

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Norman M. Glasgow, Jr.  
202-419.2460  
[norman.glasgowjr@hklaw.com](mailto:norman.glasgowjr@hklaw.com)

Jessica R Bloomfield  
202-469-5272  
[jessica.bloomfield@hklaw.com](mailto:jessica.bloomfield@hklaw.com)

October 24, 2019

## **VIA IZIS AND HAND DELIVERY**

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

**Re: Applicant's Post-Hearing Submission  
Z.C. Case No. 19-10  
Consolidated PUD @ Square 1499**

Dear Members of the Commission:

On behalf of Valor Development, LLC (the "Applicant"), we hereby submit the following materials and information requested by the Zoning Commission at the public hearing for the above-referenced application.

### **I. Increased Inclusionary Zoning ("IZ") Proffer**

At the public hearing on October 7, 2019, the Commission asked the Applicant to consider increasing its IZ proffer to greater than the 11% of residential GFA originally proposed. At the public hearing on October 10, 2019, the Applicant testified that it would increase the IZ proffer to 12% of the residential GFA. Included as Sheet G09 of Exhibit A is an updated IZ Unit Mix sheet showing the Applicant's increased IZ commitment.

As discussed by the Applicant at the public hearing, in order to achieve 12% affordability, it is critical that the Applicant obtain the flexibility previously requested as to the number of dwelling units and affordable dwelling units (*see* Exhibit 151A). This flexibility is necessary to accommodate normal fluctuations in building layout that occur during design development, adjustments to building layout that may be necessary due to the increased IZ proffer, and market fluctuations that may occur between approval and construction. The Applicant also understands the importance of maintaining the number of three bedroom IZ units as reflected in the IZ chart at Sheet G09. Therefore, the Applicant will commit to maintaining the number of three-bedroom units shown on the IZ chart, which can be handled through the proposed revision to the requested flexibility language:

Affordable Units: To vary the number and location of affordable dwelling units, except that (i) *the number of three bedroom affordable dwelling units shall not be reduced*; (ii) no affordable dwelling unit shall be located within a cellar; and (iii) no more than two affordable dwelling units shall be located directly above and below each other on any immediately successive floors (emphasis added).

The Applicant also confirmed at the public hearing that the public benefit achieved by the IZ commitment is the difference between the 10% IZ required and the 12% IZ proposed (i.e., 2%), which is consistent with 11-X DCMR § 305.5, stating that “[p]ublic benefits of the proposed PUD may be exhibited and documented in any of the following or additional categories... (g) Affordable housing, except that affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning” (emphasis added). The Applicant has never suggested that the IZ proffer is greater than the 2% difference between the requirement and the proposal.

Finally, the Applicant notes that affordable housing is just one of the many public benefits and project amenities proffered as part of this application. The benefits and amenities package was fully vetted, prepared in consultation with, and unanimously supported by ANC’s 3D and 3E, and the Applicant was always clear about the amount of IZ square footages, number of units, size, and subsidy levels being provided. Therefore, the Applicant believes that its proposed IZ proffer, as increased following the public hearing, constitutes a significant public benefit.

## **II. Response to Spring Valley-Wesley Heights Citizens Association (Dr. Jeffrey Kraskin) and Tom Smith**

At the public hearing, the Commission requested that the Applicant respond to the comments on affordable housing set forth in the written and oral testimonies of Dr. Jeffrey Kraskin, President of the Spring Valley-Wesley Heights Citizens Association (“SVWHCA”) (Exhibit 213) and Mr. Thomas Smith, a Spring Valley resident (Exhibit 212) (Kraskin and Smith together referred to in this section as the “Opposition”).

In its testimony, SVWHCA stated that it is an advocate for affordable housing, and recognizes the limited opportunity that exists to build new housing in Ward 3. Yet SVWHCA goes on to state that they opposed Valor’s proposal in Z.C. Case No. 16-23 and are now opposed to Valor’s proposal in this case. Considering the PUD site currently has no housing, is substantially underutilized, and is already zoned to allow multi-family development, why would SVWHCA be opposed to the amount of development proposed, say that a floor should be removed, and then at the same time say that more affordable housing should be provided. The required set aside under the IZ regulations has always been provided in terms of a percentage of the total development. Nonetheless, the Opposition challenged the Applicant to provide more affordable housing, and the Applicant did.

