

February 20, 2019

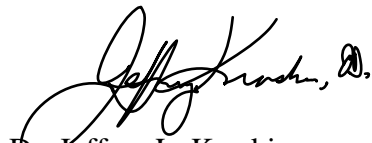
Mr. Anthony Hood, Chairman
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, D.C. 20001

Re: Z.C. Case No. 16-23 – Application by Valor Development, LLC for Voluntary Design Review: Spring Valley Opponents Findings of Fact and Conclusions of Law

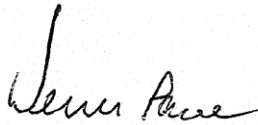
Dear Chairman Hood and Members of the Commission:

Please accept the following Findings of Fact and Conclusions of Law submitted by Spring Valley Opponents in the above referenced case. Thank you for your consideration.

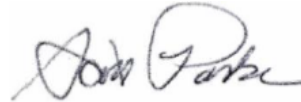
Sincerely,



Dr. Jeffrey L. Kraskin
Spring Valley-Wesley Heights
Citizens Association



Dennis Paul
Neighbors for a Livable
Community



Scott Parker
Spring Valley West
Homeowners Association

Certificate of Service

We hereby certify that on February 20, 2019, copies of the attached were sent by mail or email to the following:

Ms. Jennifer Steingasser
DC Office of Planning
1100 4th Street NW, Suite E650
Washington, D.C. 20024

Valor
c/o Mr. Norman Glasgow Jr.
Holland and Knight
800 17th Street NW
Suite 1100
Washington D.C. 20006
Chris.collins@hkllaw.com

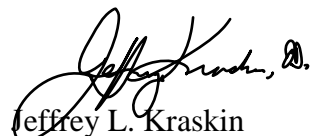
Citizens for Responsible Development
c/o Mr. Edward Donahue
Donohue and Stearns, PLC
117 Oronoco Street
Alexandria, VA 22314
edonohue@donohuestearns.com; repper3@aol.com

Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

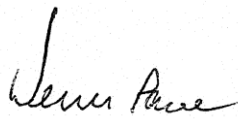
Advisory Neighborhood
Commission 3E
c/o Lisner Home
5425 Western Avenue NW, Suite 219
Washington, D.C. 20015

Spring Valley Neighborhood Association
c/o William Clarkson
4805 Sedgwick Street NW
Washington, D.C. 20016

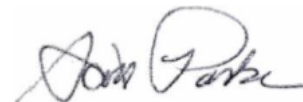
Ward 3 Vision
c/o John Wheeler
4304 Yuma Street NW
Washington, D.C. 20016



Jeffrey L. Kraskin
President, Spring Valley-
Wesley Heights Citizens Assn.
jkraskin@rcn.com



Dennis I. Paul
President, Neighbors for a
Livable Community
dennis.paul@verizon.net



Scott L. Parker
Treasurer, Spring Valley West
Homes Corporation
scottlparker@comcast.net

February 20, 2019

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-23**

Z.C. Case No. 16-23

Valor Development, LLC

(Voluntary Design Review @ Square 1499, Lots 802, 803, 806 and 807)

February 20, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a series of public hearings to consider an application from Valor Development, LLC (“Applicant”), on behalf of FW DC-Spring Valley Shopping Center LLC and Apex Real Estate Company¹ for review and approval of a new mixed-use (residential and retail) development project for Lots 802, 803, 806 and 807 in Square 1499 (the “Project Site”), pursuant to the design review provisions of Subtitle X, Chapter 6), and specifically pursuant to 11-XDCMR § 601.2. The Applicant also requested special exception relief to allow a ten-foot penthouse on top of a row dwelling for purposes of providing access to a roof deck. For the reasons stated below, the Commission hereby DOES NOT APPROVE the Application.

