage 1 PUD approved by Z.C. Order No. 04-14B. The application sought approval to develop a 130-foot-tall mixed-use building with retail and residential uses above and below-grade parking. (Ex. 1-2.)
3. The application was set down for a public hearing at the Commission’s September 26, 2016 public meeting. Notice of the public hearing was published in the *D.C. Register* on December 2, 2016 (*D.C. Register*, Volume 63, Issue 50), and was mailed to Advisory Neighborhood Commission (“ANC”) 6D and to owners of property within 200 feet of the second-stage PUD site. (Ex. 14-15.)

4. A public hearing was conducted on January 23, 2017. The Commission accepted Marius Radulescu as an expert in the field of architecture, Robert Schiesel as an expert in the field of traffic engineering, and Don Hoover as an expert in the field of landscape architecture. The Applicant provided testimony from these experts as well as from Frederick Rothmeijer, a Founding Principal of MRP Realty, and David H. deVilliers, Jr., the President of FRP Development Corp. (1/23/2017 Transcript [“Tr.”] at 18-58.)
5. In addition to the Applicant, ANC 6D was automatically a party in this proceeding. ANC 6D submitted a resolution dated November 16, 2016 into the record in support of the application. (Ex. 12.)
6. A letter from Kristin Taddei, a Planning Advocate with Casey Trees, was filed in the record in support of the Project. The letter noted appreciation of the Applicant’s efforts to include significant trees in its landscaping plan and diverse plantings at the Property. (Ex. 24.)
7. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) recommending approval of the application. The Commission also received a report from the Department of Energy and the Environment (“DOEE”) recommending approval of the application. (Ex. 20, 21, 22.)
8. The Commission also heard testimony from the ANC Single Member District representative in support of the application. No person or party testified in opposition to the application. (Ex. 28.)
9. At the close of the hearing, the Commission asked the Applicant for further information on the issues it raised during the hearing regarding: (1) roof shade element, (2) green spaces, (3) architectural notes on the plans, (4) affordable housing unit floor plan, and (5) levels of affordability provided for the Inclusionary Zoning units. (1/23/2017 Tr. at 70-72.)
10. The Applicant filed its post-hearing submission addressing the Commission’s comments on January 30, 2017. (Ex. 30-30B7.)
11. The Commission took final action to approve the application on February 13, 2017.

First-Stage PUD Approval

12. Pursuant to Z.C. Order No. 850, a first-stage PUD was first approved in 1998 for the Property for an office and retail project consisting of 1.5 million square feet of gross floor area in two buildings (6.0 floor area ratio [“FAR”]), with a maximum height of 130 feet. A second-stage PUD was approved in connection with Z.C. Order No. 910 the following year in 1999. The second-stage PUD was consistent with the first-stage approval. It provided amenity spaces along the waterfront, as well as proposed neighborhood-serving retail and exhibition space. The PUD included a significant amount of “amenity

property” that would be dedicated to maritime programs, residential use (when market appropriate), and parkland. Nevertheless, the PUD continued to focus on solely commercial uses. (Ex. 1.)

13. Prior to the expiration of the PUD approved by Z.C. Order No. 910, the Applicant filed an application to extend the second-stage PUD. The Commission denied the request (Z.C. Order No. 910-A) but ultimately granted a conditional extension of the project as a first-stage PUD. Since the approval of the second-stage PUD in 1999, planning efforts were underway to establish the Capital Gateway Overlay and to construct a stadium for the Nationals baseball team. In light of the changed conditions of the surrounding area, the Commission wanted the opportunity to review the proposed development for the Property. OP had suggested a series of conditions for the approval of the extension of the first-stage PUD, which were adopted by Z.C. Order No. 910-B. (Ex. 1.)
14. In 2004, the Applicant filed an application for second-stage PUD approval for the Property. Plans for the ballpark were released prior to the hearing, forcing the Applicant to reconsider some aspects of the project. The PUD was ultimately approved in 2008 pursuant to Z.C. Order No. 04-14. The approval contemplated four phases of development that focused primarily on office development. Phases I and III of the approval were for office buildings, Phase II was for a residential building, and Phase IV was for a hotel. As part of Z.C. Order No. 04-14, the Commission approved a PUD-related map amendment for the Property from the CG/W-2 Zone District to the C-3-C Zone District. (Ex. 1.)
15. In 2013, the Commission approved a modification of this approval. Pursuant to Z.C. Order No. 04-14B, the focus of the development shifted from commercial office buildings to residential buildings. Z.C. Order No. 04-14B approved two residential buildings in Phases I and II, a commercial office building in Phase III, and a hotel in Phase IV. This application is for the residential building set forth for Phase II in Z.C. Order No. 04-14B. (Ex. 1.)
16. In its Stage 1 approval for Phase II, the Commission approved a 130-foot-tall, 261,515-square-foot residential development with approximately 5,630 square feet of retail uses. The residential building included approximately 282 units and 262 below-grade parking spaces. (Ex. 1B, p. 10.)

Second-Stage PUD Approval

Overview of the Property

17. The PUD Site is located along Potomac Avenue, S.E. (Square 708, Lot 14). It is bound by Potomac Avenue on the north, the Anacostia River on the south, Phase I to its east, and Phase III to its west. It is located between Nationals Park and the Anacostia River to the north and south, respectively, and Yards Park and the future soccer stadium to its east and west, respectively. (Ex. 1 at p. 6; 27A1.)

18. The Property comprises a portion of Lot 14, as depicted in the site plan. (Ex. 19B1.) It is 48,596 square feet in size. The adjacent riparian area is 108,190 square feet in size. (Ex. 19 at 2; 19B5 at Sheet A100.)
19. The Property, like those surrounding it, was initially zoned for industrial uses. A PUD-related map amendment to the C-3-C Zone District was approved for the Property in connection with Z.C. Case No. 04-14. The Applicant does not propose modifying the approved C-3-C Zone District. The marina is located in the CG/W-2 Zone District. (Ex. 1D, 19, 19B2.) As such, the marina is subject to the require of § 1610.1 that “all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission” in accordance with the requirements of the §§ 1610.3 and 1610.4. The Applicant requests the Commission to undertake this review as part of this PUD application. The Commission’s application of the applicable design review criteria appears in Finding of Fact No. 49 below.
20. To the east of the Property is Diamond Teague Park, which was constructed with the help of an \$800,000 contribution made by Florida Rock, as a condition of the Z.C. 04-14B Order. (Ex. 27A1.)

