

Good Evening Commissioners.

Thank you for the opportunity to speak on behalf of Citizens for Responsible Development (CRD).

My name is Shelly Repp. I live on Windom Pl. NW, just five houses from the proposed “Ladybird” development – the “Project.” I am joined here this evening by three neighbors. Nearly 600 DC residents have signed a petition opposing the current project, and 73 households have written and sent to the Commission individual letters in opposition, including 16 who are “200 footers.”

Valor is proposing to build two five-to-seven-story buildings on the lot of the former one story SuperFresh grocery. There are also several existing businesses on the lot that employ around 80 people. The buildings would face two local, residential streets lined with two-story, single-family homes. On the back side they would overlook the one-story historically designated and protected Spring Valley Shopping Center. In fact, as we explain later and in our written submission,

including the supplement filed on January 9, since the Project encompasses the Shopping Center, the proposal triggers additional historic review that has not been performed.

You asked two weeks ago what the Project would look like. This is an important question because Valor's renderings do not show how the buildings will look to the human eye. The following images show that the buildings will look larger than shown in the Valor renderings. They were prepared by Digital Design & Imaging Service in accordance with National Park Service, National Capital Planning Commission and industry standards

Show images.

The Project raises a host of legal issues. In a nutshell, however, the Project is just too big. CRD supports lower scale redevelopment of the site. From the beginning, the Applicant has said that they wanted to bring a real grocery store to the site of the former SuperFresh, and has stated that they need additional commercial density to do so. In fact, they are requesting both additional residential and commercial density. And they have failed to deliver a real grocery store, instead securing a non-binding letter of intent with Balducci's, a gourmet food store, which

will in fact compete with Wagshals, a long-standing community asset next door.

The application is submitted pursuant to the Design Review provisions. The Design Review regulations impose stringent limitations on Design Review applications. As set forth below, the Project exceeds and violates a number of these limitations. In fact, the complexity of these issues underscores why this project is not appropriate for the expedited and less intensive Design Review process.

First, an increase in density shall not be permitted as part of a design review application. Valor states that the maximum amount of Gross Floor Area available on the subject lot is 184,514 GFA. The proposed project far exceeds this limitation. Valor's original Application included buildings with 285,829 GFA. While the Prehearing Statement does not specify the GFA for the new buildings, by adding the square footage figures on each of the floors except the Penthouse, one gets at least 277,278 GFA, or almost 93 thousand GFA more than would be allowed as a matter-of-right. Thus, the application defies the letter and spirit of the Design Review requirements.

Second, Design Review is intended to allow less deviation from matter-of-right standards than would be available in a PUD. Under a PUD, a developer may add 20% in GFA. For Valor, the best case scenario would allow them to pursue a PUD project with up to 232,287 GFA. At 277,278 GFA, the Project would utilize 44,991 more GFA than could be secured under a PUD, thus violating section §600.2 of the Design Review regulations.

Third, the Project is inconsistent with the Comprehensive Plan, thus violating section §600.4 of the Design Review regulations. We provide a more complete explanation for this conclusion in our written submission. But in short, the Land Use, Urban Design and Rock Creek West Elements of the Comprehensive Plan each call for development to be appropriate to the scale and character of the adjoining communities. A five-to-seven-story, 89-foot tall structure is incompatible with the two-story homes on the adjoining neighborhood streets and with the one to three story, low density, historically designated Spring Valley shopping area. The images prepared by Digital Design & Imaging Service, Inc. which are included in our formal presentation demonstrate the excessive scale of the Project in relation to the neighborhood. The Project exemplifies the “overpowering contrasts, in scale, height and density” that the Urban Design Element states should be avoided. The Rock Creek West Element states as a General Policy that “Future

development in both residential and commercial areas must be carefully managed to ..... protect and enhance the existing scale, function, and character of these neighborhoods.” The Project fails to meet the standard contemplated by this Policy. Rather than managing growth, by exceeding the height and density limits of what is permitted, the Project is an example of uncontrolled growth.

Also, being almost a mile from the Metro, the site is not transit friendly.

