

February 20, 2018

The Honorable Anthony Hood, Chair
D.C. Zoning Commission
441 4th Street NW, Suite 200S
Washington, D.C. 20001

RE: Z.C. Case No. 16-23: Valor Development, LLC – Voluntary Design Review For Square 1499, Lots 802, 803, 806, and 807; Reply by Spring Valley-Wesley Heights Citizens Association (SVWHCA), Neighbors for a Livable Community, and Spring Valley West Homes Corporation (Spring Valley Opponents) to Applicant’s Post-Hearing Submission

Dear Chairman Hood and Commissioners:

This submission is a joint reply by the Spring Valley-Wesley Heights Citizens Association (SVWHCA), Neighbors for a Livable Community (NLC), and Spring Valley West Homes Corporation – accepted as a single joint party (“Spring Valley Opponents”) in the above referenced case – to the February 12, 2018 post-hearing submission by Valor Development, LLC. This submission will focus on the following:

- Valor’s failure to submit density allocation/transfer agreements for review in this case;
- Valor’s continued failure to provide reliable visual renderings of the project to show the project accurately within the context of the low-density neighborhood: single family homes and one-story commercial retail;
- Valor’s attempt to minimize the impact of its proposal on the nationally-designated Spring Valley Parking Shoppes landmark that is part of the heritage of our neighborhood;
- Valor’s inadequate response to community needs in terms of unit mix and condo vs. rental mix; and
- Valor’s newly proposed, so-called “enhancements” to the pedestrian experience in the alleyways.

1. Submission and Review of Transfer Agreements

In its post-hearing submission, the applicant stated that density transfer agreements between (a) Valor and FW DC-Spring Valley Shopping Center LLC (“FW DC”) and (b) Valor and American University (“AU”) are private and that Valor cannot provide these agreements for review by the Zoning Commission and parties in this case because FW DC and AU have said “they are unwilling to have those agreements placed into the public record.” However, this claim does not mesh with the record in this case.

When it filed its application initially in this case on October 26, 2016, Valor filed a letter of authorization from FW DC signed by Ms. Krista C. Dilaconi, senior vice president, authorizing Valor “to act on behalf of FW DC-Spring Valley Shopping Center LLC, for all

actions necessary with respect to a voluntary design review application encompassing A&T Lots 802 and 803.” (*Exhibit 3J, Z.C. 16-23*)

On September 9, 2017, Valor filed a request to revise the application boundary for this project to include Lot 806, which is owned by AU. (*Exhibit 67, Z.C. 16-23*). This submission included a similar letter from Mr. Douglas Kudravetz, AU’s vice president and treasurer, authorizing Valor to file and process the voluntary design review application acting on AU’s behalf (*Exhibit 67D*).

With these letters, FW DC and AU delegated authority to Valor for all matters arising in the course of this proceeding and relinquished any right to withhold release of the density transfer agreements as long as Valor, itself, was willing to make the agreements available for review. Although Valor did not indicate in its post-hearing submission if it was willing to make those agreements available, the other parties to the agreements have ceded authority to Valor, according to the record in this case. So, if Valor wants to release the agreements to the Zoning Commission and the parties in this case for review, it could. It is simply refusing and hiding behind its partners and making the partners their scapegoats for refusing to release the agreements.

Valor argues these are private agreements; but these so-called private agreements have public consequences and require the Zoning Commission – a public board – to provide relief from matter-of-right zoning rules in order for Valor and its partners to benefit financially from these agreements. Without the transfer of density that is at the heart of these agreements, the project proposed by Valor would not be viable and most likely would be unable to secure approvals from the Zoning Commission. The stakes in this project are particularly high because the proposed development is in a low density residential neighborhood instead of in a downtown zone. So, the Zoning Commission has an extra burden to ensure that the agreements will not result in conditions that would significantly harm neighbors – now and/or in future years – as Valor and its partners secure financial gain at the public’s expense.

The wording in Valor’s post-hearing submission referring to these agreements also is curious (e.g. “the Commission expressed an interest in receiving a copy of the agreement being negotiated ...”) and raises questions about whether the agreements cited in its application have yet been finalized. Valor has suggested that it already has density transfer agreements in place with FW-DC Spring Valley and AU. (We understand a separate agreement on parking is still being negotiated with AU.) But, in its post-hearing filing, Valor states that the agreements are still being negotiated. Is Valor unwilling to provide these agreements for review because they do not yet exist?

