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VIA IZIS AND HAND DELIVERY

Zoning Commission for
the District of Columbia
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: 1333 M Street, LLC / ZC Case No. 20-06 / Post-Hearing Submission

Dear Members of the Commission:

On behalf of 1333 M Street, LLC (the “Applicant”), we respectfully submit this post-hearing submission in support of the first-stage planned unit development (“PUD”), consolidated PUD, and map amendment proposed in Zoning Commission Case No. 20-06. The public hearing for this case occurred on September 10, 2020; the case is scheduled for the October 19th meeting of the Zoning Commission.

Revised Building Design and Additional Plans

The revised architectural plans and renderings for the project are attached as Exhibit A. The sheets have been updated as described below. The Applicant will file comprehensive sets of the updated architectural plans and drawings prior to the Zoning Commission’s final action on the application.

First Stage PUD Approval

1. Sheet A-24: LEED Checklist

The LEED Checklist has been updated to achieve LEED Gold equivalency standard.

Consolidated PUD for Phase I

1. Sheet A-6: Inclusionary Zoning (“IZ”) Units

IZ units with balconies or patios have been identified. 12.7% (10 units) of the 79 units have balconies or patios.

2. Sheet A-20: Exterior Elevations

In response to the Commission's request to study several architectural features of the proposed building envelope in order to simplify the overall design solution, the building massing and exterior material palette have been reworked in the following areas:

- a. **The "cut-out"** - The massing has been redesigned to create a covered outdoor space that is more proportionate to the human scale and pedestrian experience. The two-story amenity structure and bridge previously located at the eastern edge of the "cut-out" have been removed. Additionally, a 6'-0" setback has been created at the north and south edges of the massing below the "cut-out."
- b. **Balconies** - Additional metal balconies have been added and relocated along the north elevation of the building, and all glass balcony railings have been replaced with metal.
- c. **Brick corner return** - The massing of the brick corner at the southwest edge of the building has been redesigned to incorporate the exterior balcony element.
- d. **Masonry Base along South Facade** – Additional masonry has been added at the face of the third level private courtyard to maintain a continuous datum line along the retail base.
- e. **Framed balconies** – The framed balcony areas on the south face of the building have been rearranged, with the addition of "composite metal panel" in lieu of the "wood-like" fiber cement panel in several areas.

3. Sheet A-35: Building Views – View along Virginia Avenue Promenade

Enlarged detail of the view along the Virginia Avenue promenade, highlighting the proposed landscaping and the addition of seating plinth's along the walkway.

4. Sheet A-36: Building Views – View from Anacostia Waterfront Park

Revised view from the Anacostia Waterfront Park with updated landscape elements shown along boathouse row.

5. Sheet A-43: LEED Checklist

The LEED Checklist has been updated to achieve a LEED Gold equivalency standard equivalent.

6. Sheet A-47: View of M Street Lobby

Details of the main lobby entrance and design revisions at the third floor exterior amenity spaces at the “cut-out.” Inspiration imagery includes the former Anacostia Community Boathouse, and other relevant precedent images.

7. Sheet A-48: View of M Street Residential Yards

Details of M Street residential yards and private entrances.

8. Sheet A-49: Detail view of South Elevation Balconies

Details of projecting balcony elements on south face of building. Of the 496 units, 184 units will have balconies, which is 64 more units with balconies than what was originally proposed.

9. Sheet L-09: Bike Trail Fencing

The Zoning Commission requested that the Applicant study the conditions adjacent to the bike trail proposed for the north side of M Street, and provide details about the proposed safety fence. The safety fence will have a height of 8'-0". The aesthetic of the fence and hedging between the fence and bike trail are reflected in the precedent images on Sheet L-09 of the attached plans.

10. Sheet A-48: Front Yards on M Street

On Sheet A-48 of the attached plans is an additional rendering of the front yard experience for the residential units along M Street. A residential-scale fence will create a private front yard experience along the sidewalk and gates and landscaping will serve as a visual separation between private and public space.

11. Sheet L-26: Updated GAR Scorecard

The GAR Scorecard was updated to achieve a GAR of 0.225 in accordance with the Memorandum of Understanding (“MOU”) between the Applicant and Advisory Neighborhood Commission (“ANC”) 6B (the “ANC”).

12. Sheet L-27: View from across Anacostia River

The Zoning Commission suggested the Applicant revise the renderings to include the existing vegetation on the south side of Water Street. The existing vegetation is shown on Sheet L-27 of the attached plans. This exhibit also shows an expansive view shed open to the water adjacent to the PUD site.

A priority of the PUD design is preserving and enhancing the view corridors to the water along Virginia Avenue and 14th Street. Also, the expansive views to the water from the PUD’s publicly accessible open spaces and overlook area will foster connectivity to the Anacostia River, and will be key to the waterfront experience. The Applicant does not want to interrupt the views with new tree plantings at the southeastern edge of the PUD site along Water Street.