FINDINGS OF FACT

Application, Parties In Opposition (Spring Valley Opponents) and Hearing

Application

1. The property that is the subject of the Application consists of Lots 802, 803, 806 and 807, approximately 160,788 square feet of land area in Square 1499 (“Property”); and, is generally bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48th Street on the east; and the Spring Valley Exxon station on the west.
2. The project site is currently improved with the Spring Valley Shopping Center (“SVSC”) (Lots 802 and 803), the former American University Law School building (“AU Building”) (Lot 806), and a vacant grocery store building, retail uses (restaurant and salon), and surface and below-grade parking (Lot 807). Collectively, Lots 806 and 807 make up Record Lot 9.
3. The Project Site is zoned MU-4, a district in which residential and retail uses are permitted as a matter of right.
4. Applicant filed an application for voluntary design review on October 26, 2016 for Square 1499, Lots 802, 803, and 807.

¹ The Applicant’s original application included Lot 807, which is currently owned by Apex Real Estate Company, and Lots 802 and 803, which are owned by FW DC-Spring Valley Shopping Center LLC. On September 8, 2017, the Applicant amended its application to also include Lot 806, which is owned by American University. The Applicant has submitted letter of authorization from each of the aforementioned property owners within the design review project area.

5. The applicant filed a request on September 8, 2017 to revise the application boundary to include Lot 806.
6. The applicant submitted a revised plan for Design Review on October 16, 2018.

Deferrals and Postponements

1. The applicant filed a request to postpone hearings in the case on December 14, 2016.
2. The applicant filed a second request for postponement on February 16, 2017.
3. The applicant filed a third request to postpone hearings on August 17, 2017.
4. The applicant filed for a deferral of deliberations in the case on February 22, 2018.
5. The applicant filed for a second deferral of deliberations in the case on April 16, 2018.
6. The applicant filed for a third deferral of deliberations in the case on June 15, 2018.

Public Hearings and Meetings

1. The Zoning Commission convened public hearings in the case on January 11, 2018; January 25, 2018; January 7, 2019; January 24, 2019; and February 6, 2019.
2. The Zoning Commission convened public meetings in the case on September 11, 2017; November 13, 2017; March 12, 2018; April 30, 2018; and June 25, 2018.

Party In Opposition: Spring Valley Opponents

1. Spring Valley West Homeowners Corporation filed its opposition to the application on January 30, 2017.
2. The Spring Valley-Wesley Heights Citizens Association filed its opposition to the application on December 15, 2017.
3. Neighbors for a Livable Community filed its opposition to the application on December 16, 2017.
4. Spring Valley West Homeowners Corporation, the Spring Valley-Wesley Heights Citizens Association, and Neighbors for a Livable Community filed a joint application for joint party status in the case on December 21, 2017.
5. The application filed its opposition to granting the three groups joint party status on January 2, 2018.

6. The Zoning Commission approved the joint party status request for the three groups (Spring Valley Opponents) on January 11, 2018.

ANC 3D

1. ANC 3D submitted a resolution in opposition to the application on December 12, 2016.
2. ANC 3D submitted a resolution in support of the application on December 12, 2017.
3. ANC 3D Commissioners Holmes Whalen and Alma Gates submitted three separate filings on January 10, 2018, January 11, 2018, and September 5, 2018 reporting to the Zoning Commission that ANC 3D had failed to follow proper procedure in filing reports to the Zoning Commission in the case. Specifically, the two ANC 3D Commissioners indicated that ANC 3D's position in support of the application had been taken prior to submission of the full application or that reports had been filed without approval and proper votes of the full ANC 3D Commission.