If so, this is typical of the smoke and mirrors that Valor has been using to promote this project since its initial application was filed in October 2016. For example, in one breath, Valor would lead the community to think the developer had an agreement in place with a supermarket for the site, but that the name could not be revealed. Just when the community thought that the supermarket issue was resolved, Valor came back to say there was no agreement and the space allocated in the project for retail, including the supermarket, would be significantly reduced. So now, the neighborhood will lose 28,000 square feet of retail space as a consequence of this

project in return for which the community certainly doesn't receive any grocery that could be reasonably termed "full service", as the community was led to believe was being sought and negotiated by Valor from the summer of 2016 through November, 2017.

The Zoning Commission and the parties in this case are entitled to know with certainty whether the density transfer agreements are in place. The Commission also is entitled to know that there are no provisions in these agreements that could have negative consequences for future land use planning and development of these sites. We are particularly concerned that these transfer agreements may impose significant limitations on these sites on Massachusetts Avenue, a major gateway into the city, if the existing buildings on the site should be damaged or demolished for some reason in the future. Precisely because Lot 806 already is the subject of a separate easement, it important for the Zoning Commission to have certainty about the relationship between the new density transfer agreement and the existing easement. Parties also are entitled to have access to these agreements to ensure that the agreements pose no harm to the value of neighbors' property near the proposed site of Valor's development – beyond what the proposed development already poses. Valor's affidavit in its post-hearing submission provides no such assurance.

This project cannot be adequately reviewed without knowing the specifics of those agreements.

Moreover, the Zoning Commission should delay any action on this project until it has an opportunity to review all the side-agreements in the case, including the still-being negotiated agreement on parking with AU. That agreement, in particular, will have a significant impact on neighboring residents, including those living in Spring Valley who will have to deal with cars parking in the neighborhood in front of their homes. For many of these residents, who do not have access to a garage or driveway to park their own cars, they will have to compete for space in front of their own houses to park their cars. Valor's solution is to limit the ability of the residents of their new properties to qualify for residential parking permits (RPP). However, RPP hours do not limit cars parked overnight when most residents also need to find a place to park their own cars.

2. Valor's Flawed Renderings Demonstrate the Project Is Not Compatible With the Neighborhood

In its post-hearing submission, Valor goes to great lengths to explain that it had used cameras that provided an inaccurate rendering of the buildings proposed as part of this project. Valor even offers a convoluted rationale about their use of iPhone technology. Valor acknowledges that – contrary to their testimony in this case – the iPhone 7 that Valor used to try to debunk the expert renderings of the Citizens for Responsible Development (CRD) had a wide angle lens which would distort the picture and not provide an accurate rendering of the density of the project. So, Valor's solution was to take additional photos – this time using an iPhone 6, according to Valor' post-hearing submission. However, the iPhone6 also has the capability of a wide angle lens that would distort the picture. The discussion about whether a certain model of an iPhone can deliver an accurate rendering of the proposal before the Zoning Commission is

almost silly except that it is yet another example of Valor's pattern of providing misleading information to the public and the Zoning Commission in this case.

Even Valor's renderings – as imperfect and flawed as they may be – demonstrate that the density of this project is excessive – especially when located on narrow neighborhood streets – and is not compatible with the single family home residential neighborhood adjacent to 48th and Yuma Streets where the project will be located or the single family Spring Valley homes a short distance away.

Valor's own renderings show how the buildings are located on the property line with no setback. Residents in single family homes on 48th Street – whose homes are set back from their property line and almost 40 feet from the curb – will look up the block from their front yards to see a façade of a multi-story building staring them in the face. They will lose the vista they now have at this site. Residents in single family homes along Yuma street will look out their front window to a 5-7 story building where there is no more than a one-story building now. Residents in single family homes on Windom will see their neighborhood transformed from a low density residential neighborhood with neighborhood-serving commercial retail to the equivalent of living on Connecticut Avenue, a higher density major gateway into the city, or in the downtown area.

