

Holland & Knight

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

Christine M. Shiker
(202) 457-7167
christine.shiker@hklaw.com

MEMORANDUM

DATE: September 4, 2018

TO: Advisory Neighborhood Commission 6D
c/o Commissioner Andy Litsky

FROM: Christine M. Shiker, Holland & Knight LLP
Jessica R. Bloomfield, Holland & Knight LLP

CC: Abe Naparstek, Forest City Realty Trust
David Smith, Forest City Realty Trust

RE: Response to ANC 6D Questions and Issues set forth in Memo dated July 9, 2018
Z.C. Case No. 02-38I
375 and 425 M Street, SW

This memorandum provides the Applicant's response to the questions and issues identified in ANC 6D's memorandum to the Zoning Commission dated July 9, 2018, and included as Exhibit 134 in Z.C. Case No. 02-38I ("ANC Memo"). These responses are based on the meeting between the Applicant and representatives of ANC 6D on August 7, 2018, and follow up telephone conferences and email correspondence with representatives of ANC 6D.

1. Lodging Use

The ANC Memo expressed concern regarding short-term residential rentals at the M Street buildings. The Applicant provided information to the ANC regarding the Applicant's business model, which provides for leasing protocols of leases for 12 to 24-month terms. The Applicant only provides month-to-month leases for on-site employees and for tenants at the expiration of a lease, in accordance with DC Code § 42-3505.01(a) ("Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit").

By way of example, the current leases in the Eliot on 4th Street (i.e., the Northwest Building at Waterfront Station) include the following: 6 month-to-month leases (3 employees and 3 tenants from expired leases); one 6-month lease; and the remainder of the units leased having leases of 12-months or longer. Earlier this summer, the Eliot included a small number of short-term leases (i.e., less than 30-days); however, those leases have been terminated.

The Applicant commits to only leasing protocols of leases for 12 to 24-month terms in both of the M Street buildings. The Applicant also commits to providing no month-to-month leases except in the limited scenario of on-site employees and tenants at the expiration of a lease. Further, no rentals for under one month shall be provided at either building by the Applicant nor any agent acting on its behalf.

2. SW Community Center

The ANC requested that the Applicant commit to paying 100% of the community center’s electricity fee usage, with no maximum contribution limit as previously proposed. The Applicant agrees to this request and proposes inclusion of the following condition in place of the proposed Decision No. B(16) of the draft order in the record at Exhibit 136A (“Draft Order”):

16. For the first 30 years following the issuance of the certificate of occupancy for the community center within the East M Building, the Applicant shall not charge the community center operator for any (i) rental fees; (ii) property taxes; (iii) building maintenance fees; (iv) operating expenses; or (v) utilities. The fees for utilities used by the community center during this time will be billed directly to the Applicant.

References to the Applicant’s decision to maintain the contribution limit elsewhere in the Draft Order should also be removed to reflect this updated commitment of the Applicant.

3. Community-Serving Retail

The Applicant and the ANC share the goal of creating a town center environment at Waterfront Station with appropriately-sized retail spaces that provide an array of retail and service options for the surrounding neighborhood. In furtherance of this mutual goal, the Applicant proposes that the following conditions be included within any order approving the PUD:

- a. The Applicant will reserve a minimum of 6,000 square feet of retail space to be devoted to retail spaces having no more than 1,500 square feet, for a minimum commitment of 4 retail spaces each at a maximum of 1,500 square feet, across the two buildings.
- b. In an effort to provide retail spaces targeted to smaller-scale retailers and to avoid “big box” stores, the Applicant will provide no single retail space in the East M Building having more than 7,500 square feet and no single retail space in the West M Building having more than 10,000 square feet.
- c. The Applicant will dedicate a minimum of 1,000 total square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 of Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers).

4. Traffic Study

Based on discussions with ANC 6D, the Applicant has agreed to contribute \$30,000 to DDOT prior to the issuance of a building permit for the East M Street Building to complete the safety study for the intersection of 4th and M Street. Furthermore, at the request of the ANC, the Applicant completed initial evaluations of the intersection and determined that the proposed plans for the M Street Buildings would not need to be modified to accommodate a potential new south-bound left turn lane, since the new lane would impact public space only. While ANC 6D originally wanted to see the study done in advance of the approval, the ANC agrees that the contribution to DDOT is preferred to the Applicant completing the study and, thus, this timing will be acceptable.

Further, the Applicant states that should the DDOT Safety Study require additional adjustments that do not correspond to the approved PUD, that the Applicant will support making those adjustments as recommended.

5. Environmental Benefits

The Applicant commits to designing the M Street Buildings to achieve LEED Silver under LEED v4 for Building Design and Construction and will use best efforts to obtain certification. In the Draft Order at Decision B.1 and B.2, the Applicant proposed conditions that require the Applicant to submit with its building permit application for the East M Building and the West M Building a checklist evidencing that the East M Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction. The Applicant and the ANC discussed the timing considerations relating to certification and agreed that providing evidence that it has been designed to the LEED Silver standard addresses the ANC's concern.

6. Bus Shelter

The ANC requested that the Applicant (i) commit to ensuring that the M Street Buildings do not prohibit the construction of an ADA-compliant bus shelter in public space adjacent to the M Street Buildings; and (ii) pay for the replacement and construction of an ADA-compliant bus shelter.

The Applicant supports the installation of a permanent bus shelter on M Street in front of the West M Building and has designed the West M Building in such a way as to accommodate an accessible bus shelter in public space. Based on the attached plan (which is based on the plans in the record at Exhibit 131G), the Applicant has shown that an accessible bus shelter can be provided within current guidelines based on the proposed design of the West M Building. We have submitted this plan to DDOT, and DDOT has provided an initial response via email that the bus shelter can be provided within current guidelines based on the proposed design of the West M Building. A copy of DDOT's email response is attached.

With respect to payment for the bus shelter, approval and installation of new bus shelters are within DDOT's purview, are subject to separate requirements and agreements with Clear

Channel. Because the bus shelter will be funded through agreements DDOT has with Clear Channel, the Applicant cannot pay for the replacement and construction of a new bus shelter as part of this PUD. The Applicant, however, is fully committed to working with the ANC and DDOT to install a temporary bus shelter adjacent to the West M Building prior to commencement of construction of the East M Building. The installation of a temporary bus shelter will be subject to review and approval by DDOT.

7. Restriction on RPP (Residential Parking Permit)

The Applicant confirms that neither of these two buildings are eligible for RPP, and that neither the Applicant nor its agents will apply for RPP for either of the M Street Buildings. In addition, the Applicant agrees to include a rider in all residential leases that restricts all residential tenants of the M Street buildings from applying or obtaining RPPs while under the terms of their lease. Accordingly, the Applicant proposes to revised Condition C.1(m) of the Draft Order to read as follows:

The Applicant shall not apply for RPP for either of the M Street Buildings and shall include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from applying or obtaining RPPs while under the terms of their lease.

We trust that this memorandum responds to your stated concerns and conditions. If you have any questions, please let us know. Thank you.