

TESTIMONY OF MICHAEL A. STOVER DATED JANUARY 25, 2018
In ZC CASE 16-23 Valor Development LLC Square 1499

I am an AU Park resident who lives just three blocks from the proposed building site. Now retired, I have lived in my house for 40 years.

Valor has made a serious error in taking its 50-foot height measurement from the 48th Street side of its building because 48th Street rests upon an artificial embankment. This violates applicable zoning regulations. Valor is attempting to justify a massive structure that will rise impermissibly to 73 feet because (as Valor has admitted) this steeply sloping site, starting from that artificial embankment, drops 26 feet in elevation along Yuma Street.

From my observation of the topography, it is clear that the roadbed for 48th Street was leveled across the natural slope by building an artificial embankment on the downhill side, as illustrated by the diagram and photographs in the CRD Response. This conclusion is borne out by reference to the 1886 USGS topographic map (attached), which shows a continuous slope from above 48th Street down to what is now the SuperFresh lot. (You can get your bearings on this map by reference to the 1919 atlas map of D.C., also attached. Both maps show the location of Murdock Mill Creek at the bottom of the slope, which ran across Square 1499 - the SuperFresh site - as indicated on the 1919 map.) As you can see from the photographs, the 48th Street embankment levels the roadbed as well as the adjacent sidewalks and the lawn area with its trees. On the downhill side, the flat top of that embankment extends 24 feet from the 48th Street curb to the retaining wall. Just below that artificial embankment and retaining wall, there is a major excavation to accommodate the lower floor of the parking garage.

Now those features of the landscape bring into play Section 307.7 of the Zoning Regulations, which applies because the site lies within MU-4 zoning. Although a developer is permitted by Section 307.5 to use “any front” for its 50-foot height measurement, Section 307.5 qualifies that permission by saying **“except as provided in Section 307.7.”** Section 307.7 prohibits taking a height measurement from the top of any **“artificial embankment,”** and also prohibits a developer from taking advantage of an **“artificial depression”** to ignore the actual ground level that surrounds the building. This rule, we submit, requires Valor’s architects to go back to their drawing boards, and to take their 50- foot height

measurement **from the middle of the front of the building that faces Yuma Street**. That is the point required by Section 307.7 (c), because it is **not** affected by the embankment's artificial change in elevation. Alternatively, under Section 307.7 (d), the **Zoning Administrator** must determine an appropriate level based on the surrounding grid of shops and houses. (The lower floors of the Yuma Street side of the building are not, as Valor has disingenuously claimed, "below grade.") In sum, Valor failed to take due care, at the outset of their project, to determine if its design complied with the regulations of the Height Act. **Valor has not even addressed this problem, and has thus failed to meet its burden of proof.**

Under either solution, the height of this building will be reduced by two floors. This will transform it into a building more in harmony with the surrounding neighborhood. This is that result that is also required by MU-4 zoning, which calls for a "moderate density" mixed-use building, not a "medium density" building. The "Ladybird" is a "medium density" residential building, which is defined in the Comprehensive Plan as a building 4 to 7 stories tall.

Furthermore, I would like to point out that the Office of Planning has made two serious errors in regard to the points I am making. In the first place, The Ladybird building is not "stepped down" in height along Yuma Street. Perhaps the OP is referring to the building's upper floor setbacks, but these are not **actual** reductions in height. As the Court of Appeals has ruled in the Durant case, such cosmetic features designed to mitigate the **impression** of height do not give the Commission a basis for deeming the building **less high than it actually is**.

