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BY EMAIL & MAIL

Mr. Richard Saunders
Planner II / Zoning
Land Use Administration -
Planning and Development Review
City of Richmond
900 E. Broad Street, Room 511
Richmond, Virginia 23219

RE: Proposed Plan of Development – 801 – 815 West Cary Street

Dear Mr. Saunders,

It was a pleasure for me and some of my clients to meet you last Thursday regarding the proposed Plan of Development (POD) for 801-815 W. Cary Street. We discussed a number of concerns and asked for you to check into them. I write to follow up with my clients' specific concerns in writing and reiterate our request that you and the zoning administrator take another look at some key parts of the zoning ordinance as they affect the application for POD and advise us further.

Contribution of These Structures to the History and Architecture of the Block

As we discussed, my clients are vitally interested in the future and past of the block, which is one of the most vital gateways to the Oregon Hill Historic District. It appears from some of the early staff comments on the POD that the City is also aware of the importance of that block. My clients are well-versed in

the history and importance of the block and its structures and would be pleased to provide more information.

The block in question marks the beginning of the Oregon Hill neighborhood, and is its only entry from the north. The proposed POD site includes five 19th century buildings, two of which date from the 1830s; all of the buildings are listed as Virginia landmarks as contributing to the Oregon Hill Historic District. The original builder/owners were key historic figures in the early history of the area, including the namesake of Green Alley, adjacent to the proposed development. These buildings tell a story that will be silenced if demolished for the proposed large POD mixed use structure. As you know, per Charter § 17.05, the city is tasked with protecting Virginia landmarks. They are also quite attractive, architecturally, and a proper complement to the remainder of the block of historic structures.

Thanks in advance to you and the zoning administrator for your willingness to consider these points.

As you know, the proposed project is within the B-3 zoning district, which has very clear guidelines regarding permitted height and yard setbacks, and parking requirements. Here are some of the issues that we raised in our meeting last Thursday about which my clients are concerned:

**I. THE PROPOSED HEIGHT EXCEEDS THE MAXIMUM
ALLOWED BY THE ZONING ORDINANCE.**

The first concern my clients have relates to the height which appears in the proposed POD, which proposes a large structure more than a dozen feet higher than the 35 foot maximum height prescribed by ordinance. According to the B-3 zoning district regulations in the City zoning ordinance:

Sec. 30-438.5. - Height.

No building or structure shall exceed 35 feet in height in the B-3 General Business District, provided that additional height, not to exceed a total height of 60 feet, shall be permitted when all yards exceed the minimum required by not less than one foot for each one

foot of building height in excess of 35 feet and provided, further,
that no additional height shall be permitted on a transitional site.

The ordinance plainly provides that "[n]o building or structure shall exceed 35 feet in height in the B-3 General Business District." This prohibition against additional height shall apply unless the "provided" for exception for additional height applies.

The "provided" for exception requires that "all yards exceed the minimum required by not less than one foot for each one foot of building height in excess of 35 feet." Even then, that exception does NOT apply if the site qualifies as a "transitional site," as defined. Here, the proposed POD fails to qualify for additional height under BOTH of these provisions.

**a. The Proposed POD Is On A "Transitional Site" So No
Additional Height Above 35 Feet is Allowed.**

The POD at 801-815 W. Cary is on a "transitional site" per the definition found in Sec. 30-1220.123 of the City zoning ordinance. The site serves a transitional role between the VCU campus and the Oregon Hill Neighborhood as a practical matter. Moreover, the text of the zoning ordinance clearly states it is a "transitional site:"

Sec. 30-1220. – Definitions

.123 Transitional site means a lot or portion thereof located in an RO, HO or B district and situated within 50 feet of and fronting on the same block as property in an R district. A corner site as described shall not be considered a transitional site **where one frontage of the site is adjacent to or across an alley from property zoned other than residential and where that frontage is situated along a major, secondary or collector street as designated in the City's master plan.**

First, it is plain that the proposed site falls within the first sentence of the definition of "transitional site," in that it is a "B" district that is well within 50 feet of an "R" district (actually, it is adjacent) and fronts on South Laurel Street as does the R district. Zoning Ordinance, Sec. 30-1220 ("Definitions") at .123 (i.e., the proposed POD site is "a lot or portion thereof located in an RO, HO or B district and situated within 50 feet of and fronting on the same block as property in an R

district"). Therefore, the site falls within the definition of "transitional site," unless and until it meets all of the ordained requirements of the exception for certain types of corner sites.