The buildings on Lot 807 have sat largely vacant and/or underutilized for several years. The Project will provide approximately 219 new housing units, of which approximately 30 units will be devoted to households earning no more than 50% and 60% MFI. In an area where increases in density and impacts to traffic and public parking are major concerns, one would assume the

Applicant's commitment to provide 20% more affordable housing than required in a development that is below matter-of-right height and density would be widely supported by SVWHCA and Mr. Smith. As discussed below, the Applicant's affordable housing proffer will contribute greatly to Mayor Bowser's newly established affordable housing target for Rock Creek West.

Further, SVWHCA comments clearly demonstrate a fundamental lack of knowledge of how the District's Inclusionary Zoning ("IZ") program works. Rather myopically, SVWHCA seems to believe that because Ward 3 is an affluent area it must be easy to build affordable housing. While they claim Ward 3 is a lucrative market for developers, they ignore that it is one of the most expensive areas to build given land values and other known challenges that can lengthen the development process. They also seem to ignore the connection between affordable housing and additional density. The District's IZ program is based upon a mandatory model, as opposed to a voluntary model, and takes into consideration the impact of affordable housing on the economics of a project. While the program requires developers to set aside a certain amount of residential square footage for affordable housing, it also offers an incentive (bonus density) to help compensate for the additional cost of the affordable housing. Thus, where greater affordable housing is provided in an unsubsidized private sector project it is often accompanied by increases in height and/or density. However, such is not the case here. The Applicant is providing more affordable housing than would otherwise be required yet is not asking for any additional density that is available under a PUD.

As the Commission is aware, at the public hearing the Applicant agreed to increase its original affordable housing commitment to 12% of the residential GFA. As pointed out by the Commission, this proffer amounts to a 20% increase in affordable housing over the baseline requirements of the Zoning Regulations. Given that the areas covered by ANCs 3D and ANC 3E have a very limited number of IZ units, and that only 1% of the District's IZ units are located in Ward 3, the Applicant has already complied with the Opposition's request to provide more affordable housing. As a result of this project, over 30,000 square feet of affordable housing and approximately 30 IZ dwelling units will be provided in ANC 3E, whereas now there are none.

Moreover, the Commission need not look any further than the 2006 Comprehensive Plan Housing Element to see how important this Project is to addressing the District's housing crisis and achieving Mayor Bowser's recently established affordable housing target for the Rock Creek West Planning Area. As far back as 2006, the District was already predicting that if the demand for housing was unaddressed, the housing shortfall would continue to create a market dynamic where housing costs would increase faster than incomes. *See* 10-A DCMR 500.13. Specifically, the Housing Element states "[o]n a neighborhood level, the recent housing boom has challenged the District's ability to grow a city of inclusive and racially and economically diverse communities. *The District has been relatively successful in developing new affordable housing... However, most of this production has occurred in the very neighborhoods where such housing was already concentrated.*" 10-A DCMR 500.14 (emphasis added).

The District has clearly recognized the negative impacts of concentrated affordable housing and the District's inability to grow as an equitable city. Indeed, the Housing Elements states that between 2000 and 2006 very little new affordable housing was built in "Stable and Transitioning" neighborhoods, while market rate housing during the same time period was built almost entirely in

“Stable and Transitioning” neighborhoods. *See* 10-A DCMR 500.16, Map 5.1, and Applicant’s PowerPoint Slide 60. Despite this warning that if left unchecked this inequitable development pattern would continue to concentrate lower income residents in some neighborhoods and find them scarce in others, that is in fact exactly what has transpired over the last 13 years with only 0.4% of the District’s current dedicated affordable housing being located within the Rock Creek West Planning Area. *Id.* (emphasis added). The District simply has not kept pace in Ward 3.

