

April 23, 2013

VIA HAND DELIVERY

D C Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re BZA Application No 18550 - 1350 Maryland Avenue NE (Square 1027, Lot 165)

Dear Members of the Board

Enclosed, please find one original and 20 copies of the Applicant's pre-hearing submission for the above-referenced case scheduled for a public hearing on May 7, 2013. The enclosed package includes supplemented plans and a complete traffic impact study.

Should you or your staff have any questions, please do not hesitate to contact me.

Sincerely,



Cary R. Kadlec

Enclosures
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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18550
EXHIBIT NO. 23

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2013, copies of the attached letter and enclosures were delivered via U S Mail or email to the following

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Cary Kadlecek

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

Application of Valor 1350 Maryland LLC
ANC 6A

BZA Application No 18550
Hearing Date May 7, 2013

APPLICANT'S PRE-HEARING STATEMENT

This is the pre-hearing statement for the application of Valor 1350 Maryland LLC ("Valor" or "Applicant") for variance and special exception relief for a new condominium apartment building with underground parking. The property that is the subject of this application is 1350 Maryland Avenue, NE (Square 1027, Lot 165) (the "Property"). The Property is included in the HS-A/C-3-A Zone District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("BZA" or "Board") approve the following areas of relief:

1. A special exception under Section 1320.4(f) for a new building on a lot with more than 6,000 square feet of land area in the H Street Overlay.
2. A variance from Section 2116.12 (setback of parking spaces in a structure). Some of the underground parking spaces will not be set back from the property line abutting two public streets.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3104.1 and 3103.1 of the Zoning Regulations (11 DCMR §§ 3104.1 & 3103.1).

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III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property located in the H Street neighborhood of Ward 6 It is irregular in shape and contains approximately 20,051 square feet of land area The Property is bounded by commercial properties to the north, Maryland Avenue to the south, 14th Street to the east, and a public alley and a commercial property to the west. The Property is unimproved.

The surrounding neighborhood is comprised of a mixture of moderate density commercial and retail uses, row dwellings, and apartment buildings. The immediately surrounding properties are primarily moderate density commercial uses to the north (fronting on H Street) and moderate density residential uses to the south and west (fronting on Maryland Avenue, G Street, and 13th Street).

The Property is adjacent to a robust public alley system for Square 1027 that is accessible from G and H Streets The alley is 30 feet wide and intersects the center of the Property perpendicularly (i.e., it dead-ends at the Property) to the west The alley serves the commercial and retail properties along H Street as well as the residential properties along Maryland Avenue, G Street, and 13th Street

IV. THE PROPOSED PROJECT

The proposed project will be a new residential building with underground parking Plans of the proposed new building are included in Exhibit A The building will be five stories and 61.5 feet tall, and it will contain 84 dwelling units The first floor units fronting on Maryland Avenue and 14th Street will have direct entrances via steps down to the street to create more interaction between the building and the street and to mimic the other residential buildings nearby To accommodate this request of the community, the building design incorporates a raised first story 5.5 feet above grade The underground garage will contain 43 parking spaces in one level, and the parking entrance will be directly from the alley at the rear of the building The

ceiling of the underground parking garage will be approximately four feet above the adjacent sidewalk grade, and some parking spaces in the parking garage will abut the property lines along Maryland Avenue and 14th Street. Except for the variance relief requested, the building will comply with the Zoning Regulations.

Pursuant to an agreement with ANC 6A, Valor limited the FAR of the building to less than matter-of-right. As part of the agreement, the ANC and the community had an extensive opportunity to review the design of the project. In 2011 and over the course of several months, Valor worked closely with the ANC to solicit public feedback and made many changes to the plans to accommodate the expressed concerns. The proposed design has already received heavy public scrutiny to ensure its compatibility with the neighborhood.

**V. THE APPLICATION MEETS THE REQUIREMENTS FOR A
NEW BUILDING ON A LOT CONTAINING MORE THAN 6,000
SQUARE FEET**

Section 1325.1 sets forth the special exception criteria that the application must satisfy for the Board to approve a new building. As described below, this project satisfies these requirements:

A. The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street NE Strategic Development Plan (1325.1(a)).

As described below, the project will satisfy the design requirements in Section 1324.

- 1 1324.1 (design requirements apply to building permits after October 24, 2004). The design requirements apply to this project.
- 2 1324.2 (streetwalls constructed to abutting property lines). All streetwalls for the entire height of the building will be constructed to the property lines along 14th Street and Maryland Avenue.
- 3 1324.3 (new construction preserving an existing façade). This is not applicable because the building will be entirely new.