Here, although the proposed site is plainly a "corner site," the site fails to meet all of the requirements for the exception to apply.

The exception states as follows:

Sec. 30-1220. – Definitions

.123 A corner site as described shall not be considered a transitional site **(1) where one frontage of the site is adjacent to or across an alley from property zoned other than residential and (2) where that frontage is situated along a major, secondary or collector street as designated along a major, secondary or collector street as designated in the City's master plan.**

For convenient reference, I bolded and added numbers for the two requirements for a "corner site" to not be considered a transitional site under the exception provided.

The first requirement is that "one frontage" of the corner site must be adjacent to or across an alley from property zoned other than residential." The proposed site appears to meet this requirement, since "one frontage" along West Cary Street is adjacent to a parcel with similar B-3 zoning. However, this is where the exception fails. Further, the exception plainly then requires "that frontage" – i.e. the West Cary Street frontage – to be "situated along a major, secondary or collector street as designated in the City's master plan." It is not.

Fortunately, the ordinance uses very specific language for the designation of "major, secondary or collector streets" in a very specific source – the "City's master plan" – to determine whether a site is a "transitional site" or not. Here, as a corner site, it has two frontages, one frontage on West Cary Street and a second frontage on South Laurel Street. Neither West Cary Street nor South Laurel Street is identified in the city master plan as a major, secondary or collector street as designated in the city's master plan. In fact, the Richmond master plan specifically designates Laurel Street as a **"Local Street"** and designates West Cary Street as a **"Minor Arterial Roadway."** Since West Cary Street is a "minor arterial

roadway" and not a designated "major, secondary or collector street," this means that the site is still considered as a "transitional site" under the ordinance.

As a result, because the proposed POD at 801-815 West Cary Street is located on a "transitional site" as defined by City zoning ordinance Sec. 30-1220.123, the height of the project cannot exceed 35 feet. Thus, "no additional height shall be permitted" and the proposed POD incorrectly exceeds the 35 foot height limit by 13 feet.

As I mentioned earlier, this POD is on a **particularly sensitive transitional site**. It properly transitions the area from large institutional structures at VCU to modest historic two-story homes on the state and national historic registers in the R-7 zoning district across Green Alley, and also across Laurel Street from the proposed project. The apparent intent of City Council in this wording related to "transitional site" is to protect sensitive residential sites (such as found in the Oregon Hill Historic District) from being overwhelmed by the height of an adjacent commercial or mixed use development.

In other words, this is exactly the type of site the Council intended to be protected from excessive height. We ask the zoning staff to please enforce the wording of the ordinance and wise intent of Council embodied therein.

b. The Proposed POD Lacks "Yard" Setbacks Mandated by the Zoning Ordinance for the Height Requested.

Furthermore, the excess height above the mandated height limit of 35 feet is prohibited by the City zoning ordinance for another reason, beyond the site being a "transitional site."

The clear wording of the height restrictions in the B-3 zoning per city code Sec. 30-438.5 would not permit the project exceeding the 35 foot height restriction because the plan presented lacks the required increase in "yard" setbacks to compensate for the additional height. In most locations, as we agreed in our meeting, the required base setback for a structure at 35 feet in height or less is "zero." And, despite the increase in height above 35 feet, no additional setback beyond "zero" is shown. This does not comply with the ordinance language.

Section 30-438.5 states as follows:

Sec. 30-438.5. - Height.

No building or structure shall exceed 35 feet in height in the B-3 General Business District, provided that additional height, not to exceed a total height of 60 feet, shall be permitted **when all yards exceed the minimum required by not less than one foot for each one foot of building height in excess of 35 feet** and provided, further, that no additional height shall be permitted on a transitional site.

Further, the zoning ordinance provides a specific definition of "yard":

.137 Yard means an **open space**, other than a court, unoccupied and **unobstructed by any structure or portion of a structure from three feet above the ground level upward**, except as otherwise provided in Section 30-630.9 [generally-permitted encroachments not applicable here].