Fourth, the Project is inconsistent with the Future Land Use Map. The FLUM “express[es] the public policy on future land uses.” The FLUM designates the SuperFresh site as Low Density Commercial. The Plan’s Framework Element goes on to say that a “common feature [of these zones] is that they are comprised primarily of one- to three-story commercial buildings.” With the sole exception of the American University Building, this designation accurately describes the SuperFresh site, and the Spring Valley commercial area.

The Framework Element further states that the “zoning of any given area should be guided by the Future Land Use Map” and that “zone districts may be compatible with more than one” FLUM designation, “depending on the prevailing character of the area and the adjacent uses.” Here the prevailing character of the area is single family homes and one to three

story commercial. We submit that the Zoning Commission should look to the FLUM and the prevailing character of the area and adjacent uses in rendering a decision on the Application.

The one anomaly in the area is the building now owned by American University. Construction of that building occurred in 1979 as a result of the shifting of mass among two lots owned by the same organization. The Framework Element states that within an area, there may be individual buildings that are higher or lower than the ranges specified. Here, the existence of the American University building, which is six stories tall and faces Massachusetts Avenue, argues for a lower building on the rest of the site. In fact, that is exactly what was contemplated by the owner back in 1979.

Fifth, contrary to the Zoning Regulations – including §604.7(c) of the Design Review regulations - the Project undermines the historic character of the Spring Valley Shopping Centers and the surrounding neighborhood.

Sondra Mills will address these issues.

Sixth, contrary to §600.1(a) of the Design Review regulations, the Project will have an adverse impact.

Laura Ivers will address traffic congestion, pedestrian safety, sun light and privacy issues.

Another potential adverse impact concerns street parking in the neighborhood, which can already be overwhelmed by the 1,000 or so registrants in the lifelong learning programs housed at the former law school building. Valor has been vague on how much on-site parking will be available for residents of the 219 apartments. One constraining factor is that Valor must make 236 parking spaces available to American University under a pre-existing easement. The DDOT report states that of the 370 parking spaces proposed in the building, 224 will be dedicated to residents, saying that it understands that Valor has an agreement with AU to relinquish or lease back 180 of those spaces for use by residents and retail customers. Does Valor have such an agreement with AU, and for how long does it last?

Seventh, the five to seven story buildings violate the District of Columbia Height Act and violate and circumvent the Zoning Regulations.

Michael Stover will address these issues.

Finally, contrary to §604.8 of the Design Review regulations, the Applicant has not shown that the Project is “superior to ANY matter-of-right development possible on the site”, with emphasis on the word “any.” Valor has repeatedly stated that it could build essentially the same building as a matter of right, but without a grocery store. Yet, as noted above, Valor’s own calculation of the size of a matter-of-right building – taking into account the previous transfer of density from the adjoining lot – is one containing 184,514 GFA, as contrasted with the 277,278 GFA of its latest Design Review proposal.

All Valor has shown is a straw man scenario of three massings with inset outlines of the proffered five story building with a penthouse. The drawings are not realistic, and assume a building at the maximum size of MU-4 zoning without taking into consideration the more limited matter-of-right density available. Valor and its architects surely could come up with a better matter-of-right design if they put on their creative, thinking caps.



## CASE 16-23 – TESTIMONY IN OPPOSITION BY LAURA IVERS

Chairman Hood and Commissioners:

Thank you for the opportunity to speak tonight. My name is Laura Ivers and my family and I live at 4710 Windom Place, directly across the street from the proposed development. We are among those within 200 feet of the site. Our children are young - ages 3 and 6 – and we moved to the neighborhood a few years ago because of the amenities for family life, including good public schools and a quiet neighborhood where children can play outside.

We are extremely concerned about how the proposed large-scale complex would dramatically transform our neighborhood with several negative implications. I speak for many in the neighborhood who share these concerns as made clear by the many letters submitted in opposition to this case and by our petition, which has nearly 600 signatories from the neighborhood opposing the scale of the proposed development.

Our top concerns relate to pedestrian safety, traffic congestion, and overcrowding of schools, as well as deprivation of sunlight, loss of privacy, and noise and air pollution.

