

DC ZONING COMMISSION
441 4TH STREET NW, SUITE 200 SOUTH, WDC 20001

RE: PUBLIC HEARING, ZONING CASE NO. 03-28J

Waterfront Station project, Northeast Building, Second Stage PUD

Testimony brought by the Southwest Accountability Group on behalf of our members in the planning area, and supported by members of Empower DC, DC for Reasonable Development also living and working in the area.

The Southwest Accountability Group (“SWAG”), along with DC for Reasonable Development and Empower DC, bring the following testimony in opposition to approval of the 2nd Stage PUD application by PN Hoffman in ZC Case No. 03-28J. We do so on behalf of members' families, elders, children, those with disabilities, low-income residents, and any member living and working within the planning area (See Footnote #5).

Pointedly, Advisory Neighborhood Commission 6D does not represent the interests of our members in any of their reports or in their naive support of this project (especially the last minute report suggesting a few units be made for families).

Facts of this Second-Stage PUD (warranting disapproval):

- Agency reports from OP & DDOT were put on record nine days before the hearing in error. Some relevant agencies haven't put any reports in writing on the record at all. 11 DCMR §Z-400.6.
- The Applicant proffers 450+ new residential units; Most of the units are 1 bedrooms (225 1bdm units); There are NO FAMILY SIZED UNITS (3+ bedrooms) and thus no affordable family sized units; 136 of the 450 units will be considered "affordable" with 28 "affordable" 2-bedroom units.
- Only 30% of the total units are considered affordable, but plan policies call for 51% or more of the units on former public land (especially given Ward 6's affordable housing crisis); See, Policy H-1.2.4: Housing Affordability on Publicly Owned Sites.
- All of the proffered affordable units expire over time, thus unlike IZ units do not exist for the life of the project. This is an injury of the application, not a benefit.
- The Applicant does not proffer to dedicate any of the proposed housing units as replacement units for Ward 6's threatened public housing so to mitigate any future public housing resident displacement and gentrification of longtime Ward 6 communities of color and culture.
- There is no proffered affordable commercial space or conditions to work with local Ward

6 small businesses, or with Ward 6 organizations to access affordable incubator/retail space in perpetuity on the ground floor.

- Use of status quo construction materials and basic quality at a time of great environmental uncertainty will lead to premature building degradation on public land, leaving us holding the bag of maintenance and reconstruction in the future.
- The PUD will increase pressure and abuse on existing area infrastructure, public services, and environment, impacts thereof that largely remain unstudied.
- Costs for infrastructure and transit upgrades to be unfairly born by the surrounding community leading to more displacement (health, safety, welfare, and rate increases).
- The size of the project cheats the DC Height Act, at 130 feet (without the Penthouse) along 4th Street SW.
- The Applicant wants more parking and cars associated with the PUD project than allowed, proffering a 200+ parking garage even though regulations require less than 100 spaces (strange that single professionals need parking next to Metro).
- Despite exceeding zoning regulations for parking and expecting residents and retail components to drive up more vehicular use than anticipated for this type of development – the traffic impacts, parking impacts, pedestrian safety impacts, air & noise quality remain largely unstudied by planning agencies and the Applicant. See, Policy T-1.1.1: Transportation Impact Assessment; Policy T-1.1.2: Land Use Impact Assessment.

The following are facts as to all of the Commission's prior decisions as to Waterfront Station:

1. The Commission has approved no affordable housing in the approved "Northwest building" across 4th Street, SW from the instant PUD site (we believe this is in egregious error, creating a segregated exclusive neighborhood project);
2. The Commission has only required a measly 8% affordability for the other parts of the Waterfront Station PUD collectively; See, Policy H-1.2.4: Housing Affordability on Publicly Owned Sites.
3. The Commission has otherwise not set requirements for any family sized units in other components of the Waterfront Station project at all, allowing the developers to create an exclusive community for single professionals making \$45,000+ who can qualify for the affordable units at a housing cost floor of about \$1200/month (the least expensive units in this project for singles as proposed at 30% AMI).¹ This is wholly unacceptable.
4. DHCD has not offered expertise in writing to the Commission as to the rationale/acceptability for the lack of affordability and lack of family-sized units in

¹ Zoning Commission Order No. 02-38A, Decision Point 18, Page 33, "... The affordable housing units shall be approximately the same proportion of bedroom type and size as the market rate residential units and generally evenly distributed between and within the East and West Residential Towers, with the exception of the top two floors of each building."

