

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 02-38I  
Z.C. CASE NO. 02-38I

Waterfront 375 M Street, LLC and 425 M Street, LLC  
(Second-Stage PUD & Modification of Significance to First-Stage PUD @ Square 542)  
September 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public hearings on April 5, 2018 and May 10, 2018, to consider an application from Waterfront 375 M Street, LLC and 425 M Street, LLC (together, the “Applicant”) for approval of a second-stage planned unit development (“PUD”) and a modification of significance to a previously approved first-stage PUD for property located at 375 M Street, N.W. (Square 542, Lot 825) (“East M”) and 425 M Street, N.W. (Square 542, Lot 826) (“West M”) (together, the “M Street Sites”), all in accordance with the Commission’s first-stage approval of the M Street Sites in Z.C. Order No. 02-38A (“Application”). The Commission considered the Application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). For the reasons stated below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. On April 5, 2017, the Applicant filed an application for a second-stage PUD and a modification of significance to an approved first-stage PUD for the M Street Sites. The Application, as amended, proposes to convert the primary use of the approved buildings on the M Street Sites (the “East M Building” and the “West M Building,” or together the “M Street Buildings”) from office use to residential use and to include neighborhood-serving office space in addition to the previously approved ground-floor retail. Following discussions with Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the M Street Sites are located, the Applicant also incorporated a community center into the East M Building. The modified PUD maintains the approved density, height, and setbacks of the M Street Buildings that were approved in the first-stage PUD. The proposed development on the M Street Sites is hereinafter referred to as the “Project.”
2. On May 10, 2017, ANC 6D submitted a setdown form recommending that the Commission should not set down the Application for a public hearing because it would not be in the best

interests of the Southwest residents and would not create the type of vibrant “town center” envisioned for Waterfront Station in the small area plan for the Southwest known as the Southwest Neighborhood Plan (the “SW Plan”). (Exhibit [“Ex.”] 10.)

3. On June 2, 2017, the Office of Planning (“OP”) submitted a setdown report recommending that the Commission set down the Application for a public hearing and identifying some items for which more information or clarification was needed from the Applicant prior to the public hearing. (Ex. 11.)
4. At its public meeting held on June 12, 2017, the Commission voted to set down the Application for a public hearing. The Commission noted that the ANC had concerns with the Application and requested that the Applicant continue to work with the ANC to address their outstanding issues.
5. On August 15, 2017, the Applicant filed a prehearing submission. (Ex. 13-13K.) The prehearing submission responded to the following questions and issues raised by the Commission at the setdown meeting and by OP in its setdown report: (i) the Project’s consistency with the SW Plan and its ability to create a thriving and vibrant town center; (ii) the ability of the proposed residential and neighborhood-serving office uses to support ground-floor retail; (iii) a market analysis prepared by Partners for Economic Solutions (“PES”) providing evidence of the weak office market and high residential market in the Southwest neighborhood; (iv) a plan to implement a retail marketing strategy for the M Street Sites; (v) updated architectural plans and elevations responding to a variety of comments and technical corrections from OP, including updated façade designs and a greater number of balconies; (vi) a response to ANC 6D’s initial comments on the Applicant’s transportation scoping form submitted to the District Department of Transportation (“DDOT”); (vii) an initial transportation demand management (“TDM”) plan for the M Street Sites; (viii) an initial public benefits and amenities package for the M Street Sites; (ix) a phasing plan for the M Street Sites; and (x) initial design flexibility language for development of the M Street Sites. The prehearing submission also included an Inclusionary Zoning (“IZ”) unit size and location exhibit, a letter from the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) consenting to the filing of the Application, and a letter confirming the Applicant’s compliance with all First Source Employment and Certified Business Entity (“CBE”) Agreements required by the first-stage PUD to date.
6. A Notice of Public Hearing was published in the *D.C. Register* on September 8, 2017. The Notice of Public Hearing was mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 16.)
7. On August 22, 2017, the Waterfront Tower Condominium Board (“Waterfront Tower”) submitted an advanced party status request form. (Ex. 14.) Waterfront Tower is located at 1101 3<sup>rd</sup> Street, S.W., directly to the east of the East M Building. In its party status request, Waterfront Tower stated that the Project would have negative environmental, economic, and social impacts, and would decrease access, security, and safety around its property.

8. On September 15, 2017, the Applicant submitted a letter in opposition to Waterfront Tower's party status request. (Ex. 19.) The Applicant's letter described how Waterfront Tower did not meet the party status criteria of 11-Z DCMR § 404.14 because it did not demonstrate that its interests would be significantly, distinctively, or uniquely affected by the Application.
9. On October 30, 2017, the Commission voted to approve Waterfront Tower's request for party status, finding that its interests would be uniquely affected by the Project.
10. On October 27, 2017, the Applicant submitted a Comprehensive Transportation Review ("CTR") report prepared by Gorove/Slade Associates and dated October 17, 2017. (Ex. 32-32A.) The CTR concluded that the M Street Sites would not have a detrimental impact to the surrounding transportation network assuming that all planned site design elements and mitigation and TDM measures are implemented.
11. On November 2, 2017, the Applicant submitted a letter requesting a postponement of the public hearing, scheduled for November 30, 2017, to provide time for the Applicant to work with the ANC and other community groups and residents. (Ex. 35.) The Commission approved the request and rescheduled the public hearing to February 22, 2018. A Notice of Rescheduled Public Hearing was published in the *D.C. Register* and mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 35, 36.)
12. On January 10, 2018, the Applicant submitted a letter requesting a further postponement of the public hearing to provide additional time for the Applicant to continue to work with the ANC and other community groups and residents. (Ex. 47.) The Commission approved the request and rescheduled the public hearing to April 5, 2018. A Notice of Rescheduled Public Hearing was published in the *D.C. Register* and mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 35, 36.)
13. On March 16, 2018, the Applicant filed a supplemental prehearing submission. (Ex. 62-62F.) The supplemental prehearing submission included the following information and materials: (i) an update on how the Project will successfully create a town center, as evidenced through the results of a pedestrian study documenting existing site activity and a Retail Assessments and Recommendations Report addressing the ideal retail mix, public space improvements, and marketing strategies needed to create a vibrant town center; (ii) an update on the Applicant's community engagement campaign and results thereof, including a proposed Community Benefits Agreement ("CBA") with the ANC; (iii) a shadow study demonstrating the impact of the modified PUD on casting shadows on Waterfront Tower; (iv) a transportation memo describing updates to the Project based on requests from the ANC and Waterfront Tower; (v) an updated benefits and amenities package for the M Street Sites; (vi) updates to the design flexibility language requested for the M Street Sites; and (vii) updated architectural plans and elevations showing all revisions to the Project since filing the prehearing submission.
14. On March 26, 2018, OP submitted a hearing report recommending approval of the Application subject to the condition that for the life of the Project, the M Street Buildings

shall reserve no less than 32,400 square feet of space for office uses, as “office” is defined at Exhibit 13, p. 27, paragraph nine. (Ex. 64.) The OP report also included a variety of additional comments and questions, which the Applicant subsequently addressed at the public hearing and in Exhibit 76-76B2, as described in Findings of Fact (“FF”) Nos. 17, 23, and 30(c).

15. On March 26, 2018, DDOT submitted a hearing report stating no objection to the Application with the conditions that the Applicant (i) fund and conduct a safety study at the intersection of 4<sup>th</sup> and M Street, S.W.; and (ii) implement the TDM plan proposed by the Applicant in the CTR dated October 17, 2017, with additional revisions listed on page 4 of the DDOT report. (Ex. 32, 63.)
16. On April 4, 2018, ANC 6D submitted a resolution stating that at its regularly scheduled and properly noticed public meeting on March 19, 2018, ANC 6D voted 5-0-0 in support of a motion of conditional support of the Application. (Ex. 68.) The ANC’s resolution included a letter from the Southwest Neighborhood Assembly (“SWNA”) indicating its support for the Project’s proposed community center use.
17. On April 5, 2018, the Applicant submitted a letter responding to the outstanding issues set forth in the OP and DDOT reports. (Ex. 76-76B2.)
18. After proper notice described above, the Commission held a public hearing on the Application on April 5, 2018. The hearing did not conclude at the end of the evening, so a second public hearing was scheduled and held on May 10, 2018.
19. The parties to the case were the Applicant, ANC 6D, and Waterfront Tower. Tiber Island Cooperative Homes, Inc. (“Tiber Island”) and Carrollsburg Square Condominium Association (“Carrollsburg Square”) were parties to the underlying first-stage PUD and were copied on all filings to the case record.
20. Two organizations (SWNA and the Near Southeast/Southwest Community Benefits Coordinating Council) submitted letters in support of the Application. These letters supported the conversion of the M Street Buildings to residential use and highlighted the major benefits of incorporating a community center use at Waterfront Station.
21. Three organizations (Harbour Square Owners, Inc., Carrollsburg Square, and DC for Reasonable Development: Ward 6 Study Group (“DC4RD”)) and multiple individuals submitted letters in opposition to the Application. A petition in opposition to the Application was also submitted to the record. The primary concerns raised were related to the removal of the existing open spaces at the M Street Sites and the associated public events that take place on those sites; opposition to additional residential units in the neighborhood due to negative impacts on property values and the lack of sufficient public services; increased traffic, congestion, and safety concerns; impacts on views and light; insufficient affordable housing; and the Project’s inconsistency with the SW Plan and policies within the Comprehensive Plan.

22. The Applicant presented three witnesses at the public hearing in its direct testimony: David Smith on behalf of the Applicant; Brett Swiatocha of Perkins Eastman DC; and Dan VanPelt of Gorove/Slade Associates. The following witnesses also testified on behalf of the Applicant in response to questions raised and in rebuttal testimony at the public hearing: Trini Rodriguez of Parker Rodriguez Landscape Architects; Mike Smith of Streetsense; Ryan Brannan of Bowman Consulting DC; and Shane Dettman of Holland & Knight LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, Brett Swiatocha was qualified as an expert in architecture and Mike Smith was qualified as an expert in retail marketing and leasing. The Commission acknowledged that Dan VanPelt, Trini Rodriguez, Ryan Brannan, and Shane Dettman were previously qualified as experts in the fields of transportation planning, landscape architecture, civil engineering, and land use planning, respectively. The Commission also qualified Anita Morrison as an expert in real estate economics, but she did not testify.
23. At the public hearing, OP testified in support of the Application subject to the Applicant addressing the following outstanding items also discussed in the OP hearing report: (i) increasing the IZ proffer; (ii) providing more information on the depths of the window reveals and mullions to ensure adequate texture and visible interest on the buildings' façades; and (iii) potentially further increasing the number of units with balconies.
24. At the public hearing DDOT testified that it had no objection to approval of the Application, given that the Applicant had agreed to all of DDOT's requests listed in the DDOT report, including implementing a revised TDM plan and conducting a pedestrian safety study to evaluate the potential of adding a south-bound left turn lane at the intersection of 4<sup>th</sup> and M Streets, S.W. As described below, at the request of the ANC, the Applicant revised its proffer to conduct the safety study such that it will now fund the study only, with the selection of the firm to conduct the study left to DDOT.
25. Commissioner Andy Litsky testified on behalf of ANC 6D at the public hearing regarding the ANC's conditional support for the Application. Commissioner Litsky stated that the ANC wanted to resolve the following open questions and issues with the Applicant prior to approval of the Project:
  - a. Authority for the ANC to select the operator of the community center and that rent and all utilities and operating costs for the community center would be free for 30 years;
  - b. Additional details on the public space improvement element in the Metro plaza (the "Public Space Element" as further defined in FF No. 58(i));
  - c. Plans showing the configuration of the 4<sup>th</sup> and M Street intersection if a separated south-bound left-turn lane is added;
  - d. Evidence that construction of the East M Building would not preclude the replacement of the Metrobus stop and shelter for Route 74 in front of East M; and

- commitment that the Applicant would work with DDOT to arrive at a solution for the placement of a new Circulator bus stop in front of East M or West M;
- e. Written commitment to develop and enforce a construction management plan(s) for the M Street Sites;
  - f. Written assurances that residents of the M Street Buildings will not be eligible to apply for DDOT's Residential Parking Permit ("RPP") program;
  - g. Commitment that all deliveries, including trash, FedEx, UPS, and retailer deliveries will occur within the loading facilities within the M Street Buildings; and
  - h. More details on how the public realm plaza areas will be programmed and maintained following construction.
26. On May 10, 2018, the Commission held a second night of public hearing on the case. At that hearing, one individual and one organization (the Near SE/SW Community Benefits Coordinating Council) testified in support of the Application. Six individuals testified in opposition to the Application and one individual was undeclared as to being in support of or in opposition to the Application.
27. On May 10, 2018, Leigha Gooding and Hara Bouganim testified as the representatives of Waterfront Tower as the party in opposition to the Application. Daniel Marriott testified as a witness on behalf of Waterfront Tower in opposition to the Application. At the public hearing, the Commission qualified Mr. Marriott as an expert in urban planning, landscape architecture, and historic preservation.
28. Waterfront Tower's presentation set forth its concerns regarding: (i) congestion in the north-south private drive between the East M Building and Waterfront Tower (the "North-South Private Drive") resulting from the proposed loading at the East M Building; (ii) the East M Building's failure to adequately treat the North-South Private Drive as the "main entrance" to Waterfront Tower due to the East M Building's setbacks and insufficient streetscape improvements and façade treatment; and (iii) the spatial relationship between the East M Building and Waterfront Tower resulting in additional shadows on Waterfront Tower and the blocking of views of Waterfront Tower.
29. At the conclusion of the May 10, 2018 public hearing, the Commission closed the record except for the parties to submit the additional information requested at the hearing, including draft Findings of Fact and Conclusions of Law, and to respond to the other parties' filings.
30. On July 2, 2018, the Applicant submitted a post-hearing submission in response to the requests for information at the public hearing. (Ex. 131-131I.) The post-hearing submission included the following information:

- a. Updates on the Applicant’s continued community engagement, including (i) a summary of the Applicant’s commitments to the ANC and two memorandums describing those commitments; (ii) a signed Memorandum of Agreement (“MOA”) with Waterfront Tower describing the Applicant’s final commitments to Waterfront Tower and their mutual agreement and consent; (iii) a summary of the Applicant’s continued discussions with Coy McKinney who testified in opposition to the Project at the public hearing; and (iv) a response to filings and testimony submitted by DC4RD; (Ex. 131A-131D.)
  - b. An update on the Applicant’s public benefits and amenities, including its increased affordable housing commitment and an updated IZ location plan; (Ex. 131E-F.)
  - c. Updated architectural drawings responding to comments from the Commission, OP, ANC 6D, and Waterfront Tower. (Ex. 131G1-131G13.) The drawings submitted at Exhibit 131G1-131G13 are the final drawings approved by this Order and are referred to herein as the “Approved Second-Stage PUD Plans”;
  - d. A copy of the Construction Easement Agreement entered into by the Applicant and the owners of adjacent property located at 1101 and 1001 3<sup>rd</sup> Street, S.W., which created a light and air easement with which the M Street Buildings are fully compliant; (Ex. 131H.)
  - e. The resume of Mike Smith of Streetsense, the Applicant’s expert in retail marketing and leasing; and
  - f. The Applicant’s final proposed language regarding design flexibility for the M Street Buildings.
31. On July 9, 2018, Waterfront Tower submitted a response to the Applicant’s post-hearing submission noting a discrepancy between the signed MOA, which required vertical plantings along the east and north façades at the northeast corner of the East M Building, and the Approved Second-Stage PUD Plans, which showed the vertical plantings on the east façade but not the north façade of the northeast corner. (Ex. 133.)
  32. On July 16, 2018, the Applicant submitted a response to Waterfront Tower’s July 9, 2018 submission, stating that it did not intend to violate the MOA’s terms regarding the vertical plantings. The Applicant’s response included a revised landscape plan (Sheet L4-r1) and building elevation (Sheet 88-r1) showing the location and extent of the vertical plantings as agreed to in the MOA. (Ex. 135.)
  33. Also on July 9, 2018, the ANC submitted a response to the Applicant’s post-hearing submission (Ex. 134), which acknowledged that “[s]ince the last Zoning hearing. . . ANC-6D has met several times with the Applicant and their agents in attempts to further clarify terms and seek consensus.” (Ex. 134, p. 1.) However, the ANC raised new concerns and made the following requests to address unresolved issues: (i) imposing a prohibition to prevent short-term residential leases at the M Street Buildings; (ii) agreement by the

Applicant to pay 100% of the community center's utility fees for 30 years; (iii) commitment from the Applicant to devote 25% of total retail space in each building to retailers of 1000 square feet or less to ensure a greater mix of offerings, goods and services; (iv) completion of a DDOT supervised safety study of the intersection at Fourth and M Streets, S.W. prior to approval of this second-stage PUD; (v) requirement of LEED-Silver certification for both M Street buildings as a condition of this PUD approval; (vi) assurance from the Applicant that the M Street Buildings will not prohibit construction of an ADA-complaint bus shelter in public space and agreement by the Applicant to pay for the replacement and construction of an ADA-compliant bus shelter along M Street; and (vii) agreement by the Applicant to include a rider in all residential leases restricting residential tenants of both M Street buildings from obtaining RPPs.

34. On July 30, 2018, the Commission reviewed the Applicant's post-hearing submission and the responses thereto from Waterfront Tower and the ANC. The Commission noted that an agreement was reached between the Applicant and Waterfront Tower but requested that the Applicant continue to work with the ANC on the remaining outstanding issues. The Commission also asked the Applicant to confirm that the development flexibility requested in the draft findings of fact and conclusions of law is only for the colors of the approved materials and not the material types themselves. The Commission requested that the Applicant submit an update on its further negotiations with the ANC, allowed time for the ANC to respond, and scheduled deliberation on the case for September 17, 2018.
35. On September 4, 2018, the Applicant submitted a letter describing its further negotiations and agreement with the ANC, providing responses to each of the requests noted in the ANC's July 9, 2018 memo and addressing each of the items listed in FF No. 33. (Ex. 137.) The Applicant's responses to the ANC's requests listed in its July 9, 2018 memo and the Commission's findings and conclusions on each request are set forth in FF No. 93 of this Order.
36. On September 17, 2018, the Commission took final action to approve the Application.

### **The PUD Site and Prior Zoning Approvals**

37. The M Street Sites are comprised of Lots 825 and 826 in Square 542, which are part of Record Lot 89 in Square 542 (the "PUD Site").<sup>1</sup> The PUD Site consists of approximately 584,655 square feet of land in the "superblock" generally bounded by M, I, 3<sup>rd</sup> and 6<sup>th</sup> Streets, S.W. The M Street Sites are located on the southern-most portion of the PUD Site, on the north side of M Street, S.W. The M Street Sites are separated by 4<sup>th</sup> Street, S.W., which runs north-south through the middle of the PUD Site and which was constructed as

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<sup>1</sup> Record Lot 89 in Square 542 has been divided into Lots 822, 825 through 834, and 872 for assessment and taxation purposes. The West M building will be developed on Lot 826 in Square 542, and the East M building will be developed on Lot 825 in Square 542.

part of the initial phase of the PUD. West M contains approximately 46,768 square feet of land area and East M contains approximately 61,065 square feet of land area.