Signed Memorandum of Agreement

An executed copy of the MOU between Advisory Neighborhood Commission (“ANC”) 6B (the “ANC”) and the Applicant is attached as Exhibit B.

Original and Supplemental Noise Reports

Attached as Exhibit C is the report from Phoenix Noise & Vibration, LLC (“Phoenix”) dated August 28, 2020. This report was generated in response to questions from the ANC about potential noise from the railway reflecting from the proposed buildings at 1333 M Street and adversely affecting the residents on L Street. The report concluded that the noise level increase from the construction of the buildings at 1333 M Street will be imperceptible and most likely immeasurable at the residences on L Street.

A supplemental report from Phoenix, dated September 24, 2020, is attached as Exhibit D. This report is in response to comments raised by two residents during the public hearing about potential railway and helicopter noise reflecting from the buildings at 1333 M Street, increasing noise for the residents on L Street. The report concluded that the noise level at the L Street residences from the buildings at 1333 M Street will be imperceptible and most likely immeasurable.

Parking Accommodations and DDOT Conditions

1. Parking

In response to the Zoning Commission's concerns about the cost of parking for retail customers and visitors to the Waterfront Plaza, the Applicant requested that DDOT remove its proposed condition that would require the Applicant to prohibit free or discounted parking rates for retail customers, which DDOT agreed to do. Accordingly, the Applicant proposes to offer free parking for retail customers who are parked for an hour or less. Additionally, the Applicant proposes 29 new, metered parking spaces (subject to approval by DDOT) on M Street, Virginia Avenue, and the private roadway, as depicted on the Curbside Management Plan attached as Exhibit E.¹ The current metered parking rate in the area is \$2.30 per hour. Garage or lot parking in the area generally ranges from \$5 per hour to \$18 per hour with daily rates generally ranging from \$12 to \$25. As such, the metered parking rates would be significantly below the market rate cost of garage parking.

2. DDOT Conditions

Since the hearing, the Applicant and DDOT have come to agreement on all of DDOT's requested conditions, as follows:

- Construct the missing curb ramp on the east side of 12th Street approximately 200 feet south of M Street (Maritime Plaza I driveway), subject to DDOT approval;
- Install one (1) four-dock expansion plate to the existing CaBi station at Potomac Avenue and 8th Street, subject to DDOT approval;
- Construct and install at least five (5) missing tree boxes and street trees along the off-site segment of M Street between 12th Street and Virginia Avenue, subject to DDOT approval;
- Install a Transportation Information Center Display (electronic screen) within each residential lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail, Circulator, and Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- Increase the number of lockers and showers provided for retail employees to meet the ZR16 minimum;
- The minimum cost of residential parking will be established based on the average market rate within a quarter mile of the site;

¹ This exhibit was previously included in the record as part of the transportation study by Wells & Associates marked as Exhibit 28A of the case record and as part of Jami Milanovich's testimony at the public hearing.

- Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 18 utility carts, in order to encourage residents to walk to the grocery store and run errands;
- Following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation to DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case; and
- Following the issuance of a certificate of occupancy for the project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT.
- Work with another entity (e.g., Capitol Riverfront BID) to provide a shuttle service between the PUD site and a nearby Metrorail Station. The shuttle shall operate with headways between 10-15 minutes and shall operate during the weekday AM and PM commuter peak periods. The exact shuttle route and pick-up/drop-off areas in public space shall be coordinated with DDOT. The shuttle shall run until such time as the pedestrian bridge over Southeast Boulevard is constructed and open for use. In the event there is a desire to eliminate shuttle service prior to the construction of the pedestrian bridge due to low ridership, the Applicant will work with DDOT to understand reasons why the ridership is low (e.g. other alternative transportation options are available, biking/walking is preferred over shuttle, etc.) and collaborate on how to improve service and ridership. If increased vehicular traffic related to the project is determined to be the reason for low ridership, the Applicant will work with DDOT to determine if a substitute TDM measure is necessary.
- Develop a concept to convert Water Street from an automobile-oriented connection between 12th Street and M Street to a shared street (a.k.a. “neighborhood greenway”) in which bikes and pedestrians have priority over vehicles, subject to DDOT approval, with the additional guidance:
 - (a) This will be limited to new signage and pavement markings, including Anacostia Riverwalk Trail branding.
 - (b) Other elements would be limited to lower speed limit, use of flex posts, and automobile restrictions achieved through geometric changes at Water Street’s intersections with both 12th Street and M Street to discourage non-local vehicle use. Any geometric changes at the Water Street/M Street intersection will be incorporated into the Applicant’s plans to reconfigure the intersection with a traffic circle. Any geometric changes at the Water Street/12th Street intersection would be limited to installation of flex post delineators.

