



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



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 19-10

Motion of: Applicant Petitioner Appellant Party Intervenor Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Motion to strike from the case record the newly prepared shadow study submitted by CRD (Ex. 244, pp. 22-27),
or in the alternative, to reopen the record to submit a response to CRD's shadow study.

Please see attached letter stating the reasons why the Zoning Commission should grant the motion.

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- Yes, consent was obtained by all parties Consent was obtained by some, but not all parties
 No attempt was made Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this day of , 2 1

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via: Mailed letter Hand delivery E-Mail Other _____

Signature:

Print Name: Jessica Bloomfield, Holland & Knight LLP

Address: 800 17th Street, NW #1100, Washington, DC 20006

Phone No.: 2024695272 **E-Mail:** jessica.bloomfield@hklaw.com

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Jessica R Bloomfield
202-469-5272
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November 5, 2019

VIA IZIS

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

**Re: Z.C. Case No. 19-10
Consolidated PUD @ Square 1499
Addendum to Form 150 – Motion to Strike / Opportunity to Respond**

Dear Members of the Commission:

On behalf of Valor Development, LLC (the “Applicant”), and for the reasons explained below, we hereby submit a motion to strike from the case record the newly prepared shadow study submitted by Citizens for Responsible Development (“CRD”), or in the alternative to request the opportunity to reopen the case record to respond to CRD’s shadow study.

On October 31, 2019, CRD submitted its response to the Applicant’s post-hearing submission (the “CRD Response”), which included a newly prepared shadow study that was prepared by Digital Design + Imaging Service (“DDIS”) (Ex. 244, pp. 22-27). CRD’s shadow study represents entirely new evidence that should have been submitted prior to or at the public hearing to allow the Applicant an opportunity to respond to and cross-examine the witness that prepared the study.

As requested by the Commission at the conclusion of the public hearing, the Applicant’s post-hearing submission included information on contested issues. One such contested issue was potential impacts to sunlight, which is an issue initially raised by CRD in its Statement in Opposition submitted on October 3, 2019, prior to the public hearing. *See* Ex. 118.¹ CRD had every opportunity to include a shadow study in its Statement in Opposition, and/or in its Visual Impact Study PowerPoint presentation at the public hearing. *See* Ex. 217. However, CRD did not submit a shadow study to support its assertions regarding impacts to sunlight, nor did it address

¹ In its initial request for party status, CRD did not identify impacts to sunlight as being one of the major issues that was likely to affect it if the project was approved. CRD simply reserved the right to bring up additional issues.

the Applicant's shadow study which has been in the case record since the initial application. See Exhibit 2C7.

At the close of the public hearing, Chairman Hood closed the case record except for specific information to be submitted by parties. The submission schedule provided an opportunity for parties to respond to the post-hearing submissions of other parties. As such, CRD's response to the Applicant's post-hearing submission should have been limited to the content of the Applicant's submission. Instead, CRD went well beyond the permitted scope of response. CRD's response is not simply a response to the Applicant's post-hearing submission regarding potential impacts to sunlight because it: (i) contains several (erroneous) assertions regarding the accuracy of the Applicant's shadow study, and (ii) inserts substantial new evidence into the record that the Applicant has never seen. Based on the foregoing, the Commission should strike CRD's new shadow study from the record.

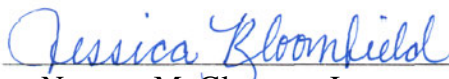
Alternatively, should the Commission decide not to strike CRD's shadow study, the Applicant respectfully requests the opportunity to respond to the new shadow study. Upon close review of this new evidence, significant errors have been identified that run contrary to testimony provided by CRD's visual impact study expert witness and are potentially intended to mislead the Commission. At the latest, the Applicant will submit its response by close of business on November 6, 2019, which would afford parties ample time to respond prior to the November 18, 2019, decision date set by the Commission.

Thank you for your continued attention to this matter.

Respectfully Submitted,

Sincerely,

HOLLAND & KNIGHT LLP

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

Attachment

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

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2019, copies of this motion were sent via email to the following:

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 EMAIL

** Email sent to each Commissioner*

Advisory Neighborhood Commission 3D
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Washington, DC 20016

VIA EMAIL

** Email sent to each Commissioner*

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VIA EMAIL

Citizens for Responsible Development
Barbara & Sheldon Repp
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VIA EMAIL

Spring Valley Opponents
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jkraskin@rcn.com

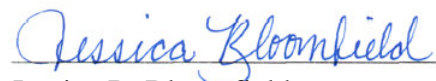
VIA EMAIL

Spring Valley Neighborhood Association
Attn: William Clarkson
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WClarkson@KSLAW.com

VIA EMAIL

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VIA EMAIL



Jessica R. Bloomfield
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