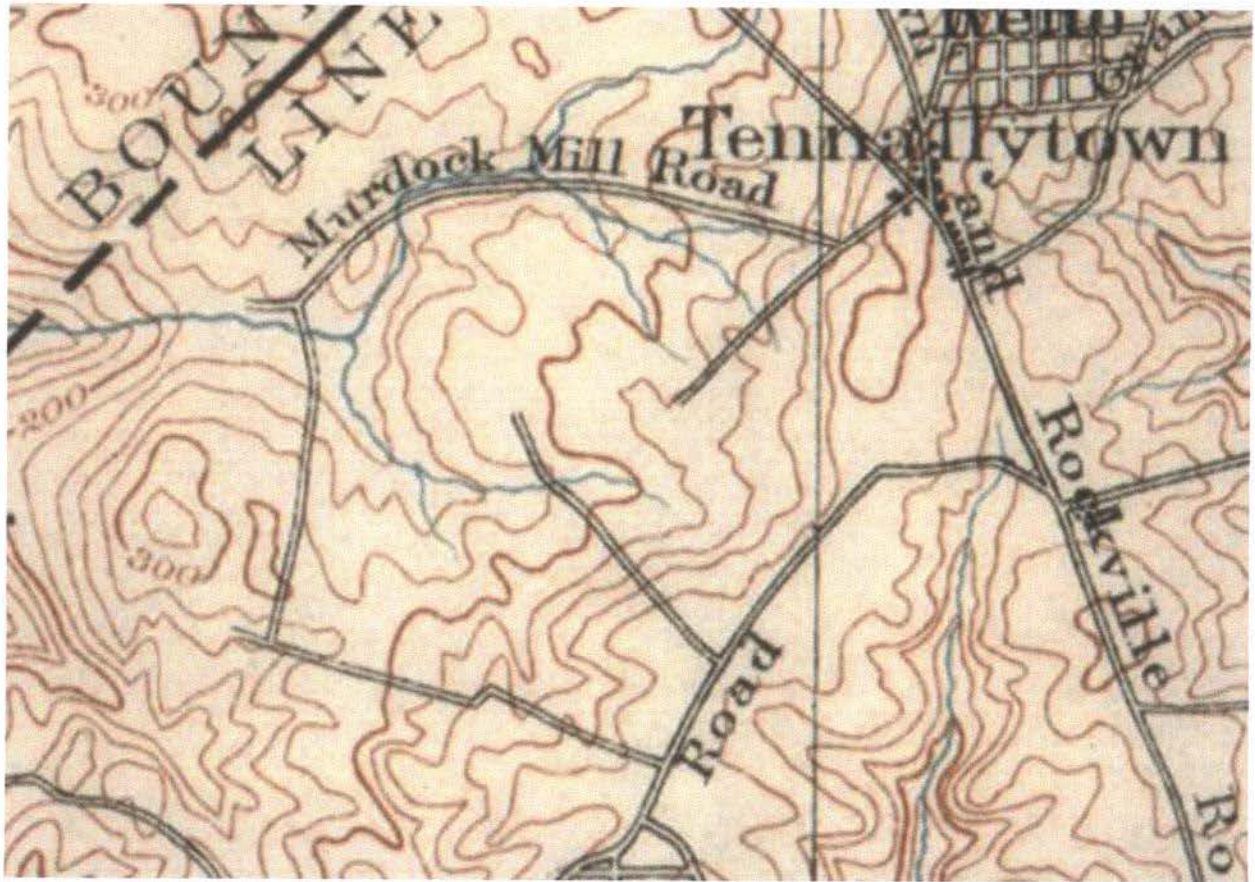
In the second place, the Office of Planning has erred in stating that Valor could erect an MOR building right up to the property lines on 48th and Yuma Streets. Their contention is wrong because Section 404.1 limits the percentage of a lot that a residential building can occupy. As Valor has acknowledged, an MOR building would contain roughly 100,000 fewer square feet than the "Ladybird" building that Valor is presently proposing. Because transfers of density would not be permitted, an MOR building would cover even less of the lot.

Thank you.

