Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 656-A
Case No. 89-15C
(PUD @ 5333 Connecticut Avenue, N.W.)
July 9, 1990

By Z.C. Order No. 656, dated March 12, 1990, the Zoning Commission for the District of Columbia approved this application of Calvin Cafritz for consolidated review of a Planned Unit Development (PUD), pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The PUD approval was for the construction of a multi-story apartment house with certain non-residential uses which are allowed as a special exception in an R-5-C zone District, including a medical clinic and commercial adjunct space.

The PUD site is located at 5333 Connecticut Avenue, N.W., includes lots 20-25, 35, 37, 44, 826, 827, and 829 in Square 1873 and that portion of a public alley to be closed, pursuant to S.O. 85-243 in Square 1873.

The PUD project was approved for a height of 90 feet, a maximum floor area ratio (FAR) of 4.0, a lot occupancy of 43% and on site parking to accommodate 234 to 248 cars. In addition to the above-mentioned development standards, other conditions of approval were contained in Z.C. Order No. 656.

Counsel for applicant, by letters dated March 7 and March 29, 1990, filed a request for a "modification without a public hearing." The Zoning Regulations do not provide for the modification of a PUD by Zoning Commission action without a hearing. The papers submitted by the applicant in support of the request evidence that the applicant's intention was to request a waiver, pursuant to 11 DCMR 3000.9, of the 10-day time limit for the filing of a motion for reconsideration pursuant to 11 DCMR 3029.5. For that reason, the Zoning Commission has treated the "modification" request as a motion for reconsideration of Z.C. Order No. 656.

The motion for reconsideration requested the Zoning Commission to waive applicable rules of practice and

procedure to allow for consideration of the substance of the motion.

The substance of the motion requested an increase in the floor area ratio (FAR) of the project by not more than four percent (4%), in order to fully comply with the new handicap adaptability provisions established under the Fair Housing Act amendments (Pub. L. 100-430).

On April 16, 1990, at its regular monthly meeting, the Zoning Commission waived its rules of practice and considered the applicant's motion for reconsideration.

At that meeting, the Director of the District of Columbia Office of Planning, by report dated April 13, 1990, expressed support of the applicant's proposed modification.

Advisory Neighborhood Commission 3G, by letter dated March 1, 1990, supported the requested modification.

The Square 1873 Committee, by letter dated February 26, 1990, supported the applicant's request.

The Commission concurred with the position of OP, ANC-3G, the Square 1873 Committee, and the applicant, and concluded that its action would be reasonable and protect the interests of all parties.

The Zoning Commission concluded that the proposed increase would be in the best interest of the District of Columbia, consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

The proposed action to approve the FAR increase was referred to the National Capital Planning Commission as a matter of courtesy. NCPC, by report dated May 14, 1990, found that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

At its meeting on May 14, 1990, the Zoning Commission voted to approve final action to approve final action to adopt the FAR increase. Thereafter, staff of the Zoning Secretariat noted that the case record may lack support for a portion of Condition No. 4 as originally approved. The Secretariat concluded that this question should be addressed by the parties and the Zoning Commission.

By letter dated May 17, 1990, the Zoning Secretariat, informed counsel for the applicant and the parties that it could find no basis in the record of the case for the

exclusionary phrase when citing the maximum FAR of the project, as contained in Condition No. 4 of Z.C. Order No. 656. Condition No. 4 reads as follows:

> The floor area ratio of the PUD project shall not exceed 4.0 FAR, excluding the loading bay, service bay, and loading dock.

Draft Z.C. Order No. 656-A provided for a four (4) percent increase of the FAR of the PUD project. The revision to Condition No. 4 of Z.C. Order No. 656, as contained in draft Z.C. Order No. 656-A and approved on May 14, 1990, read as follows:

> The floor area ratio of the PUD project shall not exceed 4.16 FAR, excluding the loading bay, service bay, and loading dock.