Waterfront Station projects as a whole or for the Northeast Building.² Nor has DHCD reviewed the Applicant's last minute notes on economic impacts and commented (unlike DDOT's review of Applicant's traffic study).

5. Moreover, without any hesitation from the Office of Planning or any other agency, the Applicant has changed their plans substantially from the First-Stage PUD approval and modification orders in error.

Unapproved Changes to Prior Commission Decisions, In Error

- According to all prior Commission decisions, “The maximum height of the Northeast and Northwest Buildings shall be 114 feet.” Zoning Commission Order, 02-38A, Decision Point 7, Page 32.
- Here and now the Applicant brings a proposed Northeast Building in excess of 130 feet, challenging prior decisions, the DC Height Act, and the moderate-medium density aesthetic of Southwest DC.
- The proffered design the Applicant brings now maximizes the building footprint and eliminates the side and rear yards. It also brings the wings of the building to encroach in on the courtyard. Both of these design factors stray from prior Commission decisions in error.
- Further, most of the "affordable units" are disproportionately located in the proposed Northeast building as facing the less sunny and more enclosed courtyard or tucked in the back southeast corner. Further, no affordable units are proffered for the upper floors or in the penthouse, thus wrongfully ensuring lower income residents have a lesser experience in this building in opposition to the DC Human Right Act.

ARGUMENT

The lack of significant affordable family sized units is fatal

Following on from the Human Rights Act, the proffered lack of family sized units throughout any component of the Waterfront Station, including in the instant Second-Stage PUD application, is unacceptable in light of the leading tenant and subsequent policies, narrative, and guidelines of our DC Comprehensive Plan -- "Building an Inclusive City." ³

DHCD has not discussed with the Office of Planning the increasing displacement impacts the

2 Zoning Commission Case No. 02-38, Exhibit 84, DC Department of Housing and Community Development (DHCD) Report makes no mention of affordability or types of housing units, let alone the uptick in displacement pressures brought onto the surrounding community by the Waterfront Station project, including this Second-Stage PUD.

3 By DC law, and purposely so, the Commission is an independent agency that is authorized to conduct independent comprehensive development review and make decisions on PUD applications that are not inconsistent with the Comprehensive Plan.

Waterfront Station PUD will have on the surrounding community's existing affordable housing. DHCD has the expertise and data sets to help identify what existing affordability is in the area and which households may be more vulnerable to displacement.

The Applicant's last minute submission (Exhibit 34C) fails to contend with the race and class divides and income gaps in this city. With the rent floor for the Northeast Building set at \$1200 for the affordable studio/1bedrooms (30% AMI for single “households” versus family-sized households), the Applicant's analysis forgoes identifying how this arbitrary valuation for singles doesn't contend with the specific race, class, incomes, familial status factors for this project.

Further, the Applicant's evidence and DHCD reporting lacks study of vulnerability of existing affordable units in the surrounding planning area for our members and the SW people (class, race, income, social needs) who will be concretely impacted by land value destabilization and thus displacement such as David Lee.⁴ This is especially the case for black members and families in SW, resulting in a project that will consist of vastly single white professionals making at least \$45,000 a year.

"While the poverty rate for white District residents is 7.9 percent, it is 27.9 percent—nearly four times higher—for Black residents, and 17.8 percent—more than twice as high—for the Latinx community. Moreover, Black families earn less than a third of their white counterparts, average 81 times less wealth than white families, and are significantly more likely to be in poverty." Income Inequality in DC Highest in the Country, Report dated December 15, 2017, DC Fiscal Policy Institute, <https://www.dcfpi.org/all/income-inequality-dc-highest-country/>

“The District continues to have a higher income inequality than any state in the country, and poverty rates east of the Anacostia River are more than three times greater than those found elsewhere in the city. Unemployment rates in the District have not returned to pre-recession levels, while the city’s black-white unemployment gap has grown since 2007.” D.C. falls short on human rights, Rachel Bergsieker, Opinion dated April 27, 2018, Washington Post.

