

# Government of the District of Columbia

## ZONING COMMISSION



**Zoning Commission Order No. 701**  
**Case No. 91-4**  
**(Text - Validity of Planned Unit Developments)**  
**September 10, 1991**

Z.C. Case No. 91-4 is an initiative of the Zoning Commission for the District of Columbia. The propose is to consider an amendment to the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The proposed amendments are to the provisions of the Zoning Regulations that affect the length of time that Planned Unit Developments (PUDs) are valid and extension of time thereof; that is, 11 DCMR 2406. The amendment would adopt a new 11 DCMR 2406.13, that would enable the Commission to extend the validity of PUD under certain circumstances beyond the provisions of 11 DCMR 2406 and 2409.

Amendments to the text of the Zoning Regulations of the District of Columbia, are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed). The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

On February 11, 1991, the Commission reviewed Case No. 89-34C (PUD & Map @ 1331 L Street, N.W.) and a request from the applicant to extend the validity of Z.C. Order No. 684 beyond the time period provided by 11 DCMR 2406 arguing that the three million dollars up-front contribution to assist the financing of a PUD at 5th Street and Massachusetts Avenue, N.W., which consists of 209 units of housing makes the project unique. The Commission in considering the extension request, adopted an emergency rule, Z.C. Order No. 687. The emergency rulemaking was to allow the Zoning Commission to extend the validity of PUD for a period of time beyond that provided for by 11 DCMR 2406.

The three million dollars up-front contribution created a linkage between the PUDs, and is designed to boast the production of affordable housing in the downtown in accordance with the provisions of Downtown Development District Overlay ("DDD") provisions (Z.C. Order No. 681 dated December 17, 1991)

The Commission noted that 11 DCMR 2406.8 and 2406.9 never contemplated off-site housing linkage amenities and the additional time that may be needed to facilitate and/or produce such amenities.

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The Commission in considering the extension request, determined that the issue should be addressed in a manner that operates in PUDs throughout the District of Columbia and not to be limited to a particular PUD. Consequently, the Commission adopted an emergency rule, Z.C. Order 687.

On March 1, 1991, the Zoning Commission published a notice of emergency and proposed rulemaking in the D.C. Register (38 DCR 1359). The emergency rulemaking was to allow the Zoning Commission to extend the validity of PUDs for a period of time beyond that provided for by 11 DCMR 2406.

At that same meeting, on February 11, 1991, the Zoning Commission authorized the advertisement of the proposed amendment for public comment. The District of Columbia Office of Planning (OP) was requested to conduct further studies on the text of the proposal.

On March 1, 1991, the Zoning Commission published the proposal to amend the text of the Zoning Regulations in the form of a notice of public hearing in the D.C. Register (38 DCR 1359). The proposal included the conditions or circumstances in which the extension would apply.

Advisory Neighborhood Commissions (ANC) 2B and 2A, by letter dated April 1, 1991 and April 5, 1991, respectively, opposed the proposed amendment. The ANCs argued that PUD housing linkage involving off-site housing are always achieved at the expense of the existing on-site housing of the site of the proposed PUD, and that the five years extension proposal would encourage PUDs, which disrupt residential and historic characteristics of neighborhoods.

By a report dated April 5, 1991, the District of Columbia Office of Planning recommended that the approval of the extensions sought by the Peabody PUD (Z.C. Case No. 87-28C, Z.C. Order No. 588) and Square 247 Associates PUD (Case No. 89-34C, Z.C. Order No. 684) based on the \$3 million up-front contribution to the off-site housing production be granted. OP also recommended that the contemplated amendment be approved to accommodate further projects with similar type of payment in connections with off-site housing linkages.

On April 15, 1991, pursuant to the notice, a public hearing was held to consider the proposed amendment to the PUD validity of time, 11 DCMR 2406.13. At the public hearing the Zoning Commission heard testimony from persons and groups who represented the interests of governments, developer, citizens and others.

On May 13, 1991, at its regular monthly meeting, the Commission considered the comments and testimonies from the public hearing and post-hearing submissions. The Commission requested OP to

reevaluate the proposed amendments and submit additional information based on the following issues and guidelines:

1. Significance of advanced payment;
2. Whether the new provisions should apply to on-site and off-site housing, or off-site housing only;
3. Whether the new provisions should be restricted to affordable housing; and
4. To prohibit extension for off-site housing.

By a memorandum dated June 3, 1991, in response to the Commission request, Office of Planning gave the significance and definition of "advanced payment" for housing. The OP also suggested guidelines for applying the proposal amendment. OP recommended that the text of the amendment should read as follows:

"As a condition of its approval of a project which provides a substantial monetary contribution for off-site low and moderate income housing, the Commission may provide that construction of the project shall start within five years of the date of final approval of the project, provided, that the substantial monetary contribution shall be made within one year of the final date of approval of the project".

On June 13, 1991, at its regular monthly meeting, the Commission further considered OP recommendation, that the amendment is necessary to establish guidelines for extension of validity of PUDs with special up-front amenity package and/or payment, beyond the provisions of 11 DCMR 2406. At that same meeting, the Commission took a proposed action to amend the Zoning Regulations.

The Commission does not concur with the position of ANCs 2A and 2B. The Commission concurs with Office of Planning and others and believes that there may be circumstances when a PUD applicant, after having made a substantial up-front monetary payment, would want some reasonable assurance that the PUD has validity that is not jeopardized by sometimes protracted negotiations.

The Commission believes that the proposed amendment to the Zoning Regulations are in the best interests of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital, as amended.

A notice of proposed rulemaking was published in the D.C. Register on July 12, 1991 (38 DCR 4366). One letter dated August 8, 1991

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was received from the law firm of Wilkes Artis Hedrick & Lane as a result of the publication of the notice.

On September 10, 1991, the Zoning Commission considered the proposed rulemaking and the response thereto and was unpersuaded to change the previous proposed action.

The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated August 23, 1991 found that implementation of the proposed amendments to the Zoning Regulations would not adversely affect the Federal Establishment or other Federal interests in the National Capital Planning, nor be inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein the Zoning Commission, hereby orders **APPROVAL** of amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The specific amendments are to add a new Section 11 DCMR 2406.13 to read as follows:

2406.13 "As a condition of its approval of a project which provides a substantial monetary contribution for off-site low and moderate income housing, the Commission may provide that construction of the project shall start within five years of the date of final approval of the project, provided, that the substantial monetary contribution shall be made within one year of the final date of approval of the project".

Vote of the Zoning Commission taken at its regular public meeting on June 13, 1991: 4-0 (Tersh Boasberg, William L. Ensign, Maybelle Taylor Bennett and Lloyd D. Smith to approve - John G. Parsons, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its regular monthly meeting on September 10, 1991 by a vote of 4-0 (Lloyd D. Smith, Maybelle Taylor Bennett, Tersh Boasberg, William L. Ensign, to adopt - John G. Parsons not present, not voting)

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

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MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission



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EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

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