

## **Motion of Advisory Neighborhood Commission 6D for Reconsideration of Decision**

Advisory Neighborhood Commission 6D (“ANC 6D”) moves that the Zoning Commission reconsider its decision in Case #22-06 approving the application submitted by *801 Maine Ave SW PJV, LLC* for a Consolidated Planned Unit Development (PUD) and Related Map Amendment @ Square 390, Lot 53 06, more commonly referred to as “*899 Maine Avenue SW*”.

### **THE MOTION IS TIMELY**

Subtitle Z § 201.2 authorizes any party to file a motion for reconsideration within ten days of the issuance of a final order.

The order in this case was issued on June 9, 2023. Under Subtitle Z § 204.2, the tenth calendar day after issuance was June 19, 2023. Because that day is a Federal Holiday, subtitle 204.2 dictates that the ten-day period be extended until the end of the next non-holiday weekday, June 20, 2023. Today being the final day of the allowed ten-day period, the motion is therefore timely submitted.

### **SUMMARY**

The Zoning Commission’s decision is erroneous in nine (9) separate respects:

- 1) **FLEXIBILITY & BALANCING** - The flexibility granted to an applicant in a PUD requires offsetting and balanced community benefits. Furthermore, a reasonable mitigation of impacts to all parties and stakeholders is required; mitigation of impacts is NOT the same as a community benefit. The order does not demonstrate reasonable mitigation of all impacts to parties, does not provide for reasonable balancing of community benefits and frequently treats impact mitigation as a community benefit.
- 2) **AFFORDABLE HOUSING** - The flexibility granted to an applicant in a PUD requires offsetting and balanced community benefits, such as the provision of additional affordable housing. In this case, the OAG consistently argued, and ANC 6D repeatedly concurred, that the affordable housing percentages the applicant has provided when specifically balanced against the additional flexibility and density approved with the extra two (2) floors of height, has not been satisfied and therefore the resulting zoning order is incorrect.
- 3) **HEIGHT ISSUES** - The approval for, and measurement of, the proposed development height facing Maine Ave SW is incorrect in multiple ways. The order frequently cites the height of buildings at The Wharf as a reasonable reference or the concept that this building provides an acceptable “transition” to The Wharf, both of which are incorrect as the building heights at The Wharf were approved as a special exception to the Comprehensive Plan outside of the Future Land Use Map (FLUM) requirements, and are specifically excluded from the approved Southwest Small Area Plan (SW SAP); these are all points

acknowledged by the Zoning Commission members in a concurrent case for another PUD development at 807 Maine Avenue.

In addition, the actual measurement of the height of the proposed development is technically incorrect as it relies on incorrect / false reference points and results in a building height on Maine Avenue SW which exceeds the height of the buildings at The Wharf.

- 4) **QUESTIONABLE COMMERCIAL BENEFIT** - The final zoning order states application is not inconsistent with the Comprehensive Plan (CP) Economic Development element as the applicant has promised 24,169 sq ft of retail, yet the final presentation of the Applicant scaled this back to only 3,000 sq. ft. for a “bodega-style” grocery, and a full-service bank that is unlikely to make up the remaining 21,000+ square footage commitment. Furthermore, the entire proffer is incomplete and likely not to be filled as the Applicant failed to submit any letter of intent or MOU from any retailer, which was not properly captured in the final zoning order.
- 5) **TRAFFIC IMPACTS** - The final zoning order does not reconcile or in any meaningful and actionable way allow for the fully identified traffic impacts to be addressed post approval by the Applicant. The Zoning Commission largely disregarded the chaotic and dangerous traffic situation that already exists in the intersection of G St SW, 9<sup>th</sup> St SW, and the exit ramp from I-395, as was well demonstrated with pictures of recent and past incidents in the presentation from the Capitol Square Homeowners Association (CSHOA). In addition, the full gate costs for the CSHOA were never properly introduced into the record, the cost and pre-approval of a series of curb cuts on both Maine Avenue SW and G Street SW were not accounted for, the proposal that a signal study for the existing known dangerous intersection at 9<sup>th</sup> Street SW and G Street SW is not enforceable or meaningful and the requests to fully adjudicate a “right in, right out” option for the proposed curb cut on Maine Avenue SW was ignored.
- 6) **LETTERS OF SUPPORT** - The Zoning Commission improperly evaluated, and the resulting zoning order incorrectly cited, letters of support improperly obtained using a non-compliant website, and letters of support from individuals outside of ANC 6D and who have no standing in the case consideration.
- 7) **SHADOW STUDIES** - Throughout the approval process, the Applicant presented misleading shadow studies, which underestimate the shadow impact over neighboring parcels, in comparison to the more detailed and complete alternate shadow studies presented by the second party to this case (–(CSHOA)), which the Zoning Commission never fully challenged or resolved, resulting in a final order that is incorrect on the impacts of the building on the neighboring parcels.
- 8) **GREAT WEIGHT** - The Zoning Commission and approved order inadvertently gives “Great Weight” to the letters and meetings held directly between the Applicant and Council Member Allen, resulting in a final

