GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18550 of Valor 1350 Maryland LLC, pursuant to 11 DCMR §§ 3104.1, 3103.2, and 1325.1, for a variance from the parking setback requirements under § 2116.12, and a special exception to allow a new residential building on a lot with more than 6,000 square feet of land area under § 1320.4, and a special exception from the roof structure requirements under § 411.11, in the HS/C-3-A District at premises 1350 Maryland Avenue, N.E. (Square 1027, Lots 141, 142, 143, and 849).[1]

HEARING DATES: May 7, 2013 and June 11, 2013
DECISION DATE: June 11, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 6A, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 6A, which is automatically a party to this application.

ANC 6A did not take a vote on whether to support this case and did not file a report. ANC chairman David Holmes appeared in support of the project and testified on his own behalf at the June 11th public hearing. He testified that both he and the single member district representative for the subject property were intricately involved in discussions between the neighbors and the Applicant regarding neighborhood concerns about the project. He testified that the neighbors and the Applicant reached an agreement concerning the project and improvements that the Applicant would make to the public alley. Commissioner Holmes stated that he supported the project and

[1] At the hearing the Applicant submitted additional information and amended the application to add a request for special exception relief from the roof structure requirements under § 411.11. The caption has been amended to reflect that additional relief requested and granted.

the agreement between the neighbors. The Board credits the personal testimony in support of the application, but because the ANC did not officially take a position on this case, there is nothing to which the Board may give great weight.

The Office of Planning ("OP") submitted a timely report dated April 30, 2013, recommending approval of the requested areas of relief under §§ 1320.4 and 2116.16. In its report prepared prior to the Applicant's supplemental submission (Exhibit 31) whereby it amended its application and plans to address roof structure relief as heretofore described, OP had suggested that special exception relief might be needed for multiple roof structures that would not be under a single enclosure and a variance from § 400.7 because the roof structures would not be set back from all exterior building walls a distance equal to their height. (Exhibit 26.) OP testified at the hearing on June 11th that they were in support of the Applicant's request for relief under §411.11. The District Department of Transportation ("DDOT") submitted a letter of "no objection" to the record with conditions.[2] (Exhibit 27.)

Brad Greenfield applied for party status in opposition. (Exhibit 25.) At the May 7th public hearing, Tracy Gerstle, wife of Brad Greenfield, appeared as the party in opposition. The Board considered the party status request but had reservations about granting party status to Ms. Girstle when only Mr. Greenfield was the applicant. The Board decided to hold the party status request in abeyance. When the Board postponed the public hearing, it neither granted nor denied the party status request. At the June 11th public hearing, as a result of an agreement between the neighbors and the Applicant, neither Mr. Greenfield nor Ms. Gerstle appeared to continue to prosecute their party status request, so there was no party in opposition. No other parties appeared in opposition at the hearing.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary under § 3103.2, to establish the case for a variance from the parking setback requirements under § 2116.12. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

[2] The Applicant agreed to the conditions that DDOT recommended and these are included among the conditions to this order.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to §§ 3104.1 and 1325.1 to allow a new residential building on a lot with more than 6,000 square feet of land area under § 1320.4 and from the roof structure requirements under § 411.11, in the HS/C-3-A District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 1325.1, 1320.4, and 411.11, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE REVISED PLANS DATED 5/28/2013 and 4/22/2013 AT EXHIBITS 31 AND 23A AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall commission a lighting study of the alley system to determine the best location for the installation of lighting to enhance safety in the interior of Square 1027.

2. The Applicant shall install lighting at the rear of its building. In addition, the Applicant shall install lighting at the rear of other buildings that abut the alley if the owner consents and provides the required electrical connection. The amount to be spent on such lighting of other properties will not exceed a total of $2500.00.

3. The Applicant shall install mirrors at the access points into the alley system if the owners of the affected buildings consent to such installation.

4. The Applicant shall request that DDOT allow a space for a car sharing service on 14th Street since four new parking spaces will be created as a result of the elimination of the existing curb cut and if a car-sharing service is interested in such space.

5. The Applicant shall provide a limited scope of repair work to resurface a portion of the alley in Square 1027. As more completely described in the proposal sheet included as Exhibit 33 of the record, the scope of work shall be limited to installing a 1.5-inch thick layer of asphalt over the existing alley surface for the portion of the alley in Square 1027 east of and including the section of Linden Court, N.E. that extends north-south

(approximately 3540 square yards). The Applicant shall complete this work at its own expense. This condition is subject to the District of Columbia's approval and issuance of an applicable permit (public space or otherwise) for the repair work described herein.

6. The Applicant shall provide the initial tenant of each unit, upon move in, and at the discretion of the tenant, either a one-time complimentary annual membership to the *Capital Bikeshare* program or a one year membership to a car-sharing program.

7. The Applicant shall provide a minimum of 27 secure bicycle parking spaces in the garage level of the building.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle[3], and Anthony J. Hood to Approve; S. Kathryn Allen, not participating or voting, one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 20, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR

[3] During deliberations on June 11th, Board member Hinkle indicated that while he had not been present at the first hearing on May 7th, he had read the record and was prepared to deliberate on the matter and vote.

THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.