

Holland & Knight

800 17th Street, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Christopher H. Collins
202.457-7841
chris.collins@hklaw.com

February 20, 2018

VIA IZIS AND E-MAIL

District of Columbia Zoning Commission
441 4th Street, N.W.
Suite 200-S
Washington, DC 20001

Re: Zoning Commission Case No. 16-23—Applicant’s Closing Statement

Dear Members of the Commission:

The proposed Project meets the criteria for voluntary design review pursuant to Sub. X, Chapter 6 of the Zoning Regulations. The Project has been carefully conceived and sculpted, with a high-quality contextual design, to address to the greatest extent possible the surrounding neighborhood environment in a manner consistent with the existing MU-4 zoning of the property and the flexibility in building bulk control, design and site placement permitted in the voluntary design review process.

Valor Development has extensively engaged with the community, and has made a number of changes to the Project, and has requested several postponements of the public hearing process, all in an attempt to address as many community concerns as possible. Valor is pleased to have received support for the Project from ANC 3D, ANC 3E, Ward 3 Vision, Spring Valley Neighborhood Association, the Coalition for Smarter Growth, Revive 3E, and a large number of individual neighborhood residents, as well as the Office of Planning and DDOT.

COMPLIANCE WITH DESIGN REVIEW CRITERIA

The testimony and evidence of record demonstrates that the Project meets the applicable standards of Sub. X, Sec. 604 of the Zoning Regulations:

Sec. 604.5 - The proposed design review development is not inconsistent with the Comprehensive Plan.

The Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan for the National Capital, including the “Neighborhood Commercial Center” general policy designation assigned to the Project Site on the Generalized Policy Map, and the

Anchorage | Atlanta | Austin | Boston | Charlotte | Chicago | Dallas | Denver | Fort Lauderdale | Houston | Jacksonville | Lakeland
Los Angeles | Miami | New York | Orlando | Portland | San Francisco | Stamford | Tallahassee | Tampa | Tysons. | Washington, D.C.
West Palm Beach

ZONING COMMISSION
District of Columbia
CASE NO.16-23
EXHIBIT NO.218

“Low Density Commercial” land use designation assigned to the Project Site on the Future Land Use Map. There is extensive evidence and testimony in the record demonstrating consistency of the Project with all aspects of the Comprehensive Plan, including the Applicant’s written submissions at Exs. 3F and 114B, as well as the OP Hearing Report at Ex. 130, and the testimony of the Applicant’s expert urban planning witness, Shane Dettman, at the public hearings on January 11 and 25, 2018.

The opposition has claimed that the proposed Project is contrary to the Comprehensive Plan, and therefore cannot be approved. The DC Court of Appeals has long held that the Home Rule Act and the Comprehensive Plan “demonstrate that the Comprehensive Plan is not self-executing and does not directly regulate the development of private property in the District of Columbia”. TACPEC v. BZA, 550 A.2d 331, 334 (DC 1988)(emphasis added). In that case, TACPEC claimed that building permits for the matter of right development of a project at 4000 Wisconsin Avenue were illegally issued because they violated the Comprehensive Plan, regardless of the fact that the permit plans conformed to the zoning regulations. The Court disagreed with TACPEC’s assertion, and affirmed the building permit issuance. *See also* Friends of McMillan Park, McMillan Coalition for Sustainable Agriculture, and DC for Reasonable Development v. DC Zoning Commission, 149 A.3d 1027, 1034 (DC 2016)(“even if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole”).

Voluntary Design Review was originally conceived in the ZR16 process as a Type 1 PUD (*see* OP Supplemental Report at Ex. 215), with Zoning Commission review but with no additional development rights above the matter of right density. Although there are no Voluntary Design Review court decisions interpreting the application of the FLUM in the Comp Plan to a specific zoning category, the Court of Appeals has ruled upon this issue in the review of a PUD and rezoning approval.

The most directly applicable case, which Mr. Dettman described in his testimony, is the Cathedral Commons PUD and Map Amendment in the area of Wisconsin and Newark Street in NW DC. That project involved a Map Amendment to C-2-A for a PUD project to include commercial use on the lower level with residential use above. The FLUM designated the site as “Low Density Commercial”. The Commission approved the PUD application and the Map Amendment to C-2-A, and that case was appealed to the DC Court of Appeals in Wisconsin-Newark Neighborhood Coalition v. Zoning Commission, 33 A.3d 382 (DC 2011). The petitioners claimed in that case that the Map Amendment was inappropriate because the project was neither “low density” nor “commercial”. The Court agreed with the Commission that the Low Density Commercial FLUM category permits housing in the commercial land use category and that the C-2-A zoning is not inconsistent with the Comprehensive Plan FLUM designation of Low Density Commercial, because the C-2-A district is specifically referenced in the Comp Plan as an example of the Low Density Commercial FLUM category. The Court further agreed with the Commission that the Comp Plan specifically does not require that each block strictly correspond with the Low

Density Commercial description of “primarily one-to-three story buildings, with retail, office and service businesses as the predominant uses”, and that this finding comports with the “Guidelines for Using the Generalized Policy Map and the Future Land Use Map”. The Court cited 10A DCMR Sec. 226.1(a) which says that the FLUM is not a zoning map and that the FLUM is to be interpreted broadly. *Id.* at pp. 395-96.

