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Testimony of Stephen A. Hansen Before the D.C. Zoning Commission, Hearing on ZC 16-23 January 24, 2019

Good evening Commissioners. My name is Stephen Hansen and I am a principal at Preservation Matters, LLC, a historic preservation consulting firm. My comments will address some of the points made by the Applicant in its December 18, 2018 response to CRD, as well as its comments at the January 7, 2019 Zoning Commission hearing.

1. Cases Cited by Valor Do Not Authorize the Transfer of Density from SVSC

The applicant is claiming that the Zoning Commission's (Commission) authority to transfer or aggregate density is supported by ZC Order 101¹ (Heurich Mansion) and McMillan.² Neither of these provide that authority.

A. Heurich Mansion

The Applicant states that Order 101 demonstrates that the Commission had the authority to approve a transfer of density outside a designated trade area, pursuant to its authority under the Zoning Act of 1938.”

The Heurich case was specifically about historic preservation. Its transfer of density was a means to save the building from demolition. After concluding that saving the mansion promoted the general welfare, the Appeals Court upheld the order. But, this was a one-off.

The Appeals Court ruling was in 1976, 13 years before the TDR program was established in 1989 limiting such transfers to the city's Downtown Plan (the “D”) zones. Therefore, there were no “outside of designated credit trade areas” in 1976 as the Applicant claims. The 2016 Zoning Regulations Rewrite (ZRR) replaced the old TDR system with a new credit trading system that enables developers to trade property uses rather than to add additional density to developments. This new system is still limited to six sending/receiving zones, none of which are anywhere near this project.

B. McMillan

The Applicant also cites the 2016 D.C. Appeals Court decision on McMillan as giving the Commission the authority to aggregate density under the Comprehensive Plan. It is premature to cite any ruling on McMillan, as it is in front of the Appeals Court now.

2. Determining SVSC's Unused Density

The Applicant claims that CRD provided no citation for its assertion that SVSC has no unused density to transfer because it is a landmark and argues that landmarks can in fact be developed. I don't dispute the second point. The Applicant mentions the Washington Real Estate Investment Trust (WREIT) project at the historic shopping center on the other side of Massachusetts Avenue from SVSC as an example of how landmarks may allow development. However, the DC Historic Preservation Office (HPO) has recognized that the SVSC site is very different from the WREIT site.

¹ D.C. Court of Appeals. See Zoning Commission Order No. 101; *Dupont Circle Citizens Association v. Zoning Commission*, 355 A.2d 550, 556-57 (DC 1976)

² D.C. Court of Appeals. See *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027 D.C. 2016

A 2015 HPO Staff Report refers to SVSC's "coordinated quality of design, the clarity of its plan, and the siting of the parking in front of, and accessed from the avenue."³ HPO argued that the WREIT site, unlike SVSC, had no clear historic plan that included the parking lot, and therefore that site offered limited development potential. I will also note that there was no transfer of density involved in the WREIT project.

The Applicant refers to D Zone-specific provisions in Title 11's transfer credit program⁴ in relation to additions to landmarked buildings, and how density on the site of a historic resource is computed and allocated. It then says that "the principle is the same as it relates to the SVSC." If that were true, then under Title 11 for a landmarked building to generate transfer credits there would have to be a project directly on the building, only on its footprint, and that provides it with preservation benefits (namely rehabilitation)⁵ — all subject to review under the Act by HPRB.⁶

Yet even with its references to Title 11, the Applicant is still doing its own calculations of SVSC's available density based on MU-4 zoning, or as they say "under zoning [that] already exists." Based on HPO's evaluation of the SVSC site, any determination of available density by HPRB would undoubtedly be much less than what the Applicant is calculating,

The Applicant is asking to have it both ways - to transfer density under the old TDR system, outside any designated sending/receiving zones, and not recognizing the specific obligations to a landmarked building such a transfer creates. There are simply no precedents or regulations to allow a transfer of density of any amount from SVSC.

3. This Project Provides No Preservation Benefits to the SVSC Landmark as Claimed

Unlike with the Heurich mansion in the 1970s, historic preservation protections for SVSC now exist and are enforceable. Even if a transfer of density were allowable under current zoning regulations, a second layer of protection that the Applicant claims this would provide would be meaningless. From a preservation perspective, there is no justifiable reason to include SVSC in the Project Lot, beyond trying to take what there may be of its unused density.

I thank you for this opportunity to comment on this project.

³ 4820 Massachusetts Avenue NW - Spring Valley Shopping Center." HPA 15-252 (April 23 and 30, 2015)

⁴ District of Columbia Municipal Regulation Title 11, Subtitle I §200.2 "Downtown Zones"

⁵ District of Columbia Municipal Regulation Title 11, Subtitle I §800 ("Generation and Certification of Credits") and §900 ("Use of Credits")

⁶ Historic Landmark and Historic District Protection Act of 1978. D.C. Law 2-144, as amended through March 2, 2007.