The Project

21. The application is for a 130-foot-tall building with approximately 7,709-11,436 square feet of retail use, a range of 250-285 residential units, and up to 185 below-grade parking spaces. (Ex. 1; 30B5 at Sheet A100.)
22. The total gross floor area for the Project is approximately 255,627 square feet for a total FAR of approximately 5.3 and a lot occupancy of approximately 44%. The building will have a maximum height of approximately 130 feet. (Ex. 19B5.)
23. This Project design is consistent with the Stage 1 approval in Z.C. Order No. 04-14B. The primary change to the Stage 1 approval is an increase in the retail square footage. The Commission finds that the retail use is consistent with the general approval of Stage 1 and with the Comprehensive Plan for this area. (Ex. 1.)
24. At the hearing, the Applicant’s representatives testified that the building design would complement the existing Phase I building that has been constructed at the PUD site. The landscaping and materials will match the Phase I project and continue the overall riverfront design aesthetic. (1/23/2017 Tr. at 25.)
25. The Project design complements Phase I and will improve the pedestrian experience surrounding the entire Property, as well as promote waterfront connectivity through the Esplanade of the Project. The Project will feature multiple pedestrian entrances along Potomac Avenue, as well as vehicular entrances from Florida Rock Alley. (Ex. 1.)

26. At the hearing, the project architect provided a detailed description of the building design intent, façade design, materials selection, and surrounding context. The architect noted the proposed components of the building design including type and color of materials, ground-floor design and rooflines, and use of balconies were all incorporated based on their compatibility with Phase I in order to articulate the building's facades. The architect also testified that the location of the building between the ballpark and the Anacostia River inspired the building design. (1/23/2017 Tr. at 2-11.)
27. Based on the report from Gorove-Slade, the Applicant's traffic consultant, the site plan will help mitigate vehicular impacts of the Project by providing easy access to bicycle facilities, including trails and short-term and long-term bicycle spaces. In the Stage 1 approval in paragraph 17 of the Conclusions of Law in Z.C. Order No. 04-14B, the Commission determined that the Project would not cause adverse traffic impacts. The Commission finds that the Stage 2 plans are consistent with the approved Stage 1 Project, and therefore, there will be no adverse traffic impacts from the Project as discussed below: (Ex. 26, 30.)
- a. Vehicular access is proposed along Potomac Avenue, which is consistent with what was approved during the Stage 1 PUD;
 - b. The proposed parking and loading is adequate to support the parking and loading needs of the residential, retail, and marina uses and is consistent with the Stage 1 approval;
 - c. Pedestrian facilities will be improved along the perimeter of the site and additional internal connectivity will provide a high-quality pedestrian environment along the Anacostia Riverfront;
 - d. The Project will provide approximately 106 bicycle parking spaces, including both surface spaces and spaces within the parking garage. The extensive bicycle facilities will help vehicular impacts of the Project by providing convenient transportation alternatives; and
 - e. The Applicant's Transportation Demand Management ("TDM") Plan includes significant TDM measures, including: (1) meeting or exceeding the 2016 Zoning Regulations requirements for short- and long-term bicycle parking; (2) unbundling all parking from the costs of a lease or purchase, which parking costs will be set at no less than the charges of the lowest fee garage located within a quarter mile; (3) posting all TDM commitments online, publicizing availability, and allowing the public to see what commitments have been promised; (4) identifying a TDM Leader (for planning, construction, and operations) to work with residents of the building to distribute and market various transportation alternatives and options; (5) providing links to CommuterConnections.com and goDCgo.com on property websites; (6) installing a Transportation Information Center Display (electronic screen) within the residential lobby containing

information related to local transportation alternatives; (7) dedicating two parking spaces within the garage for car-sharing services to use with right of first refusal; (8) funding the installation of the new Capital Bikeshare station and its first year's operating expenses up to \$83,000; and (9) offering either a one-year membership to Capital Bikeshare or a one-year membership to a carsharing service to each residential unit for a three-year-period starting at the initial lease up of each unit.

28. Based on the civil plans and the Applicant's testimony at the hearing, the proposed Project will minimize environmental impacts, particularly compared to existing conditions. Specific features cited by the Applicant's representative include a green roof for the building, the use of rain gardens and bioswales in the landscaping of the project, and a green area ratio of .326. The Project will be certified at the LEED v4 Silver level. (Ex. 30; 30B3 at Sheet-L401.)
29. The marina will be accessed from the public waterfront on the Anacostia River. The public will have general access to a main pier, public event and retail space, and public transient boat slips. There will also be private boat slips on the marina. The marina is designed around a main pier, a floating promenade, and floating docks with varying numbers of slips attached to each element. (Ex. 19.)
30. The Applicant requested flexibility from the record lot requirements of § 3202.3(b) of the 1958 Zoning Regulations in order to accommodate the marina, which will not have an underlying record lot; flexibility from the loading requirements of § 2201 of the 1958 Zoning Regulations in order to provide a 30-foot loading berth instead of a 40-foot loading berth as approved in the Stage 1 PUD approval; and flexibility for side yard relief from § 775 of the 1958 Zoning Regulations to provide a minimum side yard of 10 feet, which was included in the Stage 1 PUD. (Ex. 19.)

