



DONOHUE & STEARNS, PLC

September 7, 2017

Chairman Anthony Hood  
D.C. Zoning Commission  
441 4<sup>th</sup> Street, N.W., Suite 200S  
Washington, D.C. 20001

**Re:** ZC Case 16-23/Valor Development LLC/Square 1499  
Hearing Date October 23, 2017

Chairman Hood:

On behalf of our clients, Citizens for Responsible Development (CRD) we are submitting the attached Request for Party Status. The applicant has submitted a third request to postpone the hearing on the referenced matter, and the Zoning Commission will consider this request on September 11, 2017.

The CRD is not opposed to the request for postponement. We recognize the applicant has made some design changes, and has committed to a thorough study of the transportation issues. Our client is eager to review the study, which has been promised to us by the applicant. We want to urge the applicant to make good on its statements to the community to be transparent in the sharing of such documents and plans. That has not always been true since the plans for this redevelopment were first announced in October 2015.

In support of the Request for Party Status, in addition to the enclosed Form 140, I have attached a letter to the DC Office of Planning we submitted in December 2015 outlining our concerns and objections to the proposal. I realize some of the figures have changed slightly since 2016, however the objections remain.

Thank you for your consideration of the attached.

Sincerely,

Edward L. Donohue

Enclosure

ZONING COMMISSION  
District of Columbia  
CASE NO.16-23  
EXHIBIT NO.66



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



**FORM 140 - PARTY STATUS REQUEST**

Before completing this form, please go to [www.dcoz.dc.gov](http://www.dcoz.dc.gov) > IZIS > Participating in an Existing Case > Party Status Request for instructions. Print or type all information unless otherwise indicated. All information must be completely filled out.

**PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.**

Pursuant to 11 DCMR Subtitle Y § 404.1 or Subtitle Z § 404.1, a request is hereby made, the details of which are as follows:

<b>Name:</b>	Barbara and Sheldon Repp / Citizens for Responsible Development		
<b>Address:</b>	4704 Windom Place, NW		
<b>Phone No(s):</b>	202-362-0698	<b>E-Mail:</b>	reppe3@aol.com

I hereby request to appear and participate as a party in Case No.:	16-23
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<b>Signature:</b>		<b>Date:</b>	9 / 8 / 2017
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<b>Will you appear as a(n)</b>	<input type="checkbox"/> Proponent	<input checked="" type="checkbox"/> Opponent	<b>Will you appear through legal counsel?</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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If yes, please enter the name and address of such legal counsel.

<b>Name:</b>	Edward L. Donohue		
<b>Address:</b>	117 Oronoco Street, Alexandria, VA 22314		
<b>Phone No(s):</b>	703-549-5384	<b>E-Mail:</b>	edonohue@donohuesteams.com

**ADVANCED PARTY STATUS CONSIDERATION PURSUANT TO: Subtitle Y § 404.3/Subtitle Z § 404.3:**

I hereby request advance Party Status consideration at the public meetings scheduled for:	10 / 23 / 17
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**PARTY WITNESS INFORMATION:**

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness;
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and
4. The total amount of time being requested to present your case.

**PARTY STATUS CRITERIA:**

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

## **PARTY STAUS CRITERIA**

### **1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?**

The Applicant (Valor Development) has filed a “Design Review” application pursuant to Subtitle X, Chapter 6 of the 2016 Zoning Regulations seeking Zoning Commission approval of a large project on the site of the former SuperFresh grocery, Record Lot 807. Under the zoning regulations, the purpose of the Design Review process is to provide flexibility to property owners without an increase in density or a map amendment, and after a finding by the Commission that there is no adverse impact. The proposed project exceeds the density allowed, is contrary to the Comprehensive Plan and will adversely affect the neighborhood. Citizens for Responsible Development (CRD) is uniquely positioned to demonstrate the reasons why.

Valor’s proposed project consists of two buildings of five to seven stories, counting the penthouse levels in each. Retail space would underlie the project on the back side, where the seven story structure would tower over and detract from the adjacent historically designated Spring Valley Shopping Center. The neighboring community is composed of two story single family homes.

Among the issues CRD intends to address regarding the proposed development are:

First, Valor contends that it can build a structure with 184,514 GFA as a “matter-of-right” on the site (Lot 807), of which 2,606 GFA can be non-residential. In fact, as CRD will show, the Application calls for more residential and nonresidential density than is allowed as a “matter-of-right.” In short, much of the density Valor wishes to build on Lot 807 was transferred to Lot 806. The transfer was recorded in May, 1979 to allow for greater density of the building at 4801 Massachusetts Avenue, NW, and to require that parking be provided at the SuperFresh site (lot 807) for the benefit of lot 806.