The one major difference between the Cathedral Commons case and the Valor Project is that the Valor Project does not propose a Map Amendment, and consequently there is no need to interpret the FLUM. The Comprehensive Plan already states that the C-2-A (now MU-4) zone is consistent with the Low Density Commercial designation on the FLUM. The Design Review Project site, and all of Square 1499, was zoned C-2 beginning in 1958, 60 years ago. The C-2 zone became the C-2-A zone by order dated July 5, 1967 when the Commission created a new C-2-B zone. On November 9, 1978, almost 40 years ago, the Commission issued Order No. 242 in Case No. 78-1, which changed the maximum permitted height and FAR in the C-2-A zone from 60 ft. and 2.0 FAR (of which up to 1.8 could be residential) to 50 ft. and 2.5 FAR (of which up to 1.5 could be commercial). Thus, the C-2-A zoning of the Design Review Project site predated the adoption of the first Comprehensive Plan by the Council. Subsequently, the Commission adopted the IZ regulations in Order 04-33, which allowed a maximum FAR, with IZ, of 3.0 in the C-2-A zone. The Commission found in Order No. 04-33 that the adoption of the IZ regulations, allowing bonus density for the creation of inclusionary units, was consistent with the Comprehensive Plan. The Commission concluded its Comp Plan discussion in that case with the statement that “the Commission may authorize greater density than might otherwise be permitted by a strict application of the Generalized Land Use Map’s designations”. That IZ rulemaking was not appealed to the Court. The current MU-4 zone is identical to the prior C-2-A zone in height and FAR. Thus, a density of 2.94 FAR for the proposed Design Review Project is not inconsistent with the FLUM.

Sec. 604.6 - The proposed design review development will not tend to affect adversely the use of neighboring property, and meets the general special exception criteria of Subtitle X, Chapter 9.

(a) The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map.

The Applicant addressed this issue in its submissions at Exs. 3, and 114, and Valor’s expert urban planning witness Mr. Dettman testified on this issue as well. The OP report at Ex. 130 also addresses this issue. The stated purpose and intent of the MU-4 zone is to permit mixed-use development; provide facilities for shopping and business needs, and housing outside of the District’s central core; and be located in low- to moderate-density residential areas with access to main roadways or transit stops. The testimony and evidence shows that the Project is consistent with these purposes as it will provide a new full-service grocery store in an area that is in need of such a use, as well as a modest amount of additional neighborhood-serving retail space, all within close proximity to the existing retail and service uses along Massachusetts Avenue, including those

at the Spring Valley Shopping Center (SVSC). It will also provide a wide range of new housing opportunities, including a substantial amount of affordable housing. Additionally, the residential dwelling units proposed within Buildings 1 and 2 will consist of a wide range of unit types, including a substantial number of two- and three-bedroom units, that are sized to accommodate a diverse range of residents, including new families and “age in place” populations. Furthermore, as clearly demonstrated in the tabulation of the development data included in Ex. 114A, Sheet G05, the project is well within the matter-of-right development standards of the MU-4 zone, including height and density.

(b) The Project will not adversely affect the use of neighboring property.

There is extensive evidence and testimony in the record demonstrating compliance with this criterion, including the Applicant’s submissions at Exs. 3 and 114, and the OP report at Ex. 130. The Applicant’s expert architecture witness, Sarah Alexander, testified and demonstrated through evidence in the record that the Project plans have been carefully developed with extensive setbacks, sculpting, massing refinements and attention to detail to insure that the buildings will be more compatible with the surrounding neighborhood than a matter of right development that could be built out to the property line, with no attention to the setbacks, building bulk controls, design and site placement that are inherent in the voluntary design review process. Shadow studies were prepared at the request of the community which demonstrate that shadows cast by a proposed matter of right development will be more extensive than the shadows that will result from the proposed buildings.