**Pedestrian safety:** The development as proposed would increase traffic significantly, making the neighborhood less safe for pedestrians, a special concern for children and elderly. Valor's traffic study indicates a range of 150-305 cars **per hour** coming and going from the site during peak hours and 21 truck deliveries per day. **Such a significant increase in car and truck traffic in no way creates a more pedestrian friendly neighborhood.**

Even if Valor implements DDOT's recommendations - curb extensions and striping missing crosswalks - the increased traffic flow, lack of consistent sidewalks on surrounding streets, and disregard for crosswalks will pose a risk to pedestrians. The claims of pedestrian friendly alleyways made by Valor are simply false – pedestrian walkways in front of truck loading docs and a parking garage entrance are not a viable pedestrian solution. Windom Walk - a publicly accessible linear park – ends in the alley. In addition, the HAWK light is not a priority amenity for many and will likely cause new traffic flow problems. Personally, I find the crosswalks at 48<sup>th</sup> and 49<sup>th</sup> street totally sufficient.

**Traffic congestion:** I work downtown and am familiar with the daily commute options. On the N buses or driving on Mass Avenue, traffic is heavily congested and slow going. I find walking to the metro more efficient. Unfortunately, the nearest metro stop is a mile away, a walk that isn't for everyone both ways every day regardless of the weather, nor is the uphill bike ride. The significant increase in traffic implied by the proposed development – 305 cars/hour at peak times - would exacerbate the already bad congestion on Massachusetts Avenue during peak commuting hours. Presently there is no solution for metro access. The AU bus is slower than walking due to its indirect route.

A more immediate concern for neighbors is how traffic will flow in and out of the site. As discussed on January 11, most car trips and truck traffic will use the alley off 48<sup>th</sup> street. In accessing Mass Avenue from the alley, this traffic will bottleneck on the short block between

Warren Street and Mass Avenue. In addition to the limited space on that short block, cars and delivery trucks will need to navigate around the AU shuttle bus stop, which runs up to ten shuttles per hour. The alley behind the Spring Valley Shopping Center will also be clogged with truck deliveries for the center, during which times the alley will not be passable.

**School capacity:** My older daughter attends Janney Elementary school, and any child who would move into the proposed apartments would rightfully need to be accommodated at local public schools. However, adding 219 apartments to the site is roughly the equivalent of adding some 15 blocks of homes to the neighborhood, and unfortunately our schools are already at and beyond capacity. Last school year, Janney and Wilson High School utilization was 103%. Overcrowding of public schools is a very significant concern for many of the families in the neighborhood.

**Deprivation from sunlight:** If built, the seven-story structure would cast significant shadows on neighboring homes, depriving neighbors of sunlight. As discussed on January 11, the shadow study Valor provided with its pre-hearing statement was incomplete, only looking at seven hours of the day (9-4 pm). At our request, Valor provided a study showing shadows after 4 pm. My house is among the many that would be in Ladybird's shadow in late afternoon from March through September and through the evening in the summer. The shadow and canyon like feeling created by the building would have negative implications for our quality of life.

**Privacy issues:** Furthermore, the height of the proposed development relative to surrounding homes and the terraces proposed for the development raise concerns about personal privacy. Individuals residing in some units and those using the terraces would have vantage points where they would easily see into neighboring homes and yards.

**Pollution:** Increased traffic would bring an increase in air pollution from vehicle and truck emissions that would degrade air quality, potentially exposing residents to health risks. The additional traffic would also bring persistent noise pollution that would be a constant detraction from our quality of life. In addition, light pollution from the building and its impact on neighbors health and the well-being of birds and other wildlife is a concern.

**Electrical Wiring:** Valor's renderings do not include any electric wires. However, there are many on 48<sup>th</sup> St and Valor does not plan to put those wires below ground. This will remain a visual eyesore and a concern for electricity outages. It is also deceptive.

Unfortunately, Valor has not offered adequate amenities to offset these downgrades to the quality of life in our neighborhood. **I strongly urge you to oppose the development as currently presented.** A scaled back development – for example, two stories smaller – would have less negative impacts and be more in keeping with the character of the neighborhood.

Thank you Chairman Hood and Commissioners for your time and consideration of these issues.

TESTIMONY OF MICHAEL A. STOVER DATED JANUARY 25, 2018  
In ZC CASE 16-23 Valor Development LLC Square 1499

I am an AU Park resident who lives just three blocks from the proposed building site. Now retired, I have lived in my house for 40 years.