“negotiated” workforce housing allowance that was not formally reviewed with ANC 6D and bypassed the codified process by which the ANC is the recognized elected body whose positions by law must receive “Great Weight” in the consideration of PUD applications. Furthermore, the negotiated workforce housing allowance is specifically excluded in the zoning order as contributing to or meeting the required affordable housing measures required to balance the flexibility offered the developer as consistently cited by both the ANC 6D and OAG.

- 9) **ZONING CHOICE** - The MU-9A is inconsistent with the DC Title 11 - Zoning Handbook, Subtitle G definitions for Mixed Use (MU) Zones and therefore the zoning order must be reconsidered.

### **DETAILED DOCUMENTATION AND ANALYSIS**

District law requires the Zoning Commission to give “great weight” to the issues and concerns raised by an ANC (D.C. Official Code § 1-309.10(d)(3)(A)). “Great weight requires ... explicit reference to **each** of the [ANC’s] issues and concerns.” *Id.* (emphasis added).

Moreover, “[t]he written rationale of the decision shall articulate **with particularity and precision** the reasons why the [ANC] does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to **each** issue and concern raised by the Commission. **Further, the government entity is required to support its position on the record.**” § 1-309.10(d)(3)(B) (emphasis added).

Thus, the requirement to give “Great Weight” to ANC concerns carries an obligation to “acknowledge those concerns and articulate reasons why those concerns and issues were rejected and the relief requested from the zoning regulations was granted.” (*See Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016); *see also Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C.1977)). “We conclude that ‘great weight’ ... means ... that an agency must elaborate, with precision, its response to the ANC issues and concerns.” Failure to properly acknowledge and address an ANC’s concerns constitutes reversible error. (*See Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 934 A.2d 393, 396-97 (D.C. 2007)).

Because the Zoning Commission’s order in case 22-06 failed to address nine (9) specific objections set forth in detail below by ANC 6D, the Zoning Commission should reconsider and vacate that order.

#### **1) FLEXIBILITY & BALANCING**

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) PUD Public Benefits regulation (Title 11, Subtitle X, 305)

- a. Section 305.1 - Public benefits are superior features of a proposed PUD 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 of this title.
- b. Section 305.2 - All public benefits shall meet the following criteria:
  - (i) *Benefits shall be tangible and quantifiable items.*
  - (ii) *Benefits shall be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy.*
  - (iii) *Benefits may primarily benefit a particular neighborhood or area of the city or service a critical city-wide need; and*
  - (iv) *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 funded have been or are being provided.*

Given this definition, per the Final Zoning Order (Exhibit 133) the Zoning Commission has erroneously accepted the list of proposals/items by the applicant as public benefits as shown in the table on the following page:

Public Benefits/Amenities Proffered	Reference in Exhibit 133	Point of Reconsideration
LEED Platinum Certification	P. 66, B.1.; and again mentioned in P. 68, D.1	This proposed “benefit” fails the “matter-of-right” provisions (Subtitle X, 305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and could still take place under current zoning.
Signal Warrant Study	P. 66, Item B.2.	These actions are designed to mitigate adverse effects of the new development on 9 <sup>th</sup> Street and G Street which will generate <i>additional</i> traffic in the intersection, and therefore are not public benefits, per Title 11, Subtitle X, 305.9. Furthermore, a study and its findings do not include commitment from the applicant to take any action to mitigate adverse impacts.
\$100K to Capitol Square for cut through traffic mitigation	P. 66, Item B.4.	This action is required to mitigate potential adverse effects of the new development’s generation of <i>additional</i> traffic and should not be weighed as a benefit. Furthermore, CSHOA noted that the amount provided is insufficient. CSHOA indicated in Exhibit 130 how the logistics supposed in the Applicant’s quote were impossible, and therefore the amount not enough. CSHOA provided a new estimate based on the factual context in which the HOA can install and operate gates.
Bike and scooter corrals along perimeter of the property	P. 67, Item B.5.	These actions are required to mitigate potential adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, 305.9. Furthermore, these actions would still be required under matter-of-right.
LEED Platinum Certification  Green Roofs  EV charging stations	P. 67, Item D.1  P. 67, Item D.2  P. 67, Item D.3	As noted above, these proposed “benefits” fail the “matter-of-right” provisions (305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and can still take place under current zoning.
9 <sup>th</sup> St SW reconfiguration and redesign	P. 68, Item D.6	The community, in concurrence with the Zoning Commission, has noted on record existing traffic concerns and issues with 9 <sup>th</sup> ST SW and how they would be WORSENERD by this project. These actions are <i>required</i> to mitigate adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, 305.9.
Public Art Proffer of \$75K to a minority-owned, woman-owned, certified business entity based in Washington, DC	P. 68, Item D.8.a	Fails the “matter-of-right” provisions (Subtitle X, 305.1) of the public benefit requirement; provision of public art is not significant and could take place under current zoning.
Workforce Housing	P. 69, Item 9	Not considered as public benefit per Exhibit 133 (page 18, #54, first bullet) but at least one Commissioner made statements as if it was a benefit (see Transcript of February 9, 2023 Public Meeting – page 20, lines 11-13).
Jefferson Middle School PTO proffer of \$150K over 3 years for field experiences and curricula	P. 68,	Fails the “matter-of-right” provisions (305.1) of the public benefit requirement
3,000 sq. ft. for a grocer; market; bodega; corner store; or prepared food shop use; and space for a bank branch.	P. 68, E.2.a	The square footage of the original proposed grocery (subsequently reduced to 3000 sq. ft for something less-than a grocery) was never large enough to qualify as a benefit given the availability of convenience vendors in the immediate vicinity and includes no documentation of commitment from any retailer. A bank, never requested by the community (most “Letter in Support” referencing such language written by the Applicant, was accepted erroneously per Subtitle Z Section 206.5(d)) and the Applicant never demonstrated how such would serve the surrounding area. The Applicant has yet to provide an MOU for <u>any</u> retail or commercial use of the space, as required by Subtitle Z Section 401.2 to be considered a proffer/public benefit.

The flexibility granted to an applicant in a PUD requires offsetting and balanced community benefits. Furthermore, reasonable mitigation of impacts to all parties and stakeholders is required. Mitigation of impacts is NOT the same as a community benefit.

When specifically reviewed in total against the requirements of Title 11, Subtitle X, 305, the zoning order does not demonstrate reasonable mitigation of all impacts to parties, does not provide for reasonable balancing of community benefits versus the flexibility and density offered the applicant and frequently treats impact mitigation as a community benefit. ANC 6D requests a complete reconsideration of the validity and balancing of the community benefits offered based on the exhibits and testimony cited here.

## 2) ***AFFORDABLE HOUSING***

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) The OAG summary cover letter – Exhibit 93
- b) The OAG PowerPoint presentation – Exhibit 93A
- c) Video footage in which the Zoning Commission explicitly discounts / eliminates all consideration of the OAG presentation “because we don’t agree”, with no further discussion. <https://www.youtube.com/watch?v=heVG6A2C1t0> (around 2:39:20)
- d) Section 96 of the Zoning Order which further overrides or ignores the specific OAG requirements applied to this specific case and which states simply that providing 300% the required percentage is more than adequate

ANC 6D requests as part of reconsideration that the Zoning Commission meets with representatives of OAG to reconcile the requirements *for this case* rather than apply broad tenets / broad understandings, given the insufficient balancing of community benefits to the flexibility & density afforded the applicant *on this specific case*. Absent such a formal reconciliation and reconsideration, ANC 6D requests that, as what happened in the 807 Maine Avenue development, all ground floor retail be eliminated, and consistent with the argument detailed below, replaced with additional affordable housing to provide true balancing.