Project Amenities and Public Benefits

31. The amenities and public benefits of the PUD were proffered and accepted in conjunction with the Stage 1 PUD process. In the PUD Order, the Commission recognized that the Applicant's proffered benefits and amenities were significant, thus making the development incentives proposed in the initial application appropriate and commensurate with the flexibility afforded by the PUD process. (Z.C. Order. No. 04-14B at 28 (COL 8)).
32. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits that were approved as part of the PUD: (Ex. 1, 11, 19; 30 at Sheet L-401.)
 - a. Exemplary urban design, architecture, and landscaping, including high-quality materials, pedestrian-oriented landscape improvements, clear separation of pedestrian and vehicular entrances and circulation patterns, and sustainable features. The Project incorporates extensive pedestrian and bicycle pathways

along the waterfront, landscaping with native plantings that far exceed existing plantings on-site, and introduces sustainable features such as bioswales;

- b. Site planning and efficient land utilization, through the further development of this waterfront area, which will continue to activate the Anacostia Riverfront through the provision of ground-floor retail and introduction of active and passive recreation areas;
- c. Effective and safe vehicular and pedestrian access and transportation management measures. Specific features include:
 - i. Access to parking and loading from the same curbcuts used to access service uses for Phase I;
 - ii. Providing designated pedestrian and bicycle pathways along the Esplanade providing access to the water and access across the site;
 - iii. The Applicant will unbundle all parking from the costs of a lease or purchase;
 - iv. The Applicant will fund the installation of the new Capital Bikeshare station and its first year's operating expenses up to \$83,000; and
 - v. The Applicant will offer either a one-year membership to Capital Bikeshare or a one-year membership to a carsharing service to each residential unit for a three-year period starting at the initial lease up of each unit;
- d. Environmental benefits, include a green roof, the use of rain gardens and bioswales in the landscaping of the project, and a green area ratio of .326. The Project will be LEED v4 Silver certified. These features exceed the sustainable features currently located on the Property and will help mitigate any environmental impacts of the Project through improved stormwater management and minimizing energy usage;
- e. Uses of special value, including ground-floor retail and passive recreation areas along both Potomac Avenue and the Anacostia riverfront. The Project incorporates approximately 26,000 square feet of open area accessible to the public;
- f. Housing and affordable housing, including affordable housing provided at a lower level of affordability than required by the Zoning Regulations. The Project is subject to the Inclusionary Zoning Regulations as set forth in Chapter 26 of the 1958 Regulations. Therefore, eight percent of the residential gross floor area of the Project must be reserved as Inclusionary Units reserved for eligible households earning equal to or less than 80% of the Average Median Income

(“AMI”). However, while the Applicant will be reserving six percent of the residential gross floor area of the Project as Inclusionary Units reserved for eligible households earning equal to or less than 80%, it has agreed to reserve two percent of the residential gross floor area as Inclusionary Units reserved for eligible households earning equal to or less than 60%;

- g. A First Source Agreement with the Department of Employment Services, which promotes and encourages the hiring of District of Columbia residents. The Agreement is in the record as Exhibit 94 for Z.C. Case No. 04-14. In addition, the Applicant has agreed to implement an Employment and Training Skills program, which will target residents in the immediate neighborhood to fill positions generated by the development;
- h. A Memorandum of Understanding with the Department of Small and Local Business Development to utilize certified local, small, and disadvantages enterprises for work comprising at least 35% of the contracted development costs of Phase 2, as reflected in Exhibit 94 in Z.C. Case No. 04-14; and
- i. The Applicant made a contribution in the amount of \$800,000 to the construction of the Diamond Teague Park. The Park has been constructed with the help of this contribution. It is located at the southeast edge of the Property and complements the open spaces constructed with Phase I.

Compliance with Requirements of Z.C. Order No. 04-14B

- 33. The Stage 2 application is consistent with the approval set forth in Z.C. Order No. 04-14B, pursuant to Condition A of Z.C. Order No. 04-14B. (Ex. 1, 1B.)
- 34. Pursuant to Condition B-1 of the Order, Phase II will be certified at the LEED v4 Silver level. (Ex. 30.)
- 35. Pursuant to Condition B-2 of the Order, the Applicant will abide by the terms of the executed Memorandum of Understanding with the D.C. Department of Small and Local Business Development attached as Tab 5 to the Summary of Amenities and Benefits (Exhibit 94 in Case No. 04-14) to achieve the target goal of 35% participation by Certified Business Enterprises in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD project, as specified in Z.C. Case No. 04-14. (Ex. 1, 1B.)
- 36. Pursuant to Condition B-3 of the Order, the Applicant will abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services, attached as Tab 4 to the Summary of Amenities and Benefits (Exhibit 94 in Case No. 04-14), to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project. The Applicant shall also abide by the Employment and Skills Training Plan made part of that agreement, also attached as

Tab 4 to the Summary of Amenities and Benefits (Exhibit 94 in Z.C. Case No. 04-14). (Ex. 1, 1B.)

37. Pursuant to Condition B-4 of the Order, the Applicant has provided proof of having fulfilled the obligation to contribute \$800,000 to the District of Columbia for Diamond Teague Park prior to issuance of a building permit for Phase I. (Ex. 1, 1B.)
38. Pursuant to Condition C-5, the Applicant filed the application for Stage 2 approval of Phase II within two years of the date a building permit was issued for Phase I. (Ex. 1, 1B.)
39. The other conditions of the Order were solely based on Phase I of the Project, and therefore do not require action by the Applicant for this application. (Ex. 1, 1B.)
40. Upon review of the record, the Commission finds that the Applicant has satisfied the above conditions and requirements of Z.C. Order No. 04-14B.

