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January 2, 2019

VIA EMAIL TO [karl.moritz@alexandriava.gov](mailto:karl.moritz@alexandriava.gov)

Mary Lyman, Chair and Members of Planning Commission  
City Hall  
301 King Street, Suite 2100  
Alexandria, VA 22314

RE: Docket Item #6  
January 3, 2019, Planning Commission Hearing

Dear Madam Chair and Members of Planning Commission:

On behalf of my client, 1201 North Royal LLC, I am requesting the following edits to the staff recommended conditions of approval for the above reference matter.

**Condition 10**

~~Provide a flush connection between the arts walk and the N. Royal Street sidewalk to the extent feasible to the satisfaction of the Directors of P&Z and T&ES. (P&Z)(T&ES)~~

**Condition 14(d)(ii)**

The setback of glass from the face of the building shall be a minimum of 2 ~~4 to 8~~ inches. (P&Z)

**Condition 52(c)**

If the off-street construction workers parking plan is found to be violated during the course of construction, a correction notice will be issued to the developer. If the violation is not corrected within five (5) days, a ~~"stop work order"~~ **a maximum fine permitted by the City** will be issued, **for each day that the plan is violated.** ~~with construction halted until the violation has been corrected. \*~~

**Condition 67**

The sewer connection fee must be paid prior to release of the site plan, **unless the timing of the payment is changed by the City\*** (T&ES)

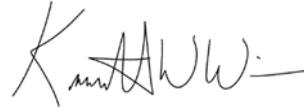
**Condition 77**

No transformer and switch gears shall be located in the public right-of-way. **The applicant may relocate existing switch gears which serve off-site properties to the nearest off-site utility pole. If Dominion requires switch gears serving off-site properties to be located on the Property, the cost of such switch gear shall be applied as a credit, not to exceed \$100,000, towards the Open Space Fund contribution set forth in Condition 107.** (T&ES)

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Please let me know if you have any questions regarding the requested edits. I look forward to discussing this project with you at tomorrow's public hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "K. W. Wire". The signature is stylized with a large "K" and a long horizontal stroke at the end.

Kenneth W. Wire

## **M E M O R A N D U M**

**TO: Karl Moritz, Director**  
**Planning & Zoning**  
**& Rob Kerns, Development Chief**

**FROM: David W. Brown, Commissioner**

**SUBJECT: 1201 N. Royal Street, DSUP 2017-0025 (Dkt. No. 6)**

**DATE: January 2, 2019**

I am sending you this memo today for inclusion in the paperwork to be shared with the other Commissioners in advance of tomorrow's hearing on Dkt. No. 6, along with any response you care to add. I apologize for not raising these issues sooner, but my thoughts on this project did not come together until today.

This case raises questions about the proper application of the density bonus under 6-904 of the Zoning Ordinance. First, I do not regard the density bonus to be applied in every case where a bonus is merited to be 30%. Rather, I see 30% as the maximum allowed bonus. The statute says "density may be increased by a maximum of 30 percent . . ." The word "maximum" is perhaps not as clear as "up to" would be, but to me it nevertheless conveys the same meaning; there would be no need for that term if every project eligible for a bonus automatically gets the same percentage bonus, wholly apart from the expense incurred by the developer or the size of the bonus obtained, the latter of which is strictly a function of the gross lot area. For example, the 30% bonus for a 5000 sq ft anchor would be .3 acres on Developer A's 1-acre lot and .9 acres on Developer B's 3-acre lot. Why should Developer B get three times the reward of Developer A for providing exactly the same thing? Similarly, if Developer A and B have similarly sized properties, but Developer A's anchor is 15,000 sq ft and Developer B's anchor is 5,000 sq. ft., why should their bonuses be the same? In conversation with Rob this afternoon, I am assured that staff is not applying a one-size-fits-all density bonus.

According to Section 6-904(F) of the Zoning Ordinance, "the public benefit of the added density will be provided through the ability of the proposed arts and cultural anchor to further the goals of the arts and cultural district." Based on this provision, staff assessed the proposed arts anchor space on how it can activate the arts and cultural district and surrounding area through design and programming. The proposed 5,732 square-foot arts anchor includes over 300 linear feet of storefront glass to help activate the adjacent street frontage and arts walk, and the activation of the anchor spaces will be ensured through the conditions of approval and memorandum of understanding. Staff feels that the size of the arts anchor space is not the only determinant for its viability and community benefit, and the controls on the design and use of the space through the

Preliminary Plan and conditions of approval should be sufficient to have a space provided that is commensurate with the bonus density request.