In the proposed POD, the "yard" setback in most locations is shown to begin 35 feet above street level, which would violate the plain meaning of the defined term, "yard." A "yard" is measured at three feet and above from ground level, not at 35 feet above ground level.

I realize that in our meeting you indicated that there was some belief among staff that an inclined plane setback requirement, which exists in the B-4 zoning district, would apply here. The ordinance does not support such an interpretation. Unlike in the B-4 zoning district regulations, there is no mention of an inclined plane or an inclined plane formula in this zoning district. Instead, the B-3 zoning district plainly prohibits additional height unless "all yards exceed the minimum required by not less than one foot for each one foot of building height in excess of 35 feet...." Here, the proposed POD does not show "all yards" exceeding the minimum required yard by one foot for each one foot of height above 35 feet.

In fact, the proposed POD shows the additional "yard" setback to begin on the roof line, which is not permitted under the clear definition of "yard" found in Sec. 30-1220.137 of the city code. By this code definition, **a yard must be,**

“unoccupied and unobstructed by any structure or portion of a structure from three feet above the ground level upward.” The plans show that there is, in most locations, 32 feet of structure upward of three feet above ground level where the setback begins at the roof line. This does not comply with the requirements for additional height in the B-3 zoning district.

In conclusion, for these two major reasons, the proposed height of the proposed POD exceeds the maximum height permitted on the B-3 zoned site. We ask for the zoning staff to take another look at this issue and please advise.

II. WHETHER ADEQUATE PARKING IS PROVIDED REMAINS IN DOUBT AND SHOULD BE FURTHER INVESTIGATED.

My clients noted several concerns in our meeting regarding parking. They ask that parking be examined further and very carefully as the POD review continues. Here are some of their concerns and information.

My clients are unsure whether the zoning office realized that parking on this site is already reserved to meet the parking requirement for several other businesses on Cary Street and this needs to be analyzed. The City certainly cannot force other businesses into zoning violation by approving the proposed POD.

Furthermore, we were informed at our meeting that the developer is strongly considering a restaurant to occupy the commercial space shown in the POD. Certainly, a restaurant is a current use on that block, and some restaurant is a likely future candidate for the commercial space. However, the proposed POD shows the commercial space only having one parking space per 300 square feet of commercial area. However, the restaurant use requires one parking space per 100 square feet of commercial area, which would seemingly prohibit a restaurant use.

As a result of these, it appears that the proposed parking provided is short by the number of parking spaces that will be required for the restaurant use, and the POD development would deprive existing nearby businesses on West Cary of their current required parking under the zoning ordinance.

Lastly, it is important to note that parking is not a permitted principal use within the R-7 zoning, so there is little prospect for finding additional parking to

accommodate the other businesses on West Cary that are already committed to this site for parking or to accommodate a restaurant on site.

The zoning comment states, "Additional parking may be required depending on the type of use that occupies the commercial space." True, but since there is already a severe shortage of parking in this area, the proposed POD would reduce parking already pledged to nearby businesses, and the proposed POD lacks parking needed for any restaurant, we suggest that a further critical review of the parking requirement be made before final POD approval.

III. A HISTORIC COBBLESTONE ALLEY OR PUBLIC RIGHT OF WAY EXISTS IN THE MIDDLE OF THE PROPOSED POD.

Finally, there is a north-south cobblestone alleyway directly to the east of 815 W. Cary that has been in public use for well over a century (it is cobbled and in constant use and shown on the 1905 Sanborn Insurance map). This cobblestone alleyway is incorrectly identified on the POD submission as a "gravel path." Such a public alley and public right of way cannot simply be ignored. My clients ask you to investigate the existence of this alley or at least, a prescriptive right of way, as you further consider the POD application.

Again, thank you for meeting with me and my clients. Let me know if I can provide any additional information.

Please let me know when you have reassessed the zoning review for the POD at 801-815 West Cary Street. While in an ideal world, we would prefer for you to have more time, my aggrieved clients have a statutorily-prescribed time to take the appeal to the BZA that the zoning administrator suggested. Therefore, since my clients would prefer to avoid the time and expense of an appeal, I ask that you please respond by close of business on Friday, March 23.

Very truly yours,



Andrew R. McRoberts

ARM/ct