Valor has made a serious error in taking its 50-foot height measurement from the 48th Street side of its building because 48th Street rests upon an artificial embankment. This violates applicable zoning regulations. Valor is attempting to justify a massive structure that will rise impermissibly to 73 feet because (as Valor has admitted) this steeply sloping site, starting from that artificial embankment, drops 26 feet in elevation along Yuma Street.

From my observation of the topography, it is clear that the roadbed for 48th Street was leveled across the natural slope by building an artificial embankment on the downhill side, as illustrated by the diagram and photographs in the CRD Response. This conclusion is borne out by reference to the 1886 USGS topographic map (attached), which shows a continuous slope from above 48th Street down to what is now the SuperFresh lot. (You can get your bearings on this map by reference to the 1919 atlas map of D.C., also attached. Both maps show the location of Murdock Mill Creek at the bottom of the slope, which ran across Square 1499 - the SuperFresh site - as indicated on the 1919 map.) As you can see from the photographs, the 48th Street embankment levels the roadbed as well as the adjacent sidewalks and the lawn area with its trees. On the downhill side, the flat top of that embankment extends 24 feet from the 48th Street curb to the retaining wall. Just below that artificial embankment and retaining wall, there is a major excavation to accommodate the lower floor of the parking garage.

Now those features of the landscape bring into play Section 307.7 of the Zoning Regulations, which applies because the site lies within MU-4 zoning. Although a developer is permitted by Section 307.5 to use "any front" for its 50-foot height measurement, Section 307.5 qualifies that permission by saying "**except as provided in Section 307.7.**" Section 307.7 prohibits taking a height measurement from the top of any "**artificial embankment,**" and also prohibits a developer from taking advantage of an "**artificial depression**" to ignore the actual ground level that surrounds the building. This rule, we submit, requires Valor's architects to go back to their drawing boards, and to take their 50-foot height

measurement **from the middle of the front of the building that faces Yuma Street**. That is the point required by Section 307.7 (c), because it is **not** affected by the embankment's artificial change in elevation. Alternatively, under Section 307.7 (d), the **Zoning Administrator** must determine an appropriate level based on the surrounding grid of shops and houses. (The lower floors of the Yuma Street side of the building are not, as Valor has disingenuously claimed, "below grade.") In sum, Valor failed to take due care, at the outset of their project, to determine if its design complied with the regulations of the Height Act. **Valor has not even addressed this problem, and has thus failed to meet its burden of proof.**

Under either solution, the height of this building will be reduced by two floors. This will transform it into a building more in harmony with the surrounding neighborhood. This is that result that is also required by MU-4 zoning, which calls for a "moderate density" mixed-use building, not a "medium density" building. The "Ladybird" is a "medium density" residential building, which is defined in the Comprehensive Plan as a building 4 to 7 stories tall.

Furthermore, I would like to point out that the Office of Planning has made two serious errors in regard to the points I am making. In the first place, The Ladybird building is not "stepped down" in height along Yuma Street. Perhaps the OP is referring to the building's upper floor setbacks, but these are not **actual** reductions in height. As the Court of Appeals has ruled in the Durant case, such cosmetic features designed to mitigate the **impression** of height do not give the Commission a basis for deeming the building **less high than it actually is**.