## 3) ***HEIGHT ISSUES***

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) The aerial views include the *proposed* building at 807 Maine Ave (ZC 22-11), (Exhibit 99A1, slide 16) as if the building already existed, which artificially increases the height of the buildings relevant to the project.
- b) The tower facing Maine Ave. (Exhibit 99A1, slide 17) appears the same height as The Wharf, and the later statement by the Applicant on record and captured in the zoning order that the building would be taller (Exhibit 133, page 16 #51, fourth bullet)
- c) The Applicant used different methods to calculate the height of their proposed

building compared to the other buildings in the surrounding area:

- a. The Applicant counted the height from the ground to the rooftop of structures in the surrounding area, including even the clock tower for Jefferson Middle School.
- b. For the Applicant's prospective building, they calculated only from the ground to the last floor, excluding the rooftop and machinery house for the elevator.
  - i. Exhibit 99A1- slides 23, 24, 25 and 26
  - ii. Exhibit 99A2- slide 61
- d) The Applicant admitted that building height would actually be taller than the Wharf buildings across the street, despite showing the same height in the slides: <https://www.youtube.com/watch?v=heVG6A2C1t0> (around 2:35:55) (Exhibit 133, page 16 #51, fourth bullet)

In fact, all references in the Zoning Order that in any way “equate”, “transition” or “contextualize” the extreme height of this building directly facing Maine Avenue SW are incorrect given that all buildings at The Wharf were approved as a special exception to the Comprehensive Plan outside of the Future Land Use Map (FLUM) requirements and are specifically excluded from the approved Southwest Small Area Plan (SW SAP). This parcel is not part of The Wharf nor is there provision in The Wharf's PUD approval for nearby or adjacent parcels to “mimic”, “extend” or “leverage” the special exception.

In a concurrent case for a similar application at 807 Maine Avenue (Zoning Commission case # 22-11) at 7<sup>th</sup> St. SW, at the opposite corner of Maine Avenue to the project in this case, the Zoning Commissioners seemed to understand this point fully as evidenced by their own statements at the September 15, 2022 hearing:

- a) Oral remarks by ZC Commissioners during September 15, 2022 meeting to discuss ZC 22-11 (<https://www.youtube.com/watch?v=J8UGsIdKWNo>):
  - a. Commissioner Peter May:
    - i. *“Not having ANC on board on this from the very beginning is problematic given this ANC and their ability to work with developers” (28:19)*
    - ii. *“The concerns that were raised by the party that requested party status I think are legitimate concerns and certainly the ANC has very serious concerns about this, and they are troubling” (28:51)*
    - iii. *“I would just add that, I think we should probably be specific about what the concerns are, I mean, I think when we first set it down the proposal was 15% affordable housing, that didn't change at all, I mean there were some tweaks but it didn't change, the percentage didn't go up, and I was arguing for more given that this was a huge increase in the density of the site and that if we look at IZ plus (...) we would expect something around 20% (...)*

***Right now the biggest concern that I have is the consistency with the Small Area Plan and issues like the footprint of the building and the height of the building and I feel like there is a certain window of availability to expand the FAR and the footprint of a project like this that comes with an upzoning and with a PUD and in this case they took***

*everything to the absolute max, but I don't feel that in doing so they have been appropriately respectful of what the community has generally wanted in that SW Small Area Plan. I think the building is taller and the footprint is larger than the Small Area Plan probably contemplated, so that is kind of my biggest issue on it from what I know so far, but again we haven't heard the whole case, but this is my problem going in and I would like to see greater collaboration with the neighborhood in order to get this to the point where the ANC and the neighbors who care so much about it to support it" (30:05)*

b. Chairman Anthony J. Hood:

- i. *"I'm ready to pull the plug on this and send it back, I don't feel like wasting the public's time, I don't feel like wasting anybody's time, from the numbers I read, from the data I read, unless I miscalculated, they are so far apart, I think it is a disservice, not only to us, but to the residents of the city, to go forward with something like this, that I think it is a slap in the face to what the Council has mandated for us to do, especially when it comes to racial equity, and that's just where I am, I don't know, do I need to put a motion on the table that we do not go forward and we send them back and work with the community, I don't know, let's have that discussion first, cause here's the thing, we are going to go through all this and we are going to waste time, and I don't have time, none of us has time to waste here. So let me hear from Commissioner May or whoever wants to talk". (29:21)*
- ii. *"For something like this that is so far apart, and not just the neighbors have a problem, I have a problem. I look at the unit mix and I look at what's being proposed, I have a serious problem, so I can't get over that to concentrate on the rest of the stuff that is going on, I mean to me, I'm human like anybody else, and for me, I think that the reality of it is we need to have a better collaboration with the community. Look at this affordable housing, look at this racial equity lens, which I think they just blew it out [of] the water (...) I'm not inclined to go forward, I've already been given a date of November 14, and between now and November 14, I would expect to see, I hope, as my colleague Commissioner May and others have mentioned, some of the things, I want see you closer together, I want to figure out what's going on with this unit mix, I can hear tonight, you can buffalo me tonight, but I don't feel like going through that, what I want is [a] more substantive plan for this community, which is going through a whole lot over the years, we put a lot on them and the ask this time, the ask I think is just overwhelming, it's overwhelming for us to ask, I'm not going to shove anything down any community, down anybody in this city [unclear], that's what I would be doing, I would feel like that's what I would be doing if I proceed with this tonight and I'm not going to do that, so count me out on this one tonight, let them go back and work more together, loosen up some of these loose ends and you all can enjoy the rest of your evening, that's where I am. (37:49)*