"Black DC residents are the only racial/ethnic group whose unemployment rate is actually worse than it was in 2007, prior to the Great Recession, according to a DCFPI analysis of data from the Current Population Survey. While unemployment among black working-age DC residents has fallen in recent years, 13.4 percent still were unemployed in 2016, compared with 9.5 percent in 2007. Meanwhile, just 1.6 percent of white residents and 3.6 percent of Hispanic adults were unemployed in 2016." Unemployment in DC Reveals Racial Inequity, Report dated March 2, 2017, DC Fiscal Policy Institute, <https://www.dcfpi.org/all/unemployment-dc-reveals-racial-inequity/>

4 David Lee is a Southwest resident who attests that he, "Applied for a government subsidy on a studio at 4th and I, SW with my modest social security retirement and a modest CD savings, [but] was found too poor to qualify for a rental subsidy. [He's] moving to Tenleytown for a less expensive studio by about 50%. I really feel connected to the SW and hate to go." -David Lee, SW

Given the income equality, the level of affordability within the Waterfront Station project as a whole and even in the Northeast Building, are facts that demonstrate an unacceptable result – a new project and community made of of vastly middle to upper-class single professionals who are largely white, likely with no families of color. This is not successful and inclusive per key plan policies. POLICIES AND ACTIONS H-1 HOMES FOR AN INCLUSIVE CITY.

Moreover, neither OP nor DHCD have ensured the Applicant or agency staff conduct a demographics study to understand the specific circumstances of this PUD application's affect on those families and residents who may be more vulnerable to displacement in the planning area, including SWAG members.⁵

The incomplete impact assessment fails basic PUD regulations, let alone basic planning purposes and intent to protect the surrounding community from any potential adverse affects.

Injury: Without identification of the demographics and mitigation of displacement vulnerability in the planning area, our community imminently risks the loss of the character and existing culture of the area and people living here now threatening the community we enjoy now.

Remedy: The Commission can ensure OP fulfills their job in conducting a comprehensive public review of the potential adverse affects of this PUD to help mitigate these impacts as their role requires, a role otherwise not pursued in any other prior Commission proceedings as to the Waterfront Station project. Now is the time to help the Applicant conduct local demographics studies and for DHCD to pull from the myriad of data sets at their disposal to ensure we can mitigate displacement impacts on those most vulnerable in the area (its starts with identifying the specific circumstances of the impacts of the actual vulnerability in the area, including that of and on our members).

This Second-Stage PUD process allows the Commission to express its independent authority to meaningfully set required bedroom sizes and affordability commensurate with the expectations of the leading tenant of the Comprehensive Plan as well as the prevailing aesthetic and cultural and architectural characteristic of the surrounding community serving families (this project overall is anathema to the type of housing & community it seeks to be shoehorned into). Policy H-1.3.1: Housing for Families.

Injury: A diversion from the characteristics of the broader area is a concrete injury to SWAG members who live in and enjoy the area now.⁶

Remedy: We expect the Commission to ensure the Applicant aligns with Comprehensive

5 Zoning Commission Case No. 02-38A, Exhibit 5, Submission by Shalom Baranes Associates, “Planning area.” Page 2 of the PDF, labeled as page “1.0” of the exhibit.

6 See among other policies, Comprehensive Plan Policy UD-2.2.4: Transitions in Building Intensity; Policy UD-2.2. 1: Neighborhood Character and Identity; Policy UD-2.2.7: Infill Development; Policy UD-2.2.8: Large Site Development; Policy UD-2.2.9: Protection of Neighborhood Open Space; Action UD-2.2.B: Using Zoning to Achieve Design Goals.

Plan policies that seek inclusion of a significant amount of family-sized units at Waterfront Station as no prior decisions have yet set this key planning parameter for this project, now is the time. See, 10A-DCMR §§ 218.3, 218.5, 500.3, 500.14, 500.18, 500.19, 500.21.

Moreover, lower-income residents should not be relegated away from the best views and experiences in this new project. This means the Commission can ensure far more affordable family units along the outside building envelope and in the upper floors and penthouse to fulfill the intent of the Human Rights Act, and ensure even treatment of all income types within the Northeast Building, promoting equal treatment of all types of people in the SW community.

Size of building is fatal

The Commission approved a 114 foot tall building, meeting the DC Height Act. Now comes the Applicant with a 130 foot tall building possessing no transitions down to the surrounding lower-rise community (church, library, low-rise & lower-income community to north, west and east).

