

October 24, 2019

Mr. Anthony Hood, Chairman
D.C. Zoning Commission
441 4th Street NW, Suite 210S
Washington, D.C. 20001

**RE: Z.C. Case No. 19-10 – Valor Development, LLC Consolidated PUD @ Square 1499:
Comments From the Spring Valley-Wesley Heights Citizens Association and Neighbors For
A Livable Community (“Spring Valley Opponents”) On Applicant’s Proffer of Proposed
Public Benefits and Amenities and Contested Issues of Fact/Conclusions of Law**

Dear Chairman Hood and Members of the Commission:

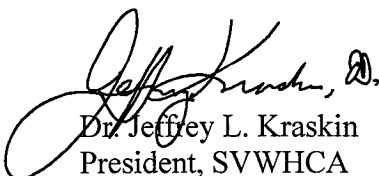
The Spring Valley-Wesley Heights Citizens Association (SVWHCA) and Neighbors For A Livable Community (NLC), referred to as “Spring Valley Opponents,” submit the following comments in the above-referenced case in response to the request by Zoning Commission Chairman Anthony Hood at the conclusion of the October 10, 2019 hearing for comments on the applicant’s proffer of proposed benefits and amenities and on contested issues of fact and conclusions of law in this case.

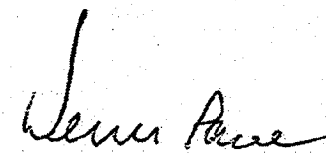
Chairman Hood also requested a single page response on issues related to affordable housing in this case. SVWHCA and NLC (Spring Valley Opponents) have submitted this one-page response in a separate filing.

Although Valor filed its updated list of proffered public benefits and amenities in this case on October 17, as requested by the Zoning Commission, and certified that the filing was sent on that date to all parties in this case, Spring Valley Opponents did not receive this filing until October 22, 2019 – just two days before the deadline for submitting comments on the proffer. If the filing was actually mailed on October 17, as Valor has certified, it is hard to understand why it took nearly five days for it to be delivered by the U.S. Postal Service.

Valor’s Certificate of Service indicates that most parties were sent the filing by e-mail, but not Spring Valley Opponents. The email contacts for Spring Valley Opponents are part of the record in this case. We would ask the Commission to direct Valor to serve its future filings in this case by e-mail or by hand delivery to all parties so as to ensure they are received in a timely way – or we would request the Commission to allow more time to reply to these filings if they are to be served to Spring Valley Opponents by U.S. mail. The delay in providing these filings for review and the tight window for responding has the effect of disadvantaging Spring Valley Opponents in this case. Thank you for your consideration.

Sincerely,


Dr. Jeffrey L. Kraskin
President, SVWHCA


Dennis Paul
President, NLC

CERTIFICATE OF SERVICE

We hereby certify that copies of this filing were sent by e-mail on October 24 to the following:

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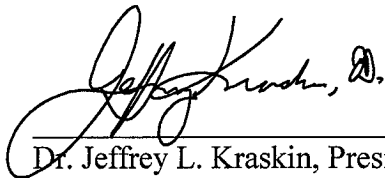
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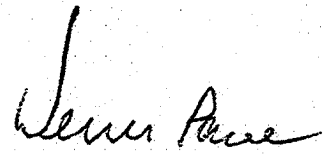
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Dr. Jeffrey L. Kraskin, President
Spring Valley-Wesley Heights
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Dennis Paul, President
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Community

**Comments By The Spring Valley-Wesley Heights Citizens Association (SVWHCA) and
Neighbors For A Livable Community (NLC) (“Spring Valley Opponents”) On Applicant’s
Proposed Public Benefits and Amenities**