Parties In Opposition (Spring Valley Opponents)

A. Spring Valley-Wesley Heights Citizens Association

1. Dr. Jeffrey L. Kraskin, President of the Spring Valley-Wesley Heights Citizens Association, testified in opposition as part of Spring Valley Opponents to the applicant's revised plan on January 24, 2019.
2. Dr. Kraskin indicated that SVWHCA had worked to try to overcome objections to the application, but that the project was too big and too incompatible with the surrounding low density residential neighborhoods, including Spring Valley, and therefore, the Association opposed the application. He noted that the AU Park and Spring Valley neighborhoods consist only of single family homes along the stretch of Massachusetts Avenue NW from Westmoreland and Ward Circles. He added that the concept of residential high-rise apartment dwellings in the neighborhood had been discussed over the years, but rejected consistently by the community. The project, if approved, will radically alter the character of the neighborhood, he added.
3. Dr. Kraskin added that the commercial area of Spring Valley is primarily no taller than 2 stories, but is only one story on the AU Park side of Massachusetts Avenue – except for the white elephant anomaly (AU's Spring Valley Building at 4801 Massachusetts Avenue NW) that is being used in this case inappropriately by the developer and the DC Office of Planning ("OP") to justify the construction of yet another building that is out of character with the neighborhood. Dr. Kraskin pointed out that the new building will be built on neighborhood streets, not Massachusetts Avenue, a major thoroughfare.
4. He said the new development might be appropriate along other major corridors in the city, such as Connecticut or Wisconsin Avenues, but not along the upper Massachusetts

Avenue corridor unless city planners are now trying to reshape a neighborhood where people have chosen to live precisely because of its low density characteristics.

5. He also pointed out that the new development will result in a net loss of nearly 20,000 square feet of retail space now occupied by valued neighborhood businesses.
6. Dr. Kraskin also noted that the reliance on narrow alleys at the site for the movement of traffic and access to the residential and retail units in the building demonstrates the site is not appropriate for the density that is being proposed.
7. He stated the project will have an adverse impact on neighbors, is not superior in design, and consequently does not meet the purposes of the design review process outlined in Section 600.1 and 600.5 of Subtitle X, Chapter 6 of the 2016 Zoning Regulations.
8. Dr. Kraskin added that the project fails also to comply with Section 604.7(a), 604.7 (b), and 604.7 (f) of Subtitle X, Chapter 6 because the application does not encourage pedestrian activity; does not provide public gathering and open spaces; and fails to provide safe pedestrian movement through the site or to connect the site to the surrounding community through safe pedestrian connections.
9. He noted the alley design does not meet industry practices recommended by the American Association of State Highway and Transportation Officials (AASHTO); the Federal Highway Administration (FHWA); the National Association of City Transportation Officials (NACTO); and the Institute of Transportation Engineers.
10. He noted that the project's design for walkways, sidewalks, and public spaces falls short of recommendations made by FHWA.
11. He added that the loading dock design falls short of recommended industry practices used by loading dock design companies, such as the highly respected Nova Technology.
12. Dr. Kraskin testified that the sidewalk design proposed by Valor, which also does not meet disability requirements, combined with the deficiencies of the truck loading facilities at the site, will create pedestrian hazards and create dangerous conditions.
13. Dr. Kraskin also testified that the applicant was being disingenuous by suggesting the plan included a full service grocer at the site as a neighborhood amenity. He said a 13,000 – 18,000 square foot grocery cannot provide the services of today's standard full service grocery. Dr. Kraskin provided evidence showing that the neighborhood is well served, if not over served, by the many large full-service grocery options available within two miles of Spring Valley homes.
14. Dr. Kraskin also noted that the filings of ANC 3D in support of the project did not convey the overwhelming sentiment of opposition to the project from neighbors expressed consistently at ANC 3D meetings since the Application was filed.

B. Neighbors for a Livable Community

1. Alma Gates, Board Member of NLC and former ANC 3D Chair, testified on January 24, 2019 that the revised Valor Application fails to meet the spirit, purpose and intent of the Zoning Regulations.
2. Ms. Gates noted that the “amenities” being proffered by the Applicant to justify the out-of-character massing and density of the project are primarily to enhance its marketability.
3. Ms. Gates noted that the proposed “full service” grocer comes at the expense of a loss of current valued neighborhood retail services; and, that the sidewalks, promoted as a connectivity factor, are poorly designed and put public safety at risk, and put pedestrians at a disadvantage in the alleyways which serve as the internal project roads.
4. Ms. Gates pointed out that there is no agreement between the Applicant and American University regarding the use of parking spaces on the SuperFresh lot reserved for the owner of the AU building under a 1979 easement. Until the agreement is finalized, Valor’s parking space numbers have no basis in fact.
5. Ms. Gates noted there is no opinion from the Attorney General in the record regarding the transfer of density within the Project Boundary, even though the Applicant with the help of the OP attempted to convince the Commission otherwise. The project site is not a designated transfer or receiving zone.
6. In conclusion, Ms. Gates noted that even after 39 months, agreements and opinions are missing from the record that bring into question the ability of the Commission to approve the Application under Design Review.