- (c) The Applicant will collect current daily traffic counts on Water Street and at driveways along Water Street (at the time the concept is being developed) to better inform the design.
 - (d) The Applicant will involve a representative from the ANC throughout the design process.
 - (e) If DDOT is unable to come to an agreement with the Applicant on the design of Water Street, then a new 10-foot trail along the Water Street frontage will be constructed.
 - (f) During permitting for the first phase of the PUD, the Applicant shall submit to DDOT a signage and striping plan for Water Street SE between 12th Street SE and M Street SE (either as part of the public space application for M Street and Virginia Avenue or as a separate public space application). Subject to DDOT's review and approval, the Applicant agrees to implement the plan during construction of the second phase of the PUD.
- Implement a Loading Management Plan with the following provisions:
 - (a) A member of the on-site management team will be designated as a loading coordinator (duties may be part of other duties assigned to the individual). He or she will coordinate all loading activities for Building #2 (including deliveries, trash disposal, and residential move-in and moveout activities) and ensure bicycle and pedestrian safety is not compromised or traffic impeded on M Street SE from these activities.
 - (b) The loading coordinator will be responsible for informing residential and retail tenants of the guidelines and procedures for loading and delivery operations.
 - (c) The loading coordinator will inform tenants of DDOT's regulations for moving trucks and will work with tenants when applying for DDOT "Emergency, No Parking" signs for moving trucks.
 - (d) The Applicant or loading coordinator will file a permit application with DDOT and coordinate with DDOT's Parking and Ground Transportation Division (PGTD) on the appropriate signage and size of loading or "no parking" zone on M Street adjacent to Building #2.
 - (e) In the event the designated on-street loading or "no parking" zone is full, the loading coordinator may direct the truck driver to return at another time, reroute trucks to the loading berths of Building #1A or #1B, or reroute trucks to Virginia Avenue or the internal north-south private driveway.
 - (f) All tenants of Building #2 will be required to notify the loading coordinator before moving in or out. The tenant shall provide the loading coordinator the following information: time and date that the truck is anticipated to arrive, size of truck being used, and name of the moving service (if applicable).

- (g) The loading coordinator will ensure that moving trucks use the designated loading zone on M Street adjacent to Building #2. If multiple move-in/move-out events overlap, additional moving trucks will be required to obtain a permit from DDOT to establish a temporary on-street no parking zone nearby.
- (h) The privately hired trash company will roll trash bins out the side of the building to the M Street curb at the time of trash pick-up and then back inside as soon as trash collection is complete. Trash and recycling bins will not be stored in public space.
- (i) Trash and delivery trucks will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight). The loading coordinator will distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws.
- (j) The loading coordinator will be responsible for disseminating suggested truck routing maps to drivers from delivery and trash pick-up services that frequently serve Building #2, as well as notifying drivers of any access or egress restrictions.

Updated Discussion on Benefits and Amenities Package

1. Flexibility / Number of 2-Bedroom Units

Notwithstanding the flexibility to decrease the number of units, the Applicant agrees to maintain the number of two-bedroom units proposed for Phase 1 of the PUD. Thus, the language for flexibility in the number of units is modified to read as follows:

Building 1 – East Tower will have 496 units. The Applicant has the flexibility to increase the number of units by up to 5% or decrease the number of units by up to 10%. Further, any flexibility in number of units will not result in fewer two-bedroom units than currently proposed, which is 64.

2. Updated LEED Scorecard

An updated LEED Scorecard for the project, achieving a LEED Gold standard equivalent is attached as Sheet A-24 of the plans attached as Exhibit A.

3. Updated GAR Scorecard

In the MOU between the Applicant and the ANC, the Applicant agreed to achieve a green area ratio of 0.225 where the Zoning Regulations only require a GAR of 0.20. The GAR scorecard reflecting this change is on Sheet L-26 of the plans attached as Exhibit A.

4. Voluntary Proffer to Support Senior Programming

At the public hearing, the Applicant voluntarily proffered the following:

The Applicant agrees to increase its proffer related to senior programming from \$25,000 to \$250,000, in accordance with Sec. 305.3 of the PUD Regulations. Specifically, the Applicant will contribute \$25,000 to the Department of Parks and Recreation to support the programming for seniors at the Arthur Capper Rec. Center, and will contribute \$225,000 to the Department of Aging and Community Living, with the request that the funds be earmarked to assist a non-profit organization with the cost of professional services related to securing a site for an adult daycare center in the Capitol Hill area of Ward 6. See Tr. pg. 11, Lines 12 -22.

The Applicant confirmed that DPR can accept the proposed contribution of \$25,000. A copy of the donation form is attached as Exhibit F.