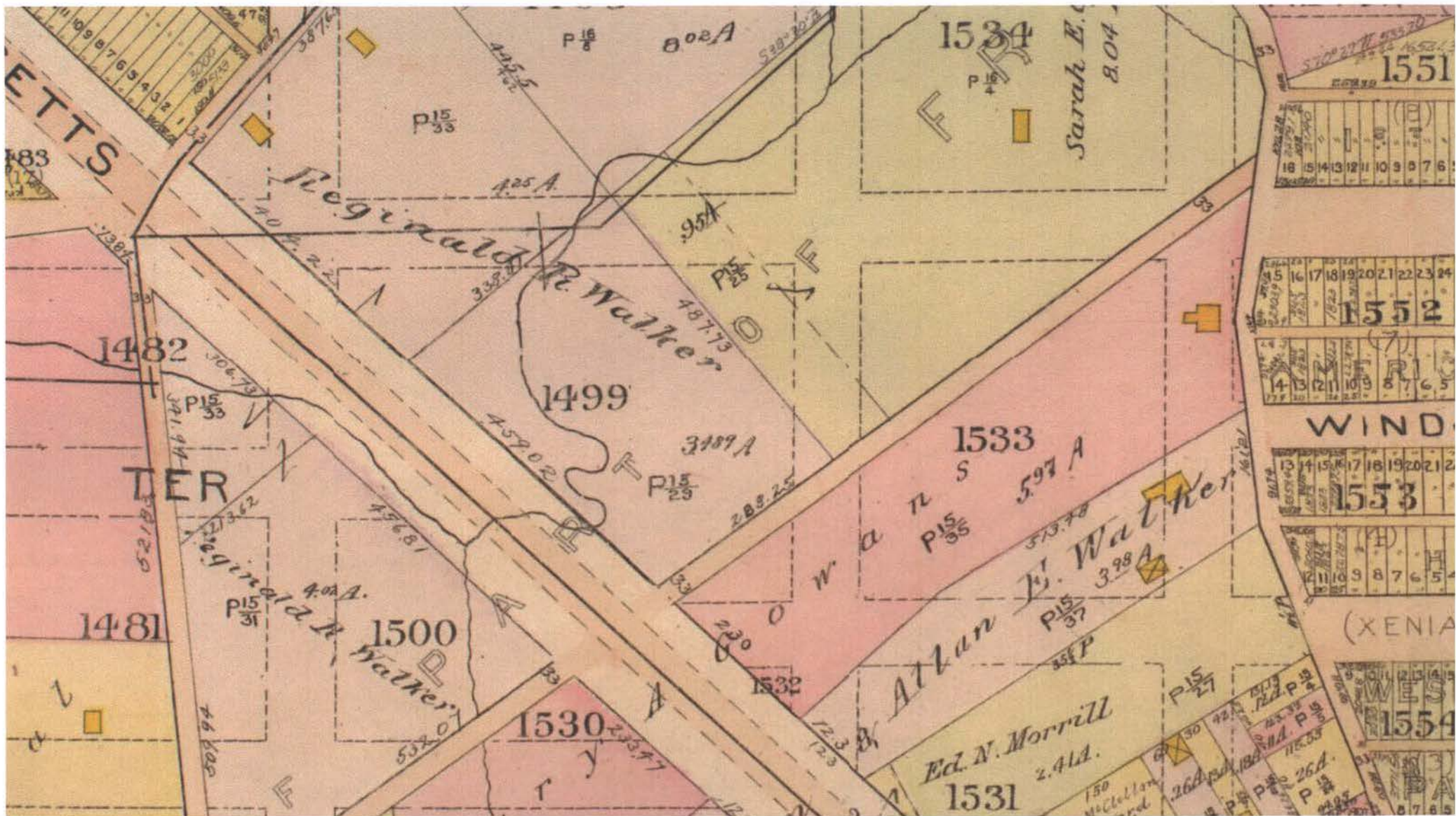
Attachments:

1886 USGS Topographical Map of Washington D.C. (detail)

1919 Baist's Atlas of the District of Columbia (detail)



Detail from U.S. Geological Survey of the District of Columbia, topographic map, published in 1886, in the Library of Congress



Detail from Baist's real estate atlas of surveys of Washington, District of Columbia, 1919 - 1921 (at the Library of Congress)