The Housing Element also acknowledges the impact of the housing market on the production of affordable housing, that there are no guarantees that a robust housing market will last, and that affordable housing requirements place a burden on the private sector. *See* 10-A DCMR 500.17. Given the amount of time and resources the Applicant has invested into the Project, and with uncertainty creeping into the current housing market, the Project is now at a critical juncture. The substantial contribution this Project will make to the District’s housing and affordable housing goals is undeniable. The Project will provide approximately 219 new housing units where none currently exist within a designated Neighborhood Commercial Center and zone that incentivizes multi-family housing. Of those, approximately 30 units will be affordable.

More importantly, based upon data in Mayor Bowser’s recent report entitled “Housing Equity Report: Creating Goals for Areas of Our City” (October 2019), the Project alone will increase the number of dedicated affordable housing units in the Rock Creek West pipeline by approximately 36%, and will move the District closer to achieving its dedicated affordable unit target for Rock Creek West. This substantial contribution toward achieving the District’s housing goals, provided within matter-of-right height and density parameters, deserves to be given substantial weight in the balancing of polices contained in the Comprehensive Plan.

In addition, the Opposition’s attempt to conflate rent control with IZ is simply incorrect. Contrary to SVWHCA’s testimony, the nearly 13,000 rent-controlled apartments in Ward 3 do not qualify as affordable housing in the same way that IZ does. As was stated by the Commission and OP at the public hearings, rent-controlled apartments are not income restricted, and all rent-controlled apartments are not necessarily permanently rent-controlled. Thus, while currently there may be some District residents in need of affordable housing that are lucky enough to reside in one of the rent-controlled apartments in Ward 3, it is also very possible that by happenstance many of these apartments are currently occupied by affluent District residents. In contrast, the Project will be subject to current IZ regulations, which clearly establish income levels and qualifications for households that may reside in an IZ unit, which will be set aside as affordable for the life of the Project.

The housing crisis in the District is real and the time has come for all areas of the city, including areas west of Rock Creek Park, to begin absorbing an equitable share of the District’s affordable housing so that residents in need of such housing have access to the same high-quality services, facilities, and amenities enjoyed by existing upper-Northwest residents. Over the course of this Project, the Applicant has reduced the overall height and density to below matter-of-right permissions while committing to an affordable housing proffer that is typical of a PUD that requests additional height and density. As a result, the Project is now right-sized for the PUD site and surrounding context while still providing a commendable amount of dedicated affordable

housing that exceed the amounts that would otherwise be required under matter-of-right development on the PUD site.

### **III. Solar**

At the public hearing the Applicant testified that it could not commit to installing PV panels on the roof of Building 1 due to the significant upper-level setbacks, step-downs, large courtyards, and public plazas incorporated into the building design in response to the lower-density residential uses to the north and east. As a result, there is limited roof space on which to accommodate enough green roof to meet storm water requirements, provide mechanical equipment to serve the building, and also incorporate a sufficient PV array that would provide any meaningful energy production. However, the Applicant will commit to constructing the roof so that it is “solar ready” in the future by installing conduit to the roof level that would be required for future roof-mounted solar should a lighter product become available.

### **IV. Precedent Raised at Hearing**

At the public hearing on October 10, 2019, the Applicant presented rebuttal testimony in response to allegations raised by Citizens for Responsible Development (“CRD”) and SVWHCA (together, the “Party Opponents”). Specifically, CRD stated in its Statement in Opposition that by

“allowing greater density on Lot 806 and limiting density on Lot 807, this allocation effectively pushed development to the Massachusetts Avenue side of Record Lot 9, thereby *benefiting the neighboring residents* by reducing density on the portions of the SuperFresh site facing the neighborhood. In fact, the District of Columbia Court of Appeals, in an opinion dated March 20, 1979, opined that the beneficiaries of the Easement were intended to be ‘*nearby property owners.*’ See *American University Park Citizens Association v. Burka*, D.C. Court of Appeals, March 20, 1979 (400 A. 2d 737, 746).”

