

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
441 4<sup>TH</sup> Street, NW, Suite 220, Washington, DC 20001**

**ZONING COMMISSION CASE No. 16-23 (Valor Development, LLC –  
Voluntary Design Review @ Square 1499, Lots 802, 803, 806 and 807)  
January 11, 2018  
(January 25, 2018)**

Testimony of Alma Hardy Gates

Chairman Hood and Members of the Zoning Commission:

I am Alma Gates, a life-long resident of the city and former frequent shopper at the Super Fresh store which remains on the Valor Lot. I am before the Commission as an individual in opposition to Application No. 16-23.

On January 10, 2018, a second vote was taken by ANC 3D to affirm support of the Valor project. The vote was 5-3-0 – a change from the earlier vote of 8-1-0 in support.

My formal testimony is in the record marked as Exhibit 150 and addresses the public dealings ANC 3D has had with Valor; changes in ZR-16 and its apparent conflict with the Comprehensive Plan as demonstrated through the definitions found on the Future Land Use Map and descriptions in the Generalized Policy Map. There are also excerpts from the Rock Creek West Area Element which discourage projects of the scale and bulk of the Valor Project in low density residential areas. The increase in FAR or density appears in conflict with the Design Review Purpose (Subtitle X § 600.1(e)).

Critical to this proposed mixed-use project is the transfer of FAR/development rights from the historic shopping center to the Valor project and whether the Valor site is a designated receiving zone, which has been deferred by the Office of Planning (OP) to the Office of the Attorney General (OAG) for an opinion. An earlier transfer of development rights from the Super Fresh building to the AU building on Lot 806 occurred when all the property in Square 1499 was in single ownership and prior to the Spring Valley Shopping Center being declared a historic site. Today, the lots and buildings belong to different owners and have different status. It isn't as easy as "moving density around on this square" as Valor would have you believe. The process and outcome replicate what is outlined in Subtitle I, Chapter 8 – Generation and Certification of Credits; and, appear in

conflict with the Design Review Purpose (X-600.1(e)). The subject property is not within the downtown zone, yet development rights or FAR are being transferred. As this is one of the first Design Review Applications, the Zoning Commission must decide if the transfer of FAR or development rights is a precedent it wishes to perpetuate across all low density mixed-use zones in the city through the Design Review process or to restrict transfers to the downtown areas where they are currently allowed; and, if the proposed increase in density is allowable and appropriate for this Design Review Application.

After filing its revised Application on December 21<sup>st</sup> and testimony on January 11<sup>th</sup>, the Valor Project has begun to resemble a House of Cards as there remain very significant unresolved issues, including:

- Valor is a “contract purchaser” for A&T Lot 807, not an “owner;”
- The agreement between AU and Valor on parking spaces is not final;
- A decision on the transfer of FAR/development rights is in the hands of the OAG;
- We have been told to accept a “Letter of Intent” from Balducci’s as the fulfillment of Valor’s promise that a “full-service grocery store will return to the site; and,
- There is concern that the IZ set-aside may not satisfy the requirements of Subtitle C, Section 1003.
- No metrics have been submitted to address the potential impacts of the proposed HAWK signal on traffic flow on Massachusetts Avenue. This is concerning - given the *known* negative impacts of the nearby Nebraska Avenue HAWK signal;
- The planned condominiums will likely be replaced by rental units;
- Current popular neighborhood serving retail businesses and 60 jobs will be lost forever when construction begins;
- An alley will serve as the only means of ingress and egress to housing, loading and grocery shopping for the Valor Project; but will also serve as the delivery, loading and trash pick-up area for the Spring Valley Shopping Center; and
- LEED Certification has been downgraded from Gold to Silver.

The Zoning Commission may wish to consider repeating the action it took regarding construction of the Sibley Medical Office Building. The removal of two stories from the Valor buildings would greatly improve the transition from mixed use to low density residential, lessen other potential impacts presented by the

parties in opposition and bring the project into line with the Comprehensive Plan – primarily one- to three-story commercial buildings.

In closing, I strongly support the position of Citizens for Responsible Development and hope the Commission will give its findings thorough consideration as CRD does not have the backing of the two adjacent ANCs. CRD has been rational, reasonable and ready to discuss alternatives with Valor, but Valor has shown no interest in compromise.

## **ORIGINAL TESTIMONY AT EXHIBIT 150**

### **BACKGROUND**

Valor first appeared before ANC 3D in December 2015 to present its project and has held many other meetings both with ANC 3D and 3E as well as the community, but each meeting presented a slightly different project and promise of a grocery store as an amenity which, over a two-year period has continued to shrink in size. While attempting to get the developer to scale back the development, Citizens for Responsible Development (CRD) has been consistent in its opposition to the scale and density of the project, the group has also been consistent in its support for new development on the site.