Second, CRD will show that the proposed project is inconsistent with the Comprehensive Plan. The Future Land Use Map that is incorporated into the Comprehensive Plan calls for this site to be low density commercial (one to three stories). Further, the Comprehensive Plan calls for protection of the low density, stable residential neighborhoods west of Rock Creek Park and specifically provides that the heights and densities of infill development shall be appropriate to the scale and character of adjoining communities.

Third, the updated DC Zoning Map labels the site as MU-4, which permits only moderate-density mixed use development in low- and moderate-density residential areas. Valor’s project falls into the category of medium density (4-7 stories), and is out of scale with both its commercial and residential surroundings. The project thus is inconsistent with the Zoning Regulations.

Fourth, CRD will demonstrate through its own expert traffic consultant that the increased density will significantly affect traffic, safety, and parking on local streets.

Finally, CRD will show how the proposed development will undermine the long-standing character of the surrounding neighborhood.

### **2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)**

CRD is an unincorporated, not-for-profit, neighborhood association, formed in 2016 by neighbors of the proposed site with the mission of ensuring that the redevelopment of the SuperFresh site is conducted in a manner that is consistent with the needs and concerns of the surrounding neighborhood. CRD's members will be adversely affected by the massive scale of the proposed project. About 150 residents are active members of CRD, including a number of individuals whose homes lie within 200 feet of Lot 807. Of the 38 residents who have filed letters of opposition with the Zoning Commission as of September 5, 2017, most are members of CRD. CRD itself has submitted a petition to the Commission that includes the names of 561 residents of Ward 3 who registered their opposition to the scale of the current proposal by signing the petition.

**3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200 ft.)**

As noted above, CRD is composed of neighbors of the proposed project. Included in CRD's membership are persons who reside within 200 feet of the proposed project.

**4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?**

Because the scale of the proposed project is too large and exceeds allowable density and the parameters of the Comprehensive Plan, it will have a detrimental impact on the neighborhood. Valor's own transportation consultant will have to acknowledge most project related traffic will enter and leave the site through local streets, endangering both the children and elderly who live nearby, and raising noise and air quality concerns. Parking will inevitably spill over onto neighboring streets. The proposed project also will further strain the local elementary, middle and high schools servicing the area, all of which are already overcapacity. Finally, the seven story "wall" on the back side of the project will detract from the adjacent one story historically designated Spring Valley shopping center that the neighbors use and treasure.

**5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.**

The narrative above summarizes the major issues currently identified by Citizens for Responsible Development as affecting the neighbors. However, we reserve the right to bring up additional concerns.

**6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.**

Citizens for Responsible Development represents the immediate neighbors to the proposed project site, including those residing within 200 feet of the site. This project has been publicly discussed for close to two years. CRD members have been the predominant opponents at all the Advisory Neighborhood Commission and other meetings where the project has been discussed. CRD will provide context to the transfer of density to 4801 Massachusetts Avenue, NW referred to paragraph 1, which is of critical importance to the Commission as it evaluates Valor's claims about matter-of-right development. Finally,

CRD is uniquely positioned to demonstrate to the Commission that the proposed development is so far out of scale as to overwhelm the neighborhood in proximity to the site. As a group, CRD has funded expert assessments and reports. Through its individual members, CRD will show how the character of its neighborhood will be significantly, adversely affected.



DONOHUE & STEARNS, PLC

December 6, 2016

Mr. Joel Lawson, Associate Director, Development Review  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, S.W., Suite E650  
Washington, D.C. 20024

**Re:** ZC Case 16-23/Valor Development LLC/Square 1499  
Hearing Date February 2, 2017

Dear Joel:

In connection with the review and recommendation by the DC Office of Planning, we are submitting a number of questions for your consideration (attached). As you know, we represent a number of neighbors in close proximity to the site, and those neighbors are quite concerned about the impact of such a large-scale redevelopment. Specifically, they are concerned about the height/size and scale and the impact those attributes will have on their single-family homes, as well as the traffic and loading demands such a project will have on the neighborhood roads.

In addition to these primary concerns, the neighbors we represent raise some fundamental questions about process. As set forth in the attached, we (1) question the legitimacy of the application in the absence of one of the property owners of Lot 9 (The American University/4801 Mass Avenue); (2) ask whether use of Design Review is legitimate given the proposed transfer of density from one A&T lot to another; and (3) consider the role of the Comprehensive Plan and Future Land Use Map as applied here.