c. Commissioner Joseph S. Imamura:

- i. *"I think Commissioner May summarized many of the issues, I counted at least 20 letters in opposition here, and I think to your point Mr. Chairman about the [good] neighbor policy, these things take a while to get off the*



*ground so it is going to be incredibly painful for the applicant to move forward with this project, the amount of time it is going to take without the public support, without the community support, so to Commissioner May's point and actually with what's in the record, I think there are some issues with the Small Area Plan for sure, certainly I think they are feeling that they are affiliated or more closely related with what's been done at The Wharf there, on the periphery of that I don't think that's what the Small Area Plan had intended, so there's some serious concerns with the project, with this case, I certainly would be in favor of supporting your plan Mr. Chairman" (32:35)*

d. Vice Chairman Robert Miller:

- i. *"I agree with Commissioner May's comments about the Small Area Plan and the ANC's concerns about the inconsistency with the Small Area Plan even though the Future Land Use Map of the Comprehensive Plan, which takes more precedence than the Small Area Plan, or is to be read in conjunction with the Small Area Plan, did change this site I believe from a lower density I think commercial zoning (...) to medium-density mixed-use residential and commercial so it is not inconsistent, the proposal is not inconsistent, but the ANC's strong opposition in this case raises a number of valid issues which are just overwhelming in a way (...) I agree with the Chairman's frustration that there hasn't been more progress in working with this area[s] responsible ANC on resolving these issues, which is, this is on the north side of Maine Ave SW, I don't want to extend The Wharf wall to the north side, there's a reason why The Wharf was The Wharf, and it doesn't look like the wall from the riverside as much as it does from the Maine Ave SW side, I don't want to create a wall, a tunnel along Maine Ave SW, it might lead to other projects doing this." (34:28)*

Especially concerning is that just two weeks later in a similar hearing on this case, ZC 22-06, the Commissioners appeared to completely reverse their position without any apparent justification.

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of all the exhibits and testimony cited here and reconsider the zoning order approval of ANY building which has a height at or exceeding 130 feet for any length of frontage on Maine Avenue SW, consistent with properly applied precedent and in conformance with all aspects of the portfolio of binding Comprehensive Plan documents to include the Southwest Small Area Plan.

#### 4) **QUESTIONABLE COMMERCIAL BENEFITS**

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) Per Title 11 Subtitle Z 401.2
  - a. "If the application proffers any public benefit that would require the agreement of or administration by any public agency or private entity, the applicant shall file a memorandum of understanding (MOU) that has been executed by the applicant and the public agency or private entity to agree to or administer the benefit."

The Applicant scaled back the original proffer for a full-service grocery store to only 3,000 sq. ft.

for a “bodega-style” grocery, and a full-service bank that is unlikely to make up the remaining 21,000+ square footage on the ground floor. The entire proffer is incomplete and likely not to be filled as the Applicant failed to submit any letter of intent or MOU from any retailer, which was not properly captured in the final zoning order.

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of all the exhibits and testimony cited here, and reconsider in total the cited community benefit offered with a “bodega style” grocery and full-service bank. Per the points above, given the reduction in the square footage and without a written MOU, the community benefit proffer is not valid, and the zoning order must be reconsidered. Furthermore, based on similar applications throughout Southwest DC, it is likely that the proposed space will remain empty for months or years and ANC 6D therefore requests as part of the reconsideration that the applicant consider converting this space to affordable housing to provide measurable community benefits rather than cited as meeting the Comprehensive Plan (CP) Economic Development element.