Ms. Alexander’s plans in the record at Ex. 114A and 211A demonstrate that the height and massing of the proposed buildings have been substantially reduced in order to relate to the surrounding context. Rather than a single building mass, the Applicant is proposing two separate buildings on the Valor Lot separated by Windom Walk. In addition, the scale of Building 1 has been substantially reduced at the street-level through the use of four-story pavilions, lower projecting bays, large courtyards and upper-level setbacks, and the use of different architectural styles. The design of the proposed buildings also takes into consideration the change in grade occurring along the perimeter of the site in order to relate to the scale of the surrounding residential neighborhood. Access to all parking and loading facilities has been effectively located entirely along existing alleys, rather than reusing one of many existing curb cuts or proposing new curb cuts. Use of the alley for access to parking and loading will improve the quality and safety of the streetscape for neighboring properties. In addition, the amount of grocery store shopper activity along Yuma Street will be minimized due to the direct connections provided from the below-grade parking garage into the grocery store.

The Applicant’s expert Transportation Engineer, Erwin Andres, also presented evidence and testimony on this issue. His Comprehensive Transportation Review (CTR) at Exhibit 107A describes in detail how the project will not have a detrimental impact on the surrounding transportation network assuming that all planned site design elements and the Transportation Demand Management (TDM) plan are implemented. Mr. Andres also testified at pp. 43-44 of the

January 11 transcript how the Applicant has agreed to the conditions of the extensive January 2, 2018 DDOT Report, which indicates no objection to the application (Ex. 133).

The plans at Ex. 114A show that the Project requires 89 parking spaces (17 retail/72 residential) and will provide 134 spaces (retail 49/residential 85). Additionally, the testimony of record states that there is a recorded parking easement that requires that 236 spaces for the AU building must be provided on Lot 807. The Project includes those parking spaces as well, for a total of 370 parking spaces on site. The evidence indicates that AU has agreed to share 180 of their 236 spaces with the Project. Exs. 107A and 133. The testimony and the CTR indicate that: 1) the Project will provide both long term and short term bicycle parking in excess of the zoning requirements; 2) the Project is served by regional and local transit services via Metrobus and Metrorail; 3) the Project is surrounded by a well-connected pedestrian network, and proposed improvements to the pedestrian facilities include publicly accessible plazas along Yuma Street and Windom Walk and improved sidewalks along the perimeter of the Project; and 4) the Project will include a robust TDM plan which reduces the demand of single-occupancy, private vehicles during peak travel times or shifts single-occupancy vehicular demand to off-peak periods. In addition, the Applicant is providing two electric vehicle charging stations and four car-share parking spaces, and will fund the installation of a HAWK signal for pedestrian access across Massachusetts Avenue. DDOT testified and submitted a report indicating no objection to the Project. Ex. 133; January 11 tr. at pp. 143-63; 167-94. The applicant has agreed to the conditions in the DDOT report, as explained by Mr. Andres. January 11 tr. at pp. 43-44, 72.

Sec. 604.7(a) - Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:

- (1) Multiple pedestrian entrances for large developments;

Ms. Alexander testified, and her drawings in the record demonstrate, that the Project will promote pedestrian circulation and access through the use of multiple pedestrian access points both to the proposed buildings and through the Valor Lot. While the main lobby for Building 1 will be located along Yuma Street, the building will also be accessible from Windom Walk, and certain individual units located on the first floor will have direct access to the street. In addition, while the main entrance to the grocery store will also be located on Yuma Street, a second entrance is proposed at the southwest corner of Building 1 adjacent to the additional retail space, and in close proximity to the SVSC and Massachusetts Avenue, Given its smaller footprint, the entrance to Building 2 will be located along 48th Street.

The Project Site will also be made more porous through the integration of Windom Walk into the proposed development which will provide a more direct route to the SVSC and other retail and service uses along Massachusetts Avenue. The proposed aesthetic and circulation improvements to the north-south public alley will provide similar pedestrian benefits.

(2) Direct driveway or garage access to the street is discouraged;

The testimony and evidence of record shows that in accordance with DDOT standards, all access to the parking and loading facilities proposed for Buildings 1 and 2 will be located off of existing alleys, rather than proposing to use existing or new curb cuts along neighborhood streets. The testimony and evidence also shows that the streetscape along 48th and Yuma Streets will be reconstructed, and approximately 80 feet of existing curb cuts that provide access to the former grocery store parking lot will be eliminated.

(3) Commercial ground floors contain active uses with clear, inviting windows;

The testimony and evidence of record shows that as a result of the substantial grade change across the Valor Lot, the extent of commercial ground floor presence is limited to only the northwest and southwest corners of Building 1, which minimizes the visual impact of the proposed grocery store and additional retail space on the surrounding residential neighborhood. However, as shown on Ex. 114A, Sheets A22, A25, & L4, and Ex. 211A, Sheets 6 -10 the limited amount of commercial ground floor that is visible is designed to be clear, inviting, and complementary to the neighborhood. The main entrance to the grocery store is limited only to a small portion of the Yuma Street façade of Building 1, and is oriented to reduce its presence along the streetscape. Due to the proximity to the residential dwellings to the north, the design of the grocery store entrance has been kept simple so that it blends in with the residential portion of the building as much as possible. The retail space in the southwest corner of Building 1 has been designed to have a visible presence along Massachusetts Avenue, and will complement the existing architecture of the SVSC and neighboring bank building.

