



DONOHUE & STEARNS, PLC

October 10, 2019

VIA IZIS

Chairman Anthony Hood
D.C. Zoning Commission
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: ZC Case 19-10/ Valor Development, LLC/ Square 1499
Hearing Date: October 10, 2019

Chairman Hood:

On behalf of my client, Citizens for Responsible Development (“CRD”), I am submitting the attached document into the record for Zoning Commission Case No. 19-10:

1. Response from Stephen Hansen of Preservation Matters (CRD’s consultant on historic preservation) that addresses the report from the Historic Preservation Office.

We appreciate the Commission’s consideration of these materials.

Thank you,

Edward L. Donohue
Attorney for CRD

Enclosures

ZONING COMMISSION
District of Columbia
CASE NO.19-10
EXHIBIT NO.215

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **October 10, 2019**, a copy of the foregoing Response to the Historic Preservation Office Report in ZC Case No. 19-10 was served via email, on Advisory Neighborhood Commissions 3E and 3D (3E@anc.dc.gov; 3D@anc.dc.gov) and counsel for the Applicant, Norman M. Glasgow, Jr. (norman.glasgowjr@hklaw.com).

By:



Edward L. Donohue

Dated: October 10, 2019



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Response to the HPO Agency Report Submitted for ZC Case No. 19-10

Stephen A. Hansen, Principal
Preservation Matters, LLC

October 10, 2019

The Historic Preservation Office's (HPO) report (HPO Report) was submitted to the Zoning Commission (ZC) for ZC Case No. 19-10 pursuant to Title 11-X §§ 308.4 of the DC Zoning Regulations.¹ HPO prepared the report as a rebuttal to points made in the Citizens for Responsible Development's (CRD) filing, yet the HPO report fails to address the most important points raised by CRD.

Specifically, as set forth below, HPO did not address (1) the project's failure to meet the PUD criteria for historic preservation benefits for a landmark under 11-X §§ 305.3, and (2) the question of how much available density is actually available to remove from the MAPS site to the project site. In fact, HPO cannot know what Regency, the current owner of MAPS, is selling and what the Applicant is buying to make this oversized project possible.

1. HPO Report fails to point out that the project does not provide tangible or quantifiable preservation benefits as required under 11-X §§ 305.3

The HPO report fails to address 11-X §§ 305.3 ("Planned Unit Development Public Benefits"), which states that states that all public benefits, of which historic preservation may be one (305.5(e)), shall be *tangible and quantifiable* (§§ 305.3(a)) and *measurable* (§§ 305.3(b)). [emphasis added].

The HPO report discusses only *indirect* effects on – and not tangible, quantifiable, and measurable benefits to – MAPS. Such indirect effects cannot be considered any of the benefits called for under 11-X §§ 305.3. The HPO report states, *inter alia* that: "[t]he project would enhance the character of the Parking Shops by improving its architectural setting through compatible design and superior execution."² This is a subjective and debatable observation. This same observation could be made about the effects of a PUD in the proximity of any landmark, whether it is included in a project lot or not. Therefore, such observations about indirect visual effects cannot be considered a public benefit of this PUD. As MAPS is included in the Project Lot, *direct* benefits to that landmark are required.

Tangible benefits for a landmark included in a PUD would be restoration or rehabilitation, or in the case of a quantifiable benefit, monies specifically earmarked for preservation and maintenance. This proposal is the only case ever in the District of Columbia that will not provide such benefits. We again draw your attention to the limited number of cases where landmarks have been incorporated into a PUD.³ In all these

¹ DC. Historic Preservation Office. "The Lady Bird" PUD Application (Case No. 19-10). October 4, 2019. Exhibit 17.

² HPO Report, p. 1.

³ These prior cases are: George Washington University "Red Lion Row." 2000-2040 Pennsylvania Ave, NW. ZC Case: 80-11, Church of Christ, Scientists. 900 16th St., NW. ZC Case: 13-04, Italian Embassy. 2627 Mozart Place, NW. ZC Case: 11-08, St. Matthews Cathedral. 1500 New Hampshire Ave., NW. ZC Case: 90-23, O Street Market. 7th Street, NW. ZC Case: 07-26, 07-26A-D, Hecht's Warehouse. 1521 New York Ave., NE. ZC Case:14-01,

cases, the landmark was either rehabilitated by physically incorporating it into the project's new construction, and/or was provided with tangible, physical preservation benefits as one of the public benefits of the PUD under §§ 305.5(e).

