

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 420

Case No. 83-2P

January 9, 1984

On January 31, 1983, K&L Joint Venture filed an application for preliminary review and approval of a PUD for Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Square 1357 located between Clark Place and Potomac Avenue near the 4600 block of Q Street, N.W. The applicant proposed to construct a single-family residential development consisting of a total of sixteen dwelling units, ten semi-detached houses located on Potomac Avenue and six detached houses located on Clark Place.

Pursuant to proper notice, the Zoning Commission held public hearings on the application on July 25, August 1 and August 8, 1983. At these hearings, extensive testimony was presented by the applicant, government agencies, Advisory Neighborhood Commission 3B and residents in the PUD site area. The ANC and a group of individual residents in the area, Dr. Kirk Rankin, et al., who were represented at the hearings by Robert Stumberg, Esquire and are now represented by Don Melvin, Esquire, were granted party status in the case.

At the end of the hearings, the Commission suggested that the applicant consider development at a density less than originally proposed. The applicant agreed to do so and the Commission extended the closing of the record in the case to receive additional written submissions. The applicant submitted a revised site plan consisting of fourteen houses. The opposition parties submitted a response opposing the revised site plan and indicating a desire for a further density reduction, more tree preservation and increased "visual penetration so that the trees on the site could be seen and enjoyed by the entire neighborhood." On September 9, 1983, the Commission considered, but failed to reach a decision in, the case. The Commission authorized the reopening of the record and invited the applicant to submit by September 30, 1983, a revised site plan limiting the site development to twelve units and preserving a maximum number of trees by not disturbing the dripline of the trees to be preserved. The parties in opposition were given an opportunity to submit written responses to the applicant's submissions within seven days after the filing of the applicant's submission.

On September 30, 1983, the applicant submitted two twelve unit plans. One plan consisted of six semi-detached and two detached houses on Potomac Avenue and four detached houses on Clark Place. The other plan consisted of a clustered arrangement with all twelve dwelling units on Potomac Avenue. In its submission, the applicant stated that the intent of the more clustered arrangement plan was to respond to the opposition parties' concerns regarding increased tree preservation and visual penetration of the site and retention of the country lane ambiance of Potomac Avenue. The parties in opposition submitted materials in opposition to both twelve unit site plans.

The Zoning Commission took proposed action to grant preliminary approval to the PUD at its public meeting held on October 17, 1983. Zoning Commission Order No. 414, which granted preliminary approval, was adopted by the Commission at its public meeting held on November 21, 1983. In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, the Order became final and effective upon publication in the D.C. Register on December 16, 1983.

The parties in opposition, through counsel, and ANC 3B filed timely motions for rehearing dated December 27, 1983. According to the parties in opposition, a rehearing should be ordered for the following reasons:

- A. The parties in opposition were deprived of their right to a hearing when the Commission granted first stage approval to a Planned Unit Development plan that was not considered during the hearings that were held.
- B. The right to cross examination was denied the parties in opposition by the Commission when it limited them to making written comments on plans that were submitted by the applicant after the hearings were closed.
- C. Most of the findings and conclusions in the Order deal with the plan that was considered at the hearings and not with the plan that was approved. Many of them have no relation to the approved plan. The findings of fact and conclusions of law are not based on substantial evidence and do not reflect a concise statement of conclusions upon each contested issue of fact.
- D. The exceptional merit requirement needed to waive the minimum area of three acres for PUD projects as specified in Paragraph 7501.212 of the Zoning Regulations was not given sufficient consideration by the Commission.
- E. The concurrence of the Office of Planning was not received for the approved plan. The Commission's

decision therefore violates its own rules for waiving the three-acre area requirement for a PUD.

ANC 3B's reasons for requesting a rehearing were as follows:

- A. The site plan and other items approved in Zoning Commission Order No. 414 were never the subject of a public hearing.
- B. The ANC was given only one week to respond to the applicant's submission of September 30, 1983, which contained major new material never introduced at the hearings, and was allowed to respond in writing only.
- C. The ANC presented three statements to the Zoning Commission on Case 83-2P dated March 11, 1983, July 18, 1983, and October 7, 1983. The issues raised by ANC 3B in these statements were not given great weight as specified in the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1978.
- D. There are various factual errors and/or omissions in Order No. 414.

The applicant filed a "Memorandum in Opposition to Petitions for Rehearing," which cites the following as reasons to deny the rehearing petitions:

- A. The preliminary approval satisfies procedural requirements.
- B. The Findings of Fact and Conclusions of Law are adequate and based on substantial evidence.
- C. The preliminary approval Order includes satisfactory findings on the waiver issue and Office of Planning concurrence.