(4) Blank facades are prevented or minimized; and

The testimony and evidence of record shows that the facades of Buildings 1 and 2 have been thoughtfully designed to relate to the surrounding context in massing and articulation, architectural character, and through the use of high-quality materials. In fact, no blank facades are proposed but rather every façade, including those along the alleys, are attractively designed and detailed. Several additional storefront windows were added along the alley as shown in Ex. 211A, Sheets 6-10 to further address this issue. In addition, the same high-quality materials that are proposed for the street-facing facades will also be used along the alley-facing facades. Finally, the parking and loading facilities for the proposed buildings have been located in a manner that minimizes views from the surrounding residential neighborhood and public rights-of-way.

(5) Wide sidewalks are provided;

The testimony and evidence of record shows that the Project will substantially improve pedestrian circulation through and around the Project Site through the reconstruction of the streetscape adjacent to the Valor Lot along 48th and Yuma Streets, the pedestrian extension of Windom Place through the Valor lot in the form of Windom Walk, and the pedestrian improvements along the public alley between Yuma Street and Massachusetts Avenue. The

reconstruction of the streetscape adjacent to the Valor Lot will result in the removal of two large curb cuts that currently provide access to the former grocery store surface parking lot and parking garage. The removal of these curb cuts, which have a combined width of approximately 80 feet (26 feet on 48th Street and 54 feet on Yuma Street), will substantially improve the safety and quality of pedestrian circulation by establishing uninterrupted sidewalks along the Valor Lot street frontages. In addition, Windom Walk will contain a wide sidewalk that will provide a new, safe travel alternative to pedestrians walking between the residential neighborhood to north and east and the SVSC, as well as other points to the west and south. Finally, the Applicant is proposing a new sidewalk along the east side of the existing north-south alley next to Building 1. The new sidewalk will connect Yuma Street to the additional retail space in the southwest corner of Building 1 and to Windom Walk. Pedestrians will also be able to use this proposed sidewalk to easily access the SVSC and other existing retail and service uses along Massachusetts Avenue.

Sec. 604.7(b) Public gathering spaces and open spaces are encouraged, especially in the following situations:

- Where neighborhood open space is lacking;
- Near transit stations or hubs; and
- When they can enhance existing parks and the waterfront.

The evidence and testimony of Ms. Alexander shows that the Project will provide two new public gathering spaces. The Applicant is proposing Windom Walk, a publicly-accessible linear park between Building 1 and Building 2 that will provide a new pedestrian extension of Windom Place through the Valor Lot between 48th Street and the SVSC. In addition, a new plaza will be provided outside the grocery store and the Building 1 lobby that will provide opportunities for seating. The Project also incorporates substantial improvements to the public space surrounding the Project Site through the rebuilding of the streetscape adjacent to the Valor Lot along 48th and Yuma Streets and the pedestrian improvements along the north-south public alley.

Sec 604.7(c) New development respects the historic character of Washington's neighborhoods, including:

- Developments near the District's major boulevards and public spaces should reinforce the existing urban form;
- Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and
- Development should respect and protect key landscape vistas and axial views of landmarks and important places.

The testimony of Ms. Alexander, Mr. Dettman and Valor's expert historic preservation witness Emily Eig, and the evidence of record, shows that the Project respects the historic character of the surrounding area. The height and massing of Building 1 has been significantly restrained from what is permitted as a matter-of-right under the MU-4 zone. Specifically, while Building 1 can be constructed to the property line to a maximum height of 50 feet at the point of measurement along 48th Street, the proposed design breaks down the initial mass of the building through the use of lower-height pavilions, recessed facades that are separated by large open courtyards, and substantial setbacks ranging between approximately 27 - 40 feet at the fifth floor level. In addition, to further reduce the mass of the western portion of Building 1 along Yuma Street, where the grade elevation is lowest, the building has been set back approximately 17 feet from the property line. In addition, the fourth and fifth floors have been further set back approximately an additional 22 feet, and the penthouse footprint has been reduced such that it exceeds the required 1:1 setback.

The record shows that along 48th Street, the Applicant is proposing to break up the extent of building façade by proposing Windom Walk, a pedestrian extension of Windom Place through the Valor Lot from 48th Street to the north-south public alley and the SVSC. In addition to reducing the scale of the proposed development, Windom Walk will open up a new linear view toward the historic SVSC where currently there is only a view of the former grocery store building.