On September 22nd, at the request of the Vice Chair of the ANC, the Applicant met with several ANC Commissioners and members of Capitol Hill Village (“CHV”). At the meeting, CHV expressed concern that the District may not have the capacity to use the proposed \$225,000 contribution to sufficiently advance efforts for an adult day care center in Capitol Hill. The Applicant was asked to contribute the funds directly to CHV so that CHV could implement the plan that it filed at Exhibit 33 of the case record. As explained during the meeting, the Applicant is unable to donate the directly to CHV as proposed because a scenario where the issuance of a certificate of occupancy solely or primarily relies on the actions of an unrelated third party is problematic for lenders and investors.²

After the meeting with the ANC and CHV, the Applicant confirmed that, because of the lengthy and complicated budget process, the Department of Aging and Community Living³, could not accept the monetary contribution originally proffered by the Applicant.

² Pursuant to Subtitle X, Sec. 305.3 of the Zoning Regulations, monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services fund have been or are being provided. (Emphasis added.)

³ As an alternative, the Applicant reached out to the Office of the Deputy Mayor for Planning and Economic Development, but that office could not accept the proposed contribution for the same reason.

Given the circumstances, and taking into account the expressed concerns of some of the ANC Commissioners, CHV and the Applicant, the Applicant hereby revises its voluntary monetary contribution as follows:

The Applicant will contribute \$25,000 to DPR to support the programming for seniors at the Arthur Capper Recreation Center.

Additionally, the Applicant agrees to expend \$225,000 to cover the cost of professional services related to efforts to secure a site for an adult day care center in the Capitol Hill neighborhood of Ward 6 or Hill East Reservation 13. Consistent with the Scope of project marked as Exhibit 33 of the case record, the funds will be used to engage one or more consultants or non-profit organizations (e.g. Capitol Hill Village and Iona) to, among other things, evaluate the demand and demographic data for adult day care; identify potential sites for an adult day care center; deliver a matrix of prioritized adult day care service needs and the square footage required to meet those needs; test fit or preliminarily design a proposed space; and identify adult day care providers. Prior to the issuance of a certificate of occupancy for Phase I of the PUD, the Applicant shall file documentation with the Zoning Administrator demonstrating that this proffer has been satisfied as set forth above.

This revised voluntary proffer addresses the concerns raised in that it allows the Applicant to expend funds with professionals and organizations, such as CHV and Iona, that have the experience and desire to advance efforts for an adult day care center in Capitol Hill; and Exhibit 33 can be used as guidance for the scope of services. Also, the revised proffer **is consistent with the signed MOU**, which reads in relevant part:

The ANC and Developer reached agreement on all items related to the project except the proffer for an Adult Day Center. Specifically, the ANC finds that the PUD benefits and amenities are insufficient unless the proffers are increased to include a monetary contribution of \$250,000 to support senior programming, specifically for the cost of professional services related to securing a site for an adult day care center in Ward 6.

It is consistent with the ANC report to the Zoning Commission, which reads in relevant part:

We note that increasing the contribution to support senior programming, specifically for the cost of professional services related to securing a site for an adult day center, to \$250,000, combined with the previously proffered public benefits outlined in the Applicant's Supplemental Prehearing Statement at Exhibit 30 of the case record, would be sufficient in meeting the threshold of X-300.1(b) in offering "a commendable number or quality of meaningful public benefits".

Lastly, it is **consistent with ANC's testimony at the public hearing:**

So, the ANC report in Exhibit 54 of the case record is clear that we would find the proffered public benefits sufficient if the contribution to support senior programming is raised to \$250,000. The proffer does that. There is a clause in our report which states the proffer should go to support the cost of professional services without specifying the amount that should go to those services. So, again being pedantic I think the proffer meets that. . . And the ANC went up, took pains to ensure that there is not a preferred recipient of the proffer. (See Tr. pg. 134, Lines 16 – 25; pg. 135, Lines 1-2.)

5. Response to Comments Regarding Superior Architecture and Urban Design Public Benefit

As set forth in the case record, and as testified by the Applicant at the public hearing, the proposed PUD exhibits superior urban design and architecture. Pursuant to the PUD regulations⁴, the design of the proposed PUD qualifies as a public benefit because it will benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of the Zoning Regulations. Further, in the same manner as every other PUD that has been approved by the Commission, the public benefit provided by the project's urban design and architecture will be tangible, quantifiable, and measureable.⁵

At the public hearing, and in the case record at Exhibit 60 of the case record, comments were provided by Mr. Neil Flanagan that generally asserted the project's design does not rise to the standard of superior urban design and architecture (the "Comments"). The Comments also asserted that the evidence in the record concerning the proposed design is not formalized in a quantifiable or measurable way. Similar statements were made regarding the project's environmental and sustainability benefits, stating that the Applicant has not demonstrated how these particular benefits exceed what could be built under the 2017 DC Construction Codes. Finally, the Comments stated that the Applicant has failed to show how the proposed design of the PUD is not inconsistent with the Comprehensive Plan. The Applicants response to the Comments are below.

a. **Urban Design and Architecture Proffers Qualify as a Public Benefit**

The plans submitted by the Applicant fully satisfy the PUD requirement that public benefits shall be tangible, quantifiable, and measureable. First, the proposed plans, including the initial plans submitted by the Applicant as supplemented in response to requested from OP and the Commission, meet or exceed the submission requirements for a Consolidated PUD under Subtitle Z §§ 300.11 and 300.12 of the Zoning Regulations. Despite this fact, the Comments compare the plans submitted for the proposed PUD with

⁴ See 11-X DCMR § 305.2

⁵ See 11-X DCMR § 305.3(a) and (b)

those approved by the Commission in a design review case within the SEFC zone (Z.C. Case No. 17-07).