Case No. 19-10

Valor Development, LLC

Consolidated PUD @ Square 1499, Lots 802, 803, 806, and 807

October 24, 2019

<u>Proffer By Valor</u>	<u>Comments From “Spring Valley Opponents”</u>
<p data-bbox="194 592 730 768"><u>Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (11-X DCMR § 305.5(c)).</u></p> <p data-bbox="194 810 730 1649">The proposed height and mass of the Project has been carefully designed to relate to the surrounding context through height reductions, courtyards, landscaping, façade articulation, upper-level setbacks, and high-quality, context sensitive materials. The Project includes development of Windom Park, a new publicly accessible open space along 48th Street; the Northwest Plaza, a new landscaped plaza adjacent to the grocery store entrance along Yuma Street; and a variety of private landscaped courtyards and terraces. The Project’s site plan takes into consideration the potential for pedestrians to circulate through the public alley system through pedestrian improvements that do not currently exist, including a new three foot delineated pedestrian path along the north-south alley, a new six foot side walk along the east-west alley, and improvements at the alley intersections.</p> <p data-bbox="194 1690 730 1866">In addition to the superior landscaping surrounding the PUD Site and within Windom Park and the Northwest Plaza, the Applicant will construct improvements specifically intended to</p>	<p data-bbox="753 623 1404 1328">The applicant proposes a building of more than 272,000 gsf on a 1.9 acre site on two residential streets (Lot 807). It can only meet FAR requirements because it is purchasing density from a different site (Lots 802 and 803) where no additional construction for this project is planned. Nevertheless, the building construction will take place on Lot 807 that directly faces single family homes along two neighborhood streets. The density of the new construction on Lot 807 will overwhelm the neighborhood and negatively impact neighboring residents. The density of the new construction will be out of character for the neighborhood and far exceeds what could be built on the site under matter-of-right. The design features of the building will not mitigate the impacts of the excessive scale of the proposed building.</p> <p data-bbox="753 1379 1404 1524">Given its size and location, the proposed Windom Park will not be accessible to neighborhood residents. It will have limited uses even for the new building residents.</p> <p data-bbox="753 1576 1404 1918">Although Valor references superior landscaping, the application does not include detailed landscaping plans. Moreover, given the limited public review by the Zoning Commission of the plans at the two public hearings on October 7 and October 10, it is virtually impossible to evaluate the quality of landscaping and whether it warrants consideration of either an amenity or a public benefit.</p>

activate these spaces and the surrounding streetscape. To demonstrate this commitment, the Applicant will dedicate \$15,000 toward such improvements, the design of which will be developed based on input from ANC 3E, and will be subject to review and approval by District public space permitting authorities, as necessary. As part of this effort, the Applicant will also consider incorporating playable and interactive elements into the design of these spaces.

The Project also exhibits efficient and economical land utilization through (i) the provision of multiple residential building types (multi-family and townhomes) within a designated neighborhood commercial center in close walking proximity to numerous amenities, such as retail, services, parks, high-quality schools, and convenient bus service; and (ii) the utilization of unused density from the historic Massachusetts Avenue Parking Shops (“MAPS”) site, which will facilitate additional housing, restore a full-service grocery store to the neighborhood, and permanently reduce the amount of density that could potentially be constructed on the historic MAPS site in the future.

Historic preservation of private or public structures, places, or parks. (11X DCMR § 305.5(e)).

The Project will assist in protecting the historic MAPS site by permanently reducing the amount of density that could potentially be constructed on the MAPS site in the future.

The applicant has proposed dedicating \$15,000 to the study of (a) the installation of a “pork chop” at the 49th Street NW entrance to the MAPS (Lot 802 and Lot 803) or (b) opening the median on Massachusetts Avenue to allow cars travelling east on Massachusetts Avenue to turn left across two lines of traffic into the MAPS. Neither Option A nor Option B is a public benefit. Option A would force more cars onto neighborhood streets on Yuma and 48th Streets to access Massachusetts Avenue, Spring Valley, and other points east and south of the site. Option B would require the installation of a signalized traffic light (in addition to the Hawk light proposed at the site) adding to traffic congestion and back-ups that will lead more vehicles to cut through neighborhood streets to avoid the congestion in the one-block commercial corridor. Additionally, the objective of opening the median, according to Valor, is to allow for trucks serving the MAPS to unload in the MAPS parking lot instead of in the north-south alley adjacent to the proposed project site or Yuma Street NW. The MAPS was designed for loading areas to be accessed through the rear of the MAPS retail outlets, not the fronts. Moreover, any truck loading or unloading in the MAPS parking lot would create serious congestion and parking problems.