The height and massing of Building 2 has also been restrained compared to what is permitted as a matter-of-right. Due to a rise in elevation along 48th Street, Building 2 is limited to four stories with a maximum height of approximately 46 feet, where a maximum height of 50 feet is permitted by-right. The compatible relationship between the roof elevations of the proposed buildings and the surrounding residential neighborhood is clearly shown in the "Proposed Building and Context Building Height Plan" included as Ex. 114A, Sheet A26, and in the cross-section drawings included as Ex. 114A, Sheets A27 – A34.

The testimony and evidence also show that the architectural styles of Buildings 1 and 2 also respect the character of the surrounding neighborhood and the historic SVSC, while establishing its own identity. The surrounding neighborhood predominately reflects colonial and colonial revival styles of architectural, and is characterized by rectangular massing; symmetrical composition; and the use of brick, multi-paned windows, bays and dormers. Each of these elements have successfully been incorporated into the design of the proposed buildings. In addition, to add visual interest along the streetscape the Applicant is proposing to use different, but complementary, architectural styles for Buildings 1 and 2. While Building 1 will be firmly based in the Colonial Revival style, Building 2 will be based upon the French Empire style of architecture. However, the symmetry of the Building 2 elevations, and the use of dormers and lighter colored materials, will not only tie together the two proposed buildings, but will also allow Building 2 to relate to the nearby residential dwellings.(d) Buildings strive for attractive and inspired façade design, including:

- Reinforce the pedestrian realm with elevated detailing and design of first (1st) and second (2nd) stories; and

- Incorporate contextual and quality building materials and fenestration.

The evidence of record shows that Buildings 1 and 2 will have a high-quality, attractive design that takes cues from the surrounding context while establishing its own identity. In addition to the substantial improvements that will be made to the pedestrian realm through the elimination of two curb curbs and additional plantings, the pedestrian realm will be further improved as a result of the Applicant's close attention to the design and detailing of the proposed building's ground level. The fenestration of the proposed buildings incorporates architectural elements that are commonly found throughout the predominately colonial-style surroundings. These elements include, among others, symmetrical façade design, multi-paned windows, and bay projections. In addition, as shown on Ex. 114A, Sheets A40 – A45, the Applicant is also proposing to use a range of high-quality materials that are also common in the surrounding context. These materials include cast stone, brick, and metal awnings and decorative railings.

(e) Sites are designed with sustainable landscaping; and

Currently, the Valor Lot is improved with a vacant grocery store building and vast surface parking lot, both of which are completely impervious and lack any form of sustainable storm water management. The evidence of record shows that the Project will replace these existing improvements with a highly sustainable development that includes a substantial landscape plan. The Project includes several landscaped courtyards, Windom Walk, and substantial green roof areas that will provide sustainable storm water management, new habitat, and urban heat island reduction. As shown on the preliminary GAR calculations included on Ex. 114A, Sheet L15, the Project will meet the applicable GAR score required under ZR16, and includes, among other sustainable elements, approximately 1,046 square feet of landscaped areas with a soil depth of 24-inches or more, approximately 30 new shade trees, a new green wall system along a substantial portion of the southern façade of Building 1, and over 20,000 square feet of green roof.

(f) Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:

(1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit;

The evidence and testimony of record shows that as a result of the proposed Windom Walk, and the substantial improvements to the streetscape surrounding the Valor Lot, pedestrian circulation through and around the Project Site will be vastly improved. Windom Walk will provide a new safe and aesthetically pleasing pedestrian connection between the residential neighborhood to the north and east and the commercial node along Massachusetts Avenue, including the SVSC. In addition, the elimination of two large curb cuts along 48th and Yuma Streets will improve the safety of pedestrian circulation along these neighborhood streets.

(2) The development incorporates transit and bicycle facilities and amenities;

As shown in the tabulation of development data included in Ex. 114A, Sheet G05, the Project will provide, at minimum, the number of short- and long-term bicycle parking spaces, and related bicycle facilities, as required under Subtitle C, Chapter 8. In addition, the Applicant has developed a robust transportation impact analysis and Transportation Demand Management (“TDM”) Plan which incorporates bicycle, transit, and car sharing incentives that will be made available to future residents. (Ex. 107).

(3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly;

The evidence and testimony of record demonstrates that the Project will improve pedestrian circulation through and around the Project Site by improving the quality of adjacent public space, eliminating two existing curb cuts, providing a new pedestrian connection by virtue of Windom Walk, and making pedestrian circulation improvements along the north-south alley. As shown in the Plans, these improvements will be designed to be safe and pedestrian friendly.

(4) Large sites are integrated into the surrounding community through street and pedestrian connections; and

The testimony and evidence shows that pedestrian circulation through the Project Site will be improved as a result of Windom Walk and the improvements along the north-south public alley, thereby better integrating the Project Site into the surrounding community. In addition, the elimination of the existing curb cuts along 48th and Yuma Streets will improve pedestrian circulation and safety along the public space adjacent to the Valor Lot.