The Comments note that the approved drawings in Z.C. Case No 17-17 contain details such as, among other things, dimensional statements about façade relief, the kinds of materials to be used, and images of buildings that served as design references. While the plans for the other project may contain certain drawings or details that are not included in the drawings for the proposed PUD, overall, the drawings for the other case are not markedly different than what has been submitted by the Applicant. For example, the approved plans for the other project do not include specific information on the kinds of materials to be used. Rather, the approved materials sheet(s) include general information the building will contain dark iron spot brick, black metal mullions and metal panels, and clear low-E glazing. This is similar to the material information provided for the proposed project, which will contain brick, concrete, cast stone trim, composite metal panel, and thermal pane aluminum windows.

Despite the assertion made in the Comments, the proposed urban design and architecture for the proposed PUD are tangible, quantifiable, and measurable in the exact same way as any other PUD approved by the Commission. To qualify as a public benefit, the Zoning Regulations do not require urban design and architecture to be tangible and measurable in some quantitative way, nor has the Commission ever required this of an Applicant. Rather, given the subjective nature of urban design and architecture, the final determination of whether the project's urban design and architecture qualifies as a public benefit is left to the Commission. As discussed below, the Commission's determination as to whether the project's urban design and architecture is not based upon any definitive guidance on what qualifies as "superior," or an arbitrary comparison to other projects approved by the Commission and/or the Historic Preservation Review Board. Rather, the Commission's determination regarding all public benefits is made relative to whether the surrounding neighborhood or the public in general will benefit to a significantly greater extent compared to development of the site under matter-of-right parameters. As discussed in greater detail below, the proposed urban design and architecture of the proposed PUD, as well as the landscaping and open space, will result in far more benefits to the neighborhood or the public than would otherwise result from matter-of-right development of the site. Like any other PUD, should the Commission determine that the project's urban design and architecture qualify as a public benefit, said benefit is made tangible, quantifiable, and measurable through a condition in the final order that requires the Applicant to construct the project in accordance with the plans approved by the order, as may be modified in accordance with any minor design flexibility granted by the Commission.⁶

⁶ As just one example, in the recently approved PUD in Z.C. Case No. 19-10, the Commission concluded that the proffered urban design, architecture, and landscaping benefits were superior. See Z.C. order No. 19-10, Conclusion of Law ("CoL") 59. The Commission further concluded that the project provided various design elements that resulted in a project that was "superior to matter of right development and that effectively relate the project to the surroundings. (emphasis added)" *Id.*, CoL 67. To ensure that the proffered urban design, architecture, and

Finally, the Comments state that the Applicant's request for minor flexibility in exterior details and materials provide no way for parties to the PUD to validate whether minor changes made after approval are substantive or not. First, the minor design flexibility requested by the Applicant is consistent with the flexibility granted by the Commission in nearly all PUDs and design review cases. The actual language of the flexibility is closely reviewed by OP, OAG, and the Commission to ensure that the flexibility does not result in substantive changes while at the same time provides a reasonable degree of flexibility to accommodate refinements that may be necessary during permitting. In fact, during the course of this project the Applicant revised the language of the requested flexibility in response to comments from OP and the Commission. Secondly, parties to a PUD, which in this case include the Applicant and the ANC, are not responsible for validating whether a minor change to a PUD is substantive. This responsibility resides within the Zoning Administrator ("ZA"). At permit, the Applicant will be required to submit (in graphic and written form) a list of design changes made since approval of the PUD, and how such changes are covered by the flexibility granted by the Commission. Upon review, should the ZA determine that one or more of the changes are not covered by the flexibility, the Applicant will likely need to return to the Commission to seek a modification to the PUD.

b. Urban Design and Architecture of the project is Superior to Matter-of-Right Development

According to the Comments, analysis of whether the project's urban design and architecture qualifies as a public benefit "is hampered by the lack of a definition of 'superior urban design and architecture.'" In light of this, the Comments attempt to establish a definition by looking to projects approved by the Commission as PUDs to projects approved by the Commission under Design Review and to buildings approved under the District's historic preservation review processes. As discussed below, the Zoning Regulations already provide guidance on how the urban design and architecture of the project is to be judged, and it does not involve comparisons to other projects approved by the Commission or any other District (or federal) agency.⁷

Projects that have been approved by the Commission (PUD or Design Review) or by the Historic Preservation Review Board ("HPRB") establish no precedent or review standard for the proposed PUD. As related to the HPRB, the Comments refer to several projects along 14th Street that, because they were approved by the HPRB, "can be

landscaping benefits of this project, the Commission conditioned its approval upon development of the project in accordance with the approved plans. Id, Condition A.1.