- 4 1324 4 (70% residential lot occupancy permitted in C-2 districts)
This is not applicable since the Property is zoned C-3-A, but the building will have a conforming lot occupancy of 74%
- 5 1324 5 (calculation of residential lot occupancy): This section is not applicable since the building will be entirely residential
- 6 1324.6 (definition of “residential uses”). The building will be a multiple dwelling, which is a residential use as defined under this section
- 7 1324 7 (requirement of commercial space for parking structures)
This section does not apply since the building will not be a parking structure
- 8 1324.8 (windows for commercial uses with frontage on various streets) This section is not applicable because the building will not include any commercial uses
- 9 1324.9 (70% transparency for security grilles): The building will not have any security grilles
- 10 1324 10 (entrances for commercial uses on various streets). This section is not applicable because the building will not include any commercial uses
- 11 1324 11 (design shall not preclude entrance every 40 linear feet of building frontage). The building will have a main entrance on 14th Street and four unit entrances on Maryland Avenue. The 14th Street frontage will be approximately 126 feet, and the Maryland Avenue frontage will be approximately 112 feet.
- 12 1324 12(b) (clear ground floor height of 14 feet if commercial space occupies ground floor). This section is not applicable because the building will not include any commercial uses
- 13 1324.13 (additional building height for ground floor). This section is not applicable because Section 1324 12 is not applicable
- 14 1324 14 (limits on dimensions of projection signs). This section is not applicable because the building will not include any projection signs.
- 15 1324 15 (façade panel sign limits). This section is not applicable because the building will not include any façade panel signs.
- 16 1324 16 (prohibition on roof signs) The building design will not include any roof signs.

In addition, the project will satisfy the design guidelines of the *H Street N E Strategic Development Plan* (“**Plan**”) The Plan calls for new development that will “be urban in character and use, [bring] new life to the street, [complement] historic buildings, and [reinforce] a sense of place for the corridor” (see Section 7.1 of the Plan). The proposed building will satisfy all of these general design guidelines. The building façade will abut the 14th Street and Maryland Avenue property lines, and will have multiple ground floor entrances. In addition, the architectural style of an apartment house with multiple floors comports well with its urban context. All of these features will contribute to the building’s urban character. Also, the design will bring street life by eliminating a vacant lot and replacing it with a new residential building that closely interacts with the adjacent streets. Further, the building will have a prominence at the intersection of two important streets in the neighborhood. This will create a sense of place and will help draw pedestrians off of H Street and down 14th Street.

In addition, the Plan calls for increasing off-street parking (see Section 8.3 of the Plan), which the project will accommodate. The project will provide 43 underground parking spaces for 84 dwelling units in the building. These spaces will accommodate the parking demand of the building such that the residents do not increase the pressures for on-street parking.

B The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located (1325.1(b))

As stated above, the Property is partially vacant and partially improved with old, dilapidated garages. The mere presence of the new building will enhance the urban design of the immediate vicinity. However, the Applicant’s architect designed the building to have a contemporaneous look and feel consistent with the older residential buildings in the neighborhood while reflecting the time in which it was designed. The building’s design is

tasteful and appropriate for the modern and lively urban neighborhood in which it will be located. The building will have a brick façade with a series of bay projections, and it will have much less density than otherwise permitted in this zone in order to prevent the building from overwhelming other nearby buildings. The building will engage the streetscape and enhance the pedestrian experience by locating the façade directly on the abutting-street property lines without any curb cuts that would create pedestrian conflicts. The building's main entrance will be on 14th Street, and first-floor units on Maryland Avenue will have direct access to the street via small stairways up to the doors. This feature will enhance the communication between the street and the building and will positively contribute to the overall urban design of the neighborhood.

C Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions (1325 1(c))

As the transportation impact study ("TIS") attached in Exhibit B, illustrates, the proposed project will not create objectionable traffic conditions. Vehicular access to the project will be through the public alley, which is the most appropriate location to minimize conflicts with pedestrians. As noted in the TIS, few pedestrians were observed in the alley, and most pedestrians near the Property walk on Maryland or 14th Streets. Thus, curb cuts along either street would have a much greater potential to create car-pedestrian conflicts than cars driving through the alley. The project was designed to access parking from the alley precisely to comply with District Department of Transportation policies of minimizing car-pedestrian conflicts. Furthermore, as the TIS explains, a curb cut that complies with DDOT policies along either of those streets would create other problems that would prove disruptive to pedestrians and would otherwise be unsuitable.

D Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences (1325 1(d))

As the TIS indicates, parking and traffic conditions will not be adversely affected because of the nominal increase in trips that will result from this project. The project will generate approximately 20 outbound trips during the AM peak hour and 25 inbound trips during the PM peak hour, this equates to, on average, one car per three minutes. Based on the analysis in the TIS, these additional trips will not affect the good levels of service at the nearby intersections and will not cause additional noticeable congestion in the vicinity of the project.

E Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences (1325 1(e))

As an all-residential building, the project will not create objectionable noise from outdoor gatherings, music, or other noise-generating activities associated with commercial uses. All parking will be underground, so car noise will be minimized because cars will not queue or stop outside. Outdoor gathering space will be limited to a roof deck, a small area on the ground level of the northeast portion of the site, and small balconies for some individual units, none of which will tend to generate unreasonable amounts of noise. Finally, all mechanical equipment will be selected and located so that it does not generate noise levels greater than what is permitted by 20 DCMR § 2801.

F The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N E Strategic Development Plan (1325 1(f))

The project will not include any signs other than the plaque above the main entrance on 14th Street identifying the building and address.