(5) Waterfront development contains high-quality trail and shoreline design as well as ensuring access and view corridors to the waterfront. (Not Applicable).

§ 604.8 - The Zoning Commission shall find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site.

The evidence and testimony shows that the Project satisfies the criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Valor Lot alone. As shown on Ex. 114A, Sheets A15, A18, A21, and A24, as a matter-of-right the Applicant could construct an all-residential project on the Valor Lot that would be substantially taller at the street wall / property line than the current proposal. However, the Applicant would be unable to provide a new full-service grocery store within a matter-of-right project due to the lack of nonresidential GFA available to Lot 807 resulting from the prior allocation to the AU Building on Lot 806. Through the extensive consultation the Applicant has had with Advisory Neighborhood Commissions (“ANC”) 3E and 3D (collectively the “affected ANC”) and the community, the Applicant understands that there is overwhelming consensus that a full-service grocery store is widely desired by the community.

The evidence and testimony demonstrate that the design of Buildings 1 and 2 is of superior quality, is complementary to the surrounding context, provides a successful transition between the low-scale residential neighborhood and the larger-scale AU Building, and will provide a more fitting backdrop to the historic SVSC compared to what currently exists. In addition, as clearly demonstrated in the chart shown on Ex. 114A, Sheet G06, the Project is also far superior to a matter-of-right project in many other respects, including scale and massing, sustainability, building program and historic preservation, size of dwelling units, and affordable housing

Under the voluntary design review process, the Applicant is able to “sculpt” the proposed development in a manner that substantially reduces the scale and mass of Buildings 1 and 2 in an effort to relate to the surrounding context, while still making the project viable. Specifically, under a matter-of-right scenario the Applicant could develop Lot 807 to 75% lot occupancy, a maximum height of 50 feet without setbacks at the property line, and up to 0.4 FAR at the penthouse level. However, as a result of the flexibility in building bulk control afforded through the voluntary design review process, the Applicant can access unused nonresidential gross floor area from the SVSC and in return reduce the massing of the buildings proposed on the Valor Lot by providing lower initial building heights with substantial upper-level setbacks, fewer projections, large building courtyards and terraces, and a lower penthouse FAR.

The evidence also shows that the Applicant is able to reduce its proposed lot occupancy and devote approximately 14,560 square feet of land area to publicly accessible parks, plazas, and improvements to the north-south public alley. This additional open space not only helps to integrate the Project into the surrounding context, but also helps the Applicant increase the overall sustainability of the Project. While under District regulations the Applicant is only required to design the project to be LEED Certified, the Project will achieve LEED Gold (v. 4) certification (Ex. 211). The ability to utilize the SVSC’s unused gross floor area will not only allow the Applicant to provide the community a new full-service grocery store, which the Applicant understands to be highly desired by the community, it will also help protect the historic SVSC by allocating the unused development potential to the Valor Lot and relieving the historic SVSC from future development pressure.

Notably, the design review process will make it possible for the Applicant to design Buildings 1 and 2 with larger-sized dwelling units, in both market-rate and affordable categories, and provide substantially more affordable housing than with a matter-of-right project. As shown in the Plans, the majority of the dwelling units proposed in Buildings 1 and 2 are two-bedroom, two-bedroom plus den, and three-bedroom dwelling units which is not common despite the many thousands of new dwelling units being constructed in the District. The ability to provide these larger-sized units is only possible by being able to utilize unused nonresidential from the SVSC.

Perhaps most importantly, the design review process will allow the Applicant to provide more affordable housing than would be required for a matter-of-right project solely on Lot 9. The project calls for 28,671 GFA of affordable housing. This substantial amount of affordable housing in Ward 3 (which ranks last in the District in the provision of affordable housing), will greatly

advance the District's affordable housing goals within an area of the city where opportunities to provide affordable housing are few, and the inventory of affordable dwellings units is severely lacking.

ALLOCATION OF DENSITY

Both this Commission and the DC Court of Appeals have long recognized the authority of the Commission regarding the allocation of development density on a site that includes a historic landmark. Mr. Dettman testified in rebuttal about the Heurich Mansion PUD and Map Amendment case in the Dupont Circle area (Zoning Commission Order No. 101) January 25 tr. at pp. 170-71. That PUD site included four existing buildings on separate lots, and the development lot. In Finding No. 7, the Commission found that

“the most significant feature of this PUD is the proposal to transfer unused density from an existing building on the site, the Christian Heurich Mansion owned by the Columbia Historical Society, to the proposed 12 story office building to be built in the center of the site. The applicant has contracted to purchase said 82,000 sq. ft. of unused development rights to be used in the construction of the proposed building.”

In Finding 22, the Commission found that

“The sale of development rights will assure the preservation of the Heurich Mansion[; in relevant part] it will reduce the economic feasibility of ever selling the property because the development on said property will be permanently reduced to that permitted under the existing zoning minus the development rights sold to the [PUD Applicant]”.