The suggestion that the density transfer from the historic MAPS site will protect the MAPS site in the future by reducing the amount of density that could be potentially built at the site is inconsistent with provisions of the **DC Historic Landmark and Historic District Protection Act** (as amended through March 14, 2014) and the **U.S. Department of Interior Technical Standards for Historic Preservation**. Because the density transfer may come from an historic element and character defining feature of the MAPS site, it is unclear whether such a transfer requires review and approval of the DC Historic Preservation Review Board (HPRB). Because the historic

designation has been granted to a building (as opposed to a district), all of that building, including the open space, falls under historic designation and any substantive change to the building must be reviewed by the HPRB. Precisely because the density purchase from Lots 802 and 803 is critical to the proposed development on Lot 807, we believe the Zoning Commission should seek a formal opinion from the DC Office of Attorney General on this issue prior to taking any formal action in this case.

Contrary to the opinion of the Office of Planning (from David Maloney, the State Historic Preservation Officer), the proposed PUD will have a direct physical impact on the historic landmark by altering the setting of the landmark and the visual impact. The overall density of the construction on Lot 807 adjacent to the MAPS threatens the integrity of the historic MAPs site. At 81' in height along Massachusetts Avenue NW, the new building will tower over the adjacent single-level shopping center site. This alters the "feeling," "association," and "setting" of the MAPS site in relation to neighboring property, which are critical criteria used by the **U.S. Department of Interior's National Register of Historic Places** to evaluate historic places. Although a new modern building may seem aesthetically more pleasing than the existing structure at the site, it is the overall density of the proposed project that makes it incompatible with the existing landmark.

No public benefit can be realized through the construction of a building at the site when that development is so out of scale with the historic site and the surrounding neighborhood that also contributes to the significance of the historic landmark.

Housing, including housing that provides units with three or more bedrooms; and Affordable Housing in an amount that exceeds what would have been required through matter-of-right development (11-X DCMR § 305.5(f) and (g)).

The Project results in the creation of new housing consistent with the objectives and policies of the Comprehensive Plan and the Mayor's Housing Initiative. Overall, the Project will replace a long vacant and underutilized site with approximately 219 new residential units in approximately 214,094 square feet of residential gross floor area ("GFA"). The Project's unit mix includes studio, one-, two-, and three-bedroom units, including three-bedroom IZ units.

The Applicant will set aside a minimum of 12% of the residential GFA to IZ units devoted to households earning up to 60% of the median family income ("MFI"), and 12% of the non-communal penthouse habitable space to IZ units devoted to households earning up to 50% of the MFI. The Applicant will also set aside 12% of cellar floor area dedicated to residential dwelling units, and projection floor area dedicated to residential use, to IZ units devoted to households earning up to 60% of the MFI. The Applicant's affordable housing proffer exceeds the amount of affordable GFA that would have otherwise been required through matter-of-right development on the PUD Site by 20%. Further, the Applicant will provide a minimum of four, three bedroom IZ units in Building 1.

As a March 2018 report from the **DC Policy Center** concluded, "there is no easy solution" to the problem of affordable housing in the city.

As we testified at the October 10 Zoning Commission hearing in this case, inclusionary zoning is not the only tool in the city's affordable housing toolbox and, as other cities' experiences show, it is not a silver bullet for solving the affordable housing crisis. A January 2019 report, "*Inclusionary Zoning: What Does Research Tell Us About the Effectiveness of Local Action?*" prepared by the **Urban Institute** outlined the limits of relying on inclusionary zoning to produce sufficient affordable housing and even suggests that policies encouraging home ownership over rental housing may be a better long-term solution.

However, Valor has chosen to rent the units in the new building; therefore, the affordable housing offered through this project will not encourage home ownership.

In a 2019 report, "*Local Tools to Address Housing Affordability*," the **National League of Cities (NLC)** Center for City Solutions identified five tools for addressing the affordable housing crisis: (1) inclusionary zoning; (2) rent control; (3) housing vouchers; (4) housing trust funds; and (5) state tax vouchers.

The Rock Creek West area may lag in affordable housing provided by inclusionary zoning, but it has the second highest number of rent-control units in the city. Although rent control is not specifically tied to incomes, the **NLC** report notes that rent control "helps existing residents to remain in their homes; stabilizes neighborhoods; and reduces gentrification."