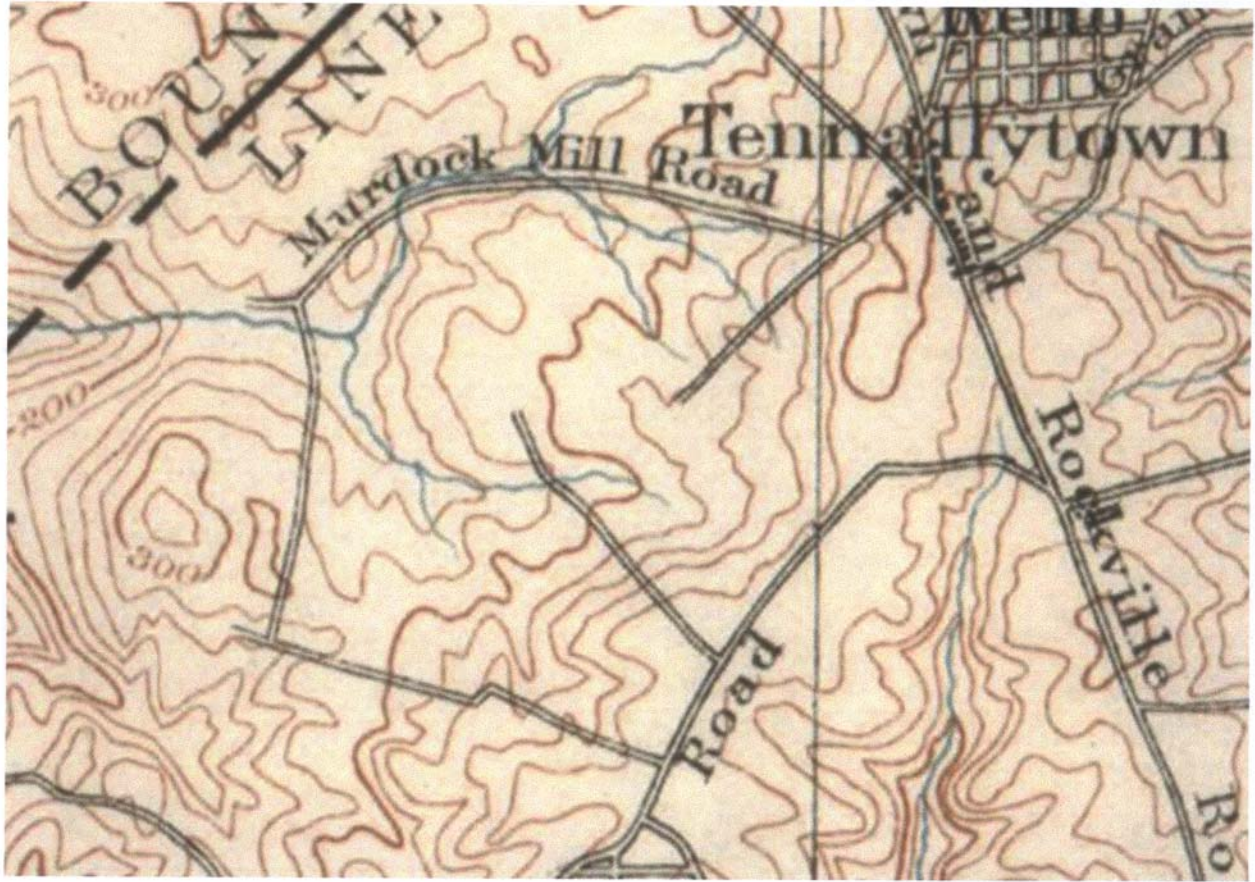
In the second place, the Office of Planning has erred in stating that Valor could erect an MOR building right up to the property lines on 48th and Yuma Streets. Their contention is wrong because Section 404.1 limits the percentage of a lot that a residential building can occupy. As Valor has acknowledged, an MOR building would contain roughly 100,000 fewer square feet than the "Ladybird" building that Valor is presently proposing. Because transfers of density would not be permitted, an MOR building would cover even less of the lot.

Thank you.

Attachments:

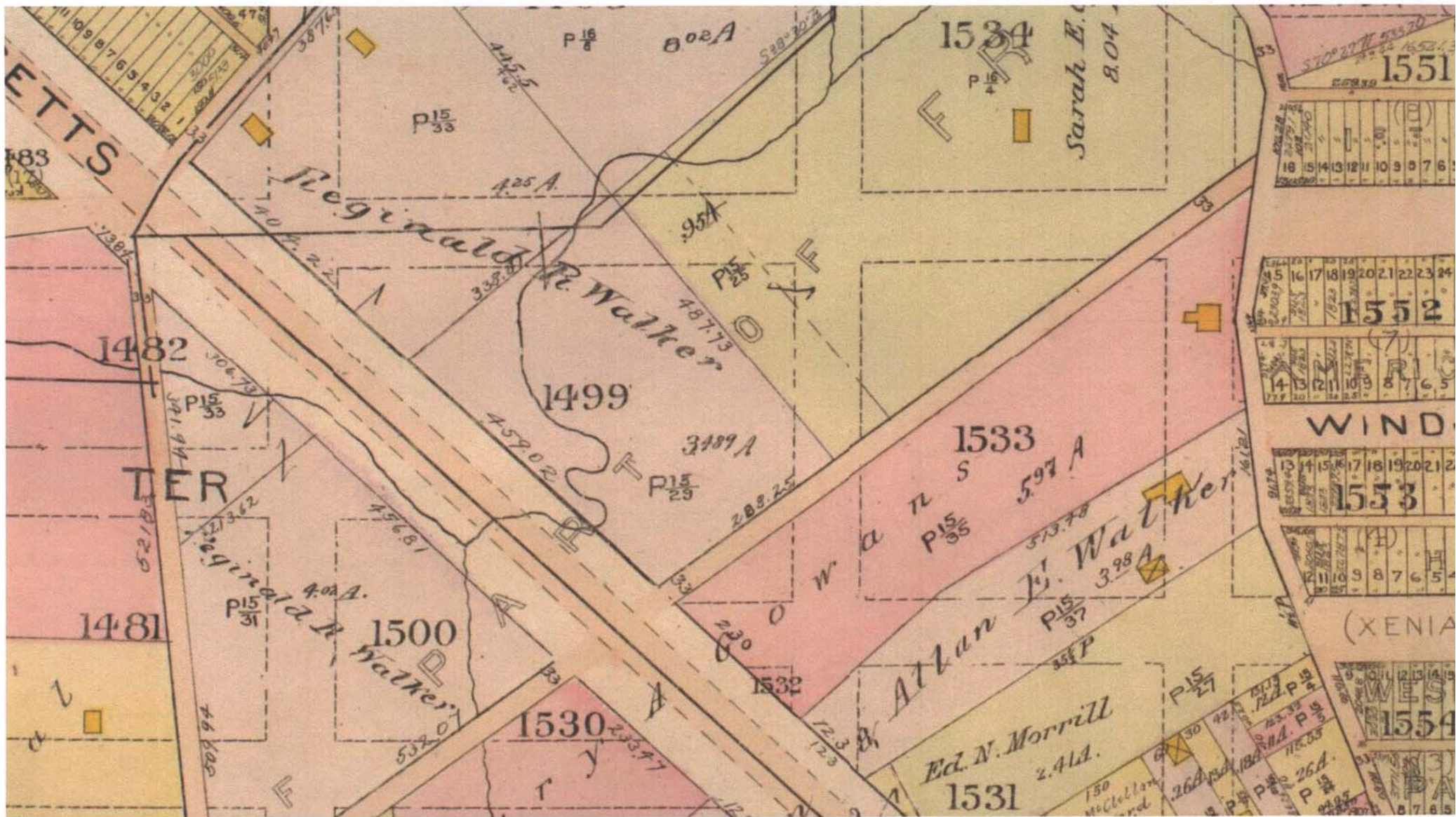
1886 USGS Topographical Map of Washington D.C. (detail)

1919 Baist's Atlas of the District of Columbia (detail)



Detail from U.S. Geological Survey of the District of Columbia, topographic map, published in 1886, in the Library of Congress





Detail from Baist's real estate atlas of surveys of Washington, District of Columbia, 1919 - 1921 (at the Library of Congress)

**Testimony of Sondra L. Mills in Opposition:**  
**ZC Case 16-23/Valor Development LLC/Square 1499**

My name is Sondra Mills. I live at 4827 Alton Place, N.W., located about a block and a half from the former “SuperFresh” site. Frankly, like many, I was stunned by the scale, massing, and design of Valor’s proposed project. It is so out of character with the neighborhood. So we decided to consult with Stephen Hansen, a respected architectural historian, who has been accepted as an expert witness before the Mayor’s Agent for Historic Preservation in September of 2017.

Mr. Hansen provided a report on the severe adverse impact of the proposed Lady Bird project on the historic Spring Valley Shopping Center sites along Massachusetts Avenue. Since receiving the Office of Planning Report, we also asked Mr. Hansen to comment in a supplemental report on some of the Planning Office’s incorrect statements and conclusions. Both reports have been filed with the Commission.<sup>1</sup> I would just like to touch on a few highlights in the reports.