Injury: A building of this size is found downtown, not in Southwest and next to a prevailing low- and moderate-sized architectural open space aesthetic. The proposed project immensity negatively affects the existing character and destabilizes land values of the area, concretely impacting our members on fixed incomes and working-poor families. Plus, this proposal directly challenges the aesthetic and environmental qualities (light & air) of the low- and moderate-rise surrounding community. See, Comprehensive Plan Figures from the Urban Design Element, Chapter 9: Figure 9.5, 9.8, 9.9 & 9.13.

Remedy: Ensure the Applicant provides transitions down from the high-rise proposal to the lower-rise community to the north and east, and qualify that the Commission approved the building at 114 feet as its height to meet the DC Height Act along 4th Street, SW. See, Footnote #5 for policy guidance.

Lack of agency reporting is fatal⁷

It is unrefuted, the record lacks studies as to environmental impacts, infrastructure impacts, public service community facilities overcrowding (10A-DCMR-1102, POLICIES AND ACTIONS CSF-1 ENSURING ADEQUATE COMMUNITY SERVICES AND FACILITIES), and adverse emergency response time impacts (CSF-4.2 FIRE AND EMERGENCY SERVICES; CSF-4.1 POLICE FACILITIES AND SERVICES), and impacts on pedestrian safety (Action T-2.4.E: Pedestrian Master Plan) all fatal to the application.

The injuries to the surrounding community and SWAG members from this lack of a required comprehensive review and impact assessment are obvious. See, Policy IM-1.5.4: Transparency

⁷ 10A-DCMR 105.2 – Of course, an implementation element alone is no guarantee that the policies of this Comprehensive Plan will be followed or that its actions will be carried out. It is the job of the District administration to abide by the Comprehensive Plan and coordinate with other agencies of government to ensure that future actions respect its policies.

in Decision-Making; Policy E-3.4.2: Transparency of Environmental Decision-Making, H-1.4.6: Whole Neighborhood Approach.

Injury: The lack of comment on impacts of overcrowding the area (now with 450 more units) affects public services such as the emergency response time of public safety responders, and exceeding the capacities of the area's public clinics, libraries, recreation centers, parks, etc. – all to the imminent harm of SWAG members who enjoy these public services now, but have seen quality and capacity decline with each new major project and lack of new investments therein.⁸

As well, an injury is the the lack of commitment to ensure the Applicant pays its fair share of public facility & infrastructure upgrades (water, gas, electric) per plan policies, putting the burden on us. It is an injury for SWAG members to take on the costs of the PUD project impact. See, Policy IM-1.1.3: Relating Development to Infrastructure Capacity Policy, Policy CSF-1.2.6: Impact Fees, Policy IN-6.1.3: Developer Contributions.

Remedy: This Second-Stage PUD process allows the Commission to express its independent authority to meaningfully require impact assessments to greatest extent feasible, to mitigate impacts, and to set conditions for the benefit of protecting the surrounding community from identified impacts. The Commission can't fulfill this key planning role unless potential impacts are actually identified.

Certainly, there's been limited agency impact assessments completed in time for the PUD hearing, thus denying due process in preventing the public and SWAG members from commenting on these types of impacts and comprehensive administrative review required by the PUD regulations in a timely way (let alone the lack of fact finding for the Commission to rest their decision). If this were to occur as required by the regulations, our members request that we get to comment on these studies. See, Policy IM-1.1.6: Studies Preceding Zoning Case Approvals; Policy IM-1.1.1: Mitigation of Development Impacts.

As the Commission knows:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy

⁸ See Comprehensive Plan Policies E-4.1; E-4.1.3; E-4.2; E-4.3; E-4.3.5; E-4.5.C; E-4.8.2; ED-3.2; ED-3.2.1; ED-3.2.6; ED-3.2.7; ED-3.2.A; ED-3.2.D; ED-4.2.4; ED-4.2.7; ED-4.2.12; CSF-1.1; CSF-1.1.1; CSF-1.1.2; CSF-1.2.2; CSF-1.2.6; CSF-3.2; CSF-4; CSF-4.2; IN-1.2; IN-1.2.2; IN-2.1.1; IN-5; IN-6; IN-6.1.3, etc.

and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

6-641.02. Zoning regulations – Purpose (emphasis added).

Now is the time to ensure real impact study and live up to the tenants of inclusivity and protection afforded by the law -- until by which the application must be put on hold or denied.

Respectfully submitted on behalf of all SWAG and DC for Reasonable Development members, on this the 31st day of January, 2019, by,

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