That approval was appealed to the Court of Appeals. Dupont Circle Citizens Association v. DC Zoning Commission, 355 A.2d 550 (DC 1976). The petitioners claimed that “the Zoning Act and the Zoning Regulations do not permit the Commission to approve a transfer of development rights within a PUD”. The Court disagreed, finding that the Zoning Act “grants the Commission a broad general authority”. Id. at p. 556. The Court held that “there is no provision in the PUD regulations that the floor area ratio of each building in the PUD must be within the maximum permitted in the district. The requirement to be met is that the FAR for all buildings does not exceed the ‘aggregate’ permitted within the project area.” The Court also found that in a PUD, “where the total FAR for the project is the determinative figure, rather than the FAR for each building, there is no impediment to permitting payment for the transfer of such rights from one building owner to another within the same project when agreed to by the parties”. Id. at pp. 556-57.

The petitioner also questioned “the Commission’s use of zoning to accomplish historical preservation contending that it is unauthorized by the Code...[The petitioner] contends that since Congress has not specifically authorized it in the Zoning Act the Commission is without authority

to use zoning for that purpose”. The Court disagreed, citing the language of the Zoning Act to “conduct zoning so as to promote the general welfare of the District of Columbia and its planning and orderly development as the national capital”. *Id.* at p. 557.

This broad authority of the Commission under the Zoning Act still exists today (see Sub. Z, Chapter 1), including the ability to allocate density within the project boundaries. Mr. Dettman also testified about the Commission’s use of its authority to allocate density in several other more recent projects, including the McMillan Reservoir PUD. January 25 tr. at pp. 167-70. The Design Review regulations allow for the same type of allocation of bulk around a design review site, even to cross streets and alleys, as is permitted for PUD’s. The OP Report at Ex. 215 states that FAR aggregation is permitted under the design review regulations; that OP confirmed with the Office of the Attorney General and with the Zoning Administrator the ability to allocate density within a design review project boundary; and that the allocation method used in this voluntary design review application is appropriate and is being properly applied.

The Project does not exceed the maximum permitted matter of right height or density within the design review boundary. CRD and the other opposition parties base their positions on the belief that the design review criteria do not allow for an allocation of density across a public alley within a design review boundary. In fact, CRD believes that the zoning calculations for the Project should be limited to only Lot 807. January 25 tr. at p. 25. Sub. X, Secs. 600.1(e) and 601.4 clearly allow the allocation of density; the Office of Planning has confirmed that they, and the Office of the Attorney General, and the Zoning Administrator concur that this is the correct interpretation and application of the regulations; and the DC Court of Appeals has long recognized the broad authority of the Commission under the Zoning Act to allocate density.

Commissioner Miller requested that the Applicant include in its closing statement an indication of what would be the FAR of a matter of right development and the FAR of the proposed Project, when calculated using only the land area of Lot 807 (the Superfresh site). The Project proposes 277,278 sq. ft. of gross floor area of new construction. Lot 807 has a land area of 79,622 sq. ft. The FAR of the new construction, if calculated only on Lot 807, would be 3.48. If properly calculated using Record Lot 9 (including both lots 806 and 807), the FAR of the new construction would be 2.29. A matter of right project on Record Lot 9, which would include Lots 806 and 807 but not Lots 802 and 803 (the SVSC site), could have 184,514 sq. ft. of gross floor area of new construction. If calculated only using the Lot 807 land area, the FAR of that new construction would be 2.32. This is because the FAR of the AU building, when calculated using only the Lot 806 land area, is 4.3.

HISTORIC PRESERVATION

Citizens for Responsible Development presented several reports incorrectly claiming that the Project, which is located across a 20 ft. wide public alley from the historic landmark Spring Valley Shopping Center, would “require lot subdivision and design review by the Historic Preservation Review Board”, and that the Project would adversely affect key landscape vistas and

axial views of historic landmarks, and potentially cause the SVSC to be delisted as a historic landmark. In response, the Applicant's expert historic preservation witness Emily Eig (who has previously testified as an expert witness before this Commission, the BZA, the CFA, the Old Georgetown Board, NCPC, HPRB, the Mayor's Agent for Historic Preservation, and the DC Superior Court-*see* Ex. 189) testified that HPRB review only applies to actions proposed for a property that is either a historic landmark or located within a historic district, and that HPRB review is not required in this case because the Project, located across the public alley from the SVSC, is neither a historic landmark nor located in a historic district, nor is there any proposed lot subdivision with the SVSC lots. She also testified that the Project would not cause the SVSC to be delisted nor would it jeopardize any aspect of the SVSC that qualifies it for historic designation. Ms. Eig agreed that the transfer of unused density from the SVSC site to the Project would provide additional protections for the future of the SVSC, because it would take away the potential for future development on the SVSC site. Referring to the design review criteria, she also testified that the SVSC does not have a "key landscape vista" that would need to be protected. She also referenced the "axial view" in this context as the view up and down Massachusetts Avenue between Ward Circle and Westmoreland Circle, and that because the Project is far removed from the Avenue, it will have no effect on that axial view. January 25 tr. at pp. 152-60.