⁷ Sections B1 – B5 of the Comments further attempt to discredit the design of the project through wide-ranging commentary pertaining to the Applicant's execution of its stated design objectives, and how specific aspects of the project design should/could have been designed differently, including the "cut out" through the Building 1 – East Tower. Also included is a critique of the Applicant's use of the term "modern industrial," and statements on how the project is inspired by the architectural character of Boathouse Row and the tradition of industrial buildings formally located along the Anacostia waterfront. Finally, the Comments assert that the project design is not oriented to the water. These particular sections of the Comments, while thoughtful, reflect subjective observations / opinions by the author of the Comments, and do not, in any way, demonstrate that the urban design and architecture of the project will not "benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions."

understood as reflecting superior design.” This is a subjective observation that is not grounded in any District historic preservation or zoning regulation. The fact that a project has been approved by the HPRB does not mean the project has superior architecture, but rather that it has met the applicable standard of review under District historic preservation laws and regulations (which is consistency with the Historic Landmark and Historic District Protection Act of 1978). Similarly, projects approved under Design Review, or another PUD, establish no precedent for the Commission’s evaluation of the proposed project. A Design Review project has an entirely different standard of review under the Zoning Regulations, which does not involve the balancing of public benefits, development incentives, and potential impacts. Thus, to the extent a particular Design Review project is referred to in the Comments as having superior architecture is a matter of preference that has no bearing on the Commission’s evaluation in this case.

The PUD regulations clearly establish how the Commission must evaluate the project’s urban design and architecture as a public benefit. The purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that a PUD, in relevant part, “results in a project superior to what would result from matter-of-right standards. (emphasis added)” *See* 11-X DCMR § 300.1(a). Further, as stated above, public benefits of a PUD are superior features “that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions. (Emphasis added,)” *See* 11-X DCMR § 305.2. Thus, as related to this case, the evaluation of “superiority” of the project’s urban design and architecture is properly conducted relative to what would result from matter-of-right development of the site. Through the written record, and the testimony provided by Ms. Hernandez-Ayala and Mr. Dettman, the Applicant demonstrated how the project’s urban design and architecture are far superior to what could result from matter-of-right development under the site’s existing PDR-4 zoning.

c. Environmental and Sustainability Proffers Qualify as a Public Benefit

Contrary to the assertions made in the Comments, the proffered environmental and sustainability benefits of the project “exceed the standards required by zoning or other regulations.” Pursuant to Section 305.5(k) of the PUD regulations, the project includes natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where it is generated, includes rooftop garden areas that residents can use for on-site food production, and will be designed to LEED Gold equivalent standards. With respect to runoff, the project will contain approximately 33,400 square feet of green roof and bioretention areas. *See* Exhibit 17A5 of the case record. Further, as shown on the proposed landscape plans the Building 1 – East Tower will contain raised garden planters that can be used for on-site food production, a project amenity that will be available to building residents.

Most importantly, the Applicant has committed to designing the project to LEED Gold equivalent standards, which exceeds what is otherwise required under the DC Green Building Act of 2013 and the 2017 Construction Code. Under the DC Green Building Act

and current Construction Code, the proposed PUD would only be required to be designed to meet one of the following four compliance pathways: ASHRAE 189.1-2011, Enterprise Green Communities Certified, LEED certified level or higher, or National Green Building Standard (ICC 700). The Applicant's commitment to designing the project to LEED Gold equivalency exceeds all four of these compliance pathways.

Pursuant to Section 305.5(k)(5) of the PUD regulations, a project meeting the minimum standards for LEED Gold would meet the environmental and sustainable public benefit standard. The PUD regulations do not require that a project achieve actual certification. Rather, the project proponent must provide a LEED checklist and documentation showing that the project will comply with LEED requirements. As shown in the revised LEED scorecard attached hereto, the project has been designed to achieve LEED Gold equivalency. The Applicant's commitment to LEED Gold equivalency will be incorporated as a condition to the Commission approval in the final PUD order.

