

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 601
Case No. 88-24M/77-16F
(PUD Modification - Rafferty)
January 9, 1989

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on November 3 and 17, 1988, to consider the application of Angene G. Rafferty for modification to the architectural plans of a previously approved Planned Unit Development (PUD), pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Section 3022 of that title.

FINDINGS OF FACT

1. On September 2, 1988, the Zoning Commission for the District of Columbia received an application from Angene G. Rafferty to modify the architectural plans of a previously approved PUD at 48th Place and Fordham Road, N.W. near Massachusetts Avenue. The applicant lives at 4730 Massachusetts Avenue, N.W.
2. By Z.C. Order No. 195 dated December 8, 1977, the Zoning Commission granted final approval for a Planned Unit Development (PUD) and related map amendment from R-1-B to R-4. The PUD site contains 3.52 acres of land, and is located on the west side of Massachusetts Avenue, N.W. with frontage of 48th Place between Fordham Road and Van Ness Street, N.W.; (Square 1530, Lots 800 and 801 and Square 1501, Lot 800). The PUD approval was for the construction of a maximum of 35 single-family detached, semi-detached or row dwellings.
3. The applicant lives in a row dwelling unit. She proposed to construct a two-story rear addition with a garage, bedroom and bath and a deck. The proposed addition would be two and one-half stories high and would cover some of the unpaved portion of the rear of her lot.
4. The applicant explained that her husband and she filed

for a building permit for the proposed addition in February 1988 and was subsequently issued a permit to build. On June 21, 1988, after the construction of footings and the foundation for the addition had begun, the District Government issued a stop work order. The stop work order was issued when District officials discovered that the permit had been erroneously issued because the Rafferty property was part of an approved PUD.

5. A PUD Covenant, also known as an Article 75 Covenant, was entered into between W.G. & A.N. Miller Development Company, the developer of the site, and the District of Columbia on June 23, 1976 and recorded among the land records of the District on or about September 5, 1978 as Instrument No. 30583 and as revised by Instrument No. 41102, recorded on or about November 20, 1978. Pursuant to the covenant, the property owners (and their successors and assigns) may use the subject property "only in accordance with the plan submitted and approved by the Zoning Commission and by the Board of Zoning Adjustment..." The covenant states, "the covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefits of the parties hereto, their successors and assigns." More specifically, the terms, conditions and agreements of the covenants as set forth in the applicable Zoning Commission and BZA Orders "shall continue as covenants running with the land and binding upon owner [sic], its successors and assigns..."
6. The applicant contends that her proposed addition does not significantly impact the light or air flowing to any adjacent property. However, to accommodate the concerns of the neighbors to the immediate south (the Sampertons), the applicant proposed to forego constructing the deck in an attempt to demonstrate good faith.
7. The applicant contends that, by eliminating the deck, the proposed addition will maintain the level of privacy enjoyed by adjacent residents.
8. The applicant contends that her \$33,000 construction costs and the substantial amount in legal fees, coupled with the unique circumstances of her situation and the limited remaining floor area ratio (FAR) and lot coverage, distinguish this case from possible further development in or around the PUD.
9. The applicant contends that sufficient FAR and lot area coverage exist to support the proposed addition.

10. The District of Columbia Office of Planning (OP), by memorandum dated October 28, 1988 and by testimony presented at the public hearing, recommended that the application be denied. OP found that the proposed two-story rear addition would violate the spirit and intent of the approved PUD and would create adverse impacts on neighboring properties. OP stated that the addition would reduce the desirability of the use of neighboring rear yards for recreational purposes and would impact on the light and air of neighboring properties. OP further stated that the proposed addition would considerably reduce the level of privacy enjoyed by abutting property owners and would disrupt the continuity of the PUD site altering the feeling of open space shared among the residents of the 35 dwelling units.
11. Advisory Neighborhood Commission (ANC)-3D, by report dated October 20, 1988 and by testimony presented at the public hearing, recommended that the Zoning Commission deny the application to modify the PUD. The ANC indicated that the applicant's proposed rear addition would destroy the architectural integrity of the court configuration of the PUD, would invade the privacy and quiet enjoyment of adjacent neighbors, and would block sunlight from open space.
12. The District of Columbia Office on Aging, by memorandum dated September 1, 1988, recommended approval of the application based on medical problems experienced by Mr. and Mrs. Rafferty.
13. There were no parties in support of the application.
14. Two persons wrote in support of the application.
15. The applicant submitted letters from residents of 16 of the 46 units within 200 feet stating that they had reviewed the drawings, had no objection to the addition, and favored allowing the work to resume.
16. Kimberly and Kyle Samperton, owners and residents at 4728 Massachusetts Avenue, N.W. were admitted as party opponents in the case. The Sampertons live next door to the Raffertys. The Sampertons opposed the application for the following reasons:
 - a. The Article 75 Covenant prohibits the proposed modifications;
 - b. The Rafferty proposal violates the spirit and