Compliance with PUD Standards

41. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” During its consideration of the first-stage PUD in Z.C. Case No. 04-14 and 04-14B, the Commission determined that the development incentives and related rezoning for the entire Property were appropriate and fully justified by the superior benefits and amenities offered by the PUD. Here, the Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations for this second-stage PUD, including the requested flexibility from the record lot, loading, and side yard and satisfaction of the PUD standards. The benefits and amenities proffered by the Project are commensurate with the flexibility afforded by the PUD process. The flexibility afforded by the PUD process for Phase II provides an increase in height and flexibility from the requirements noted above; however, the PUD process provides no flexibility in density for Phase II. The Commission determined in Stage 1 that the benefits and amenities were sufficient for the proposed development. Nevertheless, the Applicant has increased the proffered benefits and amenities to address Commissioner and community comments. Thus, the Commission finds that the Applicant’s proffered benefits and amenities are commensurate with the flexibility afforded through this PUD. (Ex. 1, 11, 19, 30.)
42. The Commission credits the testimony of the Applicant and its architectural experts and finds that the superior design, site planning, streetscape, sustainable design, uses of special value, and open space features of the Project all constitute acceptable project amenities and public benefits consistent with the Commission’s first-stage approval and objectives of the Comprehensive Plan. (1/23/2017 Tr. at 8-58.)
43. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the

PUD process to encourage high-quality developments that provide public benefits. The high level of the quality of the materials incorporated into the landscaping of the Project will establish a sense of place and help the Project realize its objective of attracting the public to the riverfront. The building itself utilizes a mix of materials, which marks the high quality of the building design and the attention to establishing a high level of character for the PUD site. (Ex. 1-1I7, 19-19B7, 30-30B7.)

44. The Commission finds that the site plan and features of the Project, including the marina, building massing, uses, amount of parking, the general site circulation, and the proposed interim uses for Phases III and IV, are consistent with the first-stage PUD. (Ex. 1-1I7, 1B, 19-19B7, 30-30B7.)
45. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD. (1/23/2017 Tr. at 32-33.)
46. As detailed in this Order, the Commission agrees with DDOT's conclusions regarding vehicular and pedestrian impacts and related issues with the proposed development. (Ex. 22.)
47. For the reasons detailed in this Order, the Commission credits the civil plans submitted into the record and finds that the Project will not only improve the sustainability of the Property but help also mitigate impacts of the Project. The bioswale and rain gardens will improve stormwater management on the Property while the green roof will also help minimize stormwater runoff, energy use, and heat island effects. (Ex. 1, 19, 30B7.)
48. The Commission credits the testimony of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The PUD is not inconsistent with the Comprehensive Plan and it furthers the goals and policies in the map, citywide and area elements of the Plan. As noted in Z.C. Order Nos. 04-14 and 04-14 B, which approved the map amendment for the Property and the massing of the PUD, respectively, the Commission incorporates by reference the analysis of the Comprehensive Plan noted on pages 5-6, 15 of Z.C. Order No. 04-14 and pages 16-24 of Z.C. Order No. 04-14B. (Ex. 1, 10, 20.)
49. The Commission reviewed the marina pursuant to the design review guidelines of the Capitol Gateway Overlay, as outlined in § 1610 and concludes as follows:
 - a. The building or structure provides suitably designed public open spaces along the waterfront (§ 1610.4(a)). The landscape plan calls for extensive landscaping along the waterfront, which provides opportunities for visitors to enjoy the waterfront. The open spaces also include a pedestrian pathway and a bicycle pathway that provide access through the site and provide vibrant views of the Anacostia River. The marina introduces a new element of both passive and active

recreation to the Project. The piers are accessible to the public and can be used to catch closer glimpses of the River. Some of the slips will also be reserved for public use, allowing for recreation water sports, while others will be private. Just as the Esplanade activates the waterfront on the land, the marina will activate the waterfront on the River;

- b. The plans in the application provide suitable treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and include provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront (§ 1610.4(b)). The pedestrian and bicycle pathways for Phase II connect to those pathways that were constructed in connection with Phase I of the PUD, to its east. The pathways will continue west and will connect with Phase III of the PUD, once Phase III moves forward. The marina connects to the Esplanade, giving the marina direct access to the public. The recordation of the PUD covenant against the Property ensures that these spaces will remain open to the public for the life of the Project and that they will be maintained by the property owner; and
- c. The application incorporates a view analysis that assesses openness of waterfront views and vistas, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street and the Frederick Douglass Bridge (§ 1610.5(c)). The marina will not affect views of these important landmarks. As shown in the renderings submitted with the application, no enclosed spaces on the marina exceed one story, ensuring that it will not obstruct views of the river, bridge, stadium or other important landmarks. The Applicant incorporated the in-depth view analysis conducted in connection with the Stage 1 PUD, which determined that the massing was appropriate for the context of the Project. (Case No. 04-14B, Ex. 38A1.)

Agency Reports

- 50. By report dated September 2, 2016 and by testimony at a public meeting, OP recommended the application be set down for public hearing. As noted on pages 1, 4, 5, 6, and 7 OP had comments on the Project at the time, which the Applicant responded to accordingly: (Ex. 10.)
 - a. Provide a more coherent building design. In response, the Applicant redesigned the building, and in evidence submitted and in testimony at the hearing, OP indicated they were satisfied with this response;
 - b. Provide more detailed drawings overall and detailed street-level renderings showing materials and signage, as well as revising the vertical orange sign. The Applicant provided additional detailed drawings, including a revised signage plan,

and in evidence submitted and in testimony at the hearing, OP indicated they were satisfied with this response;

- c. Pursue LEED-Gold. The Applicant agreed to pursue LEED v2009 Gold; however, based on comments from DOEE, the Applicant modified its approach to instead pursue LEED v4 Silver. The Commission finds that this responds to both OP and DOEE's concerns; and
 - d. Provide additional detail regarding the affordable housing proffer. The Commission finds that the Applicant addressed these concerns appropriately in its post-hearing submission agreeing to providing six percent of the residential gross floor area for units affordable to households with an annual income no greater than 80% AMI and two percent of the residential gross floor area for units affordable to households with an annual income no greater than 60% AMI.
51. By report dated January 13, 2017 and by testimony at the public hearing, OP recommended approval of the second stage application. OP reviewed the application under the PUD standards of the Zoning Regulations as well as the specific conditions of the PUD Order, and concluded that the Applicant satisfied its burden of proof. OP found that the Project represents a link in the emerging development of DC's waterfront, which is critical to the District's tourism industry, and its overall economic development and housing growth. OP encouraged the Applicant to consider increasing the affordability proffer and distributing the affordable units more evenly throughout the building. The Commission finds that the Applicant addressed the concerns in the OP report appropriately in its post-hearing submission by agreeing to provide six percent of the residential gross floor area for units affordable to households with an annual income no greater than 80% AMI and two percent of the residential gross floor area for units affordable to households with an annual income no greater than 60% AMI. (Ex. 20.)
52. By report dated January 13, 2017, DDOT recommended approval of the Applicant's application based on its review of the vehicular, pedestrian, and other transportation impacts of the Project. DDOT's specific conclusions and recommendations were: (Ex. 22.)
- a. That the impact of the project on the transportation network was consistent with the Stage 1 PUD approval;
 - b. That the Applicant is providing bicycle parking spaces which exceed the zoning requirements; and
 - c. That the TDM Management strategies proposed by the Applicant are appropriate for the scale of the project, subject to an uncapped cost for the Capital Bikeshare station.