G The Requested Relief will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps and will not Tend to Affect Adversely the Use of Neighboring Property

This project greatly benefits from the extensive public review it has already received. The ANC and community thoroughly reviewed the project, and the Applicant made many significant changes to the design to accommodate public comments and concerns and to ensure the project's compatibility with the neighborhood. For this reason alone, the project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. In addition, since the project will satisfy the requirements for special exception relief set forth in Sections 1325 1(a) – 1325 1(f), the requested relief will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Map.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). In addition, the Court of Appeals has held that the variance test may be applied with greater flexibility to nonprofit entities. Monaco v D.C. Bd. of Zoning Adj., 407 A.2d, 1091, 1099 (D.C. 1979) (attached as Exhibit B). As outlined below, the application meets the three-part test for area variance relief.

A The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property is unique because of a confluence of two factors. First, the Property has an odd trapezoidal shape that is distinct from any other property in the neighborhood. More importantly, the property has a unique condition where the rear alley perpendicularly intersects it in the center of the Property, thereby limiting alley access to the width of the alley (30 feet) in one location.

B Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972),

that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome [Footnote omitted] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants must satisfy only “the lower ‘practical difficulty’ standards” Tyler v D C Bd of Zoning Adj., 606 A 2d 1362, 1365 (D C. 1992) (citing Gilmartin v Bd. of Zoning Adj., 579 A 2d 1164, 1167 (D C. 1990)) Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration” Gilmartin, 579 A 2d at 1171 (citing Barbour v D.C Bd of Zoning Adj., 358 A 2d 326, 327 (D C 1976)), see also Tyler v D C Bd of Zoning Adj., 606 A 2d 1362, 1367 (D C 1992). Other factors to be considered by the BZA include. “the severity of the variance(s) requested”, “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan” Gilmartin, 579 A 2d at 1171 Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is *burdensome*, not impossible

In this case, the proposed project meets the practical difficulty standard with respect to the variance relief requested The perpendicular intersection of the alley with the center of the Property results in a condition that makes complying with Section 2116 12 very burdensome. As DDOT makes clear for all new developments, it has a stated policy of requiring alley access for parking in a building when alley access is available and that curb cuts are highly disfavored when alley access is available. The relevant DDOT policy (32 2 3 1) is included in Exhibit C With this policy in mind, the Applicant designed the building so that the underground parking would be accessed from the adjacent rear alley.

The practical difficulty arises from the alley's location. Since the alley perpendicularly intersects the Property and is only 30 feet wide, the Applicant had to locate the parking entrance in the exact location where the Property meets the alley. There is no room to shift the entrance in any direction because 30 feet is necessary for a two-way entrance. The difficulty with this situation is that the parking entrance is near the center of the building, which results in an inefficient layout of the ramps and drive aisles. The ramps and drive aisles consume a greater portion of the garage floor area as designed than if the entrance were near one end of the building. The result of this inefficient layout is that the architect had to maximize the space on the parking level where parking spaces could be located so that all of the necessary parking could be accommodated. If the Applicant were to comply with the parking space setback requirement in Section 2116.12, then five spaces would be lost, as shown on the illustration on page A1-2 of Exhibit A. This would result in the building not being able to provide enough car and bicycle parking spaces to satisfy the requirements in the Zoning Regulations (42 spaces are required). The only way to provide the five lost parking spaces would be to construct an additional level of underground parking. Given the set costs for any level of parking, the additional cost for another level of parking would be prohibitively high for only five spaces. This additional level would be an extreme cost burden for providing so few additional spaces. Thus, compliance with the Zoning Regulations would be very burdensome because of the shape of the property and the location of the alley.

*C Relief can be Granted without Substantial Detriment to the Public Good
and without Impairing the Intent, Purpose, and Integrity of the Zone Plan*

There would be no impact from this relief because the ceiling of the first parking level is above grade by only approximately four feet, and the parking spaces adjacent to the 14th Street and Maryland Avenue property lines will not be visible from the exterior. The clear intent of

Section 2116.12 is to prevent parking spaces in parking structures from being visible from adjacent public streets. The fact that it applies in this case is a mere technicality since none of the underground spaces will be visible from the street. From 14th Street and Maryland Avenue, the roof of the parking garage will appear as building foundation, and any passer-by would not know that it is part of the underground parking garage. Indeed, the Applicant raised the first floor of the building in order to create a more pedestrian-oriented building with four unit entrances on Maryland Avenue. In this case, the section does nothing to enhance the streetscape. Thus, the requested relief would not impair the purpose or intent of the Zoning Regulations or Map. Accordingly, because the requested variance relief will not have any adverse impact, it will not impair the intent, purpose, and integrity of the Zone Plan.

VII. EXHIBITS

EXHIBIT A	Architectural Plans and Elevations
EXHIBIT B	Traffic Impact Study
EXHIBIT C	DDOT Curb Cut Policy
EXHIBIT D	Expert Resumes

Respectfully submitted,
GOULSTON & STORRS, P.C.


Allison Prince


Cary Kadlecek