d. The Project is Not Inconsistent with the Comprehensive Plan

The Comments assert that the Applicant "has failed to show that the design of the Consolidated PUD (Building 1 – East Tower) is not inconsistent with the Comprehensive Plan, including those claimed as compensatory for other inconsistencies, and that the design addresses the requirements of other adopted plans." This is simply an inaccurate statement. Through its written filings, and the detailed analysis provided at the public hearing by Mr. Dettman, the Applicant has thoroughly analyzed the project for overall consistency, and potential inconsistencies, with the Comprehensive Plan and other adopted plans. *See* Exhibits 3, 10, 30, and 58A4 of the case record. *See* also Tr. September 10, 2020, p. 33 – 49, and 104 – 108. As was testified by Mr. Dettman, the Applicant's Comprehensive Plan analysis closely followed the guidance provided in several recent opinions of the D.C. Court of Appeals. The Applicant's Comprehensive Plan analysis thoroughly analyzed the project for consistency with each element of the Comprehensive Plan, as well as the FLUM and GPM, and, where applicable, specifically acknowledged potential inconsistencies with specific Comprehensive Plan policies. The Applicant then specifically discussed how these potential inconsistencies were outweighed by other competing considerations. Thus, while the Comments assert that the Applicant has failed to show consistency with several Comprehensive Plan elements, the record conclusively demonstrates otherwise.

The Comments claim that the project is inconsistent with five specific Comprehensive Plan polices, some of which are already addressed in the case record. For the following reasons the Applicant submits that the project is in fact "not inconsistent" with these policies. To the extent the Commission finds otherwise, any such inconsistencies are far outweighed by the project's consistency with numerous Comprehensive Plan policies such that, on balance, the project is not inconsistent with the Comprehensive Plan when read as a whole.

- *LU-2.1.1: Variety of Neighborhood Types - Maintain a variety of residential neighborhood types in the District, ranging from low-density, single family neighborhoods to high-density, multi-family mixed use neighborhoods. The positive elements that create the identity and character of each neighborhood should be preserved and enhanced in the future.*

Given the location and existing condition of the PUD site, one would be challenged to effectively argue that the project does not maintain a variety of residential neighborhood types in the District. In contrast, the project will undoubtedly help maintain the variety of residential neighborhood types by establishing a new (approximately 900 unit) multi-family mixed-use development where currently no residential is permitted. Indeed, the project will contribute to the District's string of waterfront neighborhoods (some well-established, some newly-established) located along the Potomac and Anacostia Rivers. This is consistent with Comprehensive Plan policies and AWI Framework Plan recommendations that support additional density along the waterfront, in part to leverage the creation of additional open space.

Finally, given its existing condition, there is nothing on the PUD site that is worth preserving or enhancing. The site has long been vacant, a contains parking and abandon industrial structures. However, as described in the case record the urban design and architecture of the project is informed by the context of surrounding neighborhoods, the industrial history of the site, and the former Anacostia Community Boathouse, which was demolished as part of the 11th Street Bridge project. As one example, the main entry lobby of Building 1 – East Tower has been designed to honor the past of this former industrial site and its adjacency to boathouse row. Users will enter the building thru a glass curtain wall system that visually reveals an interior masonry façade with detailing similar to the former boathouse. This façade will serve as a prominent architectural feature in the main lobby, but also a symbol of the historic past of this area of the city. *See Sheet A-47.*

- *Policy E-1.2.1: River Conservation - Improve environmental conditions along the Anacostia River and other water bodies, including shorelines, wetlands, islands, tributaries, and the rivers themselves. Particular attention should be given to eliminating toxic sediments, improving river edges to restore vegetation and reduce erosion, enhancing wetlands and wildlife habitat, creating new wetlands, and reducing litter.*

The Comments state that the Applicant has failed to demonstrate how the project is not inconsistent with the habitat protection elements of this policy, merely because the design of Building 1 – East Town contains an extensive amount of glazing along the Anacostia River. Citing to Section 4.6 of DOEE's 2015 Wildlife Action Plan, the Comments state that bird safety could be improved by reducing the amount of glazed area that faces the river.

Note, this particular Comprehensive Plan policy really has to do with improving the environmental conditions of the Anacostia River as opposed to designing bird-friendly buildings. It promotes conservation of the Anacostia River, including its shoreline and the waterways that may flow into the river, with a particular focus on, among other things, enhancement of wildlife habitat. Thus, arguably it could be said that this policy does not even apply to the project. Notwithstanding, contrary to the Comments the project's design will not cause unacceptable impacts on birds. While the design of Building 1 – East Tower contains extensive glazed surfaces, it is paired with a projecting composite metal framework that breaks down their size and scale, while also providing additional sun screening throughout the day. These design strategies serve to reduce glass reflection and visibility into transparent areas, thereby reducing the potential for bird collisions at upper levels of the building. In contrast to a flat, uninterrupted span of glazing, the massing of the proposed design is broken down by courtyards, terraces, and several projecting balconies that give the building depth. Further, the two-story brick podium and contrasting upper level materials (metal and fiber cement panel with wood look) add texture to the building, and the layered grid pattern of the façade system substantially reduce amount of uninterrupted glazing. Collectively, these elements of the design are likely to be effective at minimizing bird collisions.

