



DONOHUE & STEARNS, PLC

July 13, 2016

Citizens for Responsible Development
c/o Mr. Sheldon Repp
4704 Windom Place NW
Washington, DC 20016

Re: Proposed Development by Valor Development at 4330 4⁸th Street NW
Square 1499; Lot 0807

Mr. Repp:

I wanted to write to (i) underscore the importance and relevance of *Durant v. D.C. Zoning Commission* and (ii) provide an assessment of Valor's most recent calculations.

DURANT V. D.C. ZONING COMMISSION

In *Durant v. D.C. Zoning Commission*, the D.C. Court of Appeals clearly articulated that a Planned Use Development ("PUD") application (and related map amendment) must be assessed in accordance with the Comprehensive Plan. The Comprehensive Plan incorporates the Land Use Element which is visually depicted by the Future Land Use Map ("FLUM"). Therefore, as Judge McLeese explained in the May 26, 2016 decision, PUD review necessarily must consider if the subject application is in compliance with the FLUM's designation of a particular site as low, moderate, medium or high density. The Court took a conservative view on the flexibility of the Zoning Commission.

The FLUM categorizes this parcel as Low Density Commercial, described in the Comprehensive Plan as:

"Low Density Commercial: This designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation 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 corresponding Zone districts are generally C-1 and C-2-A, although other districts may apply."

Valor is proposing a five-story building with a penthouse. This is clearly outside the scope of structure anticipated by the Comprehensive Plan and FLUM and therefore not permitted according to *Durant*. The burden is on Valor to demonstrate how the building adheres to both and we should remind the ANC of this on July 14th.

VALOR'S JULY 11, 2016 MEMORANDUM

After reviewing the memorandum circulated by Valor on July 11, 2016, the following errors and omissions remain apparent.

1. Valor does not provide any illustration of the current proposal's (as described on page 4/ paragraph 3) compliance with the Comprehensive Plan and the FLUM pursuant to *Durant*.
2. In its description of the evolution of the FAR allowance from 2.0 to 3.0, Valor does not explain why the additional FAR should not be prorated as between Lots 807 and 806. Valor allocates all of the additional FAR to Lot 807 though it utilizes the total lot area of Lot 9 which is comprised of both Lot 807 and Lot 806 to arrive at the GFA totals.
3. In its explanation of the Design Review Application ("DRA") which will utilize Lots 802, 803 and 807 (page 5/paragraph 3), Valor fails to account for the 1979 allocation to Lot 806 of 179,302 commercial GFA. Here again, Valor utilizes the lot area of Lot 807 as part of the combined land area yet fails to explain why it can do so and not reduce the resulting GFA by the 179,302 GFA.
4. Valor is proposing to utilize the DRA in order to secure additional density. Sections 600.1(c) and (e), however, explicitly state that the DRA is not available for projects that need an increase in density.

§600.1 The purpose of the design review process is to:

(c) Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because **the project is superior in design but does not need extra density;**

(e) Provide for flexibility in building bulk control, design, and site placement **without an increase in density** or a map amendment.

Section 600.5 only further clarifies that the subject proposal is not an appropriate candidate for the DRA due to the need for additional density.

§600.5 A map amendment or **an increase in density shall not be permitted as part of a design review application.**

Please do not hesitate to contact me with any questions regarding the above.

Sincerely,



Edward L. Donohue