At issue in this case is whether Valor's proffer of 12 percent affordable housing – just two percent above what is mandated under the PUD regulations – constitutes an adequate and

sufficient public benefit. We concur with the **D.C. Department of Housing and Community Development (DHCD)** that Valor should increase its affordable housing proffer to 15 percent. However, even that falls short of providing the public benefit that would be consistent with a project of such density.

Given the intensity of the proposed development and its location in the American University Park-Spring Valley neighborhoods, we believe a 15-20 percent affordable housing requirement is more appropriate and reasonable given the likely financial gain realized from building this project.

Mill Creek, which has been designated to develop the site, has a history of developing luxury rental apartment buildings/communities across the country, including in Adams Morgan and the District Wharf. According to **Smart Asset**, a financial advisory company, an individual needs to earn at least \$133,000 before taxes to afford the average rental price in Washington, D.C. Given the neighborhood location of the building and the targeted audience, these units will almost certainly exceed the average rental price in the city.

Currently, Valor proposes roughly 32,000 sq. ft. of affordable housing for 30 units – just about 5,000 square feet above what is required. Increasing the affordable housing requirements to 15 percent will provide nearly 41,000 sq. ft – probably about 37 units; increasing to 20 percent will mean 54,000 sq. ft, or approximately 49 units. Valor can afford it and the Zoning Commission should demand it.

Moreover, we believe that one of the five townhomes proposed for this site should be set aside for affordable housing and that at least half, if not more, of the affordable units be set aside for 50 percent MFI.

<p><u>Environmental and sustainable benefits (11-X DCMR § 305.5(k)).</u> The Project has been designed to integrate a host of sustainable features and will be designed to achieve LEED Gold v.4 certification.</p> <p>The Applicant will redevelop the PUD Site, which is presently impervious and lacks any form of sustainable storm water management, with new landscaping, trees, park space, green roof systems, and bioretention areas. The parking garage includes eight electric vehicle charging stations that will be Level 2 chargers or greater, and the Applicant will install infrastructure to permit the installation of additional electric vehicle charging stations in the future. Electrical outlets will also be provided within the long-term bicycle storage rooms for the charging of electric bikes. Locations for car-share vehicles, interior retail bike storage, showers, and interior residential bike storage that exceeds the required number of spaces will also be provided.</p>	<p>Spaces for car share vehicles, bike storage facilities, and showers offer valuable amenities for building residents, but they do not constitute public benefits because the public will have no access to these amenities.</p> <p>The applicant has not provided detailed plans for new landscaping that would show that it was addressing storm water management consistent with practices recommended by the DC Department of Energy and Environment, including the use of plants native to D.C. Given the limited public review of the project by the Zoning Commission of the plans at the two public hearings – and the absence of any detailed plans in the case record – it is impossible to assess whether Valor’s proposals offer a meaningful public benefit than what would be available through a matter-of-right development.</p> <p>Based on the plans in the record, it is possible to determine that the “park space” provided by Valor would not constitute a public benefit because of the limited space provided and its limited access for the public or even building residents.</p> <p>Additionally, we believe the Zoning Commission should require installation of solar panels to provide a meaningful environmental public benefit. Absent such meaningful benefits, the Zoning Commission should reject the PUD application.</p>
<p><u>Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application, including provision of a public easement for a pedestrian walkway that would not otherwise be required (11-X DCMR § 305.5(o)).</u></p> <p>The Applicant will provide the following transportation-related benefits that are not needed to mitigate any potential</p>	<p>Many of the so-called “improvements” in the transportation infrastructure are not improvements and offer no public benefit.</p> <p>a. The proposed Hawk light is unnecessary and will encourage pedestrian passage through an alley that will be unsafe for pedestrians and will not include a sidewalk for safe passage. There was no public demand for a Hawk light at this site as part</p>

adverse transportation impacts created by the Project:

- a. Fund a new high-intensity activated crosswalk (“HAWK”) signal on Massachusetts Avenue, between 48th and 49th Streets, subject to DDOT public space approval;
- b. Allocate \$100,000 to means for connecting Project residents to the Tenleytown Metro station through shuttle or geofence with ride hailing services.
- c. Restrict residents of Building 1 from obtaining a Residential Parking Permit (“RPP”) with penalty of lease termination;
- d. Consolidate trash receptacles currently located in the north/south alley and in public space along Yuma Street to a new enclosure along the north-south alley;
- e. Improve the existing alley system by widening the north-south public alley by seven feet onto private property to maintain a 20-foot vehicle travel way and provide a new 3-foot pedestrian path; providing a new 6-foot sidewalk on private property along the east-west alley; constructing a new 5- to 6-foot sidewalk along the western side of the public alley entrance from Massachusetts Avenue; and constructing improvements to the alley intersection to increase pedestrian safety and visibility;

of DDOT’s recently completed Rock Creek Far West Livability Study.

- b. Although we applaud Valor for efforts to make it easier for residents to get to the Tenleytown Metro station, the one-year limit negates its value as a project amenity or public benefit.
- c. Limits on RPP will be a public benefit.
- d. Although we support consolidation of trash receptacles in the north/south alley, it is unclear to us based on the limited information in the record and the limited public review by the Zoning Commission at the two public hearings on October 7 and October 10 that Valor’s plan will make it feasible for trash trucks to maneuver in the alley and actually pick up the trash.
- e. This project will place new demands on the 20-foot wide alley system that were never anticipated under current conditions. With approval of the PUD, the alley will serve as the passage for vehicles for ingress and egress to the apartment building, the new retail grocery store, and for truck loading and unloading, including moving trucks and delivery trucks for the new building; and the movement of pedestrians both north-south from Massachusetts Avenue to Yuma Street (for the grocery), and east-to-west from 48th Street to Massachusetts Avenue. Today, the alley infrastructure, which will be mostly unchanged under the new PUD proposal except for some cosmetic enhancements, only has to provide service for a limited number of trucks servicing the MAPS and the existing retail – which would be significantly less than for a full-service grocery store. It is not now used by cars and it is not used for pedestrian purposes. The proposed pedestrian path (flat with the road surface) in the north-south alley which is likely to get the most pedestrian use given the proposed

- f. Contribute \$15,000 toward studying the potential to open the median on Massachusetts Avenue to improve porosity and turning movements at the MAPS site and/or studying the installation of a “pork chop” near Massachusetts Avenue and 49th Street;
- g. Work with ride hailing services to designate the building entrance on Yuma Street as the preferred pick-up and drop-off location;
- h. Work with DDOT to designate a section of 48th Street between Yuma Street and Warren Street as an “alternative transportation block” where transit options such as electric scooters, bikes, and mopeds; bike shares; and car shares can be co-located;
- i. Work with DDOT on installing a Capital Bikeshare station in the vicinity of the PUD Site; and
- j. Work with JUMP or other electric bike share service on its efforts to include electric bicycles and scooters in close proximity to the PUD Site.

entrance(s) for the grocery store is simply unsafe. The result of these so-called “improvements” will be more conflict between pedestrians and moving vehicles, especially with installation of a Hawk light and the outdoor public area outside the grocery store, and potential injuries with particular concern for children given that the American University Park and Spring Valley neighborhoods are family-friendly. These alleys will function as minor roads and service more vehicles in one day than many neighborhood streets in the surrounding area. The alley infrastructure, as planned by Valor, represents an unacceptable public safety risk. Valor’s plan could only be considered a public benefit if the alleys are widened beyond 20 feet and that ADA-acceptable sidewalks are provided throughout the site.

f. The applicant has proposed dedicating \$15,000 to the study of (a) the installation of a “pork chop” at the 49th Street NW entrance to the MAPS (Lot 802 and Lot 803) or (b) opening the median on Massachusetts Avenue to allow cars travelling east on Massachusetts Avenue to turn left across two lines of traffic into the MAPS. Neither Option A nor Option B is a public benefit. Option A would force more cars onto neighborhood streets on Yuma and 48th Streets to access Massachusetts Avenue, Spring Valley, and other points east and south of the site. Option B would require the installation of a signalized traffic light (in addition to the Hawk light proposed at the site) adding to traffic congestion and back-ups that will lead more vehicles to cut through neighborhood streets to avoid the congestion in the one-block commercial corridor. Additionally, the objective of opening the median, according to Valor, is to allow for trucks serving the MAPS to