C. Spring Valley West Homeowners Corporation

1. Scott Parker, President of the Spring Valley West Homeowners Corporation and representing its 157 homeowners, testified in opposition as part of the Spring Valley Opponents to the applicant’s revised plan on January 24, 2019.
2. Mr. Parker noted that, while there was interest in the development’s intent to include a full service grocery store, neither the originally proposed Balducci’s or the recently proposed Mom’s Organic rises to that intent. In lieu of the applicant’s repeated assertion that Mom’s is a full service grocer, Mr. Parker offered the independent view of Washington Consumer Checkbook’s recent ratings of various grocery store types, a rating that found neither Mom’s nor Balducci’s provided “a complete market basket of 154 items” that consumers typically buy. The applicant set an expectation that it failed to satisfy, and it didn’t offer the alternative of devoting more space for the grocery store which would allow for a full service tenant.
3. Mr. Parker also noted that, while the revised design reduced the overall square footage, there was no reduction in the number of 219 dwelling units from the

applicant's prior design. Therefore, the dwelling unit density and the implied resident population density would still result in a doubling of the immediate, 16 block contiguous area of American University Park. The inclusion of requested flexibility to increase the number of units by 10% would exacerbate that dramatic increase in dwelling unit and resident population density.

4. Finally, despite the repeated desire of community residents to offer a predominant mix of purchasable condos, at both ANC 3D and other community meetings with the applicants, the applicants have chosen to offer no more than possibly the 5 townhouses as condos out of the total 219+ units. The lack of a purchase option removes any economic incentive for current community residents to downsize in order to stay in the community late in life at a reduced after-tax cost to them.

Conclusions of Law

The Applicant requested that the Zoning Commission approve an application for voluntary design review consistent with the requirements outlined in Subtitle X, Chapter 6 of the Zoning Regulations. Based upon the record in this case, the Commission concludes that the Applicant has satisfied the filing and notice requirements, but has not satisfied the burden of proof to demonstrate that the Application meets the design review requirements.

Although more than 3 years has elapsed since the application was first filed in the case, the delay in acting on the application is the responsibility of the Applicant. The Applicant requested that the initial hearings in the case be delayed three times. Once all testimony in the case was received, the Applicant then requested on three separate occasions that the deliberations in the case be deferred. Then, the applicant sought yet another delay to revise its application and convene new hearings.

The Commission sought to accommodate the Applicant and acceded to all the requests for delay.

Despite these numerous delays, the overall project design has changed little, if not insignificantly. The overall massing and design have not changed to address concerns raised by nearby residents. It would still at least double the number of dwelling units and resident population in the immediate AU Park vicinity. In fact, it appears that the redesigned project has resulted in a design that would be even taller at the perimeter of the site closest to neighbors' homes.

This project may be appropriate for a major street, but the siting of the new project is along low density residential streets adjacent mostly to two story single family homes and a one story historic retail shopping center.

The project is not designed with a goal of ensuring pedestrian or vehicular safety. Safety would be deteriorated as a consequence of this project. Although the applicant maintains that the elimination of retail may address safety issues linked to truck unloading in the alley, the applicant also is saying that additional trucks – that now do not currently use the alley – will be

encouraged to unload in the alley to reduce traffic impacts on Yuma Street. With or without the existing retail, a significant number of trucks will be using the alley system, which also will be the primary means for vehicles to access the parking garage for the residences and the proposed grocery store. With sidewalks that cross these driveways and other sidewalks that are only 3 feet wide and not connected throughout the site, pedestrian conditions would be hazardous.