See CRD Statement in Opposition (Exhibit 118). However, CRD’s allegation is taken out of context. The “easement” referenced above was for “vehicular and pedestrian access” associated with the closing of the public alley separating lots then known as Lots 2, 3, and 4 from Lot 7. See *AU Park v. Burka*, 400 A.2d at 746. The purpose of the easement was not intended to benefit nearby property owners by “reducing density on the portions of the SuperFresh site facing the neighborhood” as alleged by CRD.

The Applicant submits, in its entirety, the *AU Park v. Burka* Court of Appeals decision into the case record as Exhibit B, which the Applicant described and referenced at the hearing but did not submit for the record. A copy of the easement itself is also attached at Exhibit C. As the Commission will see, the easement is clear that there are no third party beneficiaries and that the covenant has an expiration date unless sooner terminated by the parties.

## **V. Clarification on Grocery Store Commitment**

At the public hearing the Commission requested clarification as to the minimum square footage that would be devoted to the large-format grocery store. In response, the Applicant confirms the following:

- i. Approximately 18,000 square feet of GFA will be dedicated to retail use in Building 1. As stated in prior filings and testified to at the public hearing, a small portion of Building 1's retail space is not currently allocated to grocery store use, although it is possible that 100% of the retail space will be leased to the grocery store.
- ii. Of the total retail space, approximately 16,000 square feet of GFA will be dedicated/leased to a full-service grocery store. This is the square footage that the Applicant currently anticipates will be leased to a grocery store.
- iii. Pursuant to the MOU with ANC 3E, for a minimum of ten years from the date of Building 1's first Certificate of Occupancy, approximately 13,000 square feet of GFA will be dedicated/leased to a full-service grocery store. This is the minimum amount of square footage that the Applicant anticipates will be leased to a grocery store, and this is also the square footage proffered by the Applicant as a public benefit pursuant to 11-X DCMR § 305.5(q). Because many full-service grocery stores range in size from approximately 13,000-18,000 square feet, the Applicant and the ANC selected a minimum square footage requirement to which the Applicant would be able to comply for the full ten year commitment.

The Applicant also clarified, in response to comments from the Opposition Parties, that the grocery store was being proffered as a benefit under 11-X DCMR § 305.5(q) (uses of special value to the neighborhood) and not 11-X DCMR § 305.5(j) (building space for special uses including... a grocery store larger than 15,000 square feet where a grocery store does not exist within a three mile radius).

## **VI. Updated Architectural Plans and Elevations**

Attached hereto as Exhibit A are the following updated sheets that supplement the Architectural Plans and Elevations previously submitted to the case record at Exhibits 28 and 151C:

- A. Updated Landscape Plans. As requested by the Commission, attached are revised landscape drawings showing more detailed information on the materials, species, fixtures, and other landscape features proposed for the PUD Site and surrounding public spaces. As previously noted in the Applicant's proposed design flexibility language (Exhibit 151A), the Applicant requested flexibility on the streetscape design to vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division.

The revised landscape plans are dated October 24, 2019, are included as Sheets L1-L11 in Exhibit A, and are intended to supersede Sheets L1-L11 previously submitted to the record.

- B. Long-term Bicycle Parking. As requested by the Office of Planning (“OP”) in its hearing report (Exhibit 53), and as discussed at the public hearing, attached are detailed long-term bicycle parking plans showing the number, spacing, and type of Building 1’s long-term bicycle parking spaces. The revised sheets are dated October 24, 2019, are included as Sheets A02 and A09 in Exhibit A, and are intended to supersede Sheets A02 and A09 previously submitted to the record.
- C. Townhome Roof Hatches. The Commission asked the Applicant to consider replacing the penthouses on Townhomes 1-4 with a “hatch” to access the exterior roof decks. The Applicant had originally requested relief from 11-C DCMR § 1500.4 to permit penthouses to be located on Townhomes 1-4, and from 11-C DCMR § 1500.9 to permit penthouse enclosing walls of unequal heights.