Upon consideration of the Order, the record of the proceedings in this case, the petitions for rehearing, and the memorandum in opposition to the petitions for rehearing, the Commission finds as follows:

- A. The motions for rehearing fail to recognize the purpose of the two-step process for consideration of Planned Unit Developments. In the two-step process, the first step is designed to focus on the concept for development of the site. The Commission reviews the general development scheme, and looks at such larger issues as development impacts, neighborhood compatibility and consistency with city and neighborhood plans and policies. If a site is suitable for a planned unit development, and if the threshold issues noted above can be resolved, the second stage application is the

appropriate proceeding for the Zoning Commission to evaluate the specific design for a project.

- B. Public hearings will be conducted as part of the second-stage application. Those hearings will be devoted to review of the specific design of the project, and will consider whether that design meets the general criteria established in the preliminary approval. That application will be considered as a contested case, with full rights of cross-examination accorded to the properly established parties. All issues of the design will be open to review, and it is conceivable that significant changes to the plan will result from that process. It would be unnecessarily duplicative to hold an additional hearing in the first stage on a design which may change, when the entire second stage proceeding will be devoted to the design of the project.
- C. As to the assertion that the Commission granted first stage approval to a plan and other items which were radically different from the plans and items considered during the hearings, the Commission finds that the approved design concept is not radically different from the plans previously submitted by the applicant. The sixteen unit plan proposed ten houses on Potomac Avenue. The approved design concept adds two more houses on that side, and deletes the six houses originally proposed on the other side of the proposal. Such is not a substantial deviation.
- D. As to the assertion that the Commission denied the parties' right to cross-examination, the official transcript of the proceedings reflects the fact that all parties were given the right to cross-examine as stipulated in Section 6.2c of the Rules of Practice and Procedure before the Zoning Commission. Further, the Administrative Procedures Act provides for the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts." D.C. Code Section 1-1509, 1981 Ed. Given the full second stage proceeding to come, the Commission finds that adequate opportunity for cross-examination was provided.
- E. As to the assertion that the exceptional merit requirement was not given sufficient consideration, the Commission finds that the preliminary approval Order contains adequate findings regarding the exceptional merit of the applicant's PUD plan concept and its furtherance of city and national interests. The findings taken together must rationally lead to conclusions of law which are legally sufficient to support the decision. Each finding must be supported

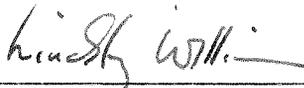
by substantial evidence. The Commission's findings on the sensitive nature of the site and the detailed findings on the exceptional benefits of the PUD including tree preservation, Park Service easement, project compatibility with the neighborhood, landscaping of public space, protection of the view of the site on the Palisades promontory and the provision of marketable housing are sufficient to rationally lead to the Commission's conclusion of law that the waiver of the minimum area requirement can be approved by the Zoning Commission. Substantial evidence of these issues was submitted in the record by the applicant.

- F. As to the issue of the concurrence of the Office of Planning, the Commission's order specifically finds that "The Office of Planning indicated that if the applicant complied with its recommendations, which the applicant did, then the minimum area requirement should be waived in this case." The concurrence of the Office of Planning is required for the application as a whole, not for the specific development scheme approved in the first stage which is subject to revision in the second stage.
- G. The Commission determined that the record should be reopened at the September 9, 1983, public meeting to allow for the inclusion of a revised development scheme. The Commission also determined that it was prudent to allow the applicant two weeks to prepare the revised development scheme and allow the ANC, fully cognizant of the September 30, 1983 deadline, time to organize a meeting to undertake ANC schematic review. In light of the nature of first stage PUD plans and what the ANC was expected to determine from the plans, the Commission believes one week was sufficient time for review. Upon the receipt of ANC reports which are properly submitted in accordance with the Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975, the Commission is bound by law to give the reports "great weight" in the formulation of a decision. The Commission has done so and the Order so reflects. The Commission is not bound by law, however, to concur with the findings of the ANC.
- H. The Commission does acknowledge that finding number 40c on page 8 of Order No. 414 should read "The existing transportation network in the area can easily accomodate the traffic that will be generated by the three additional units over matter-of-right development without appreciably adding to the traffic flow." The order incorrectly stated "five" units over matter-of-right development. This is the only significant factual error in Order No. 414, as determined by the Commission.

I. The Commission's findings and conclusions are based on the nature of the first step of a PUD process. The Commission's basic findings are sufficient to support the decision, regardless of the specific details of design, which are to be determined at the second stage.

The Commission therefore concludes that it has committed no error of fact or law in deciding the application, and that no purpose would be served by rehearing the application at this point for consideration of the above-stated reasons. It is therefore hereby ordered that Finding of Fact No. 40c of Order No. 414 be amended as set forth herein, and that the Motions for Rehearing be denied.

Vote: 5-0 (John G. Parsons, Walter B. Lewis, George M. White, Lindsley Williams and Maybelle T. Bennett to amend the order and deny the motions).



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LINDSLEY WILLIAMS  
Chairman  
Zoning Commission



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STEVEN E. SHER  
Executive Director  
Zoning Secretariat

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