Throughout the course of this project there has been discussion of the sale/transfer of non-residential FAR from the historic Spring Valley Shopping Center to the Valor site to provide the necessary FAR for the full-service grocery store. This sale/transfer, as well as the previous sale/transfer of FAR to the building currently owned by AU, seems to trigger the provisions of Subtitle C, Chapter 12, Combined Lot Provisions. All the Property Owners<sup>1</sup> are listed in the Prehearing Statement as members the Development Team, however, Valor is not currently included as one of the property owners. It was my understanding during ZRR discussions that transfer of FAR (development rights) and Combined Lot Development were meant for certain downtown zones where higher density is appropriate. Now that ZR-16 is in effect, and accepting an earlier transfer of FAR for the current AU building which at the time was located on a single lot, the Zoning Commission may want to consider whether the transfer of FAR is appropriate for a low density commercial lot surrounded by low density development consisting of single-family homes. In the Prehearing Statement (bottom of page 6) the applicant states:

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<sup>1</sup> Apex Real Estate Company; FW DC-Spring Valley Shopping Center LLC; and American University

Thus, consistent with the manner in which density can be aggregated across a project boundary in a PUD, the voluntary design review process makes it possible for the Applicant to allocate unused density from the historic SVSC to the Valor Lot, which will allow for the construction of a project that is superior to any matter-of-right project, including a new grocery store, greater affordable housing, and limitation of the potential for future increased development at the historic SVSC site.

## **HOW THE C-2-A ZONE DESIGNATION HAS BEEN CHANGED IN ZR-16**

### 1958 Zoning Regulations:

#### Section 720. Community Business Center Districts (C-2)

720.1 The Community Business Center (C-2) District is divided into C-2-A, C-2-B, C-2-B-1 and C-2-C Districts.

720.2 The C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core.

720.3 The C-2-A Districts shall be located in low and medium density residential areas with access to main highways or rapid transit stops, and shall include office employment centers, shopping centers, and medium-bulk mixed-use centers.

720.4 The C-2-A District shall permit development to medium proportions.

720.5 The C-2-A District shall accommodate a major portion of existing commercial strip developments.

### ZR-16 Zoning Regulations:

#### SUBTITLE G: Mixed-Use (MU) Zones

##### Chapter 4, MU-3 through MU-10

##### Section 400. Purpose and Intent

Section 400.1 The MU-3 through MU-10 zones are mixed-use zones consistent with the density designation of the Comprehensive Plan. A zone may be applied to more than one (1) density designation.

400.3 The MU-4 zone is intended to:

- (a) Permit moderate-density mixed use development
- (b) Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the

- District of Columbia outside of the central core;  
and
- (c) Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.

Comment: Zoning for the same zone district has changed with the approval of ZR-16:  
The C-2-A Zone shall permit development in **low** to **medium** proportions (depending on the adjacent residential zone).  
The MU-4 Zone shall permit **moderate-density** mixed use development.

## **The Comprehensive Plan**

The Comprehensive Plan designates the commercial area which includes the Valor site as **Low Density Commercial**.

**The Future Land Use Map (FLUM)** shows the Valor site located within a **Low Density Commercial Area**: Defines shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings.

The FLUM defines **Moderate Density Commercial** as [b]uildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.

**The Generalized Policy Map** shows the Valor site located within the Commercial/Mixed Use Areas as a **Neighborhood Commercial Center**. Neighborhood Commercial Centers meet the day-to-day-needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small business, such as local real estate and insurance offices, doctors and dentists and similar uses, also may be

found in such locations. New development and redevelopment within Neighborhood Commercial Areas must be managed to conserve the economic viability of these areas while allowing additional development that complements existing uses.

Text from the Comprehensive Plan can be found to support many positions, but the Urban Design Section UD-2.2 Designing for Successful Neighborhoods <sup>910</sup> clearly lays out how growth and development should be treated and scaled.

The design of commercial and mixed use development also should be harmonious with its surroundings. This does not mean new buildings must duplicate adjacent buildings; rather it means that new construction should respect basic block characteristics like building alignment, access, proportion of openings (windows and doors), exterior architectural details (cornices, parapets, etc), and heights. Signage, awnings, and other exterior elements should be designed as an integral part of each structure and should avoid negative effects on the visual environment. <sup>910.5</sup>

There is also direction on strengthening the defining visual qualities of Washington's neighborhoods and that *this should be achieved in part by relating the scale of infill development, alteration, renovations, and additions to existing neighborhood context... new development within such areas does not need to replicate prevailing architectural styles exactly but should be complementary in form, height and bulk.*

The Zoning Commission's attention is drawn to the results of the balloon test recently conducted by CRD which clearly shows the scale and density of the Valor project and its visual impact on its surrounding neighbors.