In testimony at the hearing, DDOT testified that DDOT and the Applicant agreed instead of having an uncapped cost for the Capital Bikeshare station, the amount would be

capped at \$83,000, which amount would be revisited in the event the Applicant applied for a PUD extension. The Commission finds that the Applicant addressed the concerns in the DDOT report appropriately. (1/23/2017 Tr. at 61-63.)

53. DDOT reiterated its previous objections to incorporating District property into the land area of Phases III and IV but acknowledged that this did not affect Phase II. Accordingly, DDOT did not object to progressing with approval of the Phase II development. (Ex. 22 at 1-2.)
54. By report dated January 13, 2017, DOEE recommended approval of the Applicant's application based on its review of the design and environmental performance of the Project, subject to certain conditions and comments: (Ex. 21.)
 - a. Recommending that the Applicant coordinate with the Riverwalk Trail guidelines and provide integration with the adjacent Diamond Teague Park and proposed underpass below the South Capitol Street Bridge;
 - b. Additional details regarding the stormwater management strategy will be necessary primary to permitting;
 - c. The design of the marina when finalized will need to comply with the DOEE Clean Marina program;
 - d. Finding opportunities for increased and integrated landscaping, pervious paving, and increased stormwater management;
 - e. Compliance with Control of Fugitive Dust regulations;
 - f. The Applicant should consider using lower-emitting and efficient technologies for the Project;
 - g. Commending the project for taking measures to minimize intersection vehicle emissions;
 - h. The Applicant should consider elevated parking garage vents;
 - i. The Applicant should consider the LEED v.4 guidelines used to determine LEED level and ensuring that the project is energy efficient, even though such change would likely result in a LEED-Silver certification for the project;
 - j. The Applicant should consider solar panels to generate a minimum one percent of the building's total energy use; and
 - k. The Applicant should investigate opportunities for financial tools that would allow an increased commitment to sustainability.

55. The Commission finds that the Applicant, through the evidence submitted and testimony at the hearing, has adequately addressed DOEE's comments. Specifically, the Applicant: (Ex. 30; 1/23/17 Tr. at 11, 39.)
- a. Designed the waterfront with the Riverwalk Trail guidelines and the Diamond Teague Park in mind;
 - b. Will ensure that the Project meets or exceeds DOEE's requirements related to stormwater management;
 - c. As detailed in the post-hearing submission, the Applicant has increased the amount of pervious paving and green space at the Project in response to DOEE's and Commissioners' comments;
 - d. Regarding air quality, the Applicant will comply with requirements of law;
 - e. The Applicant committed to LEED v2009 Gold certification. However, based on DOEE's comments, the Applicant modified its commitment to LEED v4 Silver certification;
 - f. The Applicant testified at the hearing that it could not commit to solar panels as it made the green roof impractical and would therefore conflict with other sustainability efforts of the Project; and
 - g. The Applicant testified at the hearing that it would continue working with DOEE throughout the permitting phase of the Project.

Based on these responses, the Commission credits the Applicant with addressing DOEE's concerns.

ANC 6D Report

56. At a duly noticed and regularly scheduled meeting on September 12, 2016, with a quorum present, the ANC approved a resolution in support of the project, noting specifically: (Ex. 12.)
- a. The ANC was supportive of the overall design and uses for the Phase II development;
 - b. The ANC was supportive of the design aesthetic of the Phase II building, landscaping, and riverfront esplanade; and
 - c. The ANC was supportive of requested relief for the project.
57. The ANC also noted its appreciation of the Applicant's additional benefit and amenity proffers, including: (Ex. 12.)

- a. Affordable housing of eight percent of the residential units in Phase II to households at 80% of the Area Median Income;
- b. A dog park for use by the community at a location on Phase III or Phase IV;
- c. Construction Management plan which the Applicant will submit to the ANC and which will include provisions requiring the Applicant to submit requests for after-hours construction permits;
- d. The restriction for residents to be ineligible for the Residential Parking Permit Program; and
- e. That the Applicant will achieve certification at the LEED-Silver Level.

Testimony in Support

58. At the hearing, the Commission received testimony from Meredith Fascett, the ANC Single Member District representative of the area including the Property, in support of the Application. Ms. Fascett testified that the Applicant has been a good neighbor and revised the benefits and amenities to respond to ANC concerns. (Ex. 28.)
59. The Commission also received a letter from Kristin Taddei, a Planning Advocate with Casey Trees, in support of the Project. The letter noted appreciation of the Applicant's efforts to include significant trees in its landscaping plan and diverse plantings at the Property. (Ex. 24.)