We recognize some of the issues raised may have to be referred to the Office of the Attorney General, DDOT or others.

Thank you for your consideration of the attached.

Sincerely,

Edward L. Donohue

**Enclosure**

## Zoning Questions for the Office of Planning to Consider

In reading Valor Development's Application for Design Review, a number of questions come to mind. Here's an initial list:

1. Record Lot 9 consists of Lot 807, the former SuperFresh site, as well as Lot 806, which includes a building now owned by American University. Record Lot 9 is one parcel for zoning and development purposes. However, American University, a co-owner of Lot 9, is not listed on the Application. Isn't an essential party missing? How is it the proposed Valor buildings will co-occupy Lot 9 with the existing building at 4801 Mass Avenue (Lot 807) without the consent and commitment of the owners of that building?

2. Is this an appropriate use of the new design review authority, given that the applicant is requesting more density than is permitted as a "matter-of-right?"

a. Under a Declaration of Easement and Agreement, recorded in 1979, the available GFA for Lot 9 was divided between the two lots, with Lot 807 receiving 63,242 GFA and Lot 806 receiving 179,302 GFA. The purpose of this allocation was to allow the construction of a larger building on Lot 806 (4801 Massachusetts Avenue) than would otherwise be possible. The allowable FAR at the time was 2.0. Since then the allowable FAR was increased to 3.0 (assuming inclusionary zoning applies). How should the additional FAR be allocated between the two lots, and is the Zoning Commission allowed to make this determination under Design Review

b. Valor claims in the design review application that it can build a building with 184,514 GFA as a "matter-of-right" on Lot 807. Page 4 of the Application. This assumes that 121,272 GFA, the entire additional GFA for all of Lot 9, is allocated to Lot 807. Is this appropriate? Isn't it more appropriate to allocate to Lot 807 only the additional GFA attributable to the size of that lot (79,622 sq. ft.)? In that case, the "matter-of-right" GFA would be 142,864. A chart showing this history is attached. In either case, isn't Valor requesting more density than is permitted as a "matter-of-right?"

c. Valor claims that "the only relief required to meet the design review standards is from the rear yard requirement for Building One. This very minor amount of zoning relief is far outweighed by the numerous positive improvements ..." Page 31 of Application. However, the proposed buildings include 285,829 GFA. Application, G05. The application therefore requests more than 100,000 GFA over what the applicant agrees is "matter-of-right," and almost 143,000 square feet over what is a more accurate calculation of what is allowed. Isn't the applicant requesting more than a "minor amount of zoning relief?"

3. The Zoning Commission must determine that the proposed development is not inconsistent with the Comprehensive Plan, and in conformance with the Zoning Regulations. The DC Court of Appeals has reaffirmed the significance of the Comp Plan, and particularly the Future Land Use Map in the recent Durant decision.

a. The Comprehensive Plan's Future Land Use Map calls for this lot to be "low density commercial." Is it appropriate to build 5-7 story mixed use buildings on a "low density commercial" lot?

b. How does this development, which faces two residential streets, “protect the low density, stable neighborhoods west of Rock Creek Park” and “protect and enhance the existing scale, function, and character of these neighborhoods?” Comprehensive Plan, Policy RCW-1.1.1.

c. How is inclusion of a large, 55,000 sq. ft. destination supermarket consistent with the Comprehensive Plan, which states that “destination” retail uses are not appropriate in smaller-scale commercial areas, especially those without Metrorail access? Comprehensive Plan, Policy RCW-1.1.5.

4. Is it appropriate to use the new Design Review process to approve a project that will adversely affect the neighborhood?

a. The inevitability of increased traffic by cars and grocery store delivery trucks up to 50 to 55 feet long will clearly have an adverse impact on the surrounding neighborhood, and endanger the many children and elderly who live there. Much of the traffic will be routed through the intersection of Massachusetts, 49th St., Yuma and the side entrance/exit to the Spring Valley Shopping Center, which is already a bottleneck.

b. The application states that 77 parking spaces are to be dedicated for residents, or 0.33 spaces per unit (though additional spaces required to be set aside for American University could be used by the residents, at least at night). Since Metrorail is almost a mile away, residential streets can be expected to have many more cars. The neighboring streets will be overwhelmed.