Located within the Rock Creek West Area Element, the Overview states:

Rock Creek West's most outstanding characteristic is its stable, attractive neighborhoods. These include predominantly single-family neighborhoods like Spring Valley, Forest Hills, American University Park, and Palisades... Although these communities retain individual and distinctive identities, they share a commitment to proactively addressing land use and development issues and conserving neighborhood quality. <sup>2300.2</sup>

The demand for housing also has been consistently strong in Rock Creek West. During the 1980s and 1990s, when the District was losing residents,

neighborhoods west of Rock Creek Park continued to add households. Growth has resulted from a combination of factors, including relatively low crime rates, numerous neighborhood amenities, accessible neighborhood retail, convenient Metrorail access, active community organizations and relatively high-performing public schools with strong parental support. 2300.7

## **The Valor Development**

The Valor Development is applying for zoning relief under the provisions of SUBTITLE X, Chapter 6: Design Review. A Special Exception for relief from the rear yard setback requirements is also necessary.

Also known as “PUD LITE,” the Design Review process is to allow for special projects. The Valor site is designated low-density commercial and is meant to serve as a transition area between the existing commercial area, which fronts on Massachusetts Avenue, and transitions to residential areas on 48<sup>th</sup> and Yuma Streets. This is a big, dense development which graphically overwhelms its neighbors on three sides. It does not serve as a proper transition zone.

There is no need to go into the specifics of the impacts of this case, that has been aptly done by Citizens for Responsible Development and others, however the fact the Applicant has waited until its Prehearing Statement, filed December 21, to fully disclose the Flexibility needed to “enable the applicant to meet all the design review standards” is somewhat shocking. There have been numerous meetings with unanswered questions since Valor’s first presentation in late-2015, yet this is the first disclosure of the scope of flexibility requested by the applicant under Voluntary Design Review. The community has endured endless carrot waving over the size and “name” of the full-service grocery store as well as alley setback issues, but those have been the extent of relief needed according to the developer.

While an amenity is not a requirement under the provisions of Design Review, a commercial component is expected on a mixed-use site. The “full-service grocery store,” has been the consistent “amenity” proffered by the Applicant. Balducci’s has signed a Letter of Intent to occupy the Valor retail space. While nothing is firm, Balducci’s describes itself as a “gourmet powerhouse.” A very high-priced grocer, where “produce is hand-selected, meats are prime cuts, and the fish is flown in fresh from the wharves.” Balducci’s specializes in catering and has its own private label goods. Not one of the ANC 3E Commissioners was supportive of the full-service grocer selection and one even remarked that he hoped it would fail so a real grocery store could occupy the space.

## **Conclusion**

After reviewing the Applicant's Prehearing Statement and other recent submissions, including the OP and DDOT reports, there remain questions about the Valor Application. The OP Report clearly outlines the relief requested beginning on page four of its report. DDOT also has areas which need clarification. LEED Certification, which has been consistently Gold and is so stated in the PHN, is now Silver. The full-service grocery store is a gourmet shop with some fresh greens and a few sundries.

The Zoning Commission should consider repeating the action it took regarding the Sibley Medical Office Building to ensure a transition from residential to institutional uses. Two stories were removed from the MOB and the height of the parking structure was lowered by placing one additional story underground. This action certainly improved the visual impacts of the new Sibley structures and reduced the potential for additional traffic impacts from the Sibley expansion.

Valor is proposing a predominantly residential development on a site meant to be a shopping and service area generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas range from small business districts that draw primarily from the surrounding neighborhoods to larger business district uses that draw from a broader market area. The Valor proposal delivers a smidgen of what is anticipated in a low density commercial zone. While low density commercial areas are generally comprised primarily of one- to three-story commercial buildings, the Lady Bird mixed use building will be six stories plus penthouse that tops out above the current AU building. The commercial or mixed-use area has been reduced over the life of the project from 55,000 sq.ft. of retail (including grocery store) to about 13,430 sq. ft. The primary use of the building is residential. The community will lose current neighborhood serving retail space if the Application is approved.

This residential project needs to be scaled down – not just back. It is not only a horrible intrusion on the opposing residential neighborhood but forms an unwanted building curtain wall which frames the historic Spring Valley Shopping Center and PNC Bank.



The alley, running between Yuma Street and Massachusetts Avenue will take major work to fix. It serves as the loading zone for businesses in the historic shopping center as well as the trash area for these businesses. While the applicant has committed to “cleaning up” the alley, it will be another undertaking to change the culture of the delivery trucks which often park and block access for extended periods of time.

In closing, I refer the Zoning Commission to the submission filed by Citizens for Responsible Development. This community group has been constant in their vigilance and have not missed an opportunity to bring awareness about the proposed Valor Development. A number of signatures in opposition have been collected which the Zoning Commission should accept. Citizens for Responsible Development members have made great personal sacrifices to pay for the expertise necessary to defend their community and unravel the insufficiencies and complexities of the ever-changing Valor proposal. This group deserves “the great weight.”

A handwritten signature in cursive script that reads "Alma H. Gates". The signature is written in black ink and is positioned above the printed name.

Alma H. Gates