38. Pursuant to Z.C. Order No. 02-38A, the Commission approved a modification to the first-stage PUD, a second-stage PUD, and a zoning map amendment to the C-3-C Zone District for the PUD Site.<sup>2</sup> The first-stage PUD authorized the development of eight buildings on the PUD Site with residential, office, and retail uses, significant open spaces and public space improvements, and the re-opening of 4<sup>th</sup> Street, S.W. The buildings and improvements approved in the first-stage PUD are hereinafter referred to as the “Overall Project.”
39. As part of Z.C. Order No. 02-38A, the Commission approved a second-stage PUD for the four buildings in the center of the PUD Site and their adjacent open spaces. The four buildings approved in Z.C. Order No. 02-38A included: (i) the “East and West 4<sup>th</sup> Street Office Buildings,” which flank the east and west sides of 4<sup>th</sup> Street and contain ground-floor retail, and (ii) the “East and West Residential Buildings,” located on the eastern and western boundaries of the PUD Site, with continuous open space connecting them to 4<sup>th</sup> Street. Construction of the East and West 4<sup>th</sup> Street Office buildings was completed in March, 2010, and construction of the East and West Residential Buildings was completed in 2013.
40. Pursuant to Z.C. Order No 02-38A, the northern portion of the PUD Site was approved as a first-stage PUD to be constructed with two residential buildings known as the “Northwest Building” and the “Northeast Building.” The Northwest Building was approved as a second-stage PUD in 2013, pursuant to Z.C. Order No. 02-38D, and delivered in 2017. The Northeast Building is owned by the District and will be developed pursuant to a second-stage PUD (Z.C. Case No. 02-38J) by DMPED and an entity of PN Hoffman.
41. The Overall Project was approved to be developed with approximately 2,526,500 square feet of gross floor area, with an aggregate density of 4.33 floor area ratio (“FAR”). Of that, approximately 1,296,895 square feet of gross floor area (2.22 FAR) was approved for office and retail use and approximately 1,229,605 square feet of gross floor area (2.11 FAR) was approved for residential use. (*See* Z.C. Order No. 02-38A, Decision No. 3.) The West M Building was approved to contain a total of approximately 322,700 square feet of gross floor area devoted to office and retail use, and the East M Building was approved to contain a total of approximately 339,000 square feet of gross floor area devoted to office and retail use. (*See* Z.C. Order No. 02-38A, Decision No. 8 and FF No. 44.) The first-stage PUD approved a minimum of 1,087 parking spaces for the Overall Project. (*See* Z.C. Order No. 02-38A, Decision No. 9.)

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<sup>2</sup> The C-3-C Zone District was converted to the MU-9 zone under the 2016 Zoning Regulations. A detailed description of the zoning history of the PUD Site can be found in the record for Z.C. Order No. 02-38A. No change is proposed to the approved zoning for the M Street Sites.

## **Modifications to the First-Stage PUD and Proposed Second-Stage PUD for the M Street Sites**

42. In the Application, the Applicant initially proposed to modify the approved first-stage PUD for the M Street Buildings by converting the primary use of both buildings from office use to residential use, with street-activating retail and neighborhood-serving office uses. The proposed change in use was due to: (i) the perpetually high office vacancy rates over the past several years in the District, which prevented the Applicant from preleasing the M Street Buildings with an office tenant(s) and obtaining financing; and (ii) the high demand for housing and affordable housing in the District and within the Southwest submarket specifically. Following extensive community engagement since filing the initial Application in April, 2017, the Applicant also incorporated a 6,000-square-foot community center into the proposed uses for the M Street Buildings.
43. The Project includes development of approximately 598 new residential units in the M Street Buildings combined (plus or minus five percent), which will advance the Mayor's housing policy and coincide with recommendations set forth in the Comprehensive Plan and the SW Plan. The Applicant will dedicate a minimum of eight percent of the residential gross floor area in the East M Building to households earning up to 60% of the MFI. Two of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. In addition to the eight percent of the residential gross floor area in the East M Building, the Applicant will dedicate an additional three-bedroom unit to households earning up to 60% of the MFI, thus providing more affordable housing than required by the Zoning Regulations. In the West M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI. Three of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. Together with the three-bedroom units in the East M Building, these larger-sized units will create new affordable housing options for families, which is an important District priority, and is specifically identified as a public benefit in 11-X DCMR § 305.5(f)(3). Under the approved first-stage PUD for the M Street Buildings, no affordable housing would have been provided at all. Moreover, the Applicant has already satisfied the amount of affordable housing required for the Overall Project, as set forth in Decision No. 18 of Z.C. Order No. 02-38A. Accordingly, the proposed affordable housing at the M Street Sites increases the amount of affordable housing for the overall PUD and for the District as a whole.
44. The Project also modifies the architectural design for the M Street Buildings to accommodate residential use, incorporate effective urban design strategies, engage the surrounding public spaces, and support the unique town-center environment created by the Overall Project. The M Street Buildings include new internal courtyards and outdoor terraces, and reorient the parking and loading entrances from M Street (as approved in the first-stage PUD) to the North-South Private Drives on the far sides of the M Street Buildings to reduce potential vehicular/pedestrian conflict. Other than the new courtyards, the modified Project maintains the approved density, height, and general setbacks and street wall of the M Street Buildings that were approved in the first-stage PUD. The

proposed mix of uses and architectural design for the M Street Buildings will benefit the community, enliven the streetscape, and provide additional services for residents, employees, and visitors who live and work in the neighborhood.

45. The East M Building will be developed with a total of approximately 339,733 square feet of gross floor area, which will include approximately 282,208 square feet of gross floor area devoted to residential use (289 units plus or minus five percent); approximately 19,069 square feet of gross floor area devoted to retail use; approximately 32,456 square feet of gross floor area devoted to office use; and approximately 6,000 square feet of gross floor area devoted to a community center. The East M Building's maximum height is 127 feet, with an approximately 45-foot setback above the second floor on the east side of the building as approved in the first-stage PUD.
46. The West M Building will be developed with a total of approximately 322,773 square feet of gross floor area, which will include approximately 301,670 square feet of gross floor area devoted to residential use (309 units plus or minus five percent) and approximately 21,103 square feet of gross floor area devoted to retail use. The West M Building's maximum height is 127 feet, with an approximately 45-foot setback above the second floor on the west side of the building as approved in the first-stage PUD.
47. The ground floors of the M Street Buildings are devoted to retail use fronting M and 4<sup>th</sup> Streets, and residential amenities and service uses (e.g. resident lounge, mail room, leasing and management offices) fronting the east-west plazas to the north of the M Street Buildings (the "East-West Plazas"). Along the Metro plaza on 4<sup>th</sup> Street, the East M Building's base is setback to extend the open space of the Metro plaza and create vibrant outdoor space for retail to engage with and activate the plaza. The far sides of the M Street Buildings along the East and West Private Drives are devoted primarily to parking and loading access.
48. The East M Building's primary residential entrance is located at the building's northwest corner facing the Metro plaza, with a secondary residential entrance located off of the East-West Plaza to the north. The primary residential entrance takes the form of a two-story glass structure that anchors the plaza's northern end and helps to activate the adjacent open space. The West M Building's primary residential entrance is located at the building's northwest corner facing 4<sup>th</sup> Street, directly across from the Metro plaza. A secondary residential entrance is located off of the East-West Plaza to the north. Retail entries for the M Street Buildings are located along both the M and 4<sup>th</sup> Street façades, with the retail facades maximizing glazing heights and widths to allow for deep interior views. In the East M Building, the entrances to the office space and community center are located on M Street, S.W.
49. A variety of outdoor and indoor amenity spaces are provided in the M Street Buildings, including an interior courtyard on the second floors and an outdoor dog run is on the third floors. Above the third floor, the M Street Buildings open as C-shaped towers facing M Street. A south-facing courtyard is located at the fourth level of each M Street Building, with access provided to individual terraces for units facing the courtyard and to a

communal outdoor recreation space for building residents. The penthouses for the M Street Buildings will contain habitable space devoted to communal recreation and outdoor rooftop recreation including a pool.

50. The design of the M Street Buildings is contemporary in style and relates to the evolving architectural character of the Southwest neighborhood. Building façades are designed to be compatible with, but distinctive from, the façades of each other as well as from the other buildings in Waterfront Station, with each façade responding to its adjacent context, solar orientation, and potential view corridors. The building designs maximize daylight into the units, enhance views, and control against heat gain. The M Street Buildings' primary exterior materials are stone and brick masonry, with infill metal panels in some locations.
51. The M Street Buildings will each contain two levels of below-grade parking, with approximately 399 total parking spaces (approximately 220 parking spaces in the East M Building and approximately 179 parking spaces in the West M Building). Access to the parking garages has been relocated from M Street (as approved in the first-stage PUD) to the North-South Private Drives on the far sides of the M Street Buildings. Relocating the parking entrances results in the removal of two proposed curb cuts on M Street, which reduces the potential for pedestrian/vehicle conflict and enhances the pedestrian experience along M Street.
52. Each M Street Building includes two 30-foot loading berths and one 20-foot service/delivery space. Access to the loading facilities is also provided from the North-South Private Drives, with the loading facilities located to the north of the parking garage entrances to avoid vehicular conflict with loading trucks. All loading and deliveries are interior to the M Street Buildings, and all maneuvering for the trucks the facility is designed to serve will be done internally.
53. The 4<sup>th</sup> Street streetscape design for the M Street Buildings was designed, approved, and constructed as part of the dedication and construction of the 4<sup>th</sup> Street right-of-way. The proposed additional landscaping surrounding the M Street Buildings integrates with the existing surrounding public spaces and improves the current condition. For both M Street Buildings, special paving will be added to the residential entrances to highlight their presence against the adjacent public space. New sidewalks and streetscape improvements will be provided, including new street trees, landscape beds, bicycle racks, scored concrete paving, and special paving at the M Street Buildings' edges.
54. The M Street Buildings include storm water management techniques, green roofs, permeable surfaces, erosion and sediment control techniques, and solar panels. The M Street Buildings will be designed to achieve LEED Silver under LEED v4 for Building Design and Construction, which is equivalent to the sustainability level required for LEED-2009 Gold rating for New Construction. Each M Street Building will also comply with the Green Area Ratio requirements of the Zoning Regulations.

## Development Flexibility

55. The Applicant requested flexibility in the following areas:
- a. To provide a range in the number of residential units of plus or minus five percent;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings, and specifically to modify the locations of demising walls and exact number of retailers within each M Street Building to provide the greatest amount of flexibility in use;
  - c. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total minimum number of parking spaces is provided as set forth in Z.C. Order No. 02-38A;
  - d. To vary the final color of the exterior materials within the color ranges shown on the Approved Second-Stage PUD Plans, based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the buildings;
  - e. To make minor variations to the location, attributes, and general design of the streetscape within the overall PUD Site, including the location of short term exterior bicycle parking spaces and the proposed landscape plans included in the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, to comply with the requirements of and approval by the DDOT Public Space Division and the other Waterfront Station property owners, without changing the overall design intent, the general location and dimensions of landscaping and hardscaping, or the quality of materials;
  - f. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades as necessary;
  - g. To make minor refinements to the buildings' details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals. Any refinements may not substantially change the buildings' external configurations, appearance, proportions, or general design intent;
  - h. To vary the types of uses designated as "retail" use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services,

Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (Arts, Design, and Creation (11-B DCMR § 200.2(e));

- i. To vary the types of uses designated as “office” use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Office (11-B DCMR § 200.2(x)); (ii) Institutional, General (11-B DCMR § 200.2(q)); (iii) Medical Care (11-B DCMR § 200.2(p)); (iv) Daytime Care (11-B DCMR § 200.2(i)); and (v) Services, Financial (11-B DCMR § 200.2(ee));
- j. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- k. To vary the configuration and layout of the exterior courtyards, so long as the courtyards continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
- l. In the retail and service areas, to vary the location and design of the ground-floor components in order to accommodate specific tenant requirements and/or to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use, and to modify the number of retailers within each M Street Building.

### **Public Benefits and Amenities**

56. Pursuant to 11-X DCMR § 304.4(c), the Commission shall find that proposed developments include specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. The first-stage PUD included a number of significant public benefits and project amenities, which are described in detail in Z.C. Order No. 02-38A, FF No. 89(a)-(f) and FF Nos. 90(a)-(h). The Commission found that the amount of benefits and amenities provided in the first-stage PUD were sufficient given the amount of flexibility sought. The significant majority of these benefits and amenities have already been delivered, including the following:
- a. Re-opening of 4<sup>th</sup> Street, S.W., as a dedicated public right-of-way to break down the super block previously in place, to restore the street grid, improve traffic flow, and serve as a neighborhood town center;
  - b. Constructing 895 residential units, with approximately 11.8% being affordable;

- c. Constructing more than 90,000 square feet of retail space (of the 110,000 square feet required overall project), with more than 10,000 square feet provided for small and local retail users (of the 12,500 square feet required for the overall project);
  - d. Delivering the significantly expanded and upgraded 55,000 square foot Safeway grocery store;
  - e. Maintaining the Safeway, CVS Pharmacy, and Bank of America on-site throughout the initial construction;
  - f. Delivering over 50,000 square feet of public open space; and
  - g. Constructing and maintaining the public park property to the north of Waterfront Station.
57. As part of this Application, the Applicant will also implement the following previously-approved public benefits and amenities applicable to the M Street Buildings:
- a. Accomplish major urban design benefits and improvements; (FF No. 89(c).)
  - b. Create and improve the town center; (FF No. 89(d).)
  - c. Add more retail and service uses in Waterfront Station, including for small and local retail users; (FF Nos. 89(f) and 90(c).)
  - d. Incorporate sustainable design features; (FF No. 90(d).)
  - e. Introduce elements of the Transportation Management Plan; (FF No. 90(g).)
  - f. Provide employment and training opportunities; and (FF No. 90(h).)
  - g. Enter into a Security and Construction Mitigation Plan for the M Street Buildings. (FF No. 90(f).)
58. In addition to the extensive public benefits and amenities approved through the first-stage PUD, the Applicant proposed the following additional and continuing benefits and amenities as part of the Application for the M Street Buildings:
- a. Urban Design (Subtitle X § 305.5(a)). The M Street Buildings will accomplish major design objectives, such as superior streetscape design and pedestrian amenities, including wide sidewalks and public plazas and the introduction of distinctive, vertical buildings that provide interest and variety along street frontages, are constructed to define public spaces, and create better connections for the neighborhood;

- b. Retail, Service, and Office Establishments (Subtitle X § 305.5(q)). The amount of retail space proposed for the M Street Buildings will exceed the minimum amount of neighborhood-serving retail and service uses required under the first-stage PUD approval for the overall PUD Site. Pursuant to Z.C. Order No. 02-38A, Condition No. 13, the overall PUD was required to have a minimum of 110,000 square feet of gross floor area devoted to neighborhood-serving retail and service uses. The M Street Buildings will include a total of approximately 40,172 square feet of gross floor area devoted to retail uses, which will result in approximately 130,000 square feet of retail use for the overall PUD, not including retail in the Northeast Building which has not yet been approved. This amount of retail use will advance the major themes and policies of the Comprehensive Plan and the SW Plan for creating a vibrant and walkable town center at Waterfront Station.

In addition, the Applicant will dedicate a minimum of 32,400 square feet of space for office uses within the Project.

With respect to retail leasing, the Applicant will provide retail spaces that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that comprise large spaces (larger than 10,000 square feet each). In addition, the Applicant will: (i) reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (ii) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; and (iii) dedicate a minimum of 1,000 total square feet in the M Street buildings to small and local businesses as part of its compliance with Condition No. 14 from Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers). Finally, the Applicant will prohibit any digital advertising signage on the exterior of the M Street Buildings during both initial lease up and for the life of the M Street Buildings;

- c. Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)). The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Future Land Use Map. Overall, the Project will replace two vacant sites with approximately 598 new residential units that would have not been provided if the M Street Sites were developed as office buildings, as approved in Z.C. Order No. 02-38A.

In the East M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI. Two of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. In addition to the eight percent of the residential gross floor area in the East M Building, the Applicant will dedicate a third three-bedroom unit to households earning up to 60% of the MFI, thus providing more affordable housing than required by the Zoning Regulations.

In the West M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI. Three of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. Together with the three-bedroom units in the East M Building, these larger-sized units will create new affordable housing options for families, which is an important District priority, and is specifically identified as a public benefit in 11-X DCMR § 305.5(f)(3).

In addition, in order to avoid the provision of short-term residential rentals, the Applicant will only offer leases with 12 to 24 month terms in both of the M Street Buildings, and will not provide any month-to month leases except in the limited scenario of on-site employees and tenants at the expiration of a lease. In addition, no rentals for under one month will be permitted at either of the M Street Buildings by the Applicant or by any agent acting on the Applicant's behalf;

- d. Employment and Training Opportunities (Subtitle X § 305.5(h)). As part of construction of the M Street Buildings the Applicant will: (i) comply with the executed First Source Employment Agreement to promote and encourage the hiring of District residents, as set forth in the agreement included in the case record at Exhibit 2K; and (ii) comply with the executed Certified Business Enterprise Agreement, in order to utilize local, small, and disadvantaged businesses, as set forth in the agreement included in the case record at Exhibit 2L;
- e. Environmental Benefits (Subtitle X § 305.5(k)). The M Street Buildings have been designed to integrate a host of sustainable features. The Applicant will incorporate solar panels on the roofs of the M Street Buildings that will cover approximately 2,400 total square feet on the East and West M Buildings combined in an effort to generate a portion of each Building's energy consumption.

