

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Valor 1350 Maryland, LLC

BZA Appeal No. 18439
ANC 6A

**APPELLANT'S MOTION TO AMEND
THE APPEAL AND FOR A CONTINUANCE**

The Appellant, Valor 1350 Maryland, LLC, by and through undersigned counsel, respectfully submits this Motion to Amend the current Appeal to include a directly related, but just issued new building permit and for a continuance of the November 27, 2012 public hearing for good cause.

Specifically, the Appellant submits this Appeal of the November 1, 2012 determination by the Zoning Administrator, Department of Consumer and Regulatory Affairs ("DCRA"), to issue Building Permit No. B1209455 for "Grocery Store to be Added to Existing Vehicle Service Station Under Separate Building Permit No. B1107494. Originally the 1 Story Store was Part of the Previous Application, and was Removed to Become this Permit." ("Grocery Store Building Permit") (Exhibit A) in violation of the Zoning Regulations, 11 DCMR §§ 1324.2, 1324.10, 3130, 3203.3 and BZA Order No. 17825 (Exhibit B) in the HS-A/C-2-A zone at 1400 Maryland Avenue, N.E. (Square 1049, Lots 21 and 803) ("Property").

I. JURISDICTION

The Board has jurisdiction in this Amended Appeal pursuant to 11 DCMR §§ 3100.2 and 3200.2. The Amended Appeal is timely pursuant to 11 DCMR § 3112 having been filed within sixty (60) days of the November 1, 2012 issuance of the Grocery Store Building Permit.

II. BACKGROUND

A. Appellant:

The Appellant, Valor 1350 Maryland, LLC, is the owner and developer of a matter-of-right eighty-four (84) unit condominium building at 1348-1350 Maryland Avenue, N.E. (Square 1027, Lot 849) immediately across 14th Street, N.E. from the Property.

B. History of the Property:

Use of the Property as a gasoline service station was abandoned no later than 1995. The last Certificate of Occupancy as a gasoline service station was issued in 1978 (No. B110943). Since then, Certificate of Occupancy records show that the Property has been used for a variety of other uses, including:

- 1) Auto repair, used auto sales, towing auto storage and service (1995);
- 2) Towing & Storage of Automobiles & Repairs and Auto Sales (2001, 2002);
- 3) Automobile/Truck Sales (2003); and
- 4) Used Car Sales (2003).

In 2008, the BZA application filed stated repeatedly that the Property was “Vacant.” More recently, the one-story vacant structure on the Property was razed except for a small portion of the rear wall. Exhibit B (July 2, 2012 Photograph).

C. BZA Order No. 17825:

By Final Order dated January 26, 2010, the Board granted special exception approval to establish a gasoline service station and convenience store in the then C-3-A zone at the Property. BZA Order No. 17825 established twelve (12) Conditions. Ten (10) days after the final date of the Order, it became effective on February 5, 2010. Under 11 DCMR § 3130, the BZA Order remained valid only for two (2) years or until February 5, 2012, during which time the Applicant

was required to file a building permit application for the approved gasoline service station and convenience store.

D. Rezoning of the Property:

In Zoning Commission Order No. 10-19, effective on December 9, 2011, the Property was rezoned from the C-3-A to HS-A/C-2-A.

E. Building Permit No. B1107494 (“Gas Station Building Permit”):

The Gas Station Building Permit issued only authorized renovation, alteration and repairs for an existing vehicle fuel service station. The Building Permit does NOT authorize construction of a new gasoline station and convenience store.

F. Building Permit No. B1209455 (“Grocery Store Building Permit”):

A separate building permit application (B1209455) for the new Grocery Store (convenience store) was filed on May 29, 2012, three and half months after BZA Order No. 18725 became invalid. The new grocery store building is now subject to the applicable HS-A/C-2-A zoning for the Property. The Grocery Store Building Permit was issued on November 1, 2012, but the Appellant did not obtain a copy of the actual permit until Thursday, November 8, 2012. To date, the Appellant has been unable to obtain a copy of the approved building permit application and approved plans from DCRA’s Record Branch. On its face, the Grocery Store Building Permit is incorrect and invalid having been issued to the Property based on the stated reference to the C-3-A zoning of the Property, NOT the correct and applicable HS-A/C-2-A zoning.

III. ZONING VIOLATIONS

The Grocery Store Building Permit was issued is in violation of the applicable Zoning Regulations and BZA Order No. 17825, including:

A. Grocery Store Violates the Design Requirements of HS-A Overlay:

The proposed new grocery store is subject to the specific design requirements of the H Street Overlay Arts Subdistrict (HS-A), including:

Under 11 DCMR § 1324.2:

Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.

Under 11 DCMR § 1324.10:

Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street N.E., 14th Street, N.E., or 15th Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk.

Although the Appellant has not been able to obtain the approved plans for careful review and identification of other Zoning violations, it is apparent from site conditions and the approved plans from BZA No. 17825 and the Gas Station Building Permit that the proposed Grocery Store is being constructed at the rear of the Property abutting the Public Alley, NOT at the Property line along Maryland Avenue, N.E. and 14th Street, N.E. No public entrance to the grocery store is directly accessible from the existing public sidewalks on Maryland Avenue, N.E. and 14th Street, N.E. At this location, the grocery store will clearly violate the applicable design requirements in the HS-A Overlay under §§ 1324.2 and 1324.10.