Testimony in Opposition

60. No persons or organizations provided testimony in opposition to the application.

CONCLUSIONS OF LAW

1. The Property meets the minimum area requirements of Chapter 24 of the Zoning Regulations.
2. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
3. Pursuant to 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 of quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)

4. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a second-stage PUD. This second-stage review permits detailed design review of the project based on the conceptual height, density, and use parameters established in the first-stage PUD and the benefits and amenities approved in exchange for that height, density, and design flexibility. The Commission concludes that the Project is consistent with the first-stage PUD, including the parameters regarding location, use, height, bulk, and parking set forth for the Property in the first-stage PUD. The benefits and amenities included in the second-stage PUD are also consistent with those approved in the first-stage PUD. The benefits and amenities approved in the first stage PUD have been deemed commensurate with the flexibility requested.
5. In approving the PUD, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission concludes that the requested flexibility from the record lot, side yard, and loading requirements can be granted without detriment to surrounding properties and without detriment to the zone plan or map.
6. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, massing of the PUD was approved under the first-stage PUD application and is not the subject of this application. The Commission reviewed the second stage application to evaluate its consistency with the first-stage approval and to determine if the design and materials are appropriate and exceed the quality of what would otherwise be constructed as a matter of right. Based on the architectural plans presented, the Commission believes that Phase II exemplifies superior design that would not otherwise be achieved but for the PUD process. The design of Phase II capitalizes on the Property's waterfront location and promotes citywide and area plans of the District of Columbia.
7. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than the matter-of-right development on the Property provides. The Commission finds that the urban design, site planning, public space improvements, efficient and safe transportation features and measures, housing and affordable housing, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the exceptional quality of the public benefits of the PUD.
9. The Commission notes that the impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission concludes that the

proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives as discussed below:

- a. Transportation: The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community nor will it create adverse impacts on the capacity of the road network. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated. The introduction of additional residents and retail uses will increase use of transportation services, which will be mitigated by the Applicant's transportation demand management program.

The site plan approved in the Stage 1 application minimizes vehicular conflicts by minimizing the number of curbcuts from Potomac Avenue and by providing separate pedestrian and bicycle areas along the river. It also provides convenient and efficient opportunities for pedestrian and bicycle travel through the site, providing an alternative to vehicular transportation.

The Commission agrees with the Applicant's and DDOT's reports that the conclusions reached in the first-stage PUD with respect to the adequacy of the parking supply, trip generation, and such conclusions are not modified by the second-stage application. The Commission also finds that the Applicant's TDM management strategy is sufficient to mitigate impacts from the introduction of additional residential, marina, and retail uses.

The Commission agrees with the Applicant's and DDOT's reports that the proposed 30-foot berth can adequately serve the residential, retail and marina uses in the Project. The first-stage PUD approved a 40-foot berth; the second-stage application modified this to provide a 30-foot berth. Loading activities will not be affected by this modification;

- b. Environmental: Based on review of the civil plans submitted into the record, the Commission finds that the stormwater management facilities will greatly improve upon existing facilities with respect to treating stormwater runoff. Based on DOEE's report, the Commission is confident that the stormwater facilities will comply with District requirements and will adequately mitigate construction of a mixed-use building on the Property. The Commission also finds that the increased levels of open space, the GAR, green roof, and LEED v4 Silver certification will help mitigate the environmental impacts of the building to an acceptable level. These development features exceed what would otherwise be required for the development as a matter of right and are preferred environmental measures on such a site located along the Anacostia River;

- c. **Housing:** The Property was formerly used as an industrial site and did not provide an opportunity for residential uses, much less affordable housing. The Project transforms the former industrial site into a project with residential uses. The Project is subject to the Inclusionary Zoning Regulations as set forth in Chapter 26 of the 1958 Regulations. Therefore, eight percent of the residential gross floor area of the Project must be reserved as Inclusionary Units reserved for eligible households earning equal to or less than 80% of the AMI. However, while the Applicant will be reserving six percent of the residential gross floor area of the Project as Inclusionary Units reserved for eligible households earning equal to or less than 80%, it has agreed to reserve two percent of the residential gross floor area as Inclusionary Units reserved for eligible households earning equal to or less than 60%;
- d. **Architectural:** The Commission finds the updated design responsive to Commission concerns regarding the unity of the northern and southern halves of the building. The glass and metal paneling are appropriate materials in this iconic location. The Commission supports maximizing the use of glass to improve views for the units as well as the number of balconies on site; and
- e. **Community:** The Commission notes that there was no opposition to this application evident in the record and that the ANC voted in support of the application. Based on the ANC Single Member District representative's personal testimony and the ANC's resolution in support, the Commission finds that the community supports the Project. It further concludes that the ANC also determined that the benefits and amenities provided for this Project are commensurate with the development flexibility otherwise afforded herein.

The Commission also finds that the proposed employment and training agreements included in the benefits and amenities package benefit the community.

- 10. As part of a PUD, the Commission may consider other forms of zoning relief needed, subject to applicable standards. The marina fully met the requirements of the applicable design review provisions of the Capital Gateway Overlay District, 11 DCMR § 1610, and therefore its design review is approved.
- 11. The approval of the PUD, including the Design Review, is not inconsistent with the Comprehensive Plan. The Commission incorporates by reference its analysis in Z.C. Order Nos. 04-14 and 04-14B, when the map amendment, and massing and site plan of the Project were first approved. The Commission concluded in those Orders that the Project was not inconsistent with the Comprehensive Plan or its designation under the Future Land Use Map and this application does not alter these conclusions. This application focuses on the design of the building and does not modify the massing or site plan that was otherwise approved in Z.C. Case No. 04-14B, which was made possible by the map amendment approved in Z.C. Case No. 04-14.

12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The Applicant proposed improvements for the public space immediately abutting its property and while the Commission does not have jurisdiction over the development of public space, it supports the proposed improvements. It understands the Applicant will work with DDOT regarding the specific improvements to the public space.
14. The Commission previously concluded in Z.C. Order No. 04-14 that the proposed PUD-related Zoning Map Amendment for the Property to the C-3-C Zone District was not inconsistent with the Comprehensive Plan and is appropriate given the superior features of the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
15. Based on the documentation included in the initial PUD application, the Commission concludes that the Applicant has demonstrated compliance with the conditions of the first stage PUD as detailed in Z.C. Order No. 04-14B.
16. The Commission finds that there is no contested issue of materials fact.
17. The Commission is required under § 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 the recommendations of OP in all zoning cases. The Commission found OP's reasoning recommending of approval to be persuasive.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) ("ANC Act") to give "great weight" to the issues and concerns raised in the written report of the affected ANC. In this instance, ANC 6D expressed no issues or concern, but rather indicated its support of the Application based upon the Applicant's responding to its previously raised issues and concerns. The District of Columbia Court of Appeals has noted that the ANC Act does not require an agency "to give 'great weight' to the ANC's recommendation but requires the [the agency] to give great weight to any issues and concerns raised by the ANC in reaching its decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016).) The court thus held that in the context of a BZA application, although "it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) Thus, the Commission did not consider the ANC's recommendation as providing substantial support to justify its decision to grant this application, except to the extent it reflected community sentiment, as noted in Conclusion of Law 9(d).

