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BY MAIL AND EMAIL

Dr. Kevin J. Vonck, Ph.D., Director
Mr. William "Chuck" Davidson, Zoning Administrator
Planning and Development Review, City of Richmond
900 East Broad Street, Room 511
Richmond, Virginia 23219

RE: Assertion of the Failure of POD-152088-2024 and BLDC-151542-2024 to Comply with Zoning Ordinance

Dear Dr. Vonck and Mr. Davidson:

Sands Anderson P.C. and I represent Floyd Grove Sheppard LLC, Thomas Courtney, Denny Covington, Ivelina Metcheva, Eugenia Reese, and Richard Reese ("Clients"). Our Clients are residents of the City of Richmond and owners of real property in adjacent proximity to the property that is the subject of the applications in BLDC-151542-2024 (the "Building Permit Application") and POD-152088-2024 (the "Plan of Development Application") (collectively, the "Applications"). As of the date of this writing, the Building Permit remains under consideration by the Zoning Administrator and the Commissioner of Building.

We write to register our Clients' assertion that the Applications violate the City of Richmond Zoning Ordinance (the "Zoning Ordinance"). Specifically, the construction and use proposed in the Applications fails to comply with the Zoning Ordinance because, *inter alia*, it violates and/or is not permitted by the following ordinances: §§ 30-402.1(2), 30-402.2, 30-412.1(1), 30-412.2, 30-680.3, and the definitions of "accessory structure," "accessory building," and "accessory use" in § 30-1220.

The Applications both seek approval for construction and use of a new 12,000 square foot "art storage building" (an industrial warehouse) on real property zoned R-6, located at 2911-2915 Grove Avenue, Richmond, Virginia 23221, and more particularly identified as Parcel Number W0001284003 in the City's GIS (the "Subject Property"). In a November 15, 2024, informal communication between Mr. Courtney and Dr. Vonck, Dr. Vonck stated that "zoning staff" had "signed off on the proposal as being compliant with the zoning ordinance" pending the receipt of comments from other City departments. Dr. Vonck reasoned that "[i]n this case, museums operated

by a government agency, including their accessory structures, are permitted by right in the R-6 zoning district."

On behalf of our Clients, we strongly deny that this is the case. The plain language of the Zoning Ordinance cannot support this interpretation, and the Zoning Administrator is therefore prohibited from certifying that the Applications are compliant with the requirements of the Zoning Ordinance, pursuant to Zoning Ordinance §§ 30-1000.1 and 30-1010.

§§ 30-402.1(2) ("R-1 Principal Use Ordinance"), 30-412.1(1) ("R-6 Principal Use Ordinance"):

The principal uses in R-1 are permitted in R-6 by reference. See Zoning Ordinance § 30-412.1(1). The construction and use proposed in the Applications are not permitted under the R-1 Principal Use Ordinance or the R-6 Principal Use Ordinance because the "art storage facility" is not a "library, museum, school, park or recreational facility." See Zoning Ordinance § 30-402.1(2). Further, though an "art storage facility" is, in this context, arguably an "other use required for the performance of governmental functions," it is in no way "primarily intended to serve residents of adjoining neighborhoods," a necessary precondition under the R-1 Principal Use Ordinance. The Applications propose to construct more than 12,000 square feet of warehouse storage space, meant to service a national art museum located on a nearby property. Such a use is outside the principal uses permitted in R-6, and to certify otherwise would be *ultra vires* and outside the Zoning Administrator's authority.

§§ 30-402.2 ("R-1 Accessory Use Ordinance"), 30-412.2 ("R-6 Accessory Use Ordinance"):

The R-1 Accessory Use Ordinance is incorporated into the R-6 Accessory Use Ordinance by reference. See Zoning Ordinance § 30-412.2. None of the accessory uses listed in the R-1 Accessory Use Ordinance remotely resembles an industrial-scale, art storage warehouse. To the extent any certification of compliance from the Zoning Administrator would rely on the R-6 Accessory Use Ordinance to permit the use proposed in the Applications, such certification would be *ultra vires* because neither "art storage warehouse," nor its analog, is listed as a permitted accessory use in R-6.