#### 5) ***TRAFFIC IMPACTS***

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a. Exhibits 25 and 25A
- b. Exhibits 38C, 38D, 38E and 38F
- c. Exhibit 44
- d. Exhibits 63A1 and 63A2
- e. Exhibits 81 and 81A
- f. Exhibits 112, 112D, 112E and 112F
- g. Exhibit 113
- h. Exhibit 114
- i. Exhibit 121
- j. Exhibit 122
- k. Exhibit 128A
- l. Exhibit 130
- m. A traffic stop light in the intersection of G and 9<sup>th</sup> streets, which will require approval by DDOT but had not been approved by DDOT at the time, although the Applicant admitted that the traffic light in their presentation was not yet been approved by DDOT: <https://www.youtube.com/watch?v=heVG6A2C1t0> (around 2:35:44)

The final zoning order does not reconcile or in any meaningful, consistent, and actionable way allow for the fully identified traffic impacts above to be addressed post-approval by the Applicant.

The Zoning Commission largely disregarded the chaotic and dangerous traffic situation that already exists in the intersection of G St SW, 9<sup>th</sup> St SW, and the exit ramp from I-395. In addition, the full gate costs for the CSHOA were never properly introduced into the record, the cost and pre-approval of a series of curb cuts on both Maine Avenue SW and G Street SW were not accounted for, the proposal that a signal study for the existing and known dangerous intersection at 9<sup>th</sup> Street SW and G Street SW is not enforceable nor is an actual physical solution, and the requests to fully

adjudicate a “right in, right out” option for the proposed curb cut on Maine Avenue SW was ignored.

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of all the exhibits and testimony specific to this application fully cited here, and reconsider in a **holistic way** the total impacts to residents utilizing all adjacent streets to this development as well as the impacts to the ingress and egress as a whole on four of the five primary entrance points into Southwest (Maine Avenue SW, I-395 7<sup>th</sup> Street SW, 9<sup>th</sup> Street SW) as opposed to meeting the bare minimum requirements for applicant approval.

**6) LETTERS OF SUPPORT**

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) inconsistent with the ZC procedures for filing letters in support / opposition, the website [www.899Maine.com](http://www.899Maine.com) (no longer working), misleadingly redirected visitors' information as letters of support to the ZC website without informing them
- b) email from Erin Berg to Sharon Schellin, Secretary to the Zoning Commission, dated October 4, 2022
- c) cross examination by party in opposition regarding the website at: <https://www.youtube.com/watch?v=heVG6A2C1t0> (around 2:39:20)
- d) Exhibit 92 informing the Zoning Commission that many of the letters in support were not authentic
- e) Applicant claiming on the website [www.899Maine.com](http://www.899Maine.com) that the building would have a grocery store with no signed documentation or square footage that would support a full-service store; ahead of the final zoning order, the grocery store did not materialize even though it was a main point to garner support for the project;
  - a. Letters in support referencing the "grocery store" as a "feature of the plan that is most important to them" are Exhibits 64, 67 through 80, 94 through 96, 100, and 102 through 107
- f) When a comparison of the letters of support versus opposed is accurately tabulated, most of the letters of support were sent by people in NW, NE, SE and VA while the letters from those opposed resided mostly in SW
  - a. Letters in support from NW DC:
    - i. Exhibits 70, 71, 72, 78, 79, 100 and 104
  - b. Letters in support from NE DC:
    - i. Exhibits 65 and 80
  - c. Letters in support from SE DC:
    - i. Exhibit 67
  - d. Letters in support from VA:
    - i. Exhibit 103

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of all the exhibits cited here and given the inconsistent, inapplicable, or illegal sources be stricken from the final zoning order, and reconsider whether the residents of ANC 6D were

demonstrably in favor of the proposed development based on accurate data.

**7) SHADOW STUDIES**

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) The applicant's initial shadow study – Exhibit 20
- b) CSHOA's additional submissions – Exhibits 81 and 81A
- c) CSHOA's shadow study – Exhibit 114

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of the exhibits as presented, and that it reconsiders the portions of the zoning order that specifically cite the Applicant's shadow study in favor of the more complete, more detailed and more comprehensive shadow study provided by the CSHOA.