18. The Commission carefully considered the positions of ANC 6D in support of approving the application and concur in its recommendation of approval. The Commission credits the ANC with understanding the needs and wants of the community and gives weight to its testimony and resolution that the PUD responds to those needs and wants.
19. The Applicant 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 a second-stage Planned Unit Development for the Property for the mixed-use development described herein, including **APPROVAL** of the design review of the marina ("Phase II"), subject to the following conditions:

A. Project Development

1. The Project shall be developed in accordance with the architectural drawings submitted into the record as Exhibit 30-30B7, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans"). Phase II will include approximately 26,000 square feet of open space, including the Esplanade. All landscape, park, open space, and streetscape designs shall be developed in accordance with the landscape plans included as Sheets L-100–L-401 of the Plans.
2. In accordance with the Plans, the Project shall be a mixed-use building with residential and ground-floor retail uses. The Project shall have a total of approximately 255,627 square feet of gross floor area (5.3 FAR) and a maximum building height of 130 feet, not including penthouses. Approximately 247,918-244,191 square feet of gross floor area shall be devoted to residential use (a range of 250-285 units). Approximately 7,709-11,436 square feet of gross floor area shall be devoted to ground-floor retail use.
3. The Commission grants approval and flexibility under the following sections of the Zoning Regulations:
 - a. Section 3202.3: flexibility from the requirement to provide a record lot for a marina in the CG/W-2 Zone District;
 - b. Section 775: flexibility from the side yard requirements; and
 - c. Section 2201: flexibility from the loading requirements to provide a 30-foot berth.

4. The Applicant will have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior colors and materials within the color ranges and general material types approved, based on availability at the time of construction;
 - c. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - d. To modify the number of residential units within the range of 250-285 units;
 - e. To vary the number of proposed garage parking spaces by 10% and to modify the layout of the garage in an effort to increase efficiency;
 - f. To vary the design of the retail space per the specifications of the retailer so long as all signage complies with the District's sign regulations;
 - g. To provide approximately 3,730 square feet of retail space along Potomac Avenue and to incorporate mezzanine space into its proposed retail space, as may be required and desired by retail tenants and the community;
 - h. To provide interim uses on the sight of Phases 3-4, including 50 surface parking spaces to serve those uses. The interim uses include temporary retail kiosks, a dog park, and other entertainment uses such as a beer garden and active recreation areas. The interim uses are permitted until such time as the first-stage PUD approval for Phases III and IV expires; and
 - i. To file an application for the construction of the marina no later than within two years after the later of the completion of the reconstruction of the Frederick Douglass Bridge, the completion of the South Capitol Street

Oval or the certificate of occupancy for Phase II, but in no circumstances, later than 10 years after the effective date of this Order.

B. Transportation

1. **Prior to issuance of a Certificate of Occupancy, and for the life of the Project** (except as noted), the Applicant shall demonstrate to the Zoning Administrator that it has undertaken the following actions with respect to implementation of the TDM plan:
 - a. The Applicant shall meet or exceed the 2016 Zoning Regulations requirements for short- and long-term bicycle parking. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
 - b. The Applicant shall unbundle all parking from the cost of the lease or purchase. Parking costs will be set at no less than the charges of the lowest fee garage located within a quarter mile;
 - c. The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - d. The Applicant shall identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents of the building to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents in the Residential Welcome Package;
 - e. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on property websites;
 - f. The Applicant shall offer either a one-year membership to Capital Bikeshare or a one-year membership to a carsharing service to each residential unit for a three-year period starting at the initial lease up of each unit;
 - g. The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby, containing information related to local transportation alternatives;
 - h. The Applicant shall dedicate two parking spaces within the garage for car-sharing services to use with right of first refusal; and

- i. **The Applicant shall fund the installation of the new Capital Bikeshare station and its first year's operation expenses up to \$83,000.** The cost of the bikeshare station shall be reevaluated in the event an application is filed to extend the approval for Phase II.

C. Construction

1. **Prior to issuance of a Certificate of Occupancy,** the Applicant shall demonstrate to the Zoning Administrator that it has complied with the terms of the Construction Management Plan submitted into the record as Exhibit 11A.

D. Benefits and Amenities

1. **Affordable Housing: Prior to issuance of a Certificate of Occupancy for the residential portion of the Project and for the life of the residential portion of the Project,** the Applicant shall demonstrate to the Zoning Administrator the following:
 - a. **For the life of the Project, the Applicant shall:**
 - i. Provide a total of approximately 245,104 square feet of residential gross floor area (“GFA”) of housing;
 - ii. Devote no less than eight percent of the residential GFA as inclusionary units pursuant to 11 DCMR Chapter 26;
 - iii. Set aside no less than two percent of the residential GFA as inclusionary units for eligible households earning equal to or less than 60% of the MFI; and
 - iv. Set aside no less than six percent of the residential GFA as inclusionary units for eligible households earning equal to or less than 80% of the MFI;
 - b. The affordable housing units shall be distributed in accordance with the Plans marked as Ex. 30 of the record, and shall be provided in accordance with the chart below; and
 - c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

Residential Unit Type	Approximate Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*
Total	245,104 sf/100%		Life of project	Rental
Market Rate	225,496 sf/92%	Market	Life of project	Rental
IZ	4,902 sf/ Not less than 2%	60% AMI	Life of project	Rental
IZ	14,706 sf/ Not less than 6%	80% AMI	Life of project	Rental

2. **Sustainability.** Prior to issuance of a Certificate of Occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has registered that portion of the Project with the USGBC to commence the LEED certification process under the USGBC’s LEED v4 rating system. The Applicant shall also furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the residential portion of the building has been designed to include at least the minimum number of points necessary to achieve LEED v4 Silver standards.