intent of the PUD process which in this case required lengthy negotiations with the community at the time that the PUD was approved;

- c. Approval of the application would set a negative precedent enabling others within the PUD to apply for modifications to the detriment of others in the PUD;
 - d. The proposed modification is inconsistent with the character of the area and would not encourage stability of the area or of land values;
 - e. The negative social impacts of the proposal, including reductions in privacy and open space;
 - f. The negative environmental impact resulting from obstructed air flow and reduced afternoon sunlight; and
 - g. Concern about the overall quality of life within the PUD.
17. Several persons who are homeowners in the PUD testified at the hearing in opposition stating their concerns regarding the negative residential value of the proposed modification, the unfair benefit that one property owner would receive to the detriment of others if the modification was approved, and concerns about open space, privacy, light, and air flow.
18. By memorandum dated November 28, 1988, OP stated that there are no easements encumbering the cluster (bounded by Fordham Road, Massachusetts Avenue, Van Ness and 48th Streets, N.W.) in which the applicant's home is located.
19. The Zoning Commission concurs with the views expressed by the Office of Planning, ANC-3D, the Sampertons and the persons in opposition to the proposed modification.
20. The Zoning Commission finds that approval of the applicant's proposed PUD modification would result in a significant reduction in the open space quality of the PUD site, would have a negative effect on privacy and would reduce the light and air of adjacent property owners.
21. The Zoning Commission finds that the concerns and testimony of the ANC, and the concerns of others with respect to the negative residential value of approving the proposed modification and the integrity of the PUD process are with merit.

CONCLUSIONS OF LAW

1. The subject application is being processed as a modification to a previously approved PUD.
2. The PUD process is an appropriate means of controlling development of the subject site, since control of the use and site plan is essential to insure compatibility with the neighborhood. Approval of this proposed modification would be inconsistent with the Article 75 Covenant recorded more than ten years ago in this case.
3. Approval of the application would not further the general public welfare nor serve to stabilize or improve the area. Approval of the proposed modification would have an adverse impact on the surrounding community and will not promote orderly development with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
4. Approval of the modification would be inconsistent with the spirit and intent of Zoning Commission Order No. 195.
5. The proposed modification would not carry out the purposes of the PUD process, as set forth in the Zoning Regulations.
6. The Zoning Commission has accorded Advisory Neighborhood Commission-3D the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law set forth herein, the Zoning Commission for the District of Columbia hereby orders DENIAL of the application in Case No. 88-24M/77-16F, which requested a modification to the Zoning Commission Order No. 195.

Vote of the Zoning Commission taken at the public meeting held on December 12, 1988: 3-0 (John G. Parsons, Lindsley Williams and Maybelle Taylor Bennett, to deny; Lloyd D. Smith and Elliott Carroll, not voting not having participated in the case).

This order was adopted by the Zoning Commission at the public meeting held on January 9, 1989, by a vote of 4-0 (Lindsley Williams and Maybelle Taylor Bennett, to adopt as amended and Elliott Carroll and John G. Parsons, to adopt by absentee vote - Lloyd D. Smith, not voting not having participated in the case).

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In accordance with 11 DCMR, Section 3028, this order is
final and effective upon publication in the D.C. Register;
that is on 10 FEB 1989.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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