5. Valor claims that it is seeking additional non-residential density so it can include a supermarket in the project. They are asking for 31,047 GFA for retail space (the remaining square footage for the 55,000-sq. ft. supermarket and 5,000 sq. ft. of other retail apparently will be below grade). However, Valor acknowledges that only 2,606 of nonresidential GFA is available to it as a “matter-of-right.” Is it appropriate to ask for additional nonresidential GFA as part of a design review application?

a. If the developer insists on proposing a project with more than 2,606 of nonresidential GFA, isn't it reasonable for them to work with the neighbors to develop less expansive alternatives that would better conform to the neighborhood?

b. Unlike a PUD, with amenities such as a grocery store secured as long-term benefits under covenants, recorded in the Land Records and enforceable, what assurances are available under Design Review for the viability of this amenity? What if it simply fails and is abandoned?

6. Valor's application states that "through the voluntary Design Review process the Applicant is able to transfer unused nonresidential GFA from the historic SVSC [Spring Valley Shopping Center] site to the Valor Lot." Can density be transferred from a historically designated site, far from the center city, that has a different owner and is separated from the SuperFresh site by a public alley? Is it appropriate to transfer density from lots that face a major commercial street in order to build a large structure on a lot facing two residential streets? In any case, is it appropriate to use the Design Review process for this purpose?

7. As noted, Valor claims that "there is currently 184,514 GFA available to the Valor Lot as a matter-of-right, of which only 2,606 GFA can be devoted to nonresidential uses." Assuming the use of the nonresidential GFA, this means that 181,908 GFA is available for residential development (plus permitted penthouse space). According to the application, the buildings will have 254,782 in residential GFA (Table



Page G05). Is it appropriate to ask for this amount of additional residential space as part of a Design Review application?

8. Lot 807 is zoned as MU-4. Under the zoning regulations, the MU-4 zone is intended to permit moderate-density, mixed-use development. Chapter 11, Subtitle G, Section 400.3. Aren't the 4 and 5 story buildings being proposed, not counting the penthouse levels, medium density rather than moderate density? Also, the larger building (Building One) is actually 7 stories tall on the north side.

9. The Application states that "no wetlands, streams or water courses are located on and/or adjacent to the property." Application, CIV-03. On information and belief, Murdock Mill Creek is channeled beneath and/or adjacent to Lot 807. It surfaces two blocks away, near 50<sup>th</sup> Street and 50<sup>th</sup> Place. Has Valor addressed the issues arising from this creek, including environmental issues?

10. Will the construction of the planned buildings on portions of Lot 9 exceed the lot occupancy requirements for that lot?

Parting Thought - It is difficult to see how Valor has satisfied its burden to show that the project complies with the Zoning Regulations and the Comprehensive Plan. Valor is proposing to build a project that is simply too big for the site, and with more density than is either reasonable or permitted. Those in the development and real estate world with whom we have talked agree as do the more than 465 residents who have signed a petition calling for rejection of the Valor plan while at the same time showing support for a project that reflects the scale and character of the neighborhood.

## Chart Showing Historical and Claimed Assertions for What Is Allowable on SuperFresh Site

	Lot 807 (site of former SuperFresh building)
Lot size	79,622 sq ft
GFA after 1979 reallocation (assumes 2.0 FAR) <sup>1</sup>	63,242 GFA
Matter-of-Right GFA after adding 1.0 additional FAR allocated to Lot 807 (based on size of Lot 807)	142,864 GFA
Valor's assertion of what can be built as a Matter-of-Right (assumes that Lot 807 is allocated the 1.0 additional FAR for both Lot 807 and Lot 806) <sup>2</sup>	184,514 GFA
GFA of Valor's proposed project <sup>3</sup>	285,829 GFA

<sup>1</sup> By means of a Declaration of Easement and Agreement, recorded in 1979, the maximum GFA for Lot 9 was divided between Lots 806 and 807. This allocation has been upheld by the Courts. The two cases linked below give a detailed explanation of the legal basis for the above conclusions:

[https://scholar.google.com/scholar\\_case?case=7137282137471843890&q=400+A.2d+737&hl=en&as\\_sdt=20006](https://scholar.google.com/scholar_case?case=7137282137471843890&q=400+A.2d+737&hl=en&as_sdt=20006)

[https://scholar.google.com/scholar\\_case?case=17771150214788664572&q=945+F.Supp.+313&hl=en&as\\_sdt=20006](https://scholar.google.com/scholar_case?case=17771150214788664572&q=945+F.Supp.+313&hl=en&as_sdt=20006).

<sup>2</sup> Page 4 of the Application.

<sup>3</sup> Application, G05.