Although the Applicant rationalizes its internal transportation design by saying these are “just alleys,” it is also designing the project in a way that would convert the alleyways into internal project roadways as well as encourage pedestrian movement through the alleys. The applicant has agreed to install a new Hawk signal adjacent to the alleyway access point on Massachusetts Avenue. The Applicant wants to show that it can meet some requirements of the design review process by facilitating pedestrian connections, but then absolves itself of the responsibility to ensure that – at a minimum – pedestrian connections at a minimum do not create hazardous pedestrian and vehicular conditions by attempting to minimize the hazards’ scope by saying these are “just alleys.” They are the primary means for all types of vehicles to access the site and for pedestrians to navigate through the site.

The alleys, as designed, are the same 20-foot width they are currently despite the increased vehicular and pedestrian traffic of the design. The alleys should be wider and the building smaller.

The alley way conditions are the result of a site that is being maximized for development. With less density, many of the issues raised by this Application could be resolved satisfactorily by widening the alleys and the sidewalks, and ensuring a connected path through the site. However, the Applicant would still need to address the overall mass and scale of the building which, as designed, is disproportionate and out of character with the surrounding residential neighborhood.

Although the Design Review regulations are not specific as to what constitutes a “superior” design, at a minimum, a superior design could be expected to meet the basic design review requirements outlined in Subtitle X, Chapter 6, Section 604. The project also falls short of meeting those requirements.

The Commission accorded the written recommendation of OP the “great weight” to which it is entitled. The Commission carefully considered the OP report. However, fundamental to OP’s report is the notion that the building is located on Massachusetts Avenue when in fact, it is sited on 48th Street NW and Yuma Street NW – both of which are neighborhood streets adjacent to single family homes.

The Commission is also required to give great weight to the issues and concerns raised by ANC 3D and ANC 3E. We note that ANC 3D initially opposed the project (Exhibit 9) and then reversed course and voted to rescind the December 12, 2016 vote (Exhibit 108). Additional filings by individual ANC 3D Commissioners, while not accorded great weight because they were not the majority view, indicate considerable discord within ANC 3D, including questions about the degree to which ANC 3D provided opportunities for residents’ views and the minority views of ANC 3D Commissioners to be represented before ANC 3D and then reported to the

Zoning Commission. The ZC also had difficulty with the position of support by ANC 3D on changes to the Application which had not been reviewed by the full ANC and had not yet been filed by the Applicant (Exhibit 238).

Likewise, the ZC is not persuaded by the views expressed by ANC 3E and note the considerable opposition of residents from within the boundaries represented by ANC 3E who testified in this case in opposition to this project. It is important to note that not a single individual testified in support of this application at hearings convened either in 2018 or 2019. ANC 3E has not indicated how the project meets the requirements of Subtitle X, Chapter 6 of the Zoning Regulations. Instead, ANC 3E has indicated its preference for the development without basing its recommendations on the zoning rules that must be applied in this case. The acknowledgement by ANC 3E that it must enter into a Memorandum of Understanding (MOU) in this case, in an attempt to limit the scale of development impacts and qualify proffers made by the Applicant, further demonstrates that ANC 3E believes the project has shortcomings, but yet – without explanation – still recommends approval of the project.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in the Order, the Zoning Commission for the District of Columbia concludes that the Applicant has not met the burden of proof that it complies with the requirements of Subtitle X, Chapter 6 of the Zoning Code, and therefore, the application is not approved.

On March 11, 2019, upon motion by Commissioner _____, as seconded by Commissioner _____, the Zoning Commission ADOPTED this Order at its public meeting by a vote of _____.

In accordance with the provisions of 11-Z DCMR Section 604.8, this Order shall become final and effective on publication in the D.C. Register on _____.

Anthony J. Hood
Chairman
Zoning Commission

Sara A. Bardin
Director
Office of Zoning