§§ 30-680.3, 30-1220:

Even if an art storage warehouse were a permitted accessory use in R-6, an accessory use is not permitted under the Zoning Ordinance to be constructed on a nearby parcel. Zoning Ordinance § 30-680.3 states that "[n]o permanent accessory building shall be erected on a lot until the construction of the main building is commenced, and no permanent accessory building shall be used until the main building is completed and a certificate of occupancy for such building has been issued." By tying the erection of an "accessory building . . . on a lot" to the construction and occupancy of the "main building," the ordinance makes clear that any "accessory use" contemplated by the Zoning Ordinance is located on the same lot as the "main building" which predicates the accessory use.

This interpretation is in harmony with the definitions of "accessory structure," "accessory building," and "accessory use" in Zoning Ordinance § 30-1220. "*Accessory structure* and *accessory building* mean a structure or building used for purposes incident and subordinate to the

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principal use of the premises." "*Accessory use* means a use of land or use of a structure or building for purposes incident and subordinate to the principal use of the premises." Both definitions emphasize that the "principal use" which subordinates the accessory use must be "on the premises." The only principal use on the premises is a "studio school" for the Virginia Museum of Fine Arts ("VMFA"). No good-faith argument exists that the proposed 12,000 square foot industrial art storage warehouse is accessory, incident or subordinate to the studio school.

The Applications appear to propose an art storage warehouse as an accessory use to the VMFA. But the proposed art storage warehouse is across and down the street from the VMFA itself. While an art storage warehouse on the same premises as the VMFA could potentially be considered an "accessory building" to the "main" museum building, the Applications propose to build an "accessory building" on a different lot which is separate and apart from the VMFA museum lot (i.e., Parcel Number W0001286001 (the "VMFA Parcel")). This is not permitted by the Zoning Ordinance, and for the Zoning Administrator to certify the Applications as compliant with the Zoning Ordinance would be *ultra vires* and of no legal effect.

Moreover, Ordinance No. 87-193-185 (the "Parking Lot Ordinance"), adopted by the City Council on September 14, 1987, approved an SUP on the Subject Property permitting construction and use of a parking lot to serve the VMFA and the medical office building then operating on the Subject Property, subject to certain conditions. One of those conditions, § 2(j) of the Parking Lot Ordinance, states that the Subject Property shall be governed by the Parking Lot Ordinance and the "special use permit" until such time as "the privileges granted by this ordinance terminate and the special use permit becomes null and void or when use of the premises is abandoned for a period of twenty-four consecutive months." The Parking Lot Ordinance expressly states that only upon one of these triggering events, "use of the real estate shall be governed thereafter by the zoning regulations prescribed for the district in which the real estate is then situated." In other words, the Subject Property is not presently subject to the regulations that govern R-6 generally; it is subject to the specific regulations found in the Parking Lot Ordinance until one or both triggering events occur. They have not occurred yet. Therefore, uses permitted and conditions in the Parking Lot Ordinance foreclose and prohibit the proposed art storage warehouse as a legal and valid use of the Subject Property.

We believe that the Plan of Development Application may have been approved by Dr. Vonck on or about December 11, 2024. We are aware of the interpretation of the Zoning Ordinance stated in the informal communication between Dr. Vonck and Mr. Courtney dated November 15, 2024. However, in light of the above analysis, our Clients insist that zoning staff reconsider its operating interpretation of the Zoning Ordinance and reject the Building Permit Application and the Plan of Development as noncompliant with the Zoning Ordinance. Any past approvals of the proposed art storage warehouse project must be reversed and no further action should be taken on any pending applications related thereto. The proposed art storage warehouse is not permitted by right, in the R-6 zoning district, on the Subject Property, under any fair interpretation of the Zoning Ordinance.

We typically represent localities and local officials such as yourselves, and do not wish to be adverse with you. Our Clients' position is consistent with both the letter and intent of the City

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Council and its legislative enactments, and ask that you agree. We would be glad to discuss the matter with you or your counsel, if represented on this matter. We are hopeful that this issue can be resolved without the need for significant litigation. The applicant may wish to go through a rezoning process if it wants to build its art storage warehouse on the Subject Property, but in such a process our Clients would have opportunities to be heard, notices, and other protections that the Zoning Ordinance and the law of Virginia is meant to afford them. We only ask that the law and ordinances of the City be followed here.

Thank you in advance for your assistance.

Sincerely,



Andrew R. McRoberts

Counsel to Floyd Grove Sheppard LLC, et al.

cc: City Attorney for the City of Richmond (by mail)
VMFA Real Estate Company, LLC (by mail to registered agent)
Hourigan Construction Corporation (by mail to registered agent)