The Applicant will design the M Street Buildings to achieve LEED Silver under LEED v4 for Building Design and Construction and will submit a LEED checklist with each building permit application evidencing that the respective Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction. The Applicant will endeavor to seek certification but proffers a condition relating to design in accordance with Subtitle I § 305.5k(5). The Applicant is not proffering its LEED commitment as a new public benefit for the second-stage PUD, but rather in compliance with the original benefits and amenities approved in Z.C. Order No. 02-38A;

- f. Security and Construction Mitigation Plan (Subtitle X § 305.5(q)). The Applicant will abide by a separate Construction Management Plan for each M Street Building, to be in place throughout the construction of the applicable M Street Building;

- g. Transportation Features (Subtitle X § 305.5(o)) - Safety Study. The Applicant will contribute \$30,000 to DDOT for the purpose of undertaking a safety study related to the 4<sup>th</sup> and M Street intersection. If the safety study requires additional adjustments that do not correspond to the approved PUD, then the Applicant will support making those adjustments as recommended;
- h. Building Space for Special Uses (Subtitle X § 305.5(j)). The Applicant will dedicate a minimum of 6,000 square feet of the East M Building as a community center. The Applicant will permit ANC 6D to select the community center operator, but prior to turning over occupancy of the community center to the operator, the ANC will be required to provide information about the selected operator to the Applicant, including but not limited to the operator's business plan, governance structure, financial statements, board of directors (if any), affiliates (new and established) and scope of services (e.g., programming, hours of operation). The ANC will permit the Applicant to provide meaningful input and feedback on the information provided (e.g., comments and concerns relating to substantive issues in the aforementioned documents), with the Applicant's feedback not to be unreasonably withheld or delayed. If the ANC does not agree with the Applicant's feedback, then it must respond in writing to the Applicant explaining its position, and the ANC and the Applicant must resolve all issues regarding the operator prior to the Applicant turning over occupancy of the community center to the operator. Once the Applicant turns over occupancy to the operator, the operator will be required to maintain the community center in good order, repair, and conditions, consistent with the terms of the lease agreement to be executed for the community center.

For the first 30 years of operation of the community center, the Applicant will not charge the community center operator for any of the following: (i) rental fees; (ii) property taxes; (iii) building maintenance; (iv) operating expenses; or (v) utilities. The fees for utilities used by the community center during the 30-year timeframe will be billed directly to the Applicant. The Applicant will also provide low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on south face of the community center to minimize heat gain.

In addition to providing the community center space at no cost, as described above, the Applicant will also contribute a one-time payment of up to (i) \$500,000 for the community center's interior design and fit-out; and (ii) \$50,000 for furniture, fixtures, and equipment.

The Applicant will permit community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building. The courtyard will be operated and maintained by the future office tenant of the East M Street Building. Use of the courtyard by the community center users will be limited to the same hours of operation and types of uses as permitted for the office tenants, unless

a special activity or event is specifically reviewed and approved by the office tenant manager;

- i. Commemorative Works or Public Art (Subtitle X § 305.5(d)). Following the Zoning Commission’s approval of the Application, the Applicant will engage with and select a local artist to design and install an element in the Metro Plaza adjacent to the M Street Sites (“Public Space Element”). The Applicant will select an artist who is familiar with the history of Waterfront Station, such that the artist will be able to design a unique and meaningful installation that creates a sense of arrival to Waterfront Station and is successful on its own, independent from the success of surrounding retail or changes in the season. The Applicant will present the proposed artist, general design, and scope of work for the Public Space Element to the ANC up to three times, and will install the Public Space Element prior to the issuance of the first certificate of occupancy for the East M Building; and
- j. Uses of Special Value to the Neighborhood Subtitle X § 305.5(q) - Continued Engagement. Following the Commission’s approval of the Application, and prior to the start of construction for the East M Building, the Applicant will convene a meeting (physically or electronically) among the Waterfront Station property owners (“PUD Owners”) and ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station. The Applicant will subsequently convene two meetings with the PUD Owners and ANC 6D within the first year following the start of construction of the East M Building, will schedule additional meetings if necessary, and will thereafter convene meetings annually with the PUD Owners and ANC 6D until one year following the issuance of the first certificate of occupancy for the West M Building.

### **Transportation Demand Management**

59. The Applicant will implement the following TDM measures as part of development of the M Street Buildings:
  - a. The Applicant will identify a TDM leader (for planning, construction, and operations). The TDM leader will work with residents and tenants of the M Street Buildings to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package;
  - b. The Applicant will provide TDM leader contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
  - c. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;

- d. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on property websites;
- e. The Applicant will unbundle all parking from the cost of the lease or purchase of residential units. Parking costs will be set at the average market rate within a quarter-mile, at a minimum;
- f. The Applicant will install one Transportation Information Center Display (electronic screen) within each residential lobby of the M Street Buildings, containing information related to local transportation alternatives;
- g. The Applicant will provide at least 20 collapsible shopping carts (10 in each Building) for resident use to run errands and for grocery shopping;
- h. The Applicant will exceed the 2016 Zoning Regulations' requirements for bicycle parking. This includes providing secure interior bicycle parking (minimum of 85 spaces in the West M Building and 93 spaces in the East M Building) and short-term exterior bicycle parking around the perimeter of the M Street Sites (minimum of 47 spaces in total). Long-term bicycle storage will be offered to residents and employees and will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
- i. The Applicant will install a bicycle repair station within each of the long-term bicycle storage rooms;
- j. The Applicant will exceed 2016 Zoning Regulations' by providing a minimum of two showers and eight lockers in the West M Building and a minimum of two showers and 20 lockers in the East M Building. These facilities will be available for use by office and retail employees such that each non-residential long-term bicycle parking space has an accompanying locker;
- k. The Applicant will offer an annual Capital Bikeshare or carshare membership to each residential unit upon initial occupancy, at the choice of the resident;
- l. The Applicant will host a transportation event for residents, employees, and members of the community once per year for a total of three years (examples: resident social, walking tour of local transportation options, lobby event, transportation fair, WABA Everyday Bicycling Seminar, etc.);
- m. The Applicant will not apply for RPP for either of the M Street Buildings and will include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from applying for or obtaining RPPs while under the terms of their lease;

- n. The Applicant will provide four spaces dedicated for carsharing services to use with right of first refusal. If an agreement has been reached with a carsharing service for only three spaces, the Applicant will extend the annual transportation event for an additional year. If an agreement has been reached with a carsharing service for only two spaces or less, the Applicant will offer an additional year of Capital Bikeshare or carshare membership to each residential unit; and
- o. The Applicant will work with DDOT to determine an appropriate location for the relocation of the Capital Bikeshare station at the intersection of 4<sup>th</sup> and M Streets, S.W. The station is currently located on the northwest corner of the intersection within private space, in a location that will be retail frontage as part of the proposed development. In conjunction with the relocation, the Applicant will fund the expansion of at least four docks to the existing station. The Applicant commits to providing Capital Bikeshare with a \$3,800 maximum contribution for the relocation and expansion.

### **Compliance with PUD Standards**

- 60. The Commission finds that the Application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3.
- 61. The Commission finds that the M Street Buildings are consistent with the first-stage PUD approval in Z.C. Order No. 02-38A, with the exception of the proposed change of use for which the modification is requested.
- 62. The Overall Project, including the M Street Buildings, provides important public benefits and project amenities which are described in detail in Z.C. Order No. 02-38A. These public benefits and project amenities have not changed with the Application. Based on those public benefits and project amenities, the Commission found in Z.C. Order No. 02-38A, FF No. 91 that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the Overall Project, including the M Street Buildings. In this Application, the Applicant has proffered additional and substantial public benefits and project amenities. The Commission finds that the Project offers a high level of public benefits and project amenities.
- 63. The M Street Buildings have been evaluated under the PUD guidelines for the MU-9 Zone District, which is the successor to the C-3-C Zone District that was approved by Z.C. Order No. 02-38A. The density of the M Street Buildings is below the density permitted for a PUD within the MU-9 zone and is less than that approved in Z.C. Order No. 02-38A. The maximum height of the M Street Buildings is within that permitted for a PUD in the MU-9 zone and is consistent with the first-stage PUD approval in Z.C. Order No. 02-38A.
- 64. In Z.C. Order No. 02-38A, the Commission found that the Overall Project, including development of the M Street Sites, will have a positive impact on the city, especially given the reopening of 4<sup>th</sup> Street and the creation of a town center. In addition, the Commission

found that the Overall Project will provide an economic boost to the Southwest neighborhood and the District of Columbia as a whole. (*See* Z.C. Order No. 02-38A, FF No. 97.) The Commission concluded that there would be no adverse impacts created by the PUD that could not be mitigated by the conditions set forth in Z.C. Order No. 02-38A. (*Id.* at FF No. 96.)

65. The Commission concludes that this second-stage PUD and the modified first-stage PUD for the M Street Sites will continue to advance the priorities approved in Z.C. Order No. 02-38A and will not create any new adverse impacts. The Application has been evaluated by the relevant District agencies, and based on the reports of those agencies and their testimony at the public hearings, the Commission finds that there will be no adverse impacts that cannot be mitigated by the conditions imposed herein. Moreover, based on the public benefits and amenities described above, including (i) those that have already been implemented as part of the first-stage PUD, (ii) those that were approved in the first-stage PUD and will continue to be implemented in this Application, and (iii) those that are new to the Application, the Commission finds that the relative value of the benefits and amenities for the Application balances with the degree of development incentives requested.

#### **Not Inconsistent with the Comprehensive Plan**

66. In Z.C. Order No. 02-38A, this Commission found that the Overall Project, including the development of the M Street Buildings, was not inconsistent with the Comprehensive Plan because it advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use and Generalized Policy Maps, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. (*See* Z.C. Order No. 02-38A, FF Nos. 98-108 and Decision No. 8.)
67. In the present case, OP stated that development of the M Street Buildings specifically is “not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP also noted that the Commission previously determined that the first-stage PUD was not inconsistent with the Comprehensive Plan. OP further stated that the change in proposed use from office to residential “would not be inconsistent with major policies from the Land Use, Transportation, Housing, Economic Development, Urban Design, and Lower Anacostia Waterfront/Near Southwest elements of the Comprehensive Plan,” and “would not be inconsistent with, and would further housing objectives, including the provision of affordable housing.” (Ex. 64, p. 10.) The Commission concurs with OP’s findings for the following reasons:
- a. The Project is Not Inconsistent with the Purposes of the Comprehensive Plan. The Commission finds that the Project will advance the purposes of the Comprehensive Plan, which are to: (i) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;

(ii) to guide executive and legislative decisions on matters affecting the District and its citizens; (iii) to promote economic growth and jobs for District residents; (iv) to guide private and public development in order to achieve District and community goals; (v) to maintain and enhance the natural and architectural assets of the District and (vi) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District; (D.C. Code §1-245(b).)

- b. The Project will significantly advance these purposes by promoting the social, physical and economic development of the District through the provision of high-quality, mixed-use buildings on the M Street Sites without generating any adverse impacts. The modified M Street Buildings will improve the surrounding neighborhood by provide housing, including affordable housing and family-sized affordable housing in an amount greater than the minimum required in the Zoning Regulations, jobs, locally-serving retail and office opportunities, and a community center for the Southwest neighborhood;
- c. The Project is Not Inconsistent with the Future Land Use Map. The Future Land Use Map of the Comprehensive Plan designates the PUD Site, including the M Street Sites, as mixed-use High-Density Residential and High-Density Commercial. The High-Density Residential land use designation is used to define neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. (10A DCMR § 225.6.) The High-Density Commercial land use category is used to define the central employment area of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower-scale buildings (including historic buildings) are interspersed; (10A DCMR § 225.11.)
- d. Pursuant to Z.C. Order No. 02-38A, FF No. 101, the Commission found that the first-stage PUD was not inconsistent with the Future Land Use Map designation of the PUD Site. The Commission finds that development of the M Street Buildings continues to be consistent with the Future Land Use Map. The M Street Buildings will be comprised of high-density apartment buildings with additional office, retail, and community uses. The conversion of the M Street Buildings to primarily residential use, while maintaining a moderate amount of office use that is suitable for neighborhood services and smaller office uses, will directly address the high demand for residential use in this area of the District and further diversify the range of uses within the overall PUD Site. Moreover, notwithstanding the change in the primary use of the M Street Buildings from office to residential, the proposed height and density remain consistent with the Future Land Use Map, which was previously approved by this Commission;
- e. The Project is Not Inconsistent with the Generalized Policy Map. The PUD Site, including the M Street Sites, is located in a Land Use Change Area on the Comprehensive Plan Generalized Policy Map, and is also identified as an

Enhanced/New Multi-Neighborhood Center. The guiding philosophy for Land Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail, services, workplaces, parks and civic facilities. The Comprehensive Plan's Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area; (10A DCMR § 223.11.)

- f. Multi-Neighborhood Centers contain many of the same activities as neighborhood centers but in greater depth and variety, and have a service area ranging from one to three miles. These centers are generally found at major intersections and along key transit routes, and might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade; (10A DCMR § 223.17.)
- g. Pursuant to Z.C. Order No. 02-38A, FF No. 102, the Commission previously found the Overall Project to be consistent with the Enhanced/New Multi-Neighborhood Center Generalized Policy Map designation. The Commission finds that development of the M Street Buildings as proposed continues to be consistent with this designation. Specifically, development of the M Street Buildings will help complete the new mixed-use town center community that is envisioned for the Overall Project, which contains housing, retail, services, employment, outdoor public spaces, and a community center. The proposed M Street Buildings are located along the major east-west transportation corridor of M Street, S.W., and also along 4<sup>th</sup> Street, S.W., which has been converted into a walkable, mixed-use commercial district. The M Street Buildings will contain a variety of retail shops, an active community center, service-oriented businesses, and smaller office uses, which are consistent with the Generalized Policy Map designation;
- h. The Project is Not Inconsistent with the Guiding Principles of the Comprehensive Plan. The Commission finds that the Project is not inconsistent with the guiding principles of the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:
  - i. Managing Growth and Change. The Commission finds that the Project is consistent with several of the principles contained within the Managing Growth and Change section, which focuses on overcoming physical, social, and economic obstacles to ensure that the benefits and opportunities available to District residents are equitably distributed. Specifically, in order to manage growth and change, the Comprehensive Plan encourages, among other factors, growth in both residential and non-residential sectors, with residential uses comprising a range of housing types to accommodate households of varying sizes and income levels, and

nonresidential uses that include services that support residents. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors and near transit stations are an important part of reinvigorating and enhancing District neighborhoods as well as the surrounding region; (10A DCMR § 217.)

- j. The Commission finds that the Project is fully consistent with these goals. Redeveloping the M Street Sites with mixed-use buildings comprised of approximately 598 residential units, ground-floor retail, neighborhood-serving office use, and a 6,000-square-foot community center will benefit the residents and employees who live and work in the neighborhood and will help contribute to the development of the surrounding area. The retail and office spaces will create new jobs for District residents and provide additional neighborhood-serving amenities to new and existing residents. In addition, the M Street Buildings will grow the District's tax base, strengthen the M Street, S.W. corridor, and help reinvigorate existing neighborhood fabric. The new residential units will greatly assist in addressing the continuing demand for additional housing in the District. In fact, according to a recent study conducted by the Capitol Riverfront BID entitled "GreenPrint of Growth 2.0," the Metrorail green line, which runs through the Waterfront Metrorail station, is the District's strongest growth corridor in both residential and retail growth. Thus, in addition to adding a substantial amount of new retail space, given the close proximity of the Waterfront Metrorail station to the M Street Sites, the Commission finds that converting the majority of the M Street Buildings to residential use will greatly assist in meeting the continued demand for housing along the green line corridor;
- k. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is to protect and stabilize neighborhood businesses, retail districts, parks, and other facilities, and to reinforce neighborhood identity and provide destinations and services for residents. In addition, noting the crisis of affordability that has resulted from the continued housing boom in the District, the guiding principles recognize the importance of preserving existing affordable housing and producing new affordable housing to avoid a deepening of racial and economic divides in the city. Citizen participation and responsive neighborhood services are also recognized as keys ingredients to creating successful neighborhoods. Such participation includes garnering public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements; (10A DCMR § 218.)
- l. The Commission finds that the Project is consistent with each of these principles. The Applicant worked closely with ANC 6D, Waterfront Tower, and other neighborhood stakeholders and community groups to ensure that the M Street Buildings will provide uses that respond to the neighborhood's current and anticipated demands. Moreover, the SW Plan indicates that the primary neighborhood demands call for increased residential use, including additional affordable housing, and greater neighborhood-serving retail and service uses. The

Project will respond to these demands by providing a significant number of new residential units within a walkable and mixed-use town center environment that is within close proximity to several modes of public transportation;

- m. Increasing Access to Education and Employment. The guiding principles pertaining to increasing access to education and employment focus on growing economic activity in the District, as well as improving the lives and economic well-being of District residents. To do this from a policy and transportation perspective, the Comprehensive Plan recognizes the importance of improving access to education and jobs by capitalizing on the city's location at the center of the region's transportation systems. Providing more efficient, convenient, and affordable transportation options for residents increases resident access to jobs within the District and the surrounding region. Moreover, expanding the economy means increasing shopping and services for many District neighborhoods, bringing tourists beyond the National Mall and into the city's business districts, and creating more opportunities for local entrepreneurs and small businesses; (10A DCMR § 219.)
- n. The Commission finds that the Project will advance the District's goals of improving access to jobs and education by redeveloping the two vacant M Street Sites with new mixed-use buildings that will provide a substantial amount of new housing and retail use directly adjacent to a Metrorail station and in close proximity to public transportation. The close proximity to transit will increase residents' ability to access educational opportunities and jobs without owning a vehicle and without the added expenses associated with vehicle ownership. This is especially relevant to those residents living in the affordable dwelling units that will be integrated into the Project and made available to households earning no more than 60% of the MFI. In addition, the proposed retail and neighborhood-serving office uses will expand the District's retail and office economy in the Southwest Waterfront neighborhood, which will create more opportunities for small businesses to thrive and create new employment opportunities for residents;
- o. Connecting the City. The Commission finds that the Project is consistent with the guiding principles that pertain to connecting the city. The Project is located in a walkable, bike-friendly, and transit-rich location, which will allow residents, employees, and visitors to the M Street Buildings to take advantage of multiple transportation modes. The Project will also include streetscape and public space improvements that will enhance mobility and circulation around the PUD Site and throughout the neighborhood. These improvements consist of the reconstruction of the public space surrounding the M Street Buildings, new street trees, and other landscape and lighting improvements, which help create a safe and inviting public realm; (See 10A DCMR § 220.)
- p. Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the Comprehensive Plan's guiding principles related to building green and healthy communities. A major component to successfully

building green and healthy communities is the use of sustainable building construction and renovation techniques that minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The M Street Buildings will be designed to meet the standards for LEED Silver under LEED v4 for Building Design and Construction. The M Street Buildings will also incorporate solar panels on their roofs, which will cover approximately 2,400 total square feet in an effort to generate a portion of each M Street Building's energy consumption; (*See* 10A DCMR § 221.)