Starting with the supplemental report, Mr. Hansen explains that the proposed development cannot go forward without first being reviewed by both the Historic Preservation Office *and* the Historic Preservation Review Board. As acknowledged by Valor, DDOT, and the Office of Planning, historic landmarks are unquestionably involved in the proposed project.

- The Spring Valley Shopping Center was designated a DC historic landmark in 1989 and the put on the national registry as a national historic landmark in 2003.

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<sup>1</sup> Mr. Hansen’s supplemental report was filed by counsel for Citizens for Responsible Development on January 9, 2018, together with a corrected version of Mr. Hansen’s original report, which was submitted on behalf of Citizens for Responsible Development as an attachment to its Statement in Opposition filed on January 4, 2018.

- Valor purports to borrow density from the adjacent historically landmarked Spring Valley Shopping Center.

- The owner of that shopping center – Regency – is a named party to this application.

There are supposedly confidential documents between Regency and Valor regarding this purported transfer, which Valor has refused to disclose.

- But regardless of whatever is contained in these secret documents, it is clear that Valor’s proposed project cannot proceed without borrowing density from the shopping center.

No one disputes that.

But no transfer of density can be received by the project. Mr. Repp has already addressed the fact that the design review process does not permit an increase in density. Our submission also explains that any transfer of density is limited to only 5 receiving zones in the downtown areas. The proposed Lady Bird is simply not located within any of these zones.

In fact, Valor goes way beyond borrowing density rights from the Spring Valley Shopping Center. What it apparently proposes to do is treat the shopping center lots 802 and 803 with the Valor lot 807 as though they were *combined* into a single lot. The lots are *separate* lots. They have not been “combined” into a single lot. Valor can’t “reallocate” density from a separate lot. A transfer of density is really what’s going on here – regardless of the labels Valor is trying to hang on this.

Citizens for Responsible Development asked Stephen Hansen about what steps need to be taken to reconfigure lots. Here is what he said in an email dated January 22, 2018:

Subdivisions are processed through DCRA. All lot subdivisions in the city have to be reviewed and signed off on by the Historic Preservation Office, and depending on what it is, other agencies as well. If it is a routine subdivision, and/or not in an historic district,



HPO sign off is all that is needed for historic approval. If the subdivision affects the character of an historic property (generally determined by HPO), then it has to go to the Historic Preservation Review Board (HPRB) for review.

See <https://planning.dc.gov/page/subdivisions-property>. Consequently, combining the Valor lot 807 with the landmarked lots requires Historic Preservation Review Board review to evaluate the effect on the character of the historic landmark. In other words, Valor cannot legally reap the benefits of combining the lots without accepting the historic preservation responsibilities that come with it.

Even if Valor can somehow overcome all of these obstacles, which we believe they cannot, the Commission still must consider the effects of the proposed development on the two landmarks. In fact, the Office of Planning's report states that where – as here - an historic landmark is involved, an application to waive rear yard requirements triggers review by the Historic Preservation Office. Valor has not sought or provided any such review.

Valor's proposed Lady Bird will unquestionably adversely impact the landmarked shopping center. As set forth in Mr. Hansen's original report and in submissions made by Citizens for Responsible Development:

- Valor's proposed project does not respect the scale or architecture of the landmark. It will loom over the landmarks and the surrounding neighborhood they were designed to serve.
- It will cast broad shadows over the community – both literally and figuratively - and detract from the historic character of the shopping centers that was recognized by the Historic Preservation Review Board, when it granted landmark status to both shopping centers.

- Consequently, the project does not satisfy the requirements of Section 604.7(c) of the Design Review regulations because it will adversely affect the landmark.

All of this might sound a little technical. But to the people who live in AU Park, it's anything but. I moved to Alton Place 12 years ago because I was looking for a neighborhood that was less dense than where I had lived before. An important consideration when I chose my home was that it was located near a small, local-serving shopping area that was protected by the historic landmark status granted to both of the two Spring Valley shopping centers along Massachusetts Ave. This is why we live there. Valor's proposed development represents a sea change in AU Park. Three families have already moved away in part due to their concerns about the huge scale of this project. If this project is approved, others, including me, will follow

Thank you for your consideration.