Second, whether expressly intended or not, I believe the model for application of the density bonus must be that provided in 7-702 & 703 of the Ordinance, dealing with the bonus for low and moderate income housing provided on site.. Here, too, the 30 percent rule is applied, but 702 includes a limiting factor not found in 9-904: namely, that the number of units, or, equivalently, square footage, devoted to low and moderate income units “shall be equivalent to at least one-third (1/3) of the increase achieved by the bonus. . .” 7-702 (A)(1). While this express limitation is not found in 6-904, I see no reason, in applying SUP standards, for staff not to use this standard as at least a first-order guide for how much the bonus density should be in any given anchor case. For example, given a minimum anchor size of 5,000 sq ft, the guideline density bonus for that size facility should be about 15,000 sq ft., inclusive of the anchor, resulting in 10,000 sq ft of additional density for the market rate portion of the project. Using this 3:1 yardstick ratio to guide application of 6-904 would still allow for departures as appropriate. I note also that this methodology treats the anchor space as included within the bonus density, not separate and added on top of all other density allowed. It is my understanding that staff has not adopted this 7-702 approach in figuring maximum allowed density under 6-904, and that strikes me as error. In my view, 6-904 is clear in expressing that the anchor, as part of the building, is part of the floor area of the building. Given this framework, the bonus proposed in DSUP 2017-0025 is at a ratio of 4.7:1, i.e., 5732 sq ft of anchor space out of a density bonus of 27,182 sq ft. This level of developer benefit—significantly higher than the guideline--may be justified in this instance, but I would expect staff to carefully scrutinize such a result.

The arts bonus density was based on the 7-700 provision of affordable housing. However, the arts provision was intentionally worded to be more flexible and provide an incentive to attract art uses and take into account the large variety and type of art uses. This includes an implementation of the bonus density provision that allows for the deduction of the arts and cultural anchor space, so far as it incentivizes the development of anchor spaces that further the goals of the Arts and Cultural District and does not reduce areas reserved for bonus density. This need for flexibility was discussed extensively at the Planning Commission and City Council hearings.

Instead of a standard formula to be applied in every case, the arts anchor provision anticipates a case-by-case evaluation, with the following safeguards:

1. Approval of a DSUP to make sure the height and scale are compatible with the character of the neighborhood.
2. A total limit within the old town north plan area (100,000 sq.ft);
3. A minimum size (5,000 sq.ft);
4. Compliance with the definition for arts anchor; and
5. Limited locations where the provision can be utilized.

Third, if it is perhaps appropriate that there be considerably more flexibility in the application of the arts and cultural anchor bonus than in figuring the low and moderate income housing bonus, that flexibility could also take into account, if not otherwise accounted for, the increase in development potential of the property when the project is predicated on a rezoning that materially adds to the density. In a case where the rezoning has little impact on project density, this may have little relevance to the anchor density bonus calculus. But where the project includes a significant increase in development potential due to rezoning, it may be appropriate to consider the size and scope of the anchor in the evaluation of what exactions are appropriate under those rezoning circumstances. In the case of DSUP 2017-0025, the rezoning of the CD-X parcel to CRMU-X appears to have little impact in this respect, as the FAR maximum under an SUP in both zones is 2.5. However, 30% of the land in this project is being rezoned from UT to CRMU-X, which reflects a 6.5-fold increase in SUP development potential (with the 6-904 bonus), i.e., from .5 to 3.25. That is an allowance of a floor area increase of over 71,000 sq ft, or almost 10 times the 6-904 density bonus attributable to the CD-X part of the property (7654 sq ft). In conversation with Rob today, he has assured me that this rezoning-based increase in the value of the property has been taken into account in the overall project evaluation, including the configuration, size and scope of the arts and cultural anchor.

The amount of density allowed in CD-X zone for residential uses is 1.25 FAR in this portion of Old Town North, and the allowable FAR for the UT zone is 0.5 FAR with an SUP (note: the UT zone does not permit residential uses). Staff has taken the increase (up to 2.5 FAR) of the rezoning into consideration, and the mitigation of impacts from this increase was evaluated and is reflected in the analysis establishing the contribution to the Old Town North Streetscape and Implementation fund, which is \$486,011 and based on the density added from the CRMU-X zone. The fund is reserved for future enhancements to the linear park that are planned along the Mount Vernon Trail.

As a Development Special Use Permit approval, staff has been able to negotiate conditions that ensure a high-quality development that reflects the increase in value provided by the rezoning. These conditions include the reconstruction of the adjacent public realm with the installation of bioretention tree wells, pedestrian safety improvements where N. Royal Street, Bashford Lane and the Mount Vernon Trail spur converge, a proposed building with high-quality building materials (metal, glass and brick) and minimum window depth, and the future dedication of a portion of N. Fairfax Street that is planned through the southwest corner of the site.

**CONCLUSION:** I raise these points not to question the outcome in this particular case, which appears to be a well-conceived project, but rather to highlight considerations that I feel need to be addressed in each instance where we are considering approval of an arts and cultural anchor in Old Town North. Each case will be dependent on its unique facts, but we should strive for clarity and consistency in the methodology employed.