- q. The Project is Not Inconsistent with the Major Elements of the Comprehensive Plan. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (10A DCMR §§ 104.4-104.5.) The Commission previously found in Z.C. Order No. 02-38A that the Overall Project was not inconsistent with the Citywide and Area Elements of the Comprehensive Plan. (*See* Z.C. Order No. 02-38A, FF Nos. 104-108.) The Commission continues to find that the M Street Buildings as proposed will advance the objectives and policies from many elements of the Comprehensive Plan, based on the evidence provided in the Applicant's Statement in Support (Ex. 2); the Applicant's Comprehensive Plan Analysis (Ex. 2H); the OP reports (Ex. 11, 64), and testimony at the public hearing (Ex. 88). Based on these documents, the Commission finds that the Project is consistent with policies ranging from:
- i. Land use policies that promote infill development on large sites with a mix of uses, transit oriented development, particularly housing, around Metrorail stations, creating neighborhood commercial districts, and neighborhood beautification; (*See* OP Report (Ex. 64, p. 17) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 8-13).)
  - ii. Transportation policies that also promote transit oriented development, improvements to pedestrian and bicycle facilities and safety, and the establishment of transportation demand management measures; (*See* OP Report (Ex. 64, p. 18) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 13-15).)
  - iii. Housing policies that promote private sector support in addressing the critical need for more affordable housing, mixed use and mixed income development, and high quality housing devoted to IZ units that can support families; (*See* OP Report (Ex. 64, p. 18) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 15-17).)
  - iv. Economic development policies that encourage development on large sites, providing diversified and locally-serving office options, neighborhood shopping opportunities to provide goods and service for the immediate community, and improving neighborhood commercial vitality; (*See* Applicant's Comprehensive Plan Analysis; (Ex. 2H, pp. 17-19).)

- v. Environmental policies that promote street tree planting, landscaping, green roofs, energy efficiency, and green building technologies; (*See* OP Report (Ex. 64, p. 17) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 19-20).)
  - vi. Urban design policies that encourage establishing neighborhood character and identity, creating attractive building façades, and reintegrating large sites to improve the street environment; and (*See* OP Report (Ex. 64, p. 19) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 20-22).) and
  - vii. The Lower Anacostia Waterfront/Near Southwest Area Element, which encourages the revitalization of existing neighborhoods, providing diverse housing choices for a mix of household types and incomes, reinforcing commercial centers, and mitigating local traffic concerns. (*See* OP Report (Ex. 64, p. 19) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 23-24).)
68. Therefore, taken together, and based on all of the evidence in the record, including the Applicant’s prior filings, the OP Reports, and testimony of expert witnesses at the public hearings, and consistent with the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

**Compliance with the SW Plan**

69. The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans” (*see* 10A DCMR § 266.1(d)), and the Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site”. (*See* 11-X DCMR § 304.4.) Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” (10A DCMR § 104.2.)
70. For the reasons set forth below, the Commission finds that the Project is consistent with the District’s visions and recommendations for the Southwest neighborhood and the M Street Sites in particular as set forth in the SW Plan, which is the Small Area Plan applicable to the PUD Site. In making this conclusion, the Commission also credits OP’s finding that the Project is not inconsistent with the policies in the SW Plan. (Ex. 64, pp. 12-13.)
71. Published in July, 2015, the SW Plan was designed to shape the future of its planning area, which encompasses the PUD Site. The SW Plan reflects community aspirations, District-wide goals, and market opportunities, and is intended to enhance parks and public spaces, improve pedestrian and street connections, bolster retail, integrate community amenities,

enhance transportation choices, and accommodate and guide the direction of future growth in the Southwest neighborhood. (SW Plan, p. 2.)

72. The SW Plan was developed to provide “detailed direction for the development of city blocks, corridors, parks and neighborhoods, providing supplemental guidance to the Comprehensive Plan.” While the Comprehensive Plan establishes “broad policy goals for the entire city, Small Area Plans (“SAP”) address planning needs and goals at the neighborhood level to supplement the Comprehensive Plan.” The SW Plan acknowledges that a “significant amount of change has happened to the areas surrounding the core of the Southwest neighborhood since the adoption of the Comprehensive Plan in 2006,” such that the SW Plan is a “timely and necessary supplement to the Comprehensive Plan.” (SW Plan, pp. 13, 17.)
73. Importantly, the SW Plan’s vision for Waterfront Station is with 4<sup>th</sup> Street, S.W. becoming a “thriving town center and commercial heart of the community, with a range of neighborhood-serving retail options, an active street atmosphere, a high quality public realm, quality new development, and easily accessible transit.” (SW Plan, p. 7.) The stated goals to achieve the town center vision include “(i) establish a strategic marketing approach to attract a unique and tailored retail mix to promote 4<sup>th</sup> Street as Southwest’s neighborhood main street; (ii) promote key corner parcels to serve as anchors and create a vibrant mix of neighborhood town center uses along 4<sup>th</sup> Street, SW; and (iii) celebrate 4<sup>th</sup> Street’s envisioned vibrancy as a neighborhood main street through temporary urbanism practices and through the burgeoning local arts movement and the city’s creative economy.” (SW Plan, p. 7.)
74. Based on the evidence in the record, including the Applicant’s Statement in Support (Ex. 2), Prehearing Statement (Ex. 13), Supplemental Prehearing Statement (Ex. 62), OP Reports (Ex. 11 and 64), and Mr. Dettman’s rebuttal testimony (Ex. 88), the Commission finds that the Project incorporates a variety of strategies and design improvements that achieve the SW Plan’s vision for creating a town center at Waterfront Station. With respect to attracting a unique retail mix, the Applicant has worked extensively with ANC 6D to understand the types and sizes of retailers that the community wants and that will successfully promote 4<sup>th</sup> Street as the Southwest’s neighborhood main street. At the request of the ANC, the Applicant has committed to providing retail spaces in the M Street Buildings that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that are larger than 10,000 square feet in size. In addition, the Applicant will reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet, and the Applicant will ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet. Also at the request of the ANC, the Applicant agreed to dedicate a minimum of 1,000 total square feet in the M Street Buildings to small and local businesses to fulfill Decision No. 14 in Z.C. Order No. 02-38A. These are the types of retailers that are favored by the community and will establish the vibrant mix of uses prioritized in the SW Plan.

75. The Commission finds that the Project will also promote key corner parcels. Development of the M Street Buildings at the intersection of 4<sup>th</sup> and M Streets will enable the M Street Sites to serve as anchors for the PUD Site with a vibrant mix of uses for the neighborhood. In addition to providing ground-floor retail that wraps both buildings at the 4<sup>th</sup> and M Street intersection, the M Street Buildings have been designed to anchor the town center. The ground floor at the corner of the East M Building encourages street activation of the Metro plaza by incorporating matching hardscape materials and patterns, landscaped beds, possible café seating, and a relocated Capital Bikeshare station directly adjacent to the Metro entrance. Consistent with the first-stage PUD, the ground floors of the M Street Buildings include setbacks to create wide sidewalks with street trees and provide clear and safe circulation and retail activation while still maintaining a strong urban street wall.
76. In addition, the Commission finds that the Project helps to establish 4<sup>th</sup> Street’s envisioned vibrancy as a neighborhood main street through creative urbanism practices and by celebrating the local economy. The proposed public spaces, landscaping, street furniture, and gathering spaces for the M Street Sites will enhance the retail energy, sidewalk activation, and overall neighborhood main street environment within and around the PUD Site. Moreover, the Applicant will market to small and local businesses to ensure that the neighborhood continues to be served by local retailers and service providers.
77. In addition to the stated goals to achieve the town center vision, the SW Plan also encourages “[r]etail energy, sidewalk activation, and new trees... landscaping, street furniture, and gathering places.” (SW Plan, p. 103.) The SW Plan supports the development of publically visible landscaped perimeters, internal green or amenity spaces, and landscaped setbacks appropriate to the streetscape, particularly for high-rise structures, and promotes the use of innovative sustainable design strategies and building standards to create a high performing environment that encourages healthy living, energy efficiency, and storm water management. (SW Plan, p. 82.) The Commission finds that the Project is fully consistent with these goals. The M Street buildings are setback to create beautiful and pedestrian-friendly outdoor public spaces, sidewalks, and plazas. They include extensive landscaping, street trees, and a variety of internal green amenity spaces, and they utilize innovative sustainable practices, including the generation of solar energy through approximately 2,400 square feet of solar panels on the roofs of the M Street Buildings.
78. Based on the foregoing, the Commission finds that the design of the M Street Buildings, with retail concentrated on 4<sup>th</sup> and M Streets, neighborhood-serving office use and a community center above, coherent storefront designs, and pedestrian-oriented streetscapes, will create a vibrant street atmosphere in a high-quality public realm. Public spaces surrounding the M Street Sites will include active landscaping, street furniture, and gathering spaces, thus further activating the sidewalk and drawing people to the M Street Sites from the adjacent Metro station. The Commission finds that these elements collectively embody the town center environment envisioned by the District in the SW Plan.
79. With respect to the proposed change in use of the M Street Buildings from primarily office to primarily residential, the Commission continues to find that the Project is consistent with

the SW Plan. In establishing the town center vision, the SW Plan specifically addresses the viability of the approved office use at the M Street Sites. In doing so, the SW Plan acknowledges that office space “may be difficult to lease,” “could prove less viable in the near term than residential development with ground floor retail,” and that “the developer should have the flexibility to request a modification to the approved Planned Unit Development to incorporate residential uses within the buildings.” (SW Plan, p. 52.)

80. The findings noted above were based on a market study prepared for the District regarding the demand for future housing, office, and retail uses in the Southwest neighborhood. (SW Plan, pp. 11, 22.) The market analysis was conducted to assess neighborhood demographics, real estate conditions and trends, infrastructure and planned development projects to better understand potential opportunities and limitations for real estate development in the Southwest Planning Area. The SW Plan’s market analysis offers findings to inform policy, design and development recommendations for the Southwest neighborhood. (SW Plan, p. 47.) The market study found a “strong market for residential development, a small market for increased retail, and little to no market for office space” (SW Plan, p. 60) and that the “[o]ne incongruity between projected future land use needs and proposed supply is office space.” (SW Plan, p. 52.) The SW Plan also specifically supports residential use at the PUD Site to establish the town center, stating that “[a]dditional residential density to be built along these blocks will improve the customer base and foot traffic in the area.” (SW Plan, p. 114.)
81. Based on the findings in the SW Plan, the Applicant also commissioned a market study as part of the subject Application, which found that: (i) residential use, and not office use, is viable at the M Street Sites in the near-term; and (ii) additional residential use will better support existing and proposed retail establishments at the PUD Site, thereby activating the street in the evenings and weekends (which office use would not do), thus improving the customer base, and increasing foot traffic in the area. (*See Ex. 13F.*)
82. Based on the foregoing, the Commission finds that the Project as proposed appropriately addresses the realistic market demand for new development in the Southwest neighborhood, and that the proposed uses will enable the establishment of a highly successful town center. The Commission credits the Applicant for taking into careful consideration the visions and goals of the SW Plan in developing modifications to the first-stage PUD and in proposing residential use for the M Street Buildings, and concludes that the Project will fully implement the goal of creating a thriving town center at Waterfront Station. Thus, based on all of the evidence in the record, including the Applicant’s previous filings, the market analysis, the OP Reports, and testimony presented at the public hearing the Commission concludes that the Project is fully consistent with the SW Plan.

### **Office of Planning Reports and Testimony**

83. By report dated March 26, 2018, OP recommended approval of the Application, stating that the “proposal is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP’s approval was

based on the Applicant addressing the items set forth in its report and subject to the following condition: “[f]or the life of the project, the buildings shall reserve no less than 32,400 square feet of space for office uses, as “office” is defined at Exhibit 13, p. 27, paragraph 9.” The Applicant agreed to this condition at the public hearing and it has been incorporated into this Order. The Applicant also responded to the issues set forth in the OP report at the public hearing and in Exhibit 76. OP’s issues and the Applicant’s responses are as follows:

- a. OP requested that the Applicant increase its affordable housing proffer. At the time that OP submitted its report, the Applicant’s IZ proffer was to dedicate eight percent of the residential gross floor area in both M Street Buildings to households earning up to 60% of the MFI, and of those units, five total IZ units would be three-bedroom units. In response to OP’s request, the Applicant offered to add a sixth three-bedroom IZ unit in addition to the 8% IZ already proffered, thus increasing the total IZ square footage and the total number of three-bedroom units in the M Street Buildings. The Commission finds the Applicant’s additional IZ proffer to be satisfactory and commends the Applicant for providing additional housing that will be affordable to District residents;
- b. OP requested that the Applicant consider ways to achieve a higher LEED rating and commit to LEED certification for the M Street Buildings. The Applicant proposes to meet the USGBC LEED v4 for Building Design and Construction Silver rating level, which is equivalent to the sustainability level required for USGBC LEED-2009 Gold rating for New Construction. Following OP’s input, the Applicant also incorporated approximately 2,400 total square feet of solar panels on the roofs of the M Street buildings to increase the Buildings’ sustainability levels, even though doing so did not push the project beyond LEED v4 Silver. The Commission notes that the Applicant did not proffer LEED as a new public benefit pursuant to the standards of 11-X DCMR § 305.5, and instead simply provided evidence of the Project’s sustainable features to ensure compliance with the commitments set forth in the first-stage PUD. As noted in FF No. 93(e), the Commission finds that the public benefits and amenities for the Overall PUD and the M Street Sites specifically balance when compared to the development incentives and flexibility requested, and is therefore satisfied with the LEED level proposed. In addition, the Applicant is committed to achieving LEED certification and will use its best efforts in good faith to achieve actual certification;
- c. OP requested that the Applicant further examine the use of solar panels on the M Street Buildings. As noted above, the Applicant agreed to incorporate solar panels on the roofs of the M Street Buildings that will cover approximately 2,400 total square feet on the M Street Buildings combined in an effort to generate a portion of each Building’s energy consumption;
- d. OP requested that the Applicant commit to using an interim retail strategy to avoid dead retail space should long term tenants not be signed immediately, and to incorporate arts, artisan, and maker uses into the retail space. In response, the

Applicant agreed to: (i) establish a vacant retail storefront campaign such that during initial lease-up some vacant storefronts will receive artistic treatments intended to animate sidewalks, engage the pedestrian and bolster connectedness with the community; and (ii) for space that has been vacant for longer than one year, offer a combination of the artistic treatments with pop-up tenancies in some storefronts for small and local businesses that do not require food preparation. The Applicant submitted that these interim retail strategies will generate “Instagrammable” moments and will bring unique engagement opportunities to the M Street Buildings during the initial period when the ground floor retail spaces may not be leased. Based on this proposal, the Commission finds that the interim retail strategy will create an engaging and appealing streetscape along the M Street Sites while the retail spaces are being leased;

- e. OP requested that the Applicant increase the number of balconies on the M Street Buildings, particularly on the north façade. At the public hearing, the Applicant explained that it had already increased the percentage of units with balconies from 19% proffered in the initial Application to 35-36% at the public hearing, which the Commission finds is appropriate in this case. The proposed percentage of units with a balcony is comparable to other new residential projects recently completed in the District and is more than sufficient for the M Street Buildings because there will be extensive outdoor public spaces provided in a variety of terrace and roof levels on both M Street buildings. These outdoor areas, which manifest as courtyards, terraces, and penthouse amenity spaces, will provide exterior activation and eyes on the street that is traditionally provided by balconies. Moreover, the Commission recognizes that the Applicant consciously limited the balconies on the north elevations of the M Street Buildings based on experience that overhangs created by balcony slabs negatively impact the quality of natural daylight in the units below. The Commission agrees that additional balconies in these locations would negatively impact the livability of those units and finds the number of balconies proposed to be adequate. Finally, the Commission credits the Applicant for providing an approximately equal proportion of balconies on the IZ units as on the market-rate units; and
- f. OP requested that the Applicant submit the following additional materials to clarify the record: (i) an explanation as to whether the TDM plan was considered a public benefit; (ii) a summary of the parking totals for the overall PUD Site; (iii) façade details showing the depth of mullions and window reveals; and (iv) an updated ground floor plan of the East M Building showing how the bicycle storage room would be connected to the residential lobby. The Applicant provided responses to OP’s requests at the public hearing, in its direct filing in response to the OP Report and through written materials in its Post-Hearing Submission. (Ex. 76, 131.) Based on its review of these materials the Commission concludes that the Applicant fully responded to all of OP’s concerns and requests for information.

84. Based on the analysis provided in the OP Report and the Applicant's responses thereto, the Commission finds that the Applicant has addressed all of OP's concerns, that the Application is consistent with the Commission's intent in approving the first-stage PUD, and that the second-stage PUD is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.

### **DDOT Report and Testimony**

85. By report dated March 26, 2018, DDOT asserted no objection to the Application with the conditions that the Applicant: (i) fund and conduct a safety study at the intersection of 4<sup>th</sup> and M Street, S.W.; and (ii) implement the TDM plan proposed by the Applicant in the CTR dated October 17, 2017 (Ex. 32), with additional revisions listed at page 4 of the DDOT report. (Ex. 63.) At the public hearing and in its written response to the DDOT Report (Ex. 76A), the Applicant agreed to fund the safety study requested by DDOT (a scope for the safety study is included within Exhibit 76A, but at the request of the ANC the Applicant has committed to making a contribution for the safety study instead of performing the safety study) and to implement the requested TDM plan (the revised, mutually-agreeable TDM plan is set forth in the Decision section of this Order). The Applicant also committed to the following items in response to questions raised in the DDOT report:
- a. The Applicant will provide showers and lockers in both M Street Buildings that will exceed the requirements of the Zoning Regulations;
  - b. The Applicant will provide at least the minimum number of required short-term bicycle parking spaces, with the exact number and location of such spaces to be consistent with the requirements of 11-C DCMR §§ 802 and 804, and as determined based on any approvals required by DDOT and/or adjacent property owners;
  - c. The Applicant will provide four total carsharing parking spaces across the two M Street Buildings, subject to the conditions listed in the TDM plan;
  - d. The Applicant will construct sidewalks along the North-South Private Drives that connect the entire length from the East-West Plazas south to M Street, S.W.;
  - e. The Applicant will continue to coordinate with DDOT and Capital Bikeshare on the appropriate relocation of the existing Capital Bikeshare station that is currently located on West M. The Applicant will also provide a contribution of up to \$3,800 to Capital Bikeshare for the relocation and expansion of the station, as detailed in the TDM plan;
  - f. The Applicant will implement the signage, striping, and traffic calming improvements on the North-South Private Drives and in the East-West Plazas consistent with the plan shown at Exhibit 62E, and subject to further coordination with ANC 6D and adjacent property owners; and

- g. The Applicant will continue to coordinate with DDOT through the public space permitting process, with all final improvements in public space to be as approved by DDOT.
- 86. At the public hearing DDOT acknowledged the Applicant's submission of the safety study, revised TDM plan, and response to the other outstanding items, and confirmed that these documents are consistent with the discussions and agreements established with the Applicant, and reiterated no objection to the Application.
- 87. Based on the analysis included in the DDOT report, including implementation of DDOT's stated conditions and the revised TDM plan, the Commission concludes that any potential adverse transportation impacts that may arise out of the second-stage PUD will be adequately mitigated and will not create any adverse impacts to the surrounding roadway network or neighborhood.