The Applicant agreed at the public hearing to remove the penthouses on Townhomes 1-4 and replace them with a hatch for rooftop access that does not exceed five feet in height. The Applicant also proposes a hatch for rooftop access to Townhome 5 with a small terrace space similar to those on Townhomes 1-4. The Applicant presented a variety of precedent images for rooftop hatches, which are shown on the attached Sheet A44a within Exhibit A.

Although removing the penthouses may eliminate the need for zoning relief, out of an abundance of caution Applicant maintains the requested relief in the event that the final design of the hatch is over four feet in height (and therefore considered a penthouse pursuant to 11-C DCMR § 1500.2) and/or has unequal heights. However, the Applicant commits that the hatches will have a maximum height of five feet and will meet all penthouse setback requirements.

**VII. Items Requested by the Office of the Attorney General (“OAG”)**

At the conclusion of the public hearing, the Commission asked the Applicant to provide additional information requested by OAG. Attached as Exhibit D are the materials requested.

On behalf of the Applicant, we thank the Commission for its continued review of this application and the materials submitted herewith.

Sincerely,

HOLLAND & KNIGHT LLP

By: Jessica Bloomfield  
Norman M. Glasgow, Jr.  
Jessica R. Bloomfield

Attachments

cc: Certificate of Service  
Joel Lawson, D.C. Office of Planning (via email and hand delivery w/ attachments)  
Elisa Vitale, D.C. Office of Planning (via email and hand delivery w/ attachments)  
Aaron Zimmerman, District Department of Transportation (via email w/ attachments)  
Maximilian Tondro, Office of the Attorney General (via email w/ attachments)



**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Applicant’s post-hearing submission were sent to the following on October 24, 2019, with hard copies sent on the following business day:

Ms. Jennifer Steingasser  
D.C. Office of Planning  
1100 4th Street, SW  
Suite 650 East  
Washington, DC 20024

VIA EMAIL

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

VIA U.S. MAIL

Commissioner Jonathan Bender  
ANC 3E Chairman  
4411 Fessenden Street, NW  
Washington, DC 20016  
[jonbender@gmail.com](mailto:jonbender@gmail.com)

VIA EMAIL

Commissioner Amy B. Hall  
ANC 3E02  
4606 Fessenden Street, NW  
Washington, DC 20016  
[anc3e02@gmail.com](mailto:anc3e02@gmail.com)

VIA EMAIL

Advisory Neighborhood Commission 3D  
PO Box 40846 Palisades Station  
Washington, DC 20016

VIA U.S. MAIL

Commissioner Chuck Elkins  
ANC 3D Chairman  
[3D01@anc.dc.gov](mailto:3D01@anc.dc.gov)

VIA EMAIL

Commissioner Troy Kravitz  
ANC 3D02  
[3D02@anc.dc.gov](mailto:3D02@anc.dc.gov)

VIA EMAIL

Commissioner Paige Ela  
ANC 3D03  
[3D03@anc.dc.gov](mailto:3D03@anc.dc.gov)

VIA EMAIL

Edward L. Donohue  
Donohue & Stearns, PLC  
117 Oronoco Street  
Alexandria, VA 22314  
[edonohue@donohuestearns.com](mailto:edonohue@donohuestearns.com)

VIA EMAIL

Citizens for Responsible Development  
Barbara & Sheldon Repp  
4704 Windom Place, NW  
Washington, DC 20016  
[repper3@aol.com](mailto:repper3@aol.com)

VIA EMAIL & U.S. MAIL

Spring Valley Opponents  
Attn: Jeff Kraskin  
4601 Tilden Street, NW  
Washington, DC 20016

VIA U.S. MAIL

Spring Valley Neighborhood Association  
Attn: William Clarkson  
4805 Sedgwick Street, NW  
Washington, DC 20016

VIA U.S. MAIL

Ward 3 Vision  
Attn: John Wheeler  
4304 Yuma Street, NW  
Washington, DC 20016

VIA U.S. MAIL



Jessica R. Bloomfield  
Holland & Knight LLP