Likewise, the single story nationally-designated historic landmark shopping center will be eclipsed on Massachusetts Avenue and Yuma Street by a structure that will rise nearly 90 feet in the air. The view from adjacent homes in Spring Valley will be of a one-story historic structure with a massive building looming behind and over the commercial strip along Massachusetts Avenue.

Whether using renderings provided by Valor or renderings provided by opponents of the project, the outcome is the same – a building that is too big in bulk, too high, and too dense for a single family residential neighborhood with commercially zoned land that is to house neighborhood-serving retail.

The neighborhood has worked vigilantly over many decades to ensure that new commercial development does not overwhelm the single family residential character of both American University Park and Spring Valley. Consequently, other than the anomaly of AU's building at 4801 Massachusetts Avenue – the construction of which prompted the neighborhood to seek historic designation protection for other buildings on both sides of the 4800 block of Massachusetts Avenue – any new development in the neighborhood has been limited to 2-3 stories in height and blends in much better with the character of the neighborhood.

The excess density puts this project at odds also with the Design Review standards outlined in Subtitle X, Chapter 6, Sections 600.5 and 604.6.

3. Valor Minimizes Impact of Project on National Historic Landmark that is Part of the Heritage of our Neighborhood

In its post-hearing filing, Valor also argued that the proposed development will respect the historic character of the surrounding neighborhood. Again, Valor is playing fast and loose

with information – or its post-hearing filing reflects a fundamental misunderstanding of the neighborhood, its character, and its history. Contrary to Valor’s comments in its post-hearing submission, the neighborhood surrounding its proposed new development is not an historic district. Only the Spring Valley Parking Shoppes adjacent to the project is a nationally-designated historic shopping center landmark (as is the 6-building 1-2 story shopping center across the street). This distinction is significant. Precisely because the neighborhood is not an historic district, there is more pressure – and higher stakes – to ensure that the shopping center building designated as a landmark is respected and that its historic status is not devalued. The density of the proposed project towering approximately 90 feet over the shopping center – and its siting immediately behind the shopping center – does not respect the landmark, damages and devalues the landmark, and may even subject it potentially to being delisted.

This is in direct conflict with Subtitle X, Chapter 6, Section 604.7(c) of the 2016 Zoning Regulations. This development does not respect and protect the axial views of the landmark – and contrary to testimony provided in this case by Valor – the provisions in this section of the zoning regulations do not apply selectively only to the more well-known national historic landmarks along the Mall. The zoning regulations are in place to protect all nationally-designated and DC-designated historic landmarks in the city – even a one-story shopping center in a low density single family residential neighborhood.

The SVWHCA can speak with some authority on this subject as it was one of four parties that led the effort in 1989 to have the shopping center successfully designated a DC historic landmark. SVWHCA conducted the historic research and prepared the application materials for what would also later be designated a national historic landmark. The shopping center is part of the heritage of our city and its development over the years.

As we testified in this case, we are concerned that the density of this project overwhelms the historic landmark and, consequently, that it puts the landmark at risk of being delisted at some time in the future. Valor has indicated that there are no procedures in place for delisting historically designated buildings. And again, Valor has been less than forthcoming in its presentations to the Commission.

In reality, the National Register Federal Program Regulations, 36 CFR Part 60, Section 60.15, state that properties may be removed from the National Register of Historic Places if the property “has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed.” These regulations set by the U.S. Secretary of the Interior are the accepted national standards for historic preservation. Contrary to comments made by Valor in this case, Title 10A, Chapter 20, Section 2003 of the DC Municipal Regulations recognize the Secretary of the Interior’s rules as standards for review for any project in Washington, D.C. that is designated a national historic landmark, such as the shopping center.

4. Unit sizes and condo vs. rental mix

One of the benefits that Valor used to promote this project to the community was that the development would present opportunities for current neighborhood residents to stay in the