B. No Record Lot:

Under 11 DCMR § 3202.3,

[A] building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record;

The Property is NOT a separate Record Lot, but is comprised of two lots (Lots 21 and 803). On its face, the Grocery Store Building Permit references Lot 803 which is an Assessment and Taxation Lot designated by the Office of Tax and Revenue, NOT the required Record Lot established by the D.C. Surveyor. The Grocery Store Building Permit was issued in direct violation of § 3202.3, although the Property Owner and DCRA have been on notice of this violation since the original Appeal was filed in July 2012.

IV. ARGUMENT

In support of this Motion to Amend and for a Continuance of the November 27, 2012 public hearing on the original Gas Station Building Permit Appeal, the Appellant has demonstrated good cause, including:

A. Appellant is Entitled to Obtain DCRA Records:

Although the Appellant has identified clear Zoning violations for the Grocery Store Building Permit, it has not been able to obtain the approved building permit application and approved plans from DCRA. The Appellant bears the burden of proof and should be given timely access to and the opportunity to carefully evaluate all relevant documents before proceeding with a consolidated hearing on the two incorrect and invalid building permits.

B. Judicial Economy and Fundamental Fairness:

It cannot be disputed that it is in the interest of judicial economy for the Board and fundamental fairness to the Appellant, DCRA and the Property Owner that the pending Appeal and the directly related new Appeal be litigated at the same time. DCRA and the Property

Owner will not be prejudiced and should welcome the opportunity to defend the two related appeals in a single consolidated proceeding. The Appellant will be substantially prejudiced by the delay and burden of pursuing separate Appeals of what is directly related matters.

C. No Prejudice to Property Owner:

The Property Owner intentionally pursued separate building permits for the gas station and grocery store elements of the overall project reviewed and approved by BZA No. 17825. Having chosen this course of action, the Property Owner cannot complain or be prejudiced by any brief delay in the original Appeal in order to allow consolidation of the hearing to include this new Appeal.

V. CONCLUSION

For the foregoing reasons, BZA Appeal No. 18439 should be amended to include this Appeal of Building Permit No. B1209455 and the public hearing scheduled for November 27, 2012 be continued to allow a consolidated hearing on both Appeals.

Date: November 13, 2012

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr.
Kate M. Olson
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 452-1400

Counsel for Appellant – Valor 1350 Maryland, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's Motion to Amend the Appeal and For a Continuance was filed electronically with the Office of Zoning and was served by first-class mail and electronic mail as indicated, this 13th day of November, 2012, upon the following:

Melinda M. Bolling, Esq., General Counsel
Jay A. Surabian, Esq.
Department of Consumer and Regulatory
Affairs
1101 4th Street, S.W., Room E-500
Washington, D.C. 20024
Melinda.bolling@dc.gov
Jay.Surabian@dc.gov

The Honorable Tommy Wells
Ward 6 Councilmember
1350 Pennsylvania Ave., N.W., Suite 450
Washington, D.C. 20004
twells@dccouncil.us

Christine Moseley Shiker, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
Christine.Shiker@hklaw.com

Mr. Drew Ronnenberg
Vice-Chairperson
Advisory Neighborhood Commission 6A02
P.O. Box 75115
Washington, D.C. 20013
Ronnenberg6a02@gmail.com

Mr. David Holmes,
Chairperson
Advisory Neighborhood Commission 6A03
P.O. Box 75115
Washington, D.C. 20013
Holmes6a3@gmail.com

Mr. Andrew Hysell
Secretary
Advisory Neighborhood Commission 6A06
P.O. Box 75115
Washington, D.C. 20013
ahysellANC6a06@hotmail.com



John Patrick Brown, Jr.

EXHIBIT A



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 11/01/2012

PERMIT NO. **B1209455**

Expiration Date: 11/01/2013

Address of Project: 1400 MARYLAND AVE NE		Zone: C-3-A	Ward: 6	Square: 1049	Suffix:	Lot: 0803
Description Of Work: GROCERY STORE TO BE ADDED TO EXISTING VEHICLE SERVICE STATION UNDER SEPERATE BUILDING PERMIT NO. B1107494. ORIGINALLY THE 1 STORY STORE WAS PART OF THE PREVIOUS APPLICATION, AND WAS REMOVED TO BECOME THIS PERMIT.						
Permission Is Hereby Granted To: 1400 Maryland Avenue Ltd		Owner Address: EMPIRE LEASING INC 1705 DESALES ST NW		PERMIT FEE: \$1,082.40		
Permit Type: Alteration and Repair	Existing Use: Gas Station with minimart		Proposed Use: Gas Station with minimart		Plans: Yes	
Agent Name: Michele Miller	Agent Address: 2529 Herrell Ct., Falls Church, Va. 22043	Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 1	Floor(s) Involved: All	
Conditions/ Restrictions: This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk James DeV Vaughn				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						



EXHIBIT B

