



DONOHUE & STEARNS, PLC

January 31, 2018

VIA IZIS

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

Cc: Christopher Collins (via email), ANC 3E (via email) and ANC 3D (via email)

Re: ZC Case 16-23/Valor Development, LLC/Square 1499
Decision Date February 26, 2018

Chairman Hood:

On behalf of our clients, Citizens for Responsible Development (CRD), we submitted the attached one-page transfer of density summary and explanatory chart on January 25, 2018 prior to the hearing and it was entered into the record as Exhibit No. 191. It was one of four submissions that comprised Exhibit 191 and, therefore, we are resubmitting it alone to insure its consideration by the Commission.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. L. Donohue".

Edward L. Donohue

Enclosures

Ladybird Project Comprises Impermissible Increase in Density- The Facts

Design Review Prohibits Increase In Density (§§ 600.1 (c) and (e) and §600.5)

According to the Applicant, the maximum amount of Gross Floor Area available as a matter-of-right on the Valor Lot is 184,514 square feet. At the January 11th hearing, the Applicant stated that project comes in at a GFA of 277,278 square feet and therefore far exceeds the density allowed as a matter-of-right.

Matter-of-Right GFA Calculation - History

The current owner of the SuperFresh site, Paul S. Burka Apex Real Estate, originally owned both Lots 806 (4801 Massachusetts Ave. – lot area of 41,650 sq. ft.) and Lot 807 (the SuperFresh site – lot area of 79,622 sq. ft.). The two Lots together compose Lot 9 (121,272 sq. ft.).

In the early 1970s, to facilitate the construction of a large building at 4801 Massachusetts Avenue (now owned by American University), the owner received City approval to close the public alley separating the two Lots. At the time, the allowable FAR for the site was 2.0 – this allowed for a maximum GFA on Lot 9 of 242,544 sq. ft. (121,272 times 2). In a Declaration of Easement and Agreement, recorded in 1979, the property owner transferred some of the density allowed for Lot 807 to the adjoining Lot 806. The maximum available GFA was allocated as follows: 179,302 sq. ft. for Lot 806, and 63,242 sq. ft. for Lot 807.¹

At 277,278 GFA, The Project Utilizes 92,764 More GFA Than Allowed As A Matter-of-Right

The current Zoning Regulations allow a FAR of 3.0 (assuming IZ requirements are satisfied). With the additional 1.0 in FAR, there is a total increase in allowable GFA of 121,272 for the entire Lot 9 (1.0 x size of total Lot 9). Assuming that Valor has an agreement with American University to use the entirety of the increase for Valor's building, the current maximum GFA for Lot 807 is the original amount allocated to that Lot – 63,242 sq. ft. – plus the additional amount now allowed for both lots – 121,272 sq. ft. – for a total of 184,514 sq. ft. This is precisely the density the Applicant claims it can build as a matter-of-right.

Bottom line: The Application calls for an increase in density, which is not permitted under sections 600.1 (c) and (e) and section 600.5 of the Design Review Regulations.

The Project Seeks More Relief Than Could Be Secured Under A PUD In violation of §600.2

Under a PUD, a developer may add up to 20% in GFA. Assuming that this increase applies to Lot 807 in the abstract, the Applicant could add up to 47,773 in GFA through a PUD (the 79,622-square foot lot area of Lot 807 times a 3.0 FAR times 20%). [It would be less if the calculation were based on the reduced GFA available for Lot 807.] The Applicant, therefore, could pursue a PUD of no more than 232,287 GFA (184,514 GFA plus 47,773 GFA). At 277,278, the proposed Valor project would utilize 44,991 more GFA than could be secured under a PUD on Lot 807. This violates section 600.2 of the Design Review Regulations, which states that design review allows *less* deviation from matter-of-right than a PUD.

Conclusion

The attached table shows that the Valor project not only far exceeds the density allowed as a matter-of-right, but also includes more floor area than would be available for a PUD.

¹ See *American University Park Citizens Assoc. v. David Burka, et al.*, 400 A.2d 737, 739 (D.C. App. 1979) and *Paul S. Burka, et al. v. Aetna Life Insurance Co., et al.*, 945 F.Supp 313, 315 (D. D.C. 1996)

Ladybird Project Comprises Impermissible Increase in Density- The Facts

**Matter-of-Right Calculation for
SuperFresh Site (Lot 807)**

Lot size	79,622 sq. ft.
Allowable GFA (Gross Floor Area) after 1979 reallocation of GFA to Lot 806 (assumes 2.0 FAR)	63,242 GFA
Matter-of-Right (allocates the 1.0 additional FAR for both Lots - 121,272 GFA - to Lot 807)	184,514 GFA
Maximum GFA for a PUD (Matter-of-Right + 20%)	232,287 GFA
Valor's Proposed Project	277,278 GFA

DISTRICT OF COLUMBIA ZONING COMMISSION

SUPPLEMENTAL FILING

Z.C. Case 16-23

CERTIFICATE OF SERVICE

I certify that on January 31, 2018, I emailed a true copy of the foregoing one-page transfer of density summary and explanatory chart to Advisory Neighborhood Commissions 3E and 3D (3E@anc.dc.gov; 3D@anc.dc.gov), Jeff Kraskin (Jlkraskin@rcn.com) for Spring Valley Opponents, William Clarkson (wclarksonv@gmail.com) for Spring Valley Neighborhood Association, John H. Wheeler (johnwheeler.dc@gmail.com) for Ward 3 Vision and counsel for the Applicant, Christopher H. Collins (chris.collins@hklaw.com).



Edward L. Donohue
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Citizens for Responsible Development

Dated: January 31, 2018

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