neighborhood after choosing to downsize. While their 2016 comments tended more toward a predominantly rental mix, they heard and seemed amenable to the community view that a higher proportion of ownership units would better fit the community's expressed needs. Similarly, given their current dwellings of 3+ bedrooms, units of larger size would be preferable. On page 4 of its February 12 submission, Valor offers a chart of unit type, the data of which are further detailed in their Exhibit A, page 4. The break point chosen for the size mix presentation in Exhibit A continues to focus attention on 2 BR units and up as "larger units," despite the clear and repeated attempts by the community in its meetings with Valor in late 2016 and up to November, 2017 to shift the emphasis toward 2 BR + den and 3 BR units which would be more consistent with the future needs of the potential "downsizing" residents of the current community. Only 15 percent of the 219 units are of this size and would be accessible to market rate residents. This is a significant difference from the 56 percent referenced in Valor's submission which in reality shows that most units at or above 2BR are, in actuality, only 2 BR units. Those units are too small to attract current residents, as mentioned in our original testimony, and this skew is another example of the inadequacy of Valor's response to repeatedly expressed community needs. This inadequacy is exacerbated by the lack of response to the community's desire for ownership/condo units; the Tenure column of the table on page 4 of the February 12 submission mentions only 2 units that could be "rental or ownership." Again, Valor makes no attempt to offer a community-responsive mix of ownership vs. rental units. They simply don't care about the community's needs.

5. Valor's Plan Will Subject Pedestrians To Vehicle Conflicts and Unsafe Experiences

Valor states its proposal, including so-called enhancements to two adjoining alleys will "encourage pedestrian activity." Actually, Valor's proposal will put pedestrians at unnecessary risk by directing and encouraging them to venture into a jungle of two adjoining alleys with cars and trucks coming and going to enter the garage and use the loading areas. Valor's "answer" is that pedestrians will be forced to walk past a "sidewalk" at the garage entrance and loading dock as part of Valor's ill-conceived Windom Walk. What will ensure their safety? Valor says there is nothing to fear because it will paint the portion of the sidewalk at the garage entrance and loading docks a different color!

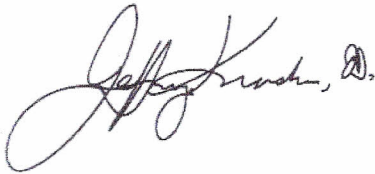
In its post-hearing filing, Valor states it will add windows on Building 1 adjacent to the public alley. This "enhancement" will not enlarge the sidewalks or avoid pedestrian interactions and conflicts with cars and trucks using the alley to service both Valor's buildings and the next door historically-designated shopping center.

Frankly, Valor's proposal for circulation defies common sense; but to comply with the design review standards, Valor appears to be reading Subtitle X, Section 604.7(a) literally and checking off the boxes – even using the regulations' exact language to make the case that its project is encouraging pedestrian activity and therefore consistent with the design review standards. However, this is just more of Valor's smoke and mirrors because, in reality, Valor's proposal highlights the limits of the infrastructure to support the density of the project it is proposing. Valor is encouraging pedestrian activity; but whether the site is being designed to promote **safe** pedestrian activity appears to be immaterial and of no concern to Valor.

The whole notion of pedestrian safety being a key concern of Valor is belied by the fact that the magnitude of the anticipated traffic and the pedestrian flow is exacerbated by a huge proposed development of 219 units vs. a smaller development that would be more consistent with the character and context of the surrounding neighborhoods. And, in general, the amount of vehicular and pedestrian traffic is underestimated by Valor, because it's data took no note of the existence of the very popular Millie's restaurant (for which Ladybird residents would be directed to cross through the alleyways and then cross Massachusetts Avenue) and those data underestimate the draw effect of the new Pizza Paradiso restaurant that will be part of the Spring Valley Village development. We continue to be concerned that Valor has underestimated the traffic impacts of the project and, in so doing, will create even more unsafe conditions for pedestrians in the neighborhood.

Consequently, for these reasons and other reasons cited in our testimony in this case, we do not believe this project meets the standards for Design Review approval. Thank you for this opportunity to respond.

Sincerely,



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Certificate of Service

We hereby certify that on February 20, 2018, copies of the attached were sent by mail or email to the following:

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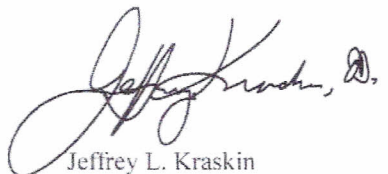
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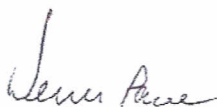
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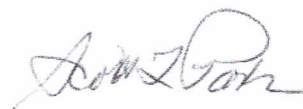
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