PHOTOS AND PERSPECTIVE DRAWINGS

CRD presented several photos, with block diagrams superimposed, purporting to represent the actual height and bulk of the Project. Their renderings used Google Earth and Sketch-Up Pro. (Ex. 137). Valor's expert architecture witness testified in rebuttal that they have used Google Earth in the past, including for the concept designs for this project, but have found that it does not produce an accurate representation of exact topography. When the more accurate Civil 3D file is used to establish topography, they have found that the topography represented in Google Earth was off by greater than 10 ft. In addition, Sketch-Up Pro is only a "simple massing tool" that does not give any accurate detail. The AutoCAD-based system used by the Applicant's expert architect witness produces "the detail, the level of clarity that's far more accurate in depicting the building than what you get from Sketch-Up". January 25 tr. at p. 143. Additionally, all of the building heights in the Applicant's photo renderings were based on a map with surveyed information for the building heights. January 25 tr. at pp. 143-44; Ex. 206B, Sheet A26.

As for the camera lens used to produce the images, the Applicant's expert architect witness produced a set of rendered photos at Ex. 211A, comparing the original iPhone 7 images with new iPhone 6 images and CRD's "blue building" images. The description of those photo renderings is found at Ex. 211, pp. 6-7. The conclusion is that the building heights in the photo renderings looking down Windom Place do not vary significantly among the three cameras used. However, the "blue building" in CRD's photo appears more massive and hulking because of its dark color. The Applicant's February 20, 2018 submission in response to CRD's February 12, 2018 submission includes a new rendering and a further explanation of the most accurate method to use in this instance.

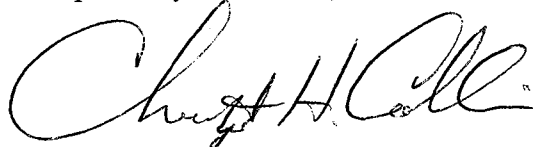
BUILDING HEIGHT MEASUREMENT

An issue was raised by Citizens for Responsible Development concerning whether the building height was properly measured from the curb level on 48th Street. They claim that the curb on 48th Street sits on top of an “artificial embankment” that was created when this portion of 48th Street was built in the 1920’s. (January 25 tr. at p. 25). To support that claim, their witness points to the excavation that occurred on the Superfresh site, at least 24 ft. away from the curb, an unknown number of years ago, to build the Superfresh parking garage. In response, Valor presented testimony and evidence from its expert civil engineering witness, Mr. Bradley Glatfelter, that the consistent elevation of this portion of 48th Street, from the early 1900’s to the present day, has been documented at elevation 265, and that the drop in elevation on the Superfresh site was due to excavation on that site, and not the creation of an artificially raised elevation for 48th Street. (January 25 tr. pp. 163-64 and Ex. 206A). Mr. Dettman, Valor’s expert urban planning witness, also testified about the propriety of using 48th Street as the point of measurement. (January 25 tr. at pp. 165-67).

MURDOCK MILL CREEK

Citizens for Responsible Development also claimed that there is an underground stream, Murdock Mill Creek, that traverses a portion of the site. Mr. Glatfelter’s expert testimony and evidence showed that Murdock Mill Creek was relocated to a storm sewer pipe below the street many years ago, and thus it does not cross the Project site, and there are otherwise no hydrology issues presented in this Project. (January 25 tr. pp. 164-65 and Ex. 206C).

Respectfully Submitted,



Christopher H. Collins

CHC:jma

cc: Jennifer Steingasser, Office of Planning (via email)
Joel Lawson, Office of Planning (via email)
Elisa Vitale, Office of Planning (via hand delivery and email)
Anna Chamberlin, District Department of Transportation (via email)
Aaron Zimmerman, District Department of Transportation (via email)
Advisory Neighborhood Commission 3E (via hand delivery and email)
Advisory Neighborhood Commission 3D (via USPS Priority Mail and email)
Edward L. Donohue, Donohue & Stearns, PLC, representing Citizens for
Responsible Development (via hand delivery and email)
Barbara & Sheldon Repp, Citizens for Responsible Development
(via hand delivery and email)

Jeff Kraskin, Spring Valley Opponents (via hand delivery and email)
William Clarkson, Spring Valley Neighborhood Association
(via hand delivery and email)
John H. Wheeler, Ward 3 Vision (via hand delivery and email)