The Zoning Commission believes that there were errors in Z.C. Order No. 656 and draft Z.C. Order No. 656-A. That is, except for the applicant's proposed findings of fact and conclusions of law, there is no basis in the record for the inclusion of the phrase, "excluding the loading bay, service bay, and loading dock."

On June 11, 1990, at its regular monthly meeting, the Zoning Commission considered the May 17, 1990 letter of the Zoning Secretariat, and responses thereto from counsel for the applicant dated May 25, 1990, ANC-3G dated May 30, 1990 and the Square 1873 Committee dated June 5, 1990.

Notwithstanding the fact that none of the responses objected to the exclusionary phrase, the Zoning Commission determined that the exclusion is not in the best interest of the zoning process. The Commission, therefore, reopened the record to allow the applicant to submit the actual FAR computations for the project, including the loading and service bays and loading deck.

By letter dated June 19, 1990, the Zoning Secretariat requested the applicant to file the above-mentioned FAR computations, and, at the direction of the Chairman of the Zoning Commission, requested the applicant to address 11 DCMR 2403, pursuant to which 4.0 is the maximum FAR standard for a PUD in an R-5-C zone district.

On July 9, 1990, at its regular monthly meeting, the Zoning Commission considered the June 19, 1990 Zoning Secretariat letter, a letter dated June 27, 1990 from counsel for the applicant, and a letter dated July 5, 1990 from ANC-3G, which did not object to the increased FAR.

The June 27, 1990 letter from counsel for the applicant identified the actual FAR for the PUD project as 4.20, including the loading bay, service bay and loading dock.

The applicant further stated that Chapter 24 of the Zoning Regulations and the Commission's past application of those regulations demonstrate that the Commission is empowered to either increase FAR above the level set forth in 11 DCMR 2403.12 or exclude floor areas from FAR when, in the Commission's judgment, discrete adjustments are reasonably necessary to achieve the purposes of Chapter 24.

The Commission does not concur with the advice of the Zoning Secretariat not to exceed 4.0 FAR for this PUD.

The Commission does not intend its decision in this order to set a precedent, nor has the Commission concluded that Chapter 24 authorizes an FAR above 4.0 for a PUD in an R-5-C District. The matters cited by the applicant certainly do not sustain that proposition. However, because of the unique series of events, as set forth in this order, and the anticipated hardship that would be imposed upon the applicant and the affected community, together with the support of all parties for the additional FAR, the Commission believes that the particular circumstances that are unique to this application are grounds for an increase in FAR.

The Commission urges persons to exercise caution in relying upon this order as authority for an FAR above that set forth in 11 DCMR 2403.12, or for exceptions from floor area ratio or gross floor area That is, because the Commission has found no authority in Chapter 24, either for allowing any FAR to exceed the standards in 11 DCMR 2403.12, or for excluding any area from floor area ratio or gross floor area, future applicants should expect that the Commission would be constrained to adhere to the standards as set forth in 11 DCMR 2403.12.

In consideration of the reasons set forth herein the Zoning Commission for the District of Columbia hereby orders APPROVAL of the modification to Z.C. Order No. 656 without a public hearing, an increase in the FAR of the project by not more than 4%, and the deletion of the aforementioned exclusionary phrase and the incorporation therein of the related FAR. Therefore, Condition No. 4 of Z.C. Order No. 656 shall be modified to read as follows:

> "The floor area ratio of the PUD project shall not exceed 4.20 FAR."

Vote of the Zoning Commission taken at the public meeting on April 16, 1990: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith and Tersh Boasberg to approve - John G. Parsons, not voting not having participated in the case).

This order was adopted, as amended, by the Zoning Commission at its public meeting held on July 9, 1990 by a vote of 4-0: (William L. Ensign, Maybelle Taylor Bennett, Lloyd D. Smith and Tersh Boasberg, to adopt as amended - John G. Parsons, not voting not having participated in the case.

In accordance with provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is, on AUG 17 1990.

TERSH BOASBERG
Chairman
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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