	<p>unload in the MAPS parking lot instead of in the north-south alley (adjacent to the proposed project site) or Yuma Street NW. The MAPS was designed for loading areas to be accessed through the rear of the MAPS retail outlets, not the fronts. Moreover, any truck loading or unloading in the MAPS parking lot would create serious congestion and parking problems.</p> <p>g. In our view, Valor should be required to carve out an off-road vehicle standing area in front of the entrance on Yuma Street. Cars stopping or parking temporarily in front of the building on Yuma street will block traffic which will be greater than under current conditions given that Yuma Street will be one of two primary points for accessing the parking lot for the apartments, the grocery store, and for truck unloading.</p>
<p><u>Uses of special value to the neighborhood or the District of Columbia as a whole (11-X DCMR § 305.5(q)).</u></p> <p>The Applicant will dedicate approximately 18,000 square feet of GFA to ground floor retail space, of which approximately 16,000 square feet will be dedicated to a full-service grocery store. Per the Memorandum of Understanding (“MOU”) with ANC 3E, for at least ten years from the date of the first certificate of occupancy, the Applicant shall dedicate a minimum of 13,000 square feet of the ground floor retail space to a full-service grocery store.</p>	<p><u>The location of a grocery store in the development does not constitute a “use of special value” under the PUD regulations.</u> The proposed project will cut available retail space at the site in half. This loss of retail comes on the heels of lost retail at American University’s Spring Valley Building, which before being purchased by American University, housed first floor neighborhood retail that included two restaurants, a dress shop, an optical shop, and a wine store. The Valor project already has displaced a beauty shop and will displace a fine dining restaurant, a BBQ take-out, and a neighborhood-serving catering service.</p> <p>Although we believe the project should include more retail, we also recognize that the need for additional housing, including affordable housing, may require the loss of additional retail services. However, the elimination of retail services – walkable for most residents – is a loss for the neighborhood, not a benefit.</p>

	<p>A grocery store, however, will increase traffic over other retail type of services that could be offered at the site. Although a neighborhood grocery store would be convenient for many residents, even a specialized grocery as proposed by Valor, it is unlikely to meet the shopping needs of most residents, who will be more attracted to use any of the many (and growing) number of grocery stores within less than a 10-minute drive.</p> <p>Moreover, the requirement that the space be reserved for a grocery store could result in vacant retail space if no grocer is found to occupy the site. Vacant retail space also is of no benefit to the public.</p>
<p><u>Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan (11-X DCMR § 305.5(r)).</u></p> <p>The Applicant will plant any missing trees within the tree-box areas located along the east side of 48th Street between Yuma Street and Massachusetts Avenue, and along north side of Yuma Street between 48th and 49th Streets</p>	<p>The record in this case does not provide any plans for additional tree landscaping and the limited public review by the Zoning Commission of the plans at the two public hearings makes it impossible to assess whether there is a need for such planting, the types of trees to be planted, and whether Valor’s plans constitute a public benefit under the PUD regulations.</p> <p>The Zoning Commission did not review whether the applicant’s Green Area Ratio (GAR) requirement is met. The inclusion of only one landscaped lot within the four-lot project area seems contrary to DOEE's Guidebook for Green Area Ratio which requires that the entire project area be landscaped. Only 79,622 sq. ft. are included in the calculations when the total land area of the project is 160,788 sq. ft.</p>

**Comments From the Spring Valley – Wesley Heights Citizens Association
And Neighbors For A Livable Community (“Spring Valley Opponents”)
On Contested Issues Of Fact/Conclusions Of Law
Z.C. Case No. 19-10**

**Legal Questions Concerning Valor’s Reliance
On Unused Density At Historic MAPS Site**

Z.C. Case No. 19-10 is unique in part because the density of the new construction proposed by Valor on Lot 807 would not be possible without purchasing additional density from Lots 802 and 803, which are part of this project application, but not owned by Valor, and currently consist of a historic landmark (the Massachusetts Avenue Park and Shop, also referred to as “MAPS”). The MAPS site is recognized as an historic landmark both by the D.C. government and the federal government. It was designated as a District of Columbia historic landmark in 1988 and was listed in the National Register of Historic Places in 2003.