**8) GREAT WEIGHT**

In support of this point, please find a summary of pertinent case file artifacts and recorded testimony that must be reconsidered and reevaluated:

- a) Council Member Allen's letter in opposition – Exhibit 120
- b) Applicant's letter in response to Council Member Allen – Exhibit 123
- c) Video footage in which the Zoning Commission explicitly requires the Applicant to meet with Council Member Allen without additional requirements to include the parties to the case: <https://www.youtube.com/watch?v=heVG6A2C1t0> (around 2:39:20)
- d) Council Member Allen's letter withdrawing opposition – Exhibit 128
- e) Council Member Allen's additional letter withdrawing opposition – Exhibit 128a
- f) The section of the Zoning Order that lists the “negotiated workforce housing allowance” yet includes a footnote that excludes housing allowance from the approved affordable housing percentages to meet the substantial expansion of affordable housing as a community benefit

ANC 6D requests as part of reconsideration that the Zoning Commission complete a detailed analysis of all the exhibits and testimony cited here, and given that “Great Weight” is granted solely to the ANC in the consideration of PUD applications, reconsider the entirety of this proffer and strike all referenced exhibits listed herein including the “workforce housing allowance” in demonstrating a proper proffer of community benefit in support of the application.

**9) ZONING CHOICE**

The MU-9A is inconsistent with the DC “Title 11 - Zoning Handbook, Subtitle G Mixed Use (MU) Zones”. Although MU-9 zones are intended to be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops, the Zoning Commission neglects the fact that the DC Zoning Handbook provides zoning categories ranging from MU-11 to MU-14 are specifically designed for areas in the vicinity of the Waterfront, with the maximum FAR

and height for these areas being 6 and 90 ft, respectively, significantly below what has been approved for 899 Maine Ave. The MU-9A zone in this location is therefore inconsistent with the intent for this waterfront community.

ANC 6D requests as part of reconsideration that the Zoning Commission provide the justification for MU 9A zoning for the parcel rather than the MU 11-14 zoning categories that were specifically designed for areas in the vicinity of the Waterfront.

## CONCLUSION

Section 505.1 of Subtitle Z of the Zoning Commission Rules of Practice and Procedure provides that the Commission shall give "Great Weight" to the written report of the ANC. Pursuant to The Advisory Neighborhood Commissions Act, as amended, "The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns".

In this case, ANC 6D has been consistently opposed to the project as documented by ZC case file 22-06 Exhibits 84, 116 and 129. ANC 6D finds itself advocating per its charter by the District of Columbia for the residents of Southwest, and not finding ways for Applicant to meet bare requirements.

Chairmen Hood captured the essence of the ANC 6D position on this matter in the December 15 Zoning Commission meeting on 22-06 when he made the following statements in speaking to the other Zoning Commissioners on precisely why focusing on bare minimum compliance is not sufficient now and into the future:

***"We need to figure out how to get to where ANC 6D is. That's my goal, that should be all our goal. Because what I think ANC 6D wants or is trying to get in all these projects for the most part is a very diverse and livable community. I think that's what they are trying to do. [And because] most of the projects in that area they are voting against. Sometimes we have to make it conducive to the people who live there and that's what I'm trying to get to, it's up to the Commission."***

Of equal importance to ANC 6D is a consistent acknowledgement ***and*** conformance with the Southwest Small Area Plan as the foundational document for all future development in Southwest ***and*** support for the primacy of all Small Area Plans adopted elsewhere throughout the District to guide development in local communities in each of the eight wards.

To reiterate our previous submissions, granting a PUD ***must*** reflect an extraordinary exception to current zoning limits and ANC 6D has consistently asked the Commission to elevate the condition for granting this PUD to a very substantial expansion. ANC 6D understands that the ultimate arbiter is the Zoning Commission; as ANC 6D presented at each point of interface in this case, anything less than a very substantial expansion of affordability ***and*** any perceived or actual precedent set with respect to altering the foundational tenets of the Southwest Small Area Plan puts the standards for redevelopment in all of Southwest at risk, and can create an immediate temptation for other property owners to redevelop those parcels in ways that too abrogate the tenets of the SW Small Area Plan. When communities are asked to be part of a planning process for future development, their vision

should become a reality; the objective is not just to get it "close."

ANC 6D respectfully moves that the Zoning Commission reconsider its order in case 22-06; vacate that order; and issue a new order denying the application.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fredrica Kramer".

Fredrica Kramer  
Chair, ANC 6D

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2023, I served by email a copy of ANC 6D's motion for reconsideration on

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*Fredrica Kramer*

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