

## **Summary of Existing and Proposed Allocation of Density within Voluntary Design Review Project Boundary (Square 1499, Lots 802, 803, 806, and 807)**

\* The following summary is based upon the Applicant's revised project plans submitted to the Zoning Commission on October 16, 2018.

### **Authority to Transfer/Aggregate Density**

- The voluntary design review provisions of 11-X DCMR, Chapter 6 authorize the Commission to approve the aggregation/transfer of density in a design review application. 11-X DCMR § 600.1(e) provides “flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.” Per 11-X DCMR § 601.4, the property in a design review application “may be separated...by a public street, alley or right of way.”
- The Commission can approve aggregation/transfer of density under its broad Zoning Act authority (*See* 11-Z DCMR § 100), which has been upheld by the 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). In that case, the Court upheld the Commission's approval of a PUD which included a transfer of density from the site of a historic landmark to an adjacent development site. Citing the Commission's “broad general authority” under the Zoning Act, the Court found that “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”.
- The Office of Planning (“OP”) testified at the January 11, 2018, public hearing that they confirmed with the Office of the Attorney General that the flexibility provided through the design review process allows for the movement of density throughout the project as proposed in this application. Tr. 166. OP further confirmed that transfer/aggregation of density is permitted as part of a [voluntary] design review application in its February 12, 2018, supplement report to the Commission (*See Exhibit 215*)
- The transfer/aggregation of density is not inconsistent with the Comprehensive Plan. Specifically, the guidelines for using the Generalized Policy Map and the Future Land Use Map (“FLUM”) state “[t]he densities within any given area on the [FLUM] reflect all contiguous properties on a block - there may be individual buildings that are higher or lower than these ranges within each area.” (10-A DCMR § 226). Further, as discussed in the Applicant's Comprehensive Plan analysis, the Historic Preservation Element encourages the use of a variety of tools to reduce development pressure on historic resources (10-A DCMR § 1016.3). The Commission's ability to transfer/aggregate density under zoning relative to the Comprehensive Plan has been upheld by the D.C. Court of Appeals. *See* Friends of McMillan Park v. D.C. Zoning Comm'n, 149 A.3d 1027 D.C. 2016

### **Voluntary Design Review Project Boundary**

- The voluntary design review project boundary is comprised of Lots 802 & 803 (land area: 39,516 square feet (“sf”)), and Record Lot 9 (land area: 121,272 sf). Record Lot 9 contains two separate A&T lots, Lots 806 and 807. Lots 802 and 803 are improved with the Spring Valley Shopping Center (“SVSC”), Lot 806 (land area: 41,650 sf) is improved with the former AU law school (“AU Building”), and Lot 807 (land area: 79,622 sf) is improved with the vacant Superfresh grocery building and other retail uses (“Valor Lot”). The SVSC and Record Lot 9 are separated by a 20 foot public alley. Collectively, the voluntary design review boundary contains approximately 160,788 sf of land area (not including the public alley). The Applicant is proposing to redevelop Lot 807 with a new mixed-use project containing residential and retail uses through the ZR16 voluntary design review process.

## **Zoning History and Development Background**

- The SVSC was constructed in the 1930s and consists of approximately 16,922 square feet of gross floor area (“GFA”).
- To facilitate construction of the AU Building, the permitted density within Record Lot 9 was allocated between Lots 806 and 807 per a Declaration of Easement and Agreement recorded in 1979 (“Easement”). At the time, the C-2 zoning of the property allowed a maximum 2.0 FAR commercial on Record Lot 9, which equated to 242,544 GFA. Under the Easement, 179,302 GFA was allocated to Lot 806 (AU Building) and 63,242 GFA was allocated to Lot 807 (Valor Lot).
- The current MU-4 zoning allows an overall matter-of-right density of 2.5 FAR, of which no more than 1.5 FAR can be devoted to nonresidential uses. Through Inclusionary Zoning (“IZ”), the overall permitted density in the MU-4 zone can be increased to 3.0 FAR.

## **Current Unused Density on Record Lot 9 and SVSC Site (Lots 802 & 803) Under Existing Zoning**

- Record Lot 9: The overall maximum GFA permitted on Record Lot 9 is 363,816 GFA. Subtracting the existing GFA of the AU Building, the amount of unused density is 184,514 GFA.
- SVSC Site: The overall maximum GFA permitted on the SVSC site is 118,548 GFA. Subtracting the existing GFA of the SVSC, the amount of unused density is 101,626 GFA.

## **Proposed Project and Allocation of Density within Voluntary Design Review Project Boundary**

- Through the ZR16 voluntary design review process, the Applicant proposes to construct approximately 234,629 GFA on Lot 807.
- Through an agreement with AU, the Applicant will utilize the remaining 184,514 GFA of density available on Record Lot 9.
- Through an agreement with the owner of the SVSC, the Applicant will acquire approximately 50,115 GFA of unused density available on Lots 802 and 803.
- As shown in the diagram below, using the flexibility in building bulk control provided under the ZR16 design review process the Applicant will use the 50,115 GFA obtained from the SVSC site on Lot 807 to construct the Project.
- Consistent with the permitted density in the MU-4 zone, the overall density of the Project aggregated within the 160,788 sf voluntary design review boundary will be approximately 2.68 FAR (1.35 FAR nonres).