Neither the owner of Lots 802/803, Regency Shopping Centers, nor Valor allege that the sale of density is necessary due to some “economic hardship” involved in maintaining the historic landmark, as defined in Section 6 (e) of the D.C. Historic Landmark and Historic District Preservation Act (as amended in 2014) (“Act”), to maintain or preserve the historic character of the shopping center.

Meanwhile, Valor has proffered that the sale of density from the MAPS site to this project which will facilitate an increase in density on the separate Lot 807 beyond a matter of right is a public benefit. According to Valor, this sale of density will permanently reduce the amount of density that could potentially be constructed on the MAPS site in the future enabling it to retain its historic landmark character and status. It is questionable whether the public interest is served by permanently restricting what could be built at the site, especially if the landmark should fall into disrepair or becomes a candidate for demolition, including as a consequence of fire or other disaster. This should figure into future planning considerations for the site, especially since historic landmarks are not frozen in time and can be adapted for modern uses.

In fact, the Act encourages the adaptation of historic landmarks for current use. Any limitation on new construction at the site could interfere with such adaptation, which may be critical for preserving the site as an historic landmark under current historic preservation law.

But, the legal issue before the Zoning Commission is whether the Commission has the authority to approve a project that includes a sale of density from an historic landmark without the sale first being reviewed and approved by the Historic Preservation Review Board (HPRB). The HPRB is charged in the Act with performing the functions and duties of a State Review Board outlined in the National Historic Preservation Act, which would include review of any alterations of a nationally designated historic landmark.

The sale of density from the MAPS site (Lots 802 and 803) to Valor for construction on a separate lot (Lot 807) may represent an alteration of the historic landmark, particularly since the MAPS landmark was approved by the U.S. Department of Interior National Register of Historic

Places as a “building” instead of a “district.” Consequently, based on the site’s listing in the National Register of Historic Places as a building, all elements of the site, including the unused density, would be considered defining features of the landmark. Any alteration of those features would require review and approval by the HPRB. Any alteration of features that would prevent the site from being adapted for current use also would require review and approval from the HPRB, according to District law.

The Office of Planning (OP) Historic Preservation Office (HPO), which serves as staff for the HPRB, is not authorized by statute to decide unilaterally whether the project is subject to review. The Act makes it clear that only the HPRB has such authority; but the HPRB can delegate this authority to HPO. That has not happened; nor has an application for review and approval ever been submitted by Valor or Regency Shopping Centers, the owner of Lots 802 and 803), to the HPRB that would enable the HPRB procedurally to delegate review to the HPO or take other formal action.

We recognize that this case does not involve a subdivision and that all the lots that are the subject of this case are separate lots. However, when considering issues related to subdivisions, the Act also makes reference to a lot “that assembles land with the lot of a historic landmark” as requiring HPRB to determine whether such an assemblage of land is consistent with the purposes of the Act.

Although HPO has filed comments in this case, those comments do not address the legal issues concerning review of the sale by the HPRB. These issues have not been qualitatively addressed in this case. There is nothing in the case record in Z.C. Case No. 19-10 that demonstrates these legal issues have been reviewed by agencies of the D.C. government helping to staff the Zoning Commission.

Without the density from the historic site, Valor’s proposal would not meet the minimal requirements for a PUD under Chapter 3 of the Zoning regulations. Since the Zoning Commission may not be able to consider a density transfer from an historic site absent a determination by the HPRB, it should not take action in Z.C. Case No. 19-10 until the legal issues concerning HPRB review are clarified.

Because of the legal question surrounding the use of density from a historic landmark, we strongly recommend that the Zoning Commission request or direct OP to request a legal opinion from the Office of Attorney General (OAG) to examine local and national preservation law and assess the legal issues tied to the sale of density from the MAPS site (Lots 802, 803) to Valor for construction on Lot 807 prior to making a decision in this case.

Although there are other contested issues of fact and law in this case, they are likely to be raised substantively by others in this case. However, the issue we raise in this filing is of critical significance because it raises statutory issues related to historic preservation law that could impact the legal authority of the Commission to take any additional action in this case at this time.