### **ANC Report**

- 88. On April 4, 2018, ANC 6D submitted a resolution ("ANC Resolution") stating that at its regularly scheduled and properly noticed public meeting on March 19, 2018, ANC 6D voted 5-0-0 for a motion of conditional support of the Application. (Ex. 68.) The ANC Resolution also included a letter from SWNA indicating its support for the proposed community center use.
- 89. The ANC Resolution acknowledged that the Applicant's retail strategy and implementation plan would advance the development of a thriving town center on 4<sup>th</sup> Street, SW. The ANC Resolution commended the Applicant's commitment to create a community center, which it stated would be "indispensable" to the neighborhood and was a critical component that lead to the ANC's support of the Project. The ANC noted that the community center and the neighborhood-serving commercial uses would be "contributions that will address essential needs of residents in every economic stratum, including residents of low income households." The ANC also supported the Applicant's commitment to implement a "substantially improved traffic plan;" to actively manage the PUD Site to enhance pedestrian safety, prevent inappropriate vehicular traffic, and improve the area overall; and to enhance the Metro plaza by adding an element that will create a sense of arrival to a vibrant, thriving waterfront neighborhood. Finally, the ANC asserted that the revised building massings are "much more appealing than the massing that would have been used for commercial buildings" and that the "newest design will have a significant positive visual impact."
- 90. The ANC Resolution also raised several issues as conditions to the ANC's full support of the Application, as were further explained by Commissioner Andy Litsky at the public hearing. (See Public Hearing Transcript ["Tr."], 4/5/2018, pp. 123-146 and Commissioner Litsky's Testimony at Ex. 89.) Following the public hearing, the Applicant continued to work with ANC 6D to address its outstanding issues, and in those meetings the ANC raised several additional concerns that were not included in the ANC Resolution or discussed at

the public hearing. The complete list of the ANC's concerns raised in the ANC Resolution and in subsequent meetings, as evidenced in filings in the record, is as follows:

- a. Community Center Selection and Operations: (i) Authority for the ANC to select the operator of the community center; (ii) confirmation that rent and all utilities and operating costs for the community center would be free for 30 years; and (iii) commitment to permit community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building;
- b. Public Space Element: Additional details on the proposed Public Space Element in the Metro plaza;
- c. Enhanced Traffic and Site Plan for 4<sup>th</sup> and M Street: The need for a safety study of the 4<sup>th</sup> and M Street intersection, to be completed prior to approval of the Application, and confirmation that the Project does not preclude the addition of a new south-bound left turn lane at the intersection;
- d. Plans showing the configuration of the 4<sup>th</sup> and M Street intersection if a separated south-bound left-turn lane is added;
- e. Metrobus and Circulator Stops: Commitment that construction of the East M Building will not preclude the replacement of the Metrobus stop and shelter for Route 74 in front of East M; and commitment that the Applicant will work with DDOT to arrive at a solution for the placement of a new Circulator bus stop in front of East M or West M;
- f. Construction Management Plans ("CMPs"): Written commitment to develop and enforce a construction management plan(s) for the M Street Sites;
- g. RPP: Written assurances that residents of the M Street Buildings will not be eligible to apply for DDOT's RPP program;
- h. Loading Operations: Commitment that all deliveries, including trash, FedEx, UPS, and retailer deliveries will occur within the loading facilities within the M Street Buildings;
- i. Public Realm Programming: More details on how the public realm plaza areas will be programmed and maintained following construction;
- j. Retail Leasing: Commitment to market the retail spaces to small and local retailers that will serve neighborhood residents, and to activate vacant storefronts during initial lease-up; and
- k. Digital Signage: Commitment to prohibit any digital advertising signage on the exterior of the M Street Buildings.

91. The Applicant's post-hearing submission, which included two subsequent memoranda from the Applicant to ANC 6D addressed all of the ANC's concerns raised up to that point. (Ex. 131-131B.) A summary of the Applicant's commitments in response to the ANC's concerns is set forth below:

a. Community Center Selection and Operations:

- (i) The Applicant will permit ANC 6D to select the community center operator. However, prior to turning over occupancy of the community center to the operator, the ANC will be required to provide information about the selected operator to the Applicant, including, but not limited to, the operator's business plan, governance structure, financial statements, board of directors, affiliates, and scope of services. The ANC will permit the Applicant to comment on the information provided and if the ANC does not agree with the Applicant's feedback, then it must respond in writing to the Applicant explaining its position. The ANC and the Applicant must resolve all issues regarding the operator prior to the Applicant turning over occupancy of the community center to the operator;
- (ii) Applicant agreed not to charge the community center operator for any of the following: (a) rental fees; (b) property taxes; (c) building maintenance fees; or (d) operating expenses. With respect to the payment of utilities, the Applicant proposed to pay 100% of all utility fees with the exception of electricity, for which the Applicant proposed a contribution limit of \$2.00 per square foot per year (a total payment of approximately \$12,000 per year) with an annual escalation of three percent. However, following further post-hearing meetings with the ANC as described in FF No. 93(b), the Applicant agreed to eliminate the contribution limit and pay for 100% of the community center's electricity fees for the first 30 years of its operation, with the utility to be billed directly to the Applicant.

In addition to paying the above-referenced costs for the community center's operations for 30 years, the Applicant also agreed to install low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on the south face of the community center to minimize heat gain. The Applicant will also contribute to the community center operator a one-time payment of up to \$500,000 for the community center's interior design and fit-out, plus \$50,000 for furniture, fixtures, and equipment; and

- (iii) With respect to the community center operations, the Applicant will allow community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building. The courtyard will be operated and maintained by the future office tenant of the East M Building, such that use of the courtyard by the community center users will be limited to the same hours of operation and types of uses as permitted for the office

tenants, unless a special activity or event is specifically reviewed and approved by the office tenant manager;

- b. Public Space Element: The Applicant will undertake the following process regarding the selection of an artist and design for the Public Space Element in the Metro plaza: Following approval of the Application, the Applicant will engage with and select a local artist to design and install an element in the Metro plaza adjacent to the M Street Sites. The Applicant will select an artist who is familiar with the history of Waterfront Station, such that the artist will be able to design a unique and meaningful installation that creates a sense of arrival to Waterfront Station and is successful on its own, independent from the success of surrounding retail or changes in the season. The Applicant will present the proposed artist, general design, and scope of work for the Public Space Element to the ANC up to three times. The Public Space Element will be installed prior to the issuance of the first certificate of occupancy for the East M building;
- c. Enhanced Traffic and Site Plan for 4<sup>th</sup> and M Street: As testified at the hearing, the Applicant does not propose any modifications to the existing configuration of the 4<sup>th</sup> and M Street intersection. The Applicant evaluated the Project assuming the existing intersection conditions would remain and found that very few site-generated trips would be expected to use a southbound left turn, given the locations of site access points and the one-way traffic flow in the private drives. Thus, DDOT found that any changes to the intersection would not be needed to mitigate project impacts.

Despite the foregoing, following discussions with DDOT and the ANC, the Applicant agreed to fund a safety study, up to a maximum amount of \$30,000, to evaluate whether any physical or operational improvements should be implemented at the intersection. Although Applicant's traffic consultant created a proposed scope of work for the safety study, the Applicant agreed to contribute the \$30,000 directly to DDOT, and permit DDOT to select the firm to perform the safety study and coordinate and direct any follow-up actions that result from the study.

Although the ANC requested that the safety study be completed prior to approval of this Application, DDOT testified that the safety study was not required as a result of the Project or as a required mitigation measure and that it was being provided as a public benefit as part of the PUD. (See Public Hearing Transcript, 4/5/2018, pp. 114-115, where Commissioner Litsky states: "My question to you is do you not feel that doing a safety report prior to allowing this PUD to move forward would be putting, literally, the cart before the horse?" and Mr. Aaron Zimmerman from DDOT responds: "No, I don't believe so. They've studied the impacts of the traffic and the impacts of the pedestrian network based on this development. Any changes that need to happen to the signal or to the roadway is all within the public right of way and that's stuff that DDOT can handle outside of this process. I don't see anything that's specifically related to this project that would potentially impact

safety at the intersections, if that's what you're referring to... We're requesting, and the Applicant has generously agreed to provide, in their public amenities package, a study that will help DDOT in aiding our decision on what to do with that intersection in the future.") Therefore, based on the testimony of DDOT and the Applicant's expert in transportation planning, and in reviewing the CTR submitted to the record, the Commission finds no value in postponing approval of the Application until after completion of the safety study and that the ANC's requested timing is not required for this Application. (Ex. 32A.)

However, at the request of the ANC, the Applicant also completed initial evaluations of the intersection and determined that the Approved Second-Stage PUD Plans for the M Street Buildings would not need to be modified to accommodate a potential new south-bound left turn lane, since the new lane would impact public space only. Nevertheless, as noted in FF No. 93(d), the Applicant agreed that should the safety study require additional adjustments that do not correspond to the Approved Second-Stage PUD plans, it would support making those adjustments as needed;

- d. Metrobus and Circulator Stops. The 74 Metrobus stop and the future Circulator bus stop will both be located in public space adjacent to the M Street Sites. The Applicant committed to working with DDOT on the location of both bus stops and confirmed that (i) the public space shown on the Approved Second-Stage PUD Plans can accommodate free standing bus shelters for both bus routes; and (ii) the bus shelters will be fully accessible and ADA-compliant. The Applicant made further commitments to the ANC regarding the space available for an ADA-compliant bus shelter, as described in FF No. 93(f);
- e. Construction Management Plans: The Applicant submitted two CMPs (one for the East M building and one for the West M building) to the record (part of Ex. 131A) that were drafted and negotiated with the ANC. Among other things, the CMPs include specific requirements for construction parking, site cleanliness, and coordination with WMATA to address the ANC's concerns regarding the existing WMATA generator in public space. The CMPs also include pre- and post-construction surveys and associated monitoring for impacted properties;
- f. RPP: The Applicant agreed to include a rider in all residential leases for the M Street buildings, to be initialed by the residential tenants, that restricts those tenants from obtaining RPPs;
- g. Loading Operations: The Applicant will work with its property manager to instruct all deliveries to the M Street Buildings to be made within the associated loading areas and to coordinate with the property managers of the adjacent buildings along the North-South Private Drives to instruct all deliveries to those buildings to be made within their associated loading areas;

- h. Public Realm Management: Following the public hearing, the Applicant, the ANC, and adjacent property owners met to review how the public realm and plazas can be programmed and maintained for the life of the M Street Buildings. The Applicant also expressed its commitment to continuing to work with these groups to establish an appropriate and mutually-agreeable site management program. Thus, the Applicant proffered that following the Commission's approval of the Application, the Applicant will convene a meeting (physically or electronically) among the Waterfront Station property owners and ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station. The Applicant will subsequently convene two meetings with the Waterfront Station property owners and ANC 6D within the first year following the start of construction of the East M Building, will schedule additional meetings if necessary, and will thereafter convene meetings annually with the Waterfront Station property owners and ANC 6D until one year following the issuance of the first certificate of occupancy for the West M Building;
- i. Retail Leasing. The Applicant proposed a leasing strategy to attract a variety of neighborhood-serving retail tenants for the M Street buildings and minimize vacancies. As part of the leasing strategy, the Applicant will focus marketing efforts towards attracting local retailers that will serve neighborhood residents and provide retail spaces that can accommodate smaller-scale retailers.

As described above, as part of the initial leasing strategy, the Applicant will employ a vacant storefront campaign to install artistic treatments in vacant windows that will animate sidewalks, engage the pedestrian, and bolster connectedness with the community. During initial lease up for retail space that has been vacant for longer than one year, the Applicant will also provide a combination of artistic treatments and pop-up tenancies for local businesses that do not require any food preparation.

In addition, the Applicant will provide retail spaces that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that comprise large spaces (larger than 10,000 square feet each). The Applicant will work with the community throughout the development and construction process to identify the types of retail uses that meet the community's needs and market demand. The Applicant will begin this process early in order to avoid any vacant retail space upon delivery of the buildings. The Applicant will also dedicate a minimum of 1,000 total square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 from Z.C. Order No. 02-38A, which requires a total of 12,500 square feet to be devoted to small and local businesses within the Overall Project. The Overall Project already includes approximately 8,000 square feet of retail space dedicated to small and local businesses, and the Applicant is committed to fulfilling the requirements of this condition. Based on further discussions with the ANC following the post-hearing submissions, the Applicant made additional commitments regarding the individual retail spaces, as set forth in FF No. 93(c); and

- j. Digital Signage: Finally, the Applicant committed to prohibiting any digital advertising signage on the exterior of the M Street Buildings during both initial lease up and for the life of the M Street Buildings.
92. After the Applicant filed its post-hearing submission responding to the ANC's concerns, ANC 6D filed a response dated July 9, 2018, which raised several new and additional concerns, some of which were not previously raised by the ANC or addressed directly by the Applicant, as follows: (Ex. 131, 134.)
- a. Residential Use: The ANC alleged that the Applicant intended to use some of the proposed residential units in the M Street Buildings for "short-term, hotel-like rentals," which would have a detrimental impact to the community;
- b. Community Center Electricity Fees: The ANC requested the Applicant to commit to paying for 100% of the community center's electricity fee usage, with no maximum cap, for a period of 30 years;
- c. Community Serving Retail: The ANC requested that the Applicant dedicate 25% of the total retail space in each M Street Building to individual retail spaces that are 1,000 square feet in size or less;
- d. Safety Study: The ANC requested that the Application not move forward until after the completion of the DDOT safety study of the 4<sup>th</sup> and M Street intersection;
- e. Environmental Benefits. The ANC requested that the Commission require LEED-Silver certification;
- f. Bus Shelter: The ANC requested that the Applicant: (i) commit to ensuring that the Project does not prohibit the construction of an ADA-compliant bus shelter in public space adjacent to the M Street buildings; and (ii) pay for the replacement and construction of an ADA-compliant bus shelter; and
- g. RPP: The ANC requested that the Applicant include a rider in all residential leases that restricts residential tenants of the M Street Buildings from obtaining RPPs.
93. On September 4, 2018, the Applicant submitted a response to the ANC's July 9, 2018 memo. (Ex. 137) The Commission finds that the Applicant's response addressed each of the above-referenced items and makes the following findings and conclusions as to each:
- a. Residential Use: The M Street Buildings are approved to include residential, retail, office, and community center uses only, and do not include any type of lodging use(s). The Applicant's business model provides for leasing protocols of leases for 12 to 24-month terms. The Applicant only provides month-to-month leases for on-site employees and for tenants at the expiration of a lease, in accordance with DC

Code § 42-3505.01(a) (“[e]xcept as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant’s lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit”). The Applicant agreed to follow the same leasing protocol for the M Street Buildings by providing leases with 12-to 24-months terms only, except in the limited scenario of on-site employees and tenants at the expiration of a lease. The Applicant also agreed that no rentals under one month will be permitted at either of the M Street Buildings by the Applicant or any agent acting on the Applicant’s behalf. Therefore, by virtue of the Applicant’s leasing protocols and the conditions of this Order, the Commission finds that the Applicant’s commitment addresses the ANC’s concerns with short-term rentals;

- b. Community Center Electricity Fees: The Applicant agreed to pay for 100% of the community center’s electricity fee usage with no maximum contribution limit for a period of 30 years. The Applicant also agreed that the fees for utilities used by the community center during the 30-year timeframe would be billed directly to the Applicant. Therefore, the Commission finds that the Applicant has satisfied the ANC’s request;
  
- c. Community-Serving Retail: As described herein, the Applicant proposes to lease the retail space in the M Street Buildings to a variety of neighborhood-serving retail tenants. In response to the ANC’s concern, the Applicant further committed to: (i) reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (ii) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; and (iii) dedicate a minimum of 1,000 square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 of Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers). The Applicant also committed to working with the community throughout the development and construction process to identify the types of retail uses that meet the community’s needs. The Applicant also submitted a retail report prepared by Streetsense, which sets forth a varied retail merchandising plan that includes an ideal mix of uses and sizes that promote foot traffic and create a complete customer offering that is consistent with a successful neighborhood town center. (Ex. 62C.) The Commission therefore finds that the Applicant’s approach to retail leasing and the commitments related to maximum and minimum square footages for individual retailers will fully address the ANC’s concerns and create an ideal opportunity to establish a vibrant town center based on neighborhood-serving retail;
  
- d. Safety Study: The Applicant has agreed to contribute \$30,000 to DDOT to complete a safety study for the 4<sup>th</sup> and M Street intersection, and already completed initial evaluations of the intersection and determined that the proposed plans for the M

Street Buildings would not need to be modified to accommodate a potential new south-bound left turn lane since the new lane would impact public space only. As described in FF No. 91(c), the Commission finds that the safety study is not required as a result of the Project or as a required mitigation measure, and that it is being proffered as a public benefit. Therefore, the Commission concludes that approval of the Application need not be postponed until after completion of the safety study and that the ANC's requested timing is not required. However, the Applicant agreed that if the safety study requires additional adjustments that do not correspond to the approved PUD, then the Applicant will support making those adjustments as recommended;

- e. Environmental Benefits. The Applicant has committed to designing the M Street Buildings to achieve LEED Silver under LEED v4 for Building Design and Construction. (See Applicant's LEED Scorecards at Ex. 131G, pp. C17-18.) The Applicant will endeavor to seek certification but proffers a condition relating to design in accordance with 11-I DCMR § 305.5k(5) only. The Applicant is not proffering its LEED commitment as a new public benefit for the second-stage PUD, but rather in compliance with the original benefits and amenities approved in Z.C. Order No. 02-38A, and will submit with its building permit applications a checklist evidencing that each respective M Street Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction. The Applicant and the ANC discussed the timing considerations relating to certification and agreed that providing evidence that each Building has been designed to the LEED-Silver standard addresses the ANC's concern. Moreover, the Commission finds that requiring certification as a condition to approval is not possible because LEED certification cannot be confirmed by the USGBC until several months after issuance of a building's certificate of occupancy. Therefore, the Commission finds that the Applicant's proposed LEED commitment is appropriate in this case;
  
- f. Bus Shelter: The Applicant committed to working with DDOT on the location of the bus shelters and confirmed that (i) the public space adjacent to the M Street Sites can accommodate free standing bus shelters; and (ii) the bus shelters will be fully accessible and ADA-compliant. (See Ex. 131, p. 3.) Following receipt of the ANC's July 9, 2018 memo, the Applicant prepared and sent to the ANC an updated landscape plan confirming that a fully accessible ADA-compliant bus shelter could be accommodated within the public space adjacent to the West M Building. The Applicant shared this plan with the DDOT reviewer for this case, who confirmed that the bus shelter is an acceptable design that allows for both pedestrian circulation and accessibility for wheelchairs and would not require altering the design of the West M Building or pushing the bus shelter into private property. Thus, the Commission finds that the Applicant has fully addressed the ANC's request to ensure that an ADA-accessible bus shelter can be located in the public space adjacent to the West M Building without modifying the PUD plans. Moreover, with respect to the ANC's initial request that the Applicant pay for a new bus shelter on M Street, the Commission finds that the approval and

installation of new bus shelters is within DDOT's purview and is subject to separate agreements and requirements that DDOT has with Clear Channel. Thus, the Commission finds that the Applicant is not required to pay for the bus shelter as a part of this Application. The Applicant, however, indicated its intent to work with the ANC and DDOT to install a temporary bus shelter adjacent to the West M Building prior to the start of construction of the East M Building. The installation of a temporary bus shelter will be subject to review and approval by DDOT; and

- g. RPP: The Applicant will not apply for RPP for either of the M Street Buildings and will include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from applying for or obtaining RPPs while under the terms of their lease.
94. In addition to the testimony provided on behalf of ANC 6D at the public hearing by Commissioner Litsky and in the written materials submitted to the record, Commissioner Roger Moffatt also testified at the public hearing in his capacity as the Single Member District representative for East M. (Ex. 87.) Commissioner Moffatt's concerns related to the need for additional three-bedroom affordable units; the need for small-sized, community-serving, and street-activating retail uses; and restrictions on residents from obtaining RPPs. The Commission finds that the Applicant has adequately addressed each of these concerns, as set forth in this Order, since the concerns were also raised by the full ANC and OP.
95. Based on the foregoing findings of facts and the Applicant's post-hearing submission, the Commission concludes that the Applicant has fully addressed and reasonably responded to all of the ANC's stated concerns and that the Commission has given great weight to all of the ANC's issues. To the extent that the Commission has not incorporated certain of the ANC's recommended conditions into this Order, it has provided findings and conclusions supported by evidence in the record to support its position.

### **Party in Opposition**

96. Waterfront Tower was granted party status on October 30, 2017, and participated as a party in opposition at the public hearing. Waterfront Tower's initial concerns related to access and security, environmental impacts, and economic/social impacts of the Project.
97. Hara Bouganim and Leigha Gooding were the designated representatives of Waterfront Tower. At the hearing, Ms. Gooding acknowledged that the Applicant had met with Waterfront Tower representatives on several occasions since party status was granted to share its plans, learn about Waterfront Tower's concerns, and propose initial solutions to address their concerns. (*See* Ex. 124, p. 1.)
98. At the public hearing, Waterfront Tower presented a draft MOA which expressed all of Waterfront Tower's concerns that had not yet been addressed. (Ex. 119.)

99. Waterfront Tower's primary concerns included the following: (i) location, timing for, and operations of loading activities at the East M Building; (ii) congestion, safety, use, and design of the North-South Private Drive on the east side of the East M Building; (iii) design issues related to the east façade of the East M Building, including landscaping; (iv) alternative parking solutions for Waterfront Tower's moving vans, deliveries, contractors, and visitors; (v) naming of the North-South Private Drives and East-West Plazas; and (vi) involvement in the decision-making process through the community advisory committee, among others.
100. The Applicant worked closely with Waterfront Tower following the public hearing on the issues identified above, and eventually came to a mutually-acceptable agreement on each of Waterfront Tower's concerns, which is set forth in the signed MOA. (Ex. 131C.) Although the conditions of the MOA would not typically be considered as public benefits under 11-X DCMR § 305, the Applicant has agreed as part of its agreement with Waterfront Tower to request that the MOA conditions become enforceable under this Order. The Commission consents to that request given the request by Waterfront Tower at the hearing. The testimony of Commissioner Litsky and Ms. Gooding is cited as follows: "MR. LITSKY: And to Ms. Gooding, you're working on an MOA and I'm glad you are. How would you feel that your condominium and your residents would be best protected once you have those conditions written up and memorialized? Would you think that you would be better protected to have those conditions clearly elucidated in the final zoning order? MS. GOODING: Yes, in a way that is binding and that sounds like the final zoning order would be good. But in addition to that I would say through regular meetings with us...So through a combination of regular meetings and documentation in the final order that you had mentioned, I think that would best protect our community. MR. LITSKY: Okay but when you have the Applicant sign off on those things that you have stated to make sure that it's not lost in translation and that it is not lost and if they could have documents that's elsewhere, do you feel that this would better be formally stated in a final zoning order, rather than just placed elsewhere? MS. GOODING: Absolutely, that was my intent. So if I wasn't clear, absolutely, yes." (Tr. 5/10/2018, pp. 51-52; see also the Applicant's rebuttal testimony, stating that "I certainly heard they want to see that in writing and we are happy to put that in writing. I understand conditions in an order make people more comfortable than just representations in testimony." (*Id.*, p. 77.)) Based on these discussions, Commissioner Miller stated "it will be helpful to have the MOA so that we can refer to the MOA in any final zoning order, if we get to that point, because there was discussion of that, and they would want to see those conditions memorialized. And you said that you were willing to do that." (*Id.*, p. 92.) Accordingly, the MOA includes a number of conditions that are set forth in the Decision section of this Order.
101. By letter dated July 2, 2018, Waterfront Tower also submitted a copy of the signed MOA and stated its appreciation for the Applicant's attempts to meet Waterfront Tower's concerns and think "out of the box." (Ex. 130.)
102. As noted in FF No. 31, on July 9, 2018, Waterfront Tower submitted a response to the Applicant's post-hearing submission, noting a discrepancy between the signed MOA,

which required vertical plantings along the east and north facades at the northeast corner of the East M Building, and the Approved Second-Stage PUD Plans, which showed the vertical plantings on the east façade but not the north façade of the northeast corner. (Ex. 133.) On July 16, 2018, the Applicant submitted a response to Waterfront Tower’s July 9, 2018 letter, stating that it did not intend to violate the MOA’s terms regarding the vertical plantings. (Ex. 135.) The Applicant’s response included a revised landscape plan and building elevation showing the location and extent of the vertical plantings as agreed to in the MOA. (Ex. 135, Sheets L4-rl, 88-rl.)

103. Based on the Applicant’s work with Waterfront Tower, the commitments set forth in the MOA, as revised by Exhibit 135, and Waterfront Tower’s recognition of the parties’ agreement, the Commission finds that the Applicant has fully addressed and reasonably resolved all of Waterfront Tower’s stated concerns.

### **Other Contested Issues**

104. In addition to the issues raised by the parties, several non-party individuals and organizations testified at the public hearing and submitted letters to the record in opposition to the Application, related to the issues discussed below.
105. Conversion of Office to Residential Use. Several individuals and organizations testified in opposition to the conversion of the M Street Buildings’ primary use from office to residential. These individuals stated that many other residential buildings are coming online in the surrounding neighborhood, that office demand is high and continues to grow, and that office use (as oppose to residential use) will better attract the type of evening and weekend activity that will draw and sustain neighborhood-serving retailers at Waterfront Station.
106. Despite these claims, the Commission finds that conversion of the M Street Buildings from office to residential use is appropriate for the neighborhood, will generate significant retail sales and pedestrian activity, and will not result in negative impacts that cannot be adequately mitigated. In making this finding, the Commission credits the Market Analysis and Economic Impact Analysis, prepared by Partners for Economic Solutions in August, 2017 (the “PES Report”), which summarized the office and residential markets of the Southwest Waterfront neighborhood and the impacts on retail activity of the M Street Buildings if they were developed with office use compared to residential use. (Ex. 13F.) It also credits the Applicant’s pedestrian study, which surveyed the number of pedestrians around the M Street Sites on a typical weekday and typical weekend day.
107. As set forth in the PES Report, retail sales at Waterfront Station attributable to office development of the M Street Sites would be significantly less than retail sales at Waterfront Station attributable to residential development of the M Street Sites (approximately \$7.3 million compared to \$9.7 million, respectively). (Ex. 13F, pp. 13-14.) According to the report, residents will spend more on goods and services near home than will employees near work. Residents will also take advantage of the retailers in the evenings and on weekends, whereas office workers would not. Moreover, while most residents of the M

Street Buildings will not be at home during the weekday, the growing trend of people working at home will generate entrepreneurs, freelancers, and telecommuters who may venture out during the day to take advantage of the Waterfront Station retail establishments. (Ex. 13F, pp. 13-14.) Thus, the Commission finds that the proposed residential use at the M Street Sites will generate significant activity that will draw and sustain neighborhood-serving retailers at Waterfront Station.

108. In furtherance of this finding, the Commission also credits the Applicant's pedestrian study that studied the times of day and days of the week that have the highest and lowest levels of pedestrian activity at Waterfront Station under current conditions. Results from the study found that pedestrian activity is primarily generated by employees and visitors to the 1100 and 1101 4<sup>th</sup> Street office buildings, and not by residents living within Waterfront Station or in the surrounding neighborhood. Specifically, the morning weekend peak hour observed 25% fewer pedestrians, the midday weekend peak hour observed 45% fewer pedestrians, and the evening weekend peak hour observed 30% fewer pedestrians, compared to comparable weekday observations, with the one exception which coincided with an 8:00 p.m. event at Arena Stage.
109. Regarding the residential housing market, the Commission credits the PES Report's finding that although the multi-family housing market is experiencing high levels of new construction, there is strong residential demand that has supported rapid lease-up of properties. (Ex. 13F, p. iii.) The PES Report anticipated an average demand for development of approximately 4,640 residential units annually in the District. (Ex. 13F, p. 8.) The Commission also agrees with the PES Report finding that residential units at the M Street Buildings will compete well for future tenants and be absorbed easily given their advantages of a Metro-oriented location, mixed-use setting, quality design and amenities, adjacency to a grocery store, and proximity to the Southwest Waterfront and Capitol Riverfront entertainment amenities. (Ex. 13F, pp. 10-11.)
110. Further, the Commission also finds that the proposed amount of office space is appropriate for the M Street Buildings. The PES Report found that the current (2017) office vacancy rate is 11.6% for the District overall and 14% for the Southwest and Capitol Riverfront neighborhoods, and that given a variety of factors it was "unlikely that the development of these two major office buildings would be feasible in less than 10 years." (Ex. 13F, p. iii.) The PES Report also found a "much stronger" market for smaller neighborhood-serving businesses," which are the types of office uses that the Applicant is proposing for the M Street Buildings.
111. In addition, the Commission notes that the SW Plan specifically acknowledges the weak office market and the potential for office use at the M Street Sites to be "less viable in the near term than residential developments with ground floor retail." (SW Plan, p. 52.) The Commission also acknowledges that the SW Plan states that the owner of the M Street Sites (i.e., the Applicant) should "have the flexibility to request a modification to the approved Planned Unit Development to incorporate residential uses within the buildings." (*Id.*) Furthermore, the Commission credits the ANC's testimony at the public hearing, stating that "even though we had expressed significant concern regarding our desire not to even

have a setback on this project... we learned during discussions with the Applicant, and we learned looking at the materials that they had put forward, that it was better to have a residential property there than to have the commercial structure that would otherwise arise.” (Tr., 4/5/2018, p. 124.)

112. Based on the foregoing, including the Commission’s review of the pedestrian study, the PES Report, the ANC’s testimony, and other filings submitted to the record by the Applicant, the Commission finds that the Applicant’s proposal to develop the M Street Buildings with primarily residential use instead of primarily office use will increase the number of residents living at Waterfront Station, attract additional retail consumers and visitors outside of workday hours, and increase pedestrian activity at off-peak times, thus supporting the active town center vision for Waterfront Station. The Commission also finds that there is a high demand and strong market for residential use in the District, particularly at the mixed-use and transit-oriented M Street Sites, and that the market for new office space is weak, such that conversion of the M Street Buildings from primarily office use to primarily residential use is appropriate in this case and will sustain a high demand for neighborhood-serving retailers.
113. Elimination of Open Space. At the public hearing, individuals testified that development of the M Street Sites would remove valuable open space and eliminate the active uses currently occurring on the M Street Sites (e.g., farmer’s markets, festivals, and concerts). Individuals noted that although other public spaces exist in the area, none have the capacity to hold such large events, and thus the elimination of the open space currently on the M Street Sites would negatively impact the community.
114. The Commission finds that development of the M Street Sites was initially approved in 2003 through Z.C. Order No. 02-38, and that the development, height, and massing of the M Street Buildings are fully consistent with this original approval. The Commission also finds that Z.C. Order No. 02-38 required approximately 25,000 square feet of open space on the PUD Site, that Z.C. Order No. 02-38A increased that requirement to 50,000 square feet of open space on the PUD Site, and that the 50,000 square feet of open space has already been constructed. The Applicant continues to propose 50,000 square feet of open space, which is fully consistent with the approved plans in Z.C. Case No. 02-38A. Pursuant to 11-Z DCMR § 704.4, the scope of a hearing for a modification of significance application shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision. Thus, the Commission finds that it has properly evaluated this Application without the need to re-review the amount of open space provided on the PUD Site.
115. The Commission notes that the Applicant activated the M Street Sites during the years that they have been vacant. In fact, the ANC testified to this at the public hearing, stating that they “have appreciated the fact that during the interim period of time, the ANC had made sure, with the assent of the Zoning Commission, that these sites were activated. These were to be activated sites only until such time as building was going to be happening on those sites...” (Tr. 4/5/2018, p. 125.) Thus, although the ANC appreciated the interim uses on the

M Street Sites, it understood that these sites were never intended to remain as public open space, and in fact commended the Applicant for activating them over the years.

116. In addition, the Applicant is providing a 6,000-square-foot community center in the East M Building, which will be available for a variety of public uses in lieu of the vacant M Street Sites. The Commission also recognizes that significant open space exists elsewhere in the immediate vicinity (within approximately one-quarter mile) of the M Street Sites, including the Southwest Duck Pond park, the 3<sup>rd</sup> and I Street park, the two pocket parks located on the southeast and southwest corners of the intersection of 4<sup>th</sup> and I Streets, and Lansburgh Park. (See Tr. 5/10/2018, p. 84, testimony of Ms. Trini Rodriguez, the Applicant's expert in landscape architecture, describing the existing public spaces in the immediate neighborhood within an eighth and a quarter mile of the PUD Site.) Thus, significant indoor and outdoor public space will continue to be provided in the immediate neighborhood.
117. Moreover, as testified to by Mr. Dettman at the public hearing, the Applicant's expert in land use planning, "there is nothing in the Comp Plan or the Small Area Plan that would suggest that the near Southwest area is lacking in available open space. Actually, the Comp Plan notes that almost 30 percent of the planning area consists of parks and open space but that many of the parks and open spaces are hard to find, underutilized, and neglected. The Small Area Plan defines -- says that a defining feature of the Southwest neighborhood is its multitude of strategically-located green spaces and makes similar recommendations to preserve and enhance existing green spaces and improve connections. The overall PUD does exactly what is called for in the Comp Plan and the Small Area Plan by adding variety to the planning area's existing parks and open spaces, and by creating a network of urban open spaces within the town center that are programmed and provide better connectivity." (Tr. 5/10/2018, pp. 87-88; see also 10-A DCMR § 1902.2 and SW Plan, p. 86.)
118. Therefore, based on existence of public spaces in the surrounding neighborhood, the incorporation of the community center use into the East M Building, and the approved and provided public space on the PUD Site, and based on the Commission's review of the Comprehensive Plan, the SW Plan, and the Applicant's experts in landscape architecture and land use planning, the Commission concludes that redevelopment of the M Street Sites will be beneficial to the neighborhood overall despite the removal of the vacant lots, that the community will still be able to take advantage of a variety of public open spaces in the immediate neighborhood, and that the Project is fully consistent with the approved first-stage PUD.
119. Affordable and Family-Sized Housing. Testimony was presented that: (i) the Applicant did not propose an adequate amount of affordable housing in the M Street Buildings; (ii) that the proposed affordability level (60% of the MFI) was not affordable for low-income District residents; and (iii) that the majority of the units in the M Street Buildings are studios and one-bedroom units, which will not support families or the socioeconomic or racial diversity of the Southwest which indicates that more families are moving and/or staying in the District.

120. Regarding the amount of affordable housing proposed, the Applicant initially proposed to dedicate a minimum of eight percent of the residential gross floor area in each M Street building to IZ units reserved for households earning up to 60% of the MFI, with three of those units in the West M Building reserved as three-bedroom units and two of those units in the East M Building reserved as three-bedroom units. Following the public hearing, the Applicant agreed to increase the IZ proffer to provide a third three-bedroom unit in the East M Building reserved for households earning up to 60% of the MFI. This additional unit is above the eight percent of residential gross floor area originally proposed, which increases both the amount of affordable housing in the Project and the amount of family-sized housing. Moreover, as testified to by the Applicant and as described in the Applicant's filings (*see, e.g.* the Applicant's Prehearing Submission at Ex. 13), the amount of affordable housing proposed for the M Street Buildings will increase the total number of affordable units within the overall PUD Site by approximately 20%, and will increase the effective proportion of IZ units compared to market rate units across the overall PUD Site (prior to development of the Northeast Building) to approximately 15%. The Commission finds that this proportion is significantly greater than the minimum percentage required by the current IZ regulations and is consistent with other recently approved PUDs.
121. Regarding the subsidy level proposed for the IZ units, the Commission notes that at the time that the Applicant filed the Application, the Zoning Regulations only required a subsidy level of 80% of the Area Medium Income ("AMI") for all IZ units, yet the Applicant still proposed a deeper subsidy level of 60%.<sup>3</sup>
122. Regarding the number of family-sized housing, as noted above, the Applicant increased this proffer following comments at the public hearing. Thus, given the significant amount of other benefits and amenities proposed in this Application, the lack of any additional development incentives or flexibility requested, and the benefits and amenities that have already been delivered and will continue to be delivered through this second-stage PUD, the Commission finds that the proposed IZ proffer – including the square footage of IZ units, the subsidy level of IZ units, and the number of affordable three-bedroom units – is appropriate in this case.
123. Moreover, the Commission also credits the Applicant's testimony at the public hearing that with respect to delivery of additional IZ units, the ANC expressed a preference for a cost-free community center as follows: Commissioner Litsky stated that "[t]he ANC believes that the creation of a Southwest community center is indispensable to the wellbeing of our Southwest community and is a critical component that led to our support of this project. We asked for it. We recognize that this is something that's absolutely critical." (Tr. 4/5/2015, p. 125.) In discussing the Applicant's IZ proffer in the ANC Resolution, the ANC stated that "ANC 6D has been and remains an advocate for affordable housing and for affordable units with more than two bedrooms. The commitment in this Application meets the current requirement for Inclusionary Zoning and also includes five three-bedroom units affordable at 60% of Area Median Income. (Note: The Applicant is providing these larger units at the ANC's specific request.) The ANC also believes that the inclusion of the

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<sup>3</sup> The terminology of AMI vs. MFI is different but the substantive definitions are the same.