A quantifiable historic preservation benefit is best illustrated in terms by the sale of density in the Heurich case (ZC Order 101). In that case, there was an agreed upon and publicly disclosed dollar amount for the sale of Heurich's unused density that was specifically earmarked for the maintenance of the mansion. Unlike with the Heurich mansion, the HPO report states that the "Parking Shops has been successfully maintained and adapted under preservation regulations... There is little reason to anticipate extraordinary rehabilitation costs."⁴ Thus, any monies paid for the purchase and transfer of MAPS's density will certainly not go to the upkeep of the landmark.

This project is the only known example of a PUD application that attempts to remove density from a free-standing landmark and not provide it with tangible, quantifiable, or measurable benefits in return. None of the indirect effects cited in the HPO report accomplish this. Improved business traffic to MAPS as postulated in the HPO report,⁵ and not even proffered as a benefit by the Applicant, is only conjecture and can in no way be considered material under 11-X §§ 305.3.

2. The HPO report fails to discuss density determination and allotment

Density belongs to and is an attribute of the MAPS landmark. Removing such an attribute from a landmark is beyond the purview of the Zoning Commission. The Applicant's use of density determinations under MU-4 zoning to calculate the available development potential of the MAPS landmark disregards its planned layout, design, and historic allocation of its density. The open space of the parking lot is as much part of the allocation and use of density as it the building itself. Therefore, one must consider the parking lot space as already used density.

CRD continues to state that the determination and allocation of MAPS's density cannot be done simply by subtracting the amount of density (FAR) already used by the landmark building's footprint on Lots 802 and 803 from what would generally be available under MU-4 zoning for those lots. CRD's point remains that any determination of useable, transferable density should be determined by what could actually be built on the MAPS site—a determination that would involve HPRB. Therefore, such a determination of available density cannot be made by ZC alone.

To illustrate the question of available density, say that the same density available from MAPS were to be attempted to be applied to a new project on the MAPS site itself. Any addition that would be incompatible with its height, or that blocked views of the building from public spaces or obscured its architectural features, would certainly not be allowed by HPRB. So, is all the unused density claimed by the Applicant useable on the site itself? No. You cannot sell something that you do not have. Again, the question remains: what is Regency selling, and what is the Applicant buying? These were never unknowns during the review of the Heurich PUD. The Commission has been asked for this key agreement but to no avail.

Randall Junior High School. 820 Half St., SW ZC Case: 07-13, Town Center East. 1001 3rd St., SW. ZC Case: 12-14A, Sumner School Project. 1615 M St., NW. ZC Case: 82-14, 2225 N St., NW. ZC Case: 89-20, and Hillandale Mansion. 4149 Parkglen Ct., NW. ZC Case: 79-14/79-6F

⁴ HPO Report, p. 2.

⁵ "The enhanced customer base from more than 200 adjacent residential units is far more likely to benefit the landmark by ensuring local customers for the retail establishments." HPO Report, p. 2.

We again draw your attention to the advice that Steve Callcott, HPO Deputy Director, gave to the architect of Wagshal's (a MAPS tenant) patio enclosure that for it to be found compatible and consistent with the property's designation, it would need to be lowered in height so as to not affect the roof and dormer, and retain the pediments.⁶ Therefore, any amount of available density that could be utilized on the MAPS site would be very limited as to not affect the integrity of the designation and remain consistent with the landmark. Thus, realistically there is not much available and useable density on the site, so how can one transfer something that does not exist?

To conclude, this PUD project provides no direct historic preservation benefits to the landmarked site included in the project lot, and therefore what is being proffered cannot be considered a public benefit under 11-X §§ 305.3. This project only attempts to take an undetermined amount of density from MAPS and provides nothing in return. There are no justifiable reasons for including it in the PUD's project lot.

⁶ Email correspondence between Jeffrey Kraskin and Steve Callcott (HPO) dated September 24, 2015. Shared with Stephen Hansen by Mr. Kraskin.