While the Commission is obligated to consider the potential impacts of the project as a part of the PUD standard of review, the evaluation of the project's potential environmental impacts in no way concludes with the Commission. In fact, it is only the beginning. Should the Commission approve the proposed PUD, the Applicant will be required to complete a thorough environmental review under the D.C. Environmental Protection Act and implementing regulations. This process involves an evaluation of the potential impacts of the project, including environmental impacts, prior to issuance of a building permit and "implementation" of the project.⁸ DOEE is the District agency primarily responsible for analyzing the potential environmental impacts of the project, which will include potential impacts to wildlife and, to the extent it is applicable, conformance with the 2015 Wildlife Action Plan. Should DOEE identify an impact, including impacts to birds, that can only be mitigated through modifications to the project that are not covered by the minor design flexibility included in the PUD order, the Applicant would need to return to the Commission to seek a PUD modification.

- Policy E-2.2.1: Energy Efficiency - Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees.

Through the Applicant's commitment to designing the project to LEED Gold equivalency and installation of solar panels the project is not inconsistent with this Comprehensive Plan policy. The policy promotes the efficient use of energy, which the project will do through meeting several LEED Energy and Atmosphere prerequisites

⁸ The D.C. Court of Appeals has held that "implementation" of a zoning approval occurs when construction actually begins. (*See Foggy Bottom Ass'n v. D.C. Bd. Of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002).

and credits. The Policy also promotes the use of renewable energy, which the project will do through installation of solar panels that will generate at least 1% of building energy, an amount that is consistent with a number of recently approved PUDs. The policy does not require the type of quantitative analysis suggested by the Comments, nor is it necessary to determine whether the project is not inconsistent with this policy. The mere fact that the project will generate and consume an amount of energy generated through green sources means it will consume that much less energy generated through non-green sources.

- *Policy UD-1.3.3: Excellence in Waterfront Design - Require a high standard of design for all waterfront projects, with an emphasis on shoreline access, integration of historic features and structures, an orientation toward the water, and the creation of new water-oriented public amenities.*

The Comments state the project is inconsistent with this policy because the Applicant has failed to show how the design “integrates historic features and structures, and that the plaza and buildings are oriented toward the water.” First, there are no historic features and structures on the PUD site, nor has the Applicant ever said there were. Rather, the Applicant has only stated that the architectural concept of the project is informed by / takes cues from industrial past of the site and surroundings and the former Anacostia Community Boathouse. Secondly, as has been testified by Ms. Hernandez-Ayala, the plaza and buildings are indeed oriented toward the water. The site plan and overall massing for the project have been designed to take full advantage of this irregularly shaped triangular site and the opportunities for unobstructed views of the Anacostia River and city, which exist on all sides of the project. The projecting wings located on the south face of Building 1 – East Tower allow all units fronting the river to take full advantage of waterfront views as the river bends west around the site. Finally, as testified by Mr. Dettman, the proposed height of the project allows the Applicant to devote a large portion of the site to new plazas and open space that are oriented toward the waterfront, preserve viewsheds, and improve site porosity and pedestrian connections to the Anacostia shoreline, which are all improvements that this policy specifically promotes.

- *Policy AW-1.1.5: River Basins as a Planning Guide - Recognize and be responsive to the distinct settings and environments created by varying conditions along the shoreline. Consistent with the Anacostia Framework Plan, the river should be viewed as a series of “basins,” each defined by their unique physical and visual characteristics. In general, there should be a progression from a more urban environment on the lower basins (Washington Channel and the river gateway) to a more natural environment on the upper basins (Kingman and Heritage Islands, Arboretum, etc.)*

The project is not inconsistent with this policy, and is fully consistent with the recommendations of the 2003 AWI Framework Plan. Framework Plan describes the Anacostia River as a series of basins that vary in character from urban to pastoral. The PUD site is located within the “Anacostia Basin,” which is generally described in the

Framework Plan as suitable for marinas, recreational boating, and rowing, and the beginning of the transition to the pastoral character of the upstream basins. The project is also located within the Near Southeast Target Area of the Framework Plan, which is recommended for a “significant increase in residential density” that is concentrated at, among other areas, the eastern end of M Street. The project is consistent with Framework Plan’s basin concept and recommendation for increased residential development. The project will enliven this end of M Street by bringing approximately 900 new residential units (market rate and affordable) and retail uses where none currently exists. This will be accomplished in a manner that takes advantage of the PUD site’s proximity to the waterfront through new plazas and open spaces where residents and visitors can gather in close proximity to the recreational activities taking place along the Anacostia River.

6. Conclusion

We trust that this post-hearing submission sufficiently addresses the Zoning Commission’s comments related to the application, and respectfully request that the Commission take proposed action at the public meeting scheduled for October 19, 2020. Thank you for your considerate attention to this matter.

Sincerely,

HOLLAND & KNIGHT



Norman M. Glasgow, Jr.
Leila M. Jackson Batties
Christopher S. Cohen

Cc: Certificate of Service