Community Center and neighborhood-serving commercial are contributions that will address essential needs of residents in every economic stratum, including residents of low income households.” (Ex. 68, p. 2.) Thus, the Commission concludes that the amount of affordable housing proposed for the Project is sufficient, given the substantial benefits and amenities associated with this second-stage PUD, the total amount of affordable units that will be provided on the Overall PUD Site, and the ANC’s concurrence with the IZ proffer.

124. The Commission’s further conclusions on the issues of affordable housing, gentrification, and overdevelopment are set forth in FF Nos. 126, 130, 131, 132, 133, 134, 135, and 136 below.
125. Community-Serving Retail: Several individuals testified at the public hearing that the M Street Buildings should provide affordable retail space to attract small and local retailers. The issue of dedicating space in the M Street Buildings to small and local retailers was also raised by the ANC and addressed by the Applicant. The Commission’s findings and conclusions regarding the proposed retail space in the M Street Buildings is provided in FF Nos. 74 and 93(c) of this Order, and as described therein, the Commission concludes that the Applicant has made significant commitments regarding the retail space as requested by the community and the ANC, and that those commitments will provide maximum flexibility for the Applicant to attract and retain a wide variety of neighborhood-serving retailers that meet the community’s needs and the market demand.
126. DC for Reasonable Development (“DC4RD”) – A representative of DC4RD submitted written materials and testified in opposition to the Application at the public hearing. DC4RD claimed that the proposed second-stage PUD and first-stage PUD modification are inconsistent with the Comprehensive Plan, and that the Project will destabilize the area’s existing affordability and cause/contribute to gentrification. (Ex. 86.) The primary basis for DC4RD’s claims is the amount of time that has passed since the Commission’s initial approval of the Overall Project, and changes that have occurred in the surrounding area during that time including, according to DC4RD, “the massive displacement of black families.” Consistent with the manner in which it has participated in other recent proceedings, the Commission finds that DC4RD claims are generalized grievances that are not specific to any portion of a particular proposal, including the Applicant’s proposal. The Commission also finds that DC4RD fails to substantiate any of its claims regarding displacement and gentrification through fact-based evidence or analysis.
127. DC4RD’s Claims Regarding Consistency with the Comprehensive Plan. In its written comments submitted to the record, DC4RD states that the Project shows a huge inconsistency with the fundamentals of the Comprehensive Plan. However, as fully set forth in the Applicant’s Consistency with the Comprehensive Plan analysis, the OP Report, and the hearing testimony of Mr. Shane Dettman, the Applicant’s expert in zoning and land use, and as fully set forth in FF Nos. 67 and 68 of this Order, the Commission finds that the Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the land use designation on the Future Land Use Map and general policy designation on the Generalized Policy Map. (Ex. 2H, 64, 88.)

128. The Commission notes that the provisions of the Zoning Regulations governing PUD applications state that “[t]he first-stage application involves a *general review* of the site’s suitability as a PUD and any related map amendment,...and the compatibility of the proposed development with the Comprehensive Plan...” (emphasis added) (11-X DCMR § 302.2; *see also* Z.C. Order No. 11-03J(3), FF No. 144.) Further, these same provisions state that “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of... the first-stage approval, the Zoning Commission *shall grant* approval to the second-stage application...” (emphasis added) (*Id.*) Thus, as required under the Zoning Regulations, the Commission finds that it has already determined that the Overall Project is not inconsistent with the Comprehensive Plan as part of its review and approval of the first-stage PUD.
129. The Commission also credits OP’s finding that the Project “is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP also acknowledged the Commission’s previous determination that the first-stage PUD was not inconsistent to the Comprehensive Plan, and further found that the change in proposed use from office to residential “would not be inconsistent with major policies from the Land Use, Transportation, Housing, Economic Development, Urban Design, and Lower Anacostia Waterfront/Near Southwest elements of the Comprehensive Plan,” and “would not be inconsistent with, and would further housing objectives, including the provision of affordable housing.” (Ex. 64, p. 10.)
130. DC4RD’s Claims Regarding Gentrification, Displacement, Destabilization of Land Values, and Overdevelopment. DC4RD claimed that the Project will destabilize the area’s existing affordability and cause/contribute to displacement and gentrification. However, the Commission finds that DC4RD offered no factual evidence to substantiate these claims. This Commission has previously opined on an applicant’s obligation to respond to these types of unsubstantiated generalized grievances/claims. In so doing, the Commission found that while the burden of proof rests with the applicant, an applicant is not obligated to respond to such assertions. For example, in Z.C. Order No. 11-03J, Finding FF No. 150, the Commission stated that “[f]or a party or witness to raise an issue for which a response is required, the party or witness must have some factual basis for the claim and draw a nexus between the claimed deficiency and the current application.” In this case, the Commission finds that DC4RD has not provided any such factual basis or nexus. In addition, the DC Court of Appeals has also recognized that claims regarding “destabilization of land values,” “environmental impacts,” and broad concerns regarding overdevelopment in the community are generalized, and that under the principles of standing “a plaintiff...may not attempt to litigate generalized grievances.” (*See* DCCA No. 16-AA-0705, *Union Market Neighbors v. District of Columbia Zoning Commission and 301 Florida Ave Manager, LLC.*)
131. Based on the foregoing, the Commission concludes that DC4RD’s unsupported claims regarding displacement, gentrification, destabilization of land values, and overdevelopment do not warrant a response given their generalized nature that has not been

tied to the Project, and the lack of any factual nexus between the personal interests of DC4RD, including its groups and individual members. Nonetheless, the Applicant provided a response to these issues in its Post-Hearing Submission, and the Commission offers the additional conclusions below. (Ex. 131D.)

132. The Commission finds that DC4RD approaches the issue of affordable housing in the District extremely narrowly by applying a one size fits all solution to an issue that requires a range of strategies and programs spanning several District agencies that focus on, among other things, preserving existing affordable housing and controlling housing costs for existing residents through programs that provide rental assistance and limit assessment value increases. Increasing market rate and affordable housing supply is a strategy proven to be effective at addressing the issue of affordable housing, and the Commission finds that this Project will be greatly beneficial in this regard by adding approximately 598 new units of housing, of which approximately 50 units will be set aside as affordable at 60% of the MFI.
133. Contrary to DC4RD's claim that the Project will harm the area's existing affordability, the Commission accepts the analyses conducted by the District that have shown that increases in housing (both market rate and affordable) has not impacted lower income residents. Specifically, according to a report entitled Bridges to Opportunity, A New Housing Strategy for D.C. (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force, "the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city's population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city's continuum of housing as are public-private investments in affordable housing development." (*See* Bridges to Opportunity, A New Housing Strategy for D.C (2013), pp. 7, 41.)
134. Contrary to DC4RD's unsubstantiated claims, the Commission concludes that the Project will have significant positive impacts on affordable housing in the District through the significant number of new residential dwelling units that will be constructed, including the substantial number of affordable dwelling units that would otherwise not be constructed under the current approved office use. DC4RD's claim that the Project exacerbates the issue of affordable housing shows a lack of knowledge of where the overall Waterfront Station PUD initially started when it was approved for seven commercial buildings and one residential building. Taking into account the proposed M Street Buildings and the current proposal for substantial affordable housing in the Northeast Building, the amount of affordable housing provided within the Overall Project will be significantly more than originally proposed.
135. Further, as noted in the Comprehensive Plan, the development of new housing both market rate and affordable, is important to addressing the issue of affordable housing in the District. Academic studies and articles written from a wide range of political perspectives are increasingly finding that the addition of new housing of all types and price ranges is

one of the key steps that can be taken to mitigate rising prices and rents. The Commission recognizes the validity and importance of these and other studies that have found that construction of new housing in all price ranges, and specifically new affordable housing, is one of the best ways to mitigate increasing housing prices and rents as it helps address the imbalance between housing demand and housing supply.

136. To that end, the Commission finds that the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the Project is an excellent example of the type of development that can help mitigate the negative effects of gentrification and increasing housing costs as it will introduce approximately 598 new dwelling units into the District's supply of housing, of which approximately 50 units will be devoted to affordable housing at the 60% MFI level, including six three-bedroom units to help meet the demand for family-sized units.
137. DC4RD's Claims on Impacts on Public Services. In its written comments, DC4RD states that "[t]here's no study on the infrastructure impacts (transportation, parking, utilities, pipes, etc.), the environmental impacts (noise, refuse, emissions, air/water, construction nuisance, etc.), the gentrification impacts on surrounding vulnerable affordable housing (no surveys of housing-cost burdened residents in the area now), and the impacts on public service capacities/needs that serve our members and community now (schools, libraries, clinics, rec centers, truly affordable housing, police/fire, etc.). Without an impartial and meaningful impact assessment, the Commission cannot reconcile the benefits in determining approval."
138. Regarding transportation, as testified by Mr. Dettman, as part of its review in 2003, and again in 2007, the Commission evaluated the impacts of the Overall Project, specifically finding in Z.C. Order No. 02-38A that the Overall Project "has been evaluated by the relevant District agencies, including being supported by both OP and DDOT. Based on those reports, there will be no adverse impacts that cannot be mitigated by the conditions imposed herein." The Applicant also prepared a CTR as part of the subject second-stage PUD Application, which DDOT evaluated thoroughly and in doing so found that the Project would not have any negative transportation impacts that could not be adequately mitigated. Moreover, as presented at the public hearing by Mr. VanPelt, the Applicant's expert in transportation, the potential transportation impacts of the proposed change in use of the M Street Buildings has been thoroughly analyzed and determined to be less than the currently approved office use. Any potential impacts of the residential use will be mitigated through implementation of the Applicant's TDM plan and other commitments made with Waterfront Tower. Thus, the Commission finds that the Applicant fully evaluated the Project's transportation impacts and concludes that no mitigation measures outside of those proposed and enforced by this Order are needed.
139. Regarding impact to public services, the Commission finds that the impacts of the Project on public services will not be unacceptable, but instead will be favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. Other than the proposed change in use from office to residential for the M Street Buildings, the Project

remains fully consistent with the approved first-stage PUD. As such, the potential impacts of the Project relative to height, mass, scale, and density remain the same as what has already been evaluated and deemed acceptable by the Commission.

140. DC4RD also raised a question as to whether the capacity of local schools would be burdened by the Project. According to a D.C. Public Schools report entitled “Public Education Supply and Demand for the District of Columbia Citywide Fact Sheet, SY2016-17 (“Fact Sheet”),” which was released by DCPS on October 6, 2017, the Commission finds that there is sufficient capacity within the DCPS and D.C. Public Charter School systems to accommodate expected growth through 2025. Specifically, as stated on page 12 of the Fact Sheet, “...there may be between 93,687 and 95,502 3-17 year old public school students in 2025. If the District grows by this amount, and if the city keeps the same supply of schools with the same grade spans and facilities as they have in SY2016-17, then there may be a surplus of 6,182 to 7,996 seats in our current facility inventory.” (See Ex. 131F.)
141. Moreover, the Commission credits data published by DCPS that the local schools that would serve the M Street Buildings all have additional capacity to accommodate demand, and all have either recently been fully modernized or are in the process of being modernized. According to the DCPS website, the three public schools that would serve the M Street Sites include Amidon-Bowen Elementary School, Jefferson Middle School Academy, and Eastern High School. According to the DCPS online profiles for Amidon, Jefferson, and Eastern, all three schools are far below 100% utilization and have had recent facility upgrades, such that the Commission is able to conclude that the Project will not burden local schools. (Ex. 131F.)
142. Regarding impacts to public libraries, the Commission acknowledges that D.C. Public Libraries (“DCPL”) continues to advance its efforts to transform the District’s library system through major renovation or reconstruction of public libraries throughout the city. With regard to capacity, according to a December 2010 analysis conducted by OP, the Southwest Library was one of the least active libraries in terms of computer usage, circulation, and patronage. Thus, although this study is several years old, the Commission finds it reasonable to believe that the Southwest Library has enough capacity to accommodate any additional demand that may be generated by the Project, especially given DCPL’s ongoing efforts to modernize the District’s library system, including the Southwest Library which is currently undergoing a \$18 million modernization project to increase the net square footage of the library devoted to public areas.
143. The Commission also finds that the Project will also not adversely impact recreation centers and facilities. The surrounding area has more than sufficient recreational facilities in the immediate area, including: (i) the King Green Leaf Recreation Center, which is a 16,500 square foot facility that was substantially renovated in 2005 and includes a computer lab, fitness center, gymnasium, multi-purpose room, playground, spray park, ballfields, tennis courts, pavilion, and a large multi-purpose field; and (ii) the Randall Recreation Center, which provides an indoor multi-purpose room and several outdoor

facilities including a pool, basketball courts, soccer field, and tennis courts. Other significant parks and recreation facilities including East Potomac Park and the National Mall are also located in close proximity to the M Street Sites. Thus, the Commission finds that the M Street Sites will not adversely impact the availability of recreation centers and facilities in the surrounding area.

144. Finally, the Commission finds that the Project will not adversely impact fire stations or emergency response times. The Southwest is home to the newly constructed Engine Company 13 (“EC13”), which was completed in November 2015 and is the first new fire station to be built in the District in more than 20 years. Located at 400 E Street, S.W., in close proximity to the project, EC13 is a facility used by D.C. Fire and Emergency Management Service (“FEMS”) and serves the population of Southwest.
145. Based on the foregoing, as well as information included in the Applicant’s Post-Hearing Submission and as testified to by Mr. Shane Dettman at the public hearing, the Commission concludes that the issues raised by DC4RD are unsubstantiated, generalized grievances, not specific to the M Street Sites or the second-stage PUD. (Ex. 131F.) And, to the extent that any of the issues raised are applicable to the Project, the Commission finds that the Applicant has fully addressed all of DC4RD’s relevant concerns.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to modify the approved first-stage PUD and to consider an application for approval of a second-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this Application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Application is consistent with the purposes and goals of the Commission’s approval in the first-stage PUD and the proposed modifications serve to enhance the Overall Project.
4. The Application complies with the applicable height, bulk, and density standards of the Zoning Regulations and the first-stage PUD. The mix of uses is appropriate for the M Street

Sites. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.

5. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant did not request any flexibility from the Zoning Regulations, but did request flexibility with respect to the design of the M Street Buildings and surrounding public spaces, which are not inconsistent with the Comprehensive Plan. Moreover, the number and quality of benefits and amenities approved in the first-stage PUD and proposed in this Application are reasonable trade-offs for the flexibility and development incentives requested.
7. Ordinarily, the Commission's approval of a second-stage PUD remains valid for two years, during which time an application for a building permit to construct the PUD must be filed and construction must be within three years of the order's effective date. The Applicant has requested two vesting periods as follows: approval of the East M Building shall be valid for a period of two years from the effective date of Z.C. Order No. 02-38I. Within that time, the Applicant shall file for a building permit for the East M Building, and shall begin construction of the East M Building within three years of the effective date of Z.C. Order No. 02-38I. If either of these deadlines are missed, the approvals of the East M and West M Buildings shall expire. If both deadlines are met, approval of the West M Building shall be valid for a period of two years following issuance of the first certificate of occupancy for the East M Building. Within that time, the Applicant shall file for a building permit for the West M Building, and shall begin construction of the West M Building within three years of issuance of the first certificate of occupancy for the West M Building
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the M Street Sites in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP's recommendations. The Commission carefully considered the OP reports in this case and, as explained herein, finds OP's recommendation to grant the Application persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. ANC 6D's written report dated April 4, 2018 expressed conditional support for the Application, subject to the Applicant addressing certain outstanding conditions. (Ex. 68.) As described in this Order, the Applicant worked with ANC 6D following submission of its resolution and after the public hearing, and submitted a detailed response in its post-

hearing submission to each of the questions and concerns that had been raised by the ANC at that time. (Ex. 131.) The ANC submitted a response to the Applicant's post-hearing submission, which raised several new and additional concerns and conditions that were not previously raised by the ANC or addressed directly by the Applicant. (Ex. 134.) However, the Commission has given great weight to each of the issues raised by the ANC, including the issues raised in Exhibit 134, and this Order makes findings and conclusions as to each of those issues. To the extent that the Commission does not follow the ANC's recommendations or agree with the ANC's conditions, it has provided findings and conclusions supported by evidence in the record supporting its position. Thus, the Commission finds its decision in this Order grants the ANC the great weight to which it is entitled.

11. The Application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a second-stage PUD and a modification of significance to the previously approved first-stage PUD for the M Street Sites, subject to the guidelines, conditions, and standards set forth below:

#### **A. Project Development**

1. The M Street Buildings shall be developed with two mixed-use buildings containing residential, retail, office, and community center uses in accordance with the plans prepared by Perkins Eastman DC, dated July 2, 2018, and included in the record at Exhibits 131G1-131G13, ("Approved Second-Stage PUD Plans"), as modified by the supplemental landscape plan prepared by Perkins Eastman DC, dated July 16, 2018, and included in the record at Exhibit 135 ("Supplemental Landscape Plan") as modified by the guidelines, conditions, and standards herein.
2. The East M Building shall have a total of approximately 339,733 square feet of gross floor area, which will include approximately 282,208 square feet of gross floor area devoted to residential use; approximately 19,069 square feet of gross floor area devoted to retail use; approximately 32,456 square feet of gross floor area devoted to office use; and approximately 6,000 square feet of gross floor area devoted to a community center. The West M Building shall have a total of approximately 322,773 square feet of gross floor area, which will include approximately 301,670 square feet of gross floor area devoted to residential use and approximately 21,103 square feet of gross floor area devoted to retail use.

3. The East M Building shall include a below-grade parking garage with approximately 220 parking spaces. The West M Building shall include a below-grade parking garage with approximately 179 parking spaces.
4. The M Street Buildings shall include loading facilities as shown on the Approved Second-Stage PUD Plans.
5. The West M Building shall include landscaping as shown on the Approved Second-Stage PUD Plans. The East M Building shall include landscaping as shown on the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan.
6. The Applicant shall have flexibility with the design of the M Street Buildings in the following areas:
  - a. To provide a range in the number of residential units of plus or minus five percent;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings, and specifically to modify the locations of demising walls and exact number of retailers within each M Street Building to provide the greatest amount of flexibility in use;
  - c. To make refinements to the garage configuration, including layout, parking spaces, and other elements, so long as the total minimum number of parking spaces is provided as set forth in Z.C. Order No. 02-38A;
  - d. To vary the final color of the exterior materials within the color ranges shown on the Approved Second-Stage PUD Plans, based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the buildings;
  - e. To make minor variations to the location, attributes and general design of the streetscape within the overall PUD Site, including the location of short term exterior bicycle parking spaces and the proposed landscape plans included in the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, to comply with the requirements of and approval by the DDOT Public Space Division and the other Waterfront Station property owners, without changing the overall design intent, the general location and dimensions of landscaping and hardscaping, or the quality of materials;
  - f. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades as necessary;

- g. To make minor refinements to the buildings' details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals. Any refinements may not substantially change the buildings' external configurations, appearance, proportions, or general design intent;
- h. To vary the types of uses designated as "retail" use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (Arts, Design, and Creation (11-B DCMR § 200.2(e));
- i. To vary the types of uses designated as "office" use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Office (11-B DCMR § 200.2(x)); (ii) Institutional, General (11-B DCMR § 200.2(q)); (iii) Medical Care (11-B DCMR § 200.2(p)); (iv) Daytime Care (11-B DCMR § 200.2(i)); and (v) Services, Financial (11-B DCMR § 200.2(ee));
- j. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- k. To vary the configuration and layout of the exterior courtyards, so long as the courtyards continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
- l. In the retail and service areas, to vary the location and design of the ground-floor components in order to accommodate specific tenant requirements and/or to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use, and to modify the number of retailers within each M Street Building.

**B. Public Benefits**

- 1. **The Applicant shall submit with its building permit application for the East M Building** a checklist evidencing that the East M Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.

2. **The Applicant shall submit with its building permit application for the West M Building** a checklist evidencing that the West M Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.
3. **The Applicant shall submit with its building permit application for the East M Building** a copy of the executed First Source Employment Agreement and a copy of the executed CBE Agreement, consistent with Exhibits 2K and 2L, respectively.
4. **The Applicant shall submit with its building permit application for the West M Building** a copy of the executed First Source Employment Agreement and a copy of the executed CBE Agreement, consistent with Exhibits 2K and 2L, respectively.
5. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$30,000 to DDOT for the purpose of undertaking a safety study related to the 4<sup>th</sup> and M Street intersection. Should the safety study require additional adjustments that do not correspond to the approved PUD, then the Applicant shall support making those adjustments as recommended.
6. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that: (i) it met with ANC 6D up to three times to select a local artist who is familiar with the history of Waterfront Station to establish the general design and scope of work for installing the Public Space Element; and (ii) that it met once (physically or electronically) with ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station.
7. **During construction of the East and West M Street Buildings**, the Applicant shall abide by the terms of the applicable Construction Management Plan included in the record as part of Exhibit 131A.
8. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that the Public Space Element has been installed.
9. **Prior to the issuance of a certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) contributed up to \$500,000 for the community center's interior design and fit-out; (ii) contributed up to \$50,000 for furniture, fixtures, and equipment; and (iii) installed low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on the south face of the community center to minimize heat gain. The contributions shall be made to the community center operator. The Applicant shall provide a letter from the operator indicating that the interior design and fit-out has been or is being completed and furniture has been or is being purchased.

10. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it provided notice to ANC 6D when construction of the East M Building started (“Notice of East Building Construction Start”) and proof that it met twice with ANC 6D within the first year following the date of the Notice of East Building Construction Start to continue work on implementing a management plan for Waterfront Station.
11. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall demonstrate to the Zoning Administrator that it provided notice to ANC 6D when construction of the West M Building started (“Notice of West Building Construction Start”) and proof that it met annually with ANC 6D following the first year after the date of the Notice of West Building Construction Start to continue work on implementing a management plan for Waterfront Station.
12. The Applicant shall provide environmental benefits as set forth in this condition:
  - a. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall provide information to the Zoning Administrator showing the total square footage of solar panel systems provided on the East M Building; and
  - b. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall provide information to the Zoning Administrator: (i) showing the total square footage of solar panel systems provided on the West M Building; and (ii) confirming that the total square footage of solar panel systems provided on the M Street Buildings combined is a minimum of 2,400 square feet.
13. **Within one year following the issuance of the final certificate of occupancy for the West M Building**, the Applicant shall provide proof to the Zoning Administrator that it met with ANC 6D to discuss its final issues and concerns.
14. **For the first 30 years following the issuance of the certificate of occupancy for the community center within the East M Building**, the Applicant shall not charge the community center operator for any: (i) rental fees; (ii) property taxes; (iii) building maintenance fees; (iv) operating expenses; or (v) utilities. The fees for utilities used by the community center during this 30-year timeframe shall be billed directly to the Applicant.
15. **For the life of the East M Building**, the Applicant shall dedicate a minimum of 6,000 square feet of gross floor area in the East M Building as a community center, and shall provide access for community center visitors and employees to the shared outdoor courtyard at the second level of the East M Building.

16. **For the life of the Project**, the Applicant shall: (i) use the retail space for neighborhood-serving retail and service uses, including, but not limited to, uses such as restaurants, coffee shops, flower shops, video stores, drug stores, banks, electronic stores, bakeries, dry cleaners, and other similar types of uses in accordance with Condition No. 13 of Z.C. Order No. 02-38A; (ii) limit the size of the individual retail spaces in the M Street Buildings to a maximum of 10,000 square feet each; (iii) reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (iv) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; (v) dedicate a minimum of 1,000 square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 of Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers); and (vi) prohibit any digital advertising signage on the exterior of the M Street Buildings.
17. **For the life of the Project**, the Applicant shall only enter into residential leases of a minimum term between 12 to 24 months in the M Street Buildings and shall not provide any month-to-month residential leases, except in the limited scenario of on-site employees and existing tenants at the expiration of a lease. No residential rentals for under one month shall be provided at either of the M Street Buildings by the Applicant or by any agent acting on the Applicant’s behalf.
18. The Applicant shall provide affordable housing as set forth in this condition:
- a. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing for the East M Building as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
<b>Total</b>	231,491 sf (100%)	289	N/A	N/A	N/A	
<b>Market Rate</b>	211,920 sf (91.5%)	264	Market Rate	N/A	Rental	
<b>IZ Required</b>	18,519 sf (8%)	24	Up to 60% MFI	Life of the project	Rental	The Applicant shall reserve a minimum of three 3-bedroom units as IZ units. The 1,052 sf devoted to IZ above the 8% required will be located within one of the three 3-bedroom units.
<b>Additional IZ (over the IZ requirement)</b>	1,052 sf (0.5%)	1	Up to 60% MFI	Life of the project	Rental	

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
<b>Total IZ Provided</b>	19,571 sf (8.5%)	25	Up to 60% MFI	Life of the project	Rental	

- b. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing for the West M Building as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
<b>Total</b>	257,371 sf (100%)	309	N/A	N/A	N/A	
<b>Market Rate</b>	236,781 sf (92%)	284	Market Rate	N/A	Rental	
<b>IZ Required and Provided</b>	20,590 sf (8%)	25	Up to 60% MFI	Life of the project	Rental	The Applicant shall reserve a minimum of three 3-bedroom units as IZ units.

- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

### C. **MOA Conditions**

1. As shown on the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, the East M Building shall be subject to the following requirements:
  - a. The North-South Private Drive on the east side of the East M Building shall have a minimum width of 22'-0" curb-to-curb and be repaved as shown on Sheets L2, L2A, and L4 of the Approved Second-Stage PUD Plans. The North-South Private Drive shall include an Americans with Disabilities Act-compliant sidewalk no less than four feet, six inches wide and greenspace of no less than two feet wide, except for in the area of the parking garage ramp, loading access point, and handicapped path clearances. (Ex. 131G10.) The final selection of plant materials will be selected in accordance with Section 2(b)(iii) of the MOA; (Ex. 131C.)
  - b. The ground-floor façade of the East M Building opposite Waterfront Tower (brick walls along east and north facades at the northeast corner of the East

M Building) shall have vertical plantings of an evergreen plant material in the locations shown on the Supplemental Landscape Plan. The final selection of plant materials will be selected in accordance with Section 5 of the MOA; (*Id.*)

- c. The Applicant shall select and plant low-scale plantings between the East M Building and Waterfront Tower in the area shown on Sheets L2A and L4 of the Approved Second-Stage PUD Plans and Sheets L4r1 and 88r1 of the Supplemental Landscape Plan, to be coordinated with Waterfront Tower in accordance with Section 8 of the MOA; and (Ex. 131G10, 135.)
- d. The North-South Private Drive shall have paving that matches the current treatment on the East-West Plaza.

2. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it included Waterfront Tower representatives in quarterly meetings, unless cancelled with agreement from Waterfront Tower, with representatives from adjacent buildings to discuss issues relating to the North-South Private Drive and East-West Plaza adjacent to Waterfront Tower (including topics such as lighting, landscaping, wayfinding and traffic signage, security, and traffic management). After occupancy of the East M Building, the Applicant shall inform Waterfront Tower of any proposed changes to the topics listed above and shall consider any input from Waterfront Tower on the proposed changes.

3. The Applicant shall abide by the following construction management conditions:

- a. **Prior to the start of construction of the East M Building**, the Applicant shall perform a pre-construction survey to document the condition of the exterior and specified common areas in the interior of Waterfront Tower. **During construction of the East M Building**, the Applicant shall monitor Waterfront Tower for potential damage to the building from vibrations associated with construction of the East M Building. **No later than three months following the issuance of the first certificate of occupancy for the East M Building**, Waterfront Tower, at its election, may require the Applicant to pay for a post-construction survey to be completed within four weeks of the request. The pre- and post-construction survey and monitoring activities shall comply with the provisions set forth in the MOA. In the event that it is determined that Waterfront Tower sustained damage due to activities attributable to the Applicant's development, excavation, or construction of the East M Building, the Applicant shall coordinate repairs with Waterfront Tower and shall pay for all such repairs; and
- b. **During construction of the East M Building**, the Applicant shall establish a Community Advisory Committee ("Committee") to oversee and coordinate community concerns and issues. The Committee will consist of,

at a minimum, representatives of ANC 6D, Waterfront Tower, the Applicant, and the Applicant's general contractor. The Committee shall meet quarterly, as needed, and the Applicant shall send monthly email updates between the quarterly meetings, as needed, to provide updates on issues related to construction of the M Street Buildings. The following conditions shall apply during construction of the East M Building:

- i. The Applicant shall provide Waterfront Tower with quarterly construction activity schedules;
  - ii. The Applicant shall provide Waterfront Tower with the name, title, and contact information of a point of contact through whom Waterfront Tower will communicate with the Applicant's construction manager in case of immediate concerns with daily or weekly construction activities to include, but not be limited to, resident safety concerns;
  - iii. The Applicant shall abide by construction permit hours and shall not perform outdoor construction before 7:00 a.m. on Saturday or at all on Sunday, in accordance with the D.C. Construction Code Supplement, without prior written agreement from Waterfront Tower and ANC 6D Committee representatives;
  - iv. The Applicant shall enforce unimpeded access to Waterfront Tower at all times. The Applicant may provide alternative access options with prior written agreement from Waterfront Tower and ANC 6D Committee representatives (examples include, but are not limited to, a flag man directing traffic two ways down the one-way private drive); and
  - v. The Applicant shall pay all fees incurred by Waterfront Tower when construction-related activities do impede any service from accessing Waterfront Tower including, but not limited to, trash and recycling pick-up. The Applicant shall pay these fees in a timely manner.
4. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it included Waterfront Tower representatives in quarterly meetings, unless cancelled with agreement from Waterfront Tower, with representatives from adjacent buildings to discuss issues relating to the North-South Private Drive and East-West Plaza adjacent to Waterfront Tower (including topics such as lighting, landscaping, wayfinding and traffic signage, security, and traffic management).
5. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall provide evidence to the Zoning Administrator that it took the following actions in accordance with the MOA with Waterfront Tower:

(i) that it helped facilitate a meeting with a representative from The Bernstein Companies regarding alternative parking solutions for Waterfront Tower’s moving vans, deliveries, contractors, and visitors that currently use the North-South Private Drive adjacent to Waterfront Tower; (ii) subject to approval by the other Waterfront Station property owners, that the Applicant submitted an application to the D.C. Code Official for approval of street names for the North-South Private Drives; (iii) that the Applicant submitted a letter to DDOT in support of Waterfront Tower’s loading zone application on the west side of 3<sup>rd</sup> Street, S.W., north of M Street, S.W; and (iv) that the Applicant did not object to any work between Waterfront Tower and DDOT in the designation of a new curb cut on the west side of 3<sup>rd</sup> Street, north of M Street, for a pick-up and drop-off area.

6. **Within 30 days after publication of the Z.C. Order 02-38I in the D.C. Register, or by March 31, 2019, whichever is earlier,** the Applicant shall deposit \$40,000 into an escrow fund for the benefit of Waterfront Tower to be used to fund: (i) alternative parking solutions in the neighborhood for Waterfront Tower’s moving vans, deliveries, contractors, and visitors; (ii) energy efficiency improvements at Waterfront Tower (e.g. solar panel installation, LED conversion, modernizations to the existing heating and cooling systems); and/or (iii) beautification improvements along the North-South Private Drive and entrance to Waterfront Tower.

**D. Transportation Mitigation Measures**

1. **For the life of the Project,** the Applicant shall implement the following transportation demand management (“TDM”) measures:
- a. The Applicant shall identify a TDM leader (for planning, construction, and operations). The TDM leader shall work with residents and tenants of the M Street Buildings to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package;
  - b. The Applicant shall provide TDM leader contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year. The first report is due within six months following the point at which 75% of the residential units in the East M Building are leased, and shall be provided annually thereafter;
  - c. The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
  - d. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on property websites;

- e. The Applicant shall unbundle all parking from the cost of the lease or purchase of residential units. Parking costs shall be set at the average market rate within one-quarter mile, at a minimum;
- f. **Prior to the issuance of the first certificate of occupancy for each M Street Building**, the Applicant shall install one Transportation Information Center Display (electronic screen) within each residential lobby of the M Street Buildings, containing information related to local transportation alternatives;
- g. The Applicant shall provide at least 20 collapsible shopping carts (10 in each M Street Building) for resident use to run errands and for grocery shopping;
- h. The Applicant shall exceed the 2016 Zoning Regulations' requirements for bicycle parking by approximately nine spaces. This includes secure interior bicycle parking (minimum of 85 spaces in the West M Building and 93 spaces in the East M Building) and short-term exterior bicycle parking around the perimeter of the M Street Sites (minimum of 47 spaces in total). Long-term bicycle storage shall be offered to residents and employees and will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
- i. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall install a bicycle repair station within the East M Building's long-term bicycle storage room. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall install a bicycle repair station within the West M Building's long-term bicycle storage room;
- j. The Applicant shall exceed 2016 Zoning Regulations' by providing a minimum of two showers and eight lockers in the West M Building and a minimum of two showers and 20 lockers in the East M Building. These facilities shall be available for use by office and retail employees such that each non-residential long-term bicycle parking space has an accompanying locker;
- k. The Applicant shall offer an annual Capital Bikeshare or carshare membership to each residential unit upon initial occupancy, at the choice of the resident;
- l. **Within six months following the point at which 75% of the residential units in the East M Building are leased**, the Applicant shall host a transportation event for residents, employees, and members of the community once per year for a total of three years (examples: resident

social, walking tour of local transportation options, lobby event, transportation fair, WABA Everyday Bicycling Seminar, etc.);

- m. The Applicant shall not apply for RPP for either of the M Street Buildings and shall include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from obtaining RPPs while under the terms of their lease;
- n. The Applicant shall provide four spaces dedicated for carsharing services to use with right of first refusal. If no agreement has been reached for the use of all four spaces within six months following the issuance of the first certificate of occupancy for the West M Building, the following shall apply:
  - i. If an agreement has been reached with one or more carsharing services for only three spaces, the Applicant shall extend the annual transportation event described in Decision No. D(1)(1) for an additional year; and
  - ii. If an agreement has been reached with one or more carsharing services for only two spaces or less, the Applicant shall offer an additional year of Capital Bikeshare or carshare membership to each residential unit;
- o. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) worked with DDOT to select an appropriate location for the relocation of the Capital Bikeshare station at the intersection of 4<sup>th</sup> and M Streets, S.W.; (ii) funded the expansion of at least four docks to the existing station; and (iii) contributed a minimum of \$3,800 to DDOT for the relocation and expansion described in (i) and (ii) above;
- p. **For the life of the East M Building (unless otherwise noted)**, the Applicant shall implement the following loading management measures for the East M Building:
  - i. The Applicant shall permit the East M Building's loading doors to remain open only to allow entry and exit of vehicles and shall not permit them to remain open during or between deliveries;
  - ii. The Applicant, through its on-site property management, shall instruct and enforce mail and parcel couriers (examples include, but are not limited to, USPS, UPS, and FedEx) to make deliveries to the East M Building only within the East M Building's indoor loading dock;

- iii. **For the first twelve months following the issuance of the first certificate of occupancy for the East M Building, or until the East M Building reaches 95% residential occupancy, whichever occurs first**, the Applicant shall restrict residential move-ins and move-outs at the East M Building to occur between the hours of 9:00 a.m. and 6:00 p.m., on the days of Sunday through Saturday, and within the East M Building's indoor loading dock only. **After this initial period and for the remaining life of the East M Building**, residential move-ins and move-outs at the East M Building shall occur between the hours of 9:00 a.m. and 6:00 p.m., on the days of Monday through Saturday, and within the East M Building's indoor loading dock only;
- iv. The Applicant shall restrict retail and residential deliveries to occur between the hours of 8:00 a.m. and 6:00 p.m., on the days of Monday through Saturday, and within the East M Building's indoor loading dock only;
- v. The Applicant shall restrict restaurant deliveries to occur between the hours of 7:00 a.m. and 6:00 p.m., on the days of Sunday through Saturday, and within the East M Building's indoor loading dock only;
- vi. The Applicant shall prohibit vehicles used for the activities described in Decision Nos. D(1)(P)(ii)-(v) from parking or idling in the North-South Private Drive adjacent to Waterfront Tower in transit to and from the East M Building's indoor loading dock; and
- vii. The Applicant shall provide advance notice to Waterfront Tower of any proposed changes to the items listed in Decision No. D(1)(p)(ii)-(vi).

**E. Miscellaneous**

1. No building permit shall be issued for the M Street Buildings until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the M Street Sites in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. Approval of the East M Building shall be valid for a period of two years from the effective date of Z.C. Order No. 02-38I. Within that time, the Applicant shall file for a building permit for the East M Building, and shall begin construction of the

East M Building within three years of the effective date of Z.C. Order No. 02-38I. If either of these deadlines are missed, the approvals of the East M and West M Buildings shall expire. If both deadlines are met, approval of the West M Building shall be valid for a period of two years following issuance of the first certificate of occupancy for the East M Building. Within that time, the Applicant shall file for a building permit for the West M Building, and shall begin construction of the West M Building within three years of issuance of the first certificate of occupancy for the West M Building.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 17, 2018, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 18, 2019.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**