3. **Employment.** Prior to issuance of a Certificate of Occupancy, the Applicant shall demonstrate to the Zoning Administrator that it has complied with the terms of the First Source Agreement with the Department of Employment Services and the Employment Training Skills program entered into the record as Exhibit 94D in Z.C. Case No. 04-14.

4. Prior to issuance of a Certificate of Occupancy, the Applicant shall demonstrate to the Zoning Administrator that it has complied with the terms of the Memorandum of Understanding to utilize certified local, small and disadvantaged business enterprises as set forth in Exhibit 94E in the record for Z.C. Case No. 04-14.

E. Miscellaneous

1. No building permit shall be issued for the Project until the Applicant has recorded a PUD Covenant that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs in the land records of the District of Columbia. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The approval for construction of the building shall be valid for a period of two years from the effective date of this Order. Within such time, an application(s) must be filed for a building permit(s). Construction must begin within three years of the effective date of this Order. An application for the construction of the marina must be filed no later than two years after the later of the completion of the reconstruction of the Frederick Douglass Bridge, the completion of the South Capitol Street Oval or the certificate of occupancy for the Phase II building, but in no circumstances, later than 10 years after the effective date of this Order.
3. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code §§ 2-1401 01 et al (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, familial 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On February 13, 2017, upon the motion of Commissioner Hood, as seconded by Commissioner Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on October 27, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14E
Z.C. Case No. 04-14E
Riverfront Holdings II, LLC
(PUD Modification of Consequence@ Square 708, Lot 814)
December 11, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on December 11, 2017. At that meeting, the Commission approved the application of Riverfront Holdings II, LLC (“Applicant”) for a modification of consequence to Z.C. Order 04-14D (“Order”). The property that is the subject of this modification comprises a portion of Lot 814 in Square 708 (“Property”). The modification request was pursuant to § 703 of the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

1. Pursuant to Chapter 24 of the 1958 Zoning Regulations, the Commission approved a phased, mixed-use planned unit development (“PUD”) in Square 708, Lot 14. This approval is reflected in Z.C. Order No. 04-14B. The Order approved the second phase of the PUD, which consisted of a residential building with ground-floor retail. More specifically, the Commission approved a 130-foot-tall building with approximately 7,709-11,346 square feet of retail use, a range of 250-285 residential units, and up to 185 below-grade parking spaces. (Exhibit [“Ex.”] 1.)
2. On October 26, 2017, the Applicant submitted an application for a modification of consequence related to the redesign and relocation of architectural elements of the building. The application sought relief to make changes to the a) rooftop, b) amenity terrace, c) east elevation, and d) signage. The Applicant included a set of plans depicting each of the following proposed modifications with the application: (Ex. 1C.)
 - a. The proposed modifications to the rooftop consist of relocating the large mechanical equipment and reducing the area of the mechanical equipment in the northern portion of the penthouse. The modifications are the result of finalizing the location of building systems and shafts, which resulted in corresponding

relocation of the mechanical equipment. The result is a more efficient layout of the mechanical system and a modified pool design; (Ex. 1, 1C, 6A1, 6A2.)

- b. The submitted plans modify the approved amenity space on the second floor by creating an outdoor terrace approximately 320 square feet in size; (Ex. 1, 1C.)
 - c. The modified plans depict a refined east elevation, which include windows that increased in size; and (Ex. 1, 1C.)
 - d. Finally, the updated plans include a modification to the signage feature on the northeastern side of the building. The building signage previously extended beyond the face of the building; however, it was modified to pull it back to the building face. (Ex. 1, 1C.)
3. The Office of Planning (“OP”) submitted a report dated November 7, 2017, recommending approval of the modification of consequence as requested. OP supported the modifications as they do not otherwise diminish the benefits and amenities associated with the original PUD approval, including the flexibility granted in the Order. (Ex. 4, pp. 1, 3.)
 4. Advisory Neighborhood Commission (“ANC”) 6D submitted a letter dated November 16, 2017, in support of the modifications. It specifically approved the relocation of the mechanical equipment, finding that the resulting changes to the interior configurations of the amenity space and the pool deck would enhance the residents’ use of the spaces. (Ex. 5.) The ANC therefore expressed no issues or concerns.
 5. The Commission, at its November 13, 2017 public meeting, determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant Subtitle Z § 703.1. The Commission was therefore required by Subtitle Z § 703.17(c)(2) to establish a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the application to respond thereto; and schedule the request for deliberations. The Commission did so, and the ANC being the only party to the original proceeding, filed its report as noted above.
 6. The Commission requested additional detail regarding the increase in size of the penthouse. The Applicant submitted the requested information on November 20, 2017. (Ex. 6-6A2.)
 7. The Commission, at its December 11, 2017 public meeting, voted unanimously to approve the modification of consequence.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means a “modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. (11-Z DCMR § 703.3.) Examples of modifications of consequence “include but are not limited to, a proposed change to a condition in a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (11-Z DCMR § 703.4.)

The Commission concludes that the refinement of plans as described in the above findings of fact is a modification of consequence and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications is entirely consistent with the Commission’s previous approval of the PUD and the Order. The refinements are supported by the OP and the affected ANC.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl) to give “great weight” to the issues and concerns of contained in the written report of an affected ANC. As is reflected in the Findings of Fact, ANC 6D’s written report expressed no issues or concerns. The Commission is also required give great weight to the recommendations of OP (*See* D.C. Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP’s recommendation to approve this modification of consequence application.

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the second-stage PUD project approved in Z.C. Case No. 04-14D. The conditions in Z.C. Order No. 04-14D remain unchanged except as follows. The following condition replaces Condition No. A.1 of Z.C. Order No. 04-14D:


1. The Project shall be developed in accordance with the plans marked as Exhibits 30-30B7 of the record in Z.C. Case No. 04-14D, as modified by the plans included in Exhibits 1C and 6A1-6A2 of the record in Z.C. Case No. 04-14E, and as further modified by the guidelines, conditions, and standards herein.

On December 11, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission took final action to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter Shapiro not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 16, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING