Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 785
Case No. 94-15/84-3
(Text Amendment - PUD Provisions of the Zoning Regulations)
September 11, 1995

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on December 15, 1994 to further consider proposed amendments to Chapter 24, the planned unit development (PUD) provisions of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, pursuant to Section 102 of that title. The public hearing was conducted in accordance with the provisions of Section 3021 of the Zoning Regulations.

The Zoning Commission initiated revisions and amendments to Chapter 24 of the Zoning Regulations in early 1984, in Z.C. Case No. 84-3 (Planned Unit Development Process). At that time, only the "Area Requirements" provisions of Z.C. Case No. 84-3 were finalized and adopted as reflected in Z.C. Order No. 527. The other proposed revisions and amendments were held in abeyance.

On August 1, 1994 at its monthly meeting, the Commission discussed issues relating to updating the PUD provisions of the Zoning Regulations to respond to numerous changes that have occurred over a period of time. The Chairperson of the Zoning Commission expressed the belief that many of the proposed revisions from case No. 84-3 were still useful, and could be adopted after further review. The Chairperson also indicated that the unpublished notice of proposed rulemaking in Case No. 84-3 entailed a large amount of staff work, numerous citizens' input gathered in the course of the public hearing sessions and workshops held by the Commission. Subsequently, the Commission requested the Office of Planning (OP) to further review, revamp and update the provisions of the notice of proposed rulemaking in Case No. 84-3 for the Commission's further consideration.

The Commission indicated that the purpose of the revision to Chapter 24 of the Zoning Regulations was to delete obsolete provisions of the chapter, and update the chapter with refined language that would reflect and respond to regulatory changes.

By memorandum dated August 1, 1994, and captioned "Discussion of Regulatory Changes for Planned Unit Developments", the Chairperson of the Commission reiterated that the notice of proposed rulemaking in Case No. 84-3 should be further reviewed and reactivated. The memorandum presented summary observations of the PUD regulations. It listed sections and issues of the chapter that should be discussed and also highlighted segments of Chapter 24 that have stood the test of time and should remain unchanged. The memorandum urged that certain recent requirements and innovations to the PUD process be standardized and accommodations be found for those new provisions in the relevant sections of Chapter 24.

The OP, by memorandum dated August 1, 1994 responded to the Commission's request and submitted a report (Preliminary report), which analyzed side-by-side, the existing Zoning Regulations and the unadopted Notice of Proposed Rulemaking in Z.C. Case No. 84-3. The report provided explanatory comments for the recommended text changes in the existing Regulations and the Notice of Proposed Rulemaking. Further language refinements which do not represent policy changes were also suggested for the Commission's consideration. The report indicated that new staff work and focus were primarily on the question of "guidelines vs. standards." The OP recommended that the Commission further discuss the proposed amendments and other issues raised during the discussion, and schedule a public hearing for the case.

On September 29, 1994, at a special public meeting, the Commission reviewed the memoranda of the Chairperson and the OP in greater detail. The Commission determined which provisions and language in the OP memorandum should be incorporated into the text of the public hearing notice to be advertised.

On November 4, 1994, the Office of Zoning (OZ) published a public hearing notice of the revised proposed amendments to Chapter 24, of the DCMR, Title 11, Zoning. Following the publication of this notice the OZ received the following submissions into the record of the case.

1. By a letter dated December 6, 1994, a resolution from Foggy Bottom and West End Advisory Neighborhood (ANC) was conveyed to the Zoning Commission. The ANC described the importance of the PUD process to its community and requested that the Commission leave the record open after the hearing. This would enable the ANC to submit written comments to the record of the case.

2. Advisory Neighborhood Commission (ANC) 2F by a letter dated December 8, 1994 also stated the importance of this process

and requested that the Commission leave the record open until January 8, 1995 as this would allow the citizens sufficient time to send in written comments to the record.

3. Mr. Lindsley Williams submitted an outline of his prepared testimony to be presented at the hearing. He commended the Commission for not allowing the enormous resources used in case No. 84-3 to go to waste.

4. The law firm of Wilkes, Artis, Hedrick and Lane, by a letter dated December 8, 1994, stressed the usefulness of PUDs and recommended that the process be retained, and that the proposed regulations be adopted. However, the letter pointed out that the regulations as proposed should not apply the new standards to PUDs which have previously been approved. It expressed concern about limitations imposed on extensions and urged that provisions not be applied after-the-fact to applicants who had a PUD approved but did not know that they would be limited to one extension.

At the public hearing, the Commission heard the testimony of the Office of Planning (OP), Advisory Neighborhood Commission (ANC) 2A, the Foggy Bottom Association (FBA), a representative of the law firm of Wilkes, Artis, Hedrick and Lane and three citizens.

The OP, by memorandum dated November 21, 1994, and through testimony at the public hearing affirmed its position taken in the preliminary report. The OP stressed that its analysis, revision and recommendations contained in the August 31, 1994 report were in considerable detail. Nevertheless, the OP indicated its willingness to respond to, or address additional issues as they arise during or after the public hearing. The OP further recommended that the Commission adopt the advertised text subject to any modifications that may arise from the public hearing and the final decision process.

Advisory Neighborhood Commission (ANC) 2A by its "Resolution #94-12A" and through testimony at the public hearing criticized the amendment procedures with respect to the time frame for the amendment. The resolution stated that even though the notice of the proposed amendments were published in the D.C. Register, that members of the public and the ANCs should be given more time to study and comment on the amendments given the complexities of the proposal and the amount of work that is involved in the amendments, including the creation of a new section. The ANC specifically noted, listed and addressed various deficiencies it perceived in the proposed amendments. The ANC's opposition and recommendations are summarized as follows:

1. Subsection 2403 - Evaluation Standards

   a. The ANC resolution suggested that the Zoning Commission should request the Office of Business and Economic Development to undertake a quantitative analysis of the benefits which would accrue to the developer as a result of the PUD approval and the public benefits and project amenities to be provided by the developer.

   b. The duration for public benefits and project amenities should be specified, and public benefits should accrue first to the immediate community and neighbors who may be adversely impacted by approval of a PUD.

   c. The burden of proof "not found to be acceptable" should be replaced by the higher standard of "found to be acceptable" and "not inconsistent" should be replaced with "consistent." The rationale is that the District is granting a public good (i.e. extra development rights) for private gain.

   d. The phrase "capable of being mitigated" for a negative impact is unacceptable because "mitigation" excludes a full elimination of a negative impact.

   e. Project amenities which accrue to the occupants of the PUD should not be used as criteria for approval of additional development benefits because they should occur in matter of right projects. They also should be subject to the same standard as "public benefits" in so far as being superior features that provide benefits to a significantly greater extent than would likely result from the matter of right development of the site.

2. Section 2405 (now 2406) - Filing Requirements

   The tabulation of development data for first-stage approval of a PUD should require a building utilization plan and a preliminary listing of specific proposed public benefits and project amenities. The tabulation of development data for second-stage approval should require a building utilization plan and a final listing of specific proposed public benefits and project amenities.

3. Section 2406 (now 2407) - Processing of First-Stage PUD Applications

   a. The Fire Department and the the Office of Business and Economic Development should be added to the list of

agencies to review the PUD request to ensure accessibility for firefighting and to allow for quantitative analysis.

b. The Office of Planning (OP) should be required to consider compatibility with "all relevant sections" of the Comprehensive Plan in its review of the proposed PUD.

4. Section 2407 (now 2408) - Processing of Second-Stage PUD Applications

To ensure that development of the PUD is intended and that the PUD approval in not just to enhance the value of property, the PUD approval should be void if there is a significant change in ownership of the property.

5. Section 2408 (now 2409) - Implementation

a. To ensure that all public benefits and project amenities are implemented to the benefit of impacted neighbors, the community and the public at large, the PUD covenant should specifically included such benefits and amenities and their duration.

b. To ensure that the Department of Consumer Regulatory Affairs does not approve a seemingly "minor amendment," its discretion should be limited to those instances where all parties to the original PUD are given notice of the request, and given the right to request a hearing, and where such hearing shall be granted by the Department of Consumer and Regulatory Affairs.

Additionally, the ANC requested the Commission to prepare and distribute copies of the proposed text amendments which show the proposed new language and the deleted old language clearly demarcated, and to reschedule the hearing on the proposed amendments for February, 1995 or later to provide sufficient time for ANCs, and citizens to develop thoughtful and constructive commentary that will assure common good to the District of Columbia.

Subsequently, the ANC attached suggested wording changes to the proposed text amendment to Chapter 24 of the Zoning Regulations, for the Commission's consideration. In addition, the ANC indicated that it may recommend more changes if given sufficient time for more thoughtful and constructive commentary.

The Vice President of the Foggy Bottom Association (FBA) testified in opposition to the proposal. The FBA representative indicated that the opposition to the amendment stems from the fact that there were difficulties in analyzing the proposal, the published text of

the proposal contained mistakes, and because the use of the asterisk to indicate the unchanged provisions was not consistent. She urged the Commission to make available a redlined version of the proposed text amendment language (displaying strikers and shaded inserts) of the proposal and to schedule a new hearing so that the Commission could receive informed public comments. The association also criticized and opposed the five years approved/ action time period proposed in Section 2407.8. The association preferred the current two year approval/action time period provided in Section 2406.8.

The FBA also criticized and opposed the proposed "Evaluation Standards" (Section 2403). The association testified that the listed public benefits and project amenities associated with PUDs should be specified and not be things that are rewarding to the developer, or things in which the commercial developer would be the sole beneficiaries. It targeted the recently approved International Monetary Fund (IMF) PUD as an example of a PUD where approval was based on its primary amenity of landscaping.

It added such approval based on landscaping alone leaves the community without a balanced and tangible amenity. Furthermore, the testimony claimed that unbalanced land use projects distort the entire PUD process, undercut the Comprehensive Plan, and should not be allowed in the PUD provisions, let alone the provision in Section 2403.10 which states that a project may qualify for approval by seeing particularly strong in only one or a few of the categories in Subsection 2403.9.

A representative of the Committee of 100 for the Federal City testified in support of the proposal and offered the following comments for the Commission to consider:

1. PUDs should be required to be greatly superior to probable matter of right developments on a site.

2. The proposed time limits and extension potential are too long and encourage speculative PUDs. A long term for validity of PUDs also ties up the subject property for too long. It would be better to keep a two year period of validity and allow only one extension.

3. Off-site amenities alone cannot justify a PUD; the evaluation of issues related to impacts from the increased height and bulk as they are off-set by other public benefits and amenities is still needed.

The law firm of Wilkes, Artis, Hedrick and Lane reiterated its earlier submission in support of the proposed amendments and added the following in the course of its testimony at the public hearing.

1. The PUD process has produced many good development projects over the years.

2. There is no reason to require documentation of the financial viability of a PUD application. The cost of carrying through a PUD application to approval is very high, and private sector financing is currently very tight, requiring substantial pre-leasing for commercial projects.

3. The absolute time limit on extensions that is included in the advertised text is a problem for applicants who have spent money on the delivery of benefits.

One citizen testified in support of the proposed amendments.

Upon the completion of the public hearing, the Zoning Commission left the record open until February 1, 1995 for the submission of additional materials into the record by the ANCs, various groups and individuals.

In a post-hearing submission dated February 1, 1995, the law firm of Wilkes, Artis, Hedrick and Lane expressed continued belief that the PUD process was a valuable development tool within the District of Columbia which gives the Commission broad latitude to weigh the merits of specific projects on specific parcels of property. In response to issues raised at the public hearing, the law firm offered the following comments:

1. The PUD process can remain a viable method for achieving the city's goals if the requirements imposed on applicants are commensurate with the increased value which results in each individual case. The time and cost which an applicant incurs to go through the PUD process and have an application approved are substantial. The Commission must be aware of the burdens it imposes by way of conditions and amenity requirements. If commercial projects are burdened by actual costs which are out of line with potential value, no projects will succeed.

2. The value created by PUDs in the current economy is substantially less than what was projected in the mid and late 1980's. Since approximately 1989, real estate values in the District of Columbia have been falling. While values appear to have bottomed out, the development environment that will exist for the foreseeable future requires a substantial creditworthy pre-leased tenant to finance a building. The Urban Land Institute, on several occasions, has commented that this phenomenon appears to be systemic rather than part of a cyclical process. As a result, the Commission should be cognizant of commercial land values and where they appear to be headed. If PUD amenities are valued on the basis of

realistic commercial value, and not on values inflated to pump up amenity packages, it may be possible to proceed with planned unit developments under the economic environment which is reasonably foreseeable. If developers will be faced with situations where they do not have tenants and they must respond to unrealistic expectations as to FAR values, then the PUD process will not have much use for commercial projects.

3. The Zoning Commission should allow the PUD process to help improve the competitive position of the District vis-a-vis the suburbs. Through the use of the planned unit development process, the Zoning Commission, on behalf of the District of Columbia, must make an overall determination as to the position it will take in a regional market in competition with other jurisdictions for employment base, jobs and taxes. It is well-known that tenants and jobs are leaving the District of Columbia for suburban locations. This is based in large part on economics. In the minds of many office tenants, the District's superior location is outweighed by lower rents and newer buildings with newer amenities in the suburbs. The PUD process gives the District an opportunity to take a position against that trend and provide buildings which can be highly competitive in the market place.

On March 20, 1995, at its monthly meeting, the Commission further reviewed and considered all the written comments in the record of the case and the testimony gathered in the course of the public hearing. The Commission also reviewed and discussed the Office of Planning's Summary Abstract report dated February 3, 1995, and its recommendation that the Commission adopt the amendment subject to modifications that may arise from the public hearing and final decision process. Furthermore, the Commission evaluated, and addressed most of the issues and concerns raised by ANC-2A and others.

In responding to the issues and concerns of the ANC, the Commission modified the advertised text of the proposed amendments based on the following consideration:

1. The Commission, instead of rescheduling the public hearing in February as suggested by ANC-2A, left the record open until February 1, 1995 to allow all interested persons and groups including ANC-2A to further review and where possible submit additional comments to the record.

2. The Commission concurred with ANC-2A that the approval and time periods for extension of the validity of PUDs as proposed is lengthy, accordingly, the Commission reinstated the original provisions of Sections 2406.8, 2406.9 and 2406.10, but renumbered them 2407.8 through 2407.10.

3. The Commission did not concur with the ANCs that the proposed evaluation standards were lacking in measurable criteria and quantifiable standards that were meaningful nor that the neighborhood in which a specific PUD is located should be the only beneficiary of the amenities.

4. Nevertheless, the Commission modified Subsection 2408.9 to include the demonstration of the uses of special value to the neighborhood or the District of Columbia as a whole; and modified Subsection 2403.12 to include the "duration of the operational and/or grant programs" in the annotated table required to be submitted by the applicant of a PUD.

Having discussed, considered and balanced most of the issues and concerns raised by ANC-2A, the Commission believes that "great weight" has been accorded the ANC.

The Zoning Commission believes that upon considering and resolving most of the pertinent concerns raised before, during and after the public hearing, that its action struck a reasonable and appropriate balance in amending Chapter 24 of the Zoning Regulations.

A notice of proposed rulemaking was published in the District of Columbia Register on June 16, 1995. The notice was also referred to the Zoning Administrator and the Office of Planning for comments.

Following the publication of the notice of proposed rulemaking, the Commission received additional comments from the law firm of Wilkes, Artis, Hedrick and Lane, Foggy Bottom, West End ANC-2A, and Barbara F. Kahlow.

By a letter dated July 24, 1995, Foggy Bottom - West End ANC-2 commented on the notice of proposed rulemaking. The ANC's comments correlate to the ANC's Resolution 94-12A which was passed in response to this case and was contained in the ANC's testimony during the hearing proceeding. Nevertheless, the ANC took issue with some of the amendments and stated as follows:

1. Section 2403.3 - the language of 'capable of being mitigated' does not provide for the full elimination of the negative impact in case there is only partial ability to mitigate a negative effect.

2. Section 2403.5 - 'specific public benefits and project amenities' should have a time factor included for the long term benefits to the neighborhood.

3. Section 2403.6 - 'significantly greater extent that would likely result' should have quantifiable factors which can be independently measured by all parties.

4. Section 2403.7 - 'adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors.' A project amenity is for the benefit of the neighborhood and the community. One assumes that the comfort for the occupants is a given in the design of the building.

5. Section 2403.9 - 'Public benefits and project amenities of the proposed PUD may be exhibited and documented in any of the following, or additional, categories.' A project should be required to provide contributions in substantially all the listed categories.

6. Section 2403.10 -'A project may qualify for approval by being particularly strong in only one or a few of the categories in Subsection 2403.9, but must be acceptable in all proffered categories and superior in many.' A project should qualify in a majority of categories and be acceptable in all categories in Subsection 2403.9.

7. Section 2404.4 - Lot occupancy - Deletion from "However" to the end of the section. Lot occupancy should follow the standards.

8. Section 2406.3 - This section should also include the Office of Business and Economic Development as one of the responsible offices for reports.

9. Sections 2405.11 and 2405.12 - Application for first and second stage approvals should include a building utilization plan, including the number of occupants, visitors, and customers housed in or attracted to the building and a trip generation analysis for each category.

A letter from the law firm of Wilkes, Artis, Hedrick and Lane dated July 24, 1995, reinforced its support for the amendments and suggested that changes be made to the proposed regulations as follows:

1. The letter suggested that Subsection 2404.4 be amended to provide that the percentage of lot occupancy shall be as otherwise prescribed in this title, and that the Zoning Commission shall have the option to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the particular project;

2. That language be added to the end of the proposed subsection 2407.10, that good cause shall mean the inability to obtain other government approvals such as alley closings or historic preservation approvals, pending litigation or such other factors as would make it impractical or impossible for an applicant to prepare and file plans or commence construction within the specified time period; and

3. Add a new Subsection 2407.11 and renumber the subsequent section, with the now 2107.11 to read that a limited public hearing, focused solely on the requested time extension, shall be held on a request for an extension of the validity of a PUD if, in the determination of the Commission, an evidentiary hearing is necessary to resolve a material factual conflict which has been generated by the parties to the PUD.

The letter further stated the rationale for each of the suggested changes and indicated that the changes would clarify the regulations, make them internally consistent as to the bulk and density standards and respond to the D.C. Court of Appeals' decision in the case of Hotel Tabard Inn, et al. v. District of Columbia Zoning Commission, No. 93-AA-1011, June 29, 1995. A case that dealt with an order extending the PUD at 1717 Rhode Island Avenue, N.W.

Mrs. Barbara F. Kahlow in a letter dated July 9, 1995, commented on the notice of proposed rulemaking as follows:

1. She stated her gratitude to the Commission for returning to the existing time limits for planned unit developments (PUDs), indicating that the previously proposed time extensions were the most serious problems with the previous version of the text amendments.

2. She stated as she did in her December 15, 1994, testimony, objections on behalf of the Foggy Bottom Association to the "any" qualifier in Section 2403.9 and the "only one" qualifier in Section 2403.10;

3. She pointed out what she considers to be a problem in Sections 2404.4 and 2404.5, and 1,404.6. Unlike Sections 2404.3 and 2408.6 which permit only a set percentage of increase (5 percent and 2 percent, respectively), the three indicated sections allow the Commission to approve a lot occupancy, yards or courts, and off-street parking spaces "greater or lesser" in any degree than the normal requirements. She recommended that a set percentage of increase greater than the normal requirements be established in each of the three indicated sections, and suggested a five percent deviation for each; and

4. Finally, she recommended that the proposed rule be amended to reflect Section 1200.227(10) of the Ward 2 Plan in the D.C. Comprehensive Plan Amendments Act of 1994, which became law after the December 15, 1994, hearing. This section states "A substantial part of the amenities provided in proposed Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact." This special section was enacted because of the large number of PUDs in various parts of Ward 2, including in Foggy Bottom-West End, some of which have had insufficient amenities for the impacted community.

On September 11, 1995 at its regular monthly meeting, the Commission considered the comments received as a result of the publication of the notice of proposed rulemaking. The Commission noted the suggestions and the recommendations offered by the law firm of Wilkes, Artis, Hedrick and Lane, the ANC and Mrs. Kahlow. The Commission indicated that issues like good cause for extension of the validity of PUDs will be better addressed in a separate case as has occurred with off-site housing linkage.

The Commission believes that the proposed amendments 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.

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 June 29, 1995 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, nor be inconsistent with the Comprehensive Plan for the National Capital, provided that the Height of Buildings Act as strictly enforced.

The Commission has determined that the changes in the text of the proposed rulemaking do not alter the intent, meaning, or operation of the rule as proposed.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the following amendments to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The specific amendments are as follows:

CHAPTER 24 PLAN REVIEW PROCEDURES

2400 PLANNED UNIT DEVELOPMENT (PUD)

2400.1 The planned unit development (PUD) process is designed to encouraged high quality developments that provide public benefits.

2400.2 The overall goal is to permit flexibility of development and other incentives, such as increased building height and density, provided that the project offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience.

2400.3 A comprehensive public review by the Zoning Commission of the specific development proposal is required in order to evaluate the public benefits offered in proportion to the flexibility or incentives requested, and in order to establish a basis for long-term public control over the specific use and development of the property.

2400.4 While providing for greater flexibility in planning and design than may be possible under conventional zoning procedures, the planned unit development process shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan.

2400.5 The Zoning Commission may approve an application for a PUD with or without modifications. In carrying out the purposes of this chapter, the Zoning Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts in this chapter or elsewhere in this title.

2400.6 The Zoning Commission may also set appropriate time limits for benefits conferred under this chapter to individual applicants in order to ensure the construction of a proposed development in accordance with the conditions established.

2400.7 Failure of an applicant to complete a proposed development as directed within the time limits set by the Zoning Commission or the Zoning Regulations shall result in the termination of the benefits granted under the application, and reversion of the zoning controls to the pre-existing regulations and map.

2401 AREA REQUIREMENTS

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

(a) A total of two (2) acres for a development to be located in any R-1, R-2, R-3, R-4, or R-5-A, zone district.

(b) A total of one (1) acre for a development to be located in any R-5-B zone district; or

(c) A total of fifteen thousand (15,000) square feet for development to be located in any other zone district.

2401.2 The Zoning Commission may waive not more than fifty percent (50%) of the minimum area requirement of this section if the following conditions are met:

(a) The Commission shall find after public hearing that the development is of exceptional merit and in the best interest of the city or country; and

(b) The Commission shall find one of the following:

(1) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto; or

(2) If the development is to be located in a portion of the Central Employment Area which is in an HR zone district, the development shall contain a minimum floor area ratio of 2.0 devoted to hotel or apartment house use.

2401.3 All the property included in a planned unit development shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

2402 TYPES OF APPLICATIONS

2402.1 The planned unit development process may be either a one-stage or a two-stage process.

(a) The first stage involves a general review of the site's suitability for use as a planned unit development, the appropriateness, character, scale, mixture of uses and design of the uses proposed, and the compatibility of the proposed development with city-wide, ward, and area plans of the District of Columbia, and the other goals of the planned unit development process; and

(b) The second stage is a detailed site plan review to determine compliance with the intent and purposes of the planned unit development process, the first stage approval, and this title.

2402.3 An applicant may elect to file a single application for consolidated review of a planned unit development, consolidating the reviews into one proceeding.

2402.4 To initiate a consolidated review, an applicant must file all of the material required for both first and second stages, as specified in subsections 2406.11 and 2406.12, at the time of initial filing. The applicant shall also comply with the requirements of subsections 2406.7 through 2406.10, regarding pre-filing notices.

2402.5 The application shall be processed as if it were a preliminary application. When the Zoning Commission considers whether to set the case for a hearing, the Commission shall determine whether the application is sufficiently clear and detailed to be considered at one proceeding.

2402.6 The Zoning Commission reserves the right to direct an applicant to revise a one-stage application into a two-stage application, if in the opinion of the Commission the circumstances and issues surrounding the proposal require a two-stage review.

2402.7 The Zoning Commission may dismiss or deny the application at the conclusion of the presentation of the applicant's case or at any point thereafter.

2403 EVALUATION STANDARDS

2403.1 An application for a planned unit development shall be evaluated and approved, disapproved, or modified, according to the standards in this section.

2403.2 The applicant shall have the burden of proof to justify the granting of the application according to these standards.

2403.3 The impact of the project on the surrounding area and upon the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

2403.4 The Zoning Commission shall find that the proposed planned unit development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

2403.5 In the context of the Comprehensive Plan, the Zoning Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instances overlap.

2403.6 Public benefits are superior features of a proposed planned unit development that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions of this title.

2403.7 A project amenity is one type of public benefit, specifically a functional or aesthetic feature of the proposed development, that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors.

2403.8 In deciding a planned unit development application, the Zoning Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

2403.9 Public benefits and project amenities of the proposed PUD may be exhibited and documented in any of the following, or additional, categories:

(a) Urban design, architecture, landscaping, or creation or preservation of open spaces;

(b) Site planning, and efficient and economical land utilization;

(c) Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts;

(d) Historic preservation of private or public structures, places or parks;

(e) Employment and training opportunities;

(f) Housing and affordable housing;

(g) Social services/facilities;

(h) Environmental benefits, such as stormwater runoff controls and preservation of open space or trees;

(i) Uses of special value to the neighborhood or the District of Columbia as a whole; and

(j) Other public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

2403.10 A project may qualify for approval by being particularly strong in only one or a few of the categories in Subsection 2403.9, but must be acceptable in all proffered categories and superior in many.

2403.11 To assist the Commission in applying the evaluation standards of this section, the applicant shall prepare and submit to the record of the case an annotated table that shows the following:

(a) The extent to which the proposed development would comply with the standards and requirements that would apply to a matter of right development under the zone district classification of the site at the time the application is filed;

(b) The specific relief that the applicant requests from the matter of right standards and requirements; and

(c) If the applicant requests a map amendment, the extent of compliance with, and the requested relief from, the matter of right standards and

requirements of development under conventional zoning.

2403.12 The annotated table required by Subsection 2403.11 shall also show how the public benefits offered are superior in quality and quantity to typical development of the type proposed and the duration of the operational and/or grant programs.

2404 RESERVED

2405 DEVELOPMENT STANDARDS

2405.1 No building or structure shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table; provided, that the Commission may authorize minor deviations for good cause pursuant to subsection 2405.3:

ZONING DISTRICT	MAXIMUM HEIGHT
R-1-A, R-1-B, R-2, R-3, C-1	40 feet
R-4, R-5-A, R-5-B, W-1, W-2, C-M-1	60 feet
C-2-A	65 feet
R-5-C, SP-1	75 feet
R-5-D, R-5-E, SP-2, C-2-B, C-2-C, C-3-A, C-3-B, W-3, C-M-2, C-M-3, M	90 feet
CR	110 feet
C-3-C, C-4, C-5 (PAD)	130 feet
C-5(PAD) (Where permitted by the Act of 1910 along the north side of Pennsylvania Avenue)	160 feet

2405.2 The floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several zone districts included within the project area; provided, that the Commission may authorize minor deviations for good cause pursuant to subsection 2405.3:

FLOOR AREA RATIO

Zone District	Residential	Commercial, Including Hotels and Motels	Total
R-1-A, R-1-B, R-2	0.4		0.4
R-3	0.6		0.6
R-4, R-5-A	1.0		1.0
R-5-B	3.0		3.0
R-5-C	4.0		4.0
R-5-D	4.5		4.5
R-5-E	6.0		6.0
SP-1	4.5	3.5	4.5
SP-2	6.5	4.5	6.5
CR	8.0	4.0	8.0
C-1	1.0	1.0	1.0
C-2-A	3.0	2.0	3.0
C-2-B	4.5	2.0	6.0
C-2-C	6.0	2.5	6.0
C-3-A	4.5	3.0	4.5
C-3-B	5.5	4.5	5.5
C-3-C	8.0	8.0	8.0
C-4	10.5	10.5	10.5
C-4 (facing a street at least 110" wide)	11.0	11.0	11.0
C-5 (PAD)	12.0	12.0	12.0
W-1	3.0	1.0	3.0

W-2	4.0	2.0	4.0
W-3	6.0	5.0	6.0
C-M-1		3.0	3.0
C-M-2		4.0	4.0
C-M-3, M		6.0	6.0

2405.3 The Commission may authorize an increase of not more than five percent (5%) in the maximum height or floor area ratio; provided, that such increase is essential to the successful functioning of the project and is consistent with the purpose and evaluation standards of the planned unit development regulations.

2405.4 The percentage of lot occupancy shall be as otherwise prescribed in this title. However, the Zoning Commission shall have the option to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the particular project.

2405.5 Yards and courts shall be provided as otherwise prescribed in this title. However, the Zoning Commission shall have the option to approve yards or courts greater or lesser than the normal requirements, depending upon the exact circumstances of the particular project.

2405.6 Off-street parking spaces and loading berth facilities shall be provided as otherwise prescribed in this title. However, the Zoning Commission shall have the option to reduce or increase the amount of such facilities depending on the uses and the location of the project.

2405.7 Notwithstanding the other prerogatives of the Zoning Commission in approving uses in planned unit developments, the Zoning Commission shall reserve the option to approve any use that is permitted as a special exception and which would otherwise require the approval of the Board of Zoning Adjustment.

2405.8 Approval of the Board of Zoning Adjustment shall not be required for any such use approved by the Zoning Commission, under subsection 2405.7, and the Zoning Commission shall not be required to apply the special exception standards normally applied by the BZA.

2406 FILING REQUIREMENTS

2406.1 Each application for a planned unit development shall meet the requirements of this section before it will be accepted by the Zoning Commission for processing.

2406.2 An application for a planned unit development may be filed in conjunction with a change in zoning for the property involved.

2406.3 No application for a planned unit development shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.

2406.4 An application for a planned unit development may include property of one or more owners. The owner or owners may be public or private persons, corporations, agencies, or other entities.

2406.5 The name, address, and signature of each owner (or his or her authorized agent) of property included in the area to be developed shall be included in the planned unit development application filed.

2406.6 The application shall be filed on such form as may be designated from time to time by the Zoning Commission.

2406.7 At least ten (10) calendar days prior to filing an application under this chapter, the applicant shall mail written notice of its intent to file the application to the Advisory Neighborhood Commission within which the property is located, and to the owners of all property within 200 feet of the perimeter of the property in question.

2406.8 The applicant may mail notice to any other person or organization the applicant shall determine as appropriate to receive such notice.

2406.9 The notice shall describe generally the proposed development, including the name of all owners of the property involved, and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.

2406.10 At the time of filing the application, the applicant shall certify to whom and in what manner the required notice was given.

2406.11 An application for first-stage approval of a planned unit development shall include the following:

(a) A completed application form;

(b) A map showing the location of the proposed project, the existing zoning for the subject site, zoning of adjacent properties, and any proposed change of zoning;

(c) A statement of the purposes and objectives of the project, including the proposed form of development and a detailed statement elucidating how the application meets the Evaluation Standards for planned unit developments as set forth in section 2403;

(d) A general site, landscape, and development plan, indicating the proposed use, location, dimensions, number of stories, and height of each building, and the exact area of the total site; and

(e) A tabulation of development data showing the following:

(1) The area and dimensions of each lot proposed for each building, and the exact area of the total site;

(2) The percentage of lot occupancy of each building on each lot, and the total percentage of lot occupancy for all buildings on the entire site;

(3) The gross floor area and floor area ratio for each building on each lot, including a breakdown for each use, and the total gross floor area and floor area ratio for all buildings on the entire site, including a breakdown for each use;

(4) A circulation plan, including the location of all vehicular and pedestrian access ways and the location and number of all off-street

parking spaces and loading berths, including an indication of which spaces are designated for which use;

(5) The existing topography of the development area, the location of all major natural features, including trees of 6-inch caliper or greater, and the location and elevations of public or private streets, alleys, or easements bounding or traversing the site, including an indication of which of the rights-of-way or easements are to be continued, relocated, or abandoned;

(6) Estimated quantities of potable water required by the project, and of sanitary sewage and storm water to be generated, including the methods of calculating those quantities; and

(7) Any other information needed to understand the unique character and problems of developing the specific planned unit development project.

2406.12 An application for second-stage approval of a planned unit development shall include the following information:

(a) A completed application form;

(b) A detailed statement as to the uses to be located in the project, including the location, number, size and types of stores, offices, residential, institutional, industrial, and other uses;

(c) A detailed site plan, showing the location, and external dimensions of all buildings and structures, utilities and other easements, walkways, driveways, plazas, arcades, and any other open spaces;

(d) A detailed landscaping and grading plan, showing all existing contour lines, including graphic illustration of grades exceeding 15 percent (15%) in five percent (5%) increments, landscaping to be retained, grades, planting, and landscaping. Such plan shall also show the proposed drainage for the site, including the location of buildings, roads, sidewalks, water and sewer lines, inlets, and basins, and connections to public water and sewer lines. Proposed erosion control measures shall also be shown;

(e) Typical floor plans and architectural elevations for each building, sections for each building and the project as a whole, and sections and elevations of the entire square within which the project is located;

(f) A final detailed circulation plan showing all driveways and walkways, including widths, grades, and curb cuts, as well as detailed parking and loading plans;

(g) Any other information needed to understand the final design of the proposal, or information specifically requested by the Commission; and

(h) A statement showing how the second-stage plans are in accordance with the intent and purposes of this title, the planned unit development process, and the first-stage approval.

2407 PROCESSING OF FIRST-STAGE PUD APPLICATIONS

2407.1 An application for approval of a planned unit development shall be referred by the Zoning Commission to the Director of the Office of Planning, who shall report to the Zoning Commission on whether the application is consistent with the purpose of the planned unit development process, and whether or not a hearing should be held.

2407.2 Following the receipt of the report from the Office of Planning, the Zoning Commission shall review the application and determine whether a public hearing shall be granted. An application may be denied without a hearing, but no application shall be granted unless a public hearing is held.

2407.3 If a public hearing is granted, the Office of Planning shall coordinate review of the application, and prepare an impact assessment of the project, which shall include reports in writing from relevant District departments and agencies, including, but not limited to, the Department of Public Works, the Department of Housing and Community Development, and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

2407.4 The Office of Planning shall report on the following:

(a) The suitability of the site for use as a planned unit development;

(b) The appropriateness, character, scale, mixture of uses, and design of the uses proposed for the proposed development, and other identifiable public benefits; and

(c) The compatibility of the proposed development with the Comprehensive Plan, the goals of the planned unit development process as set forth in Section 2400 and the Evaluation Standards as set forth in Section 2403.

2407.5 Notice for the public hearing on a planned unit development application shall be given in the same manner as for amendments to the Zoning Map as contained in chapter 30 of this title. The hearing shall be conducted as a contested case in accordance with those rules.

2407.6 At the public hearing, the applicant shall carry the burden of justifying the proposal. Failure of groups or persons to appear in opposition shall not relieve the applicant of the responsibility of demonstrating the merits of the application.

2407.7 At the public hearing, the applicant shall advise the Commission of the efforts that have been made to apprise the affected Advisory Neighborhood Commission and other individuals and community groups concerning the proposed development.

2407.8 The Zoning Commission shall either approve, deny, or modify the application.

2407.9 The Zoning Commission's first-stage approval shall set forth the appropriate zoning classification to apply to the project, and shall state in detail the elements, guidelines, and conditions that shall be followed by the applicant in the second-stage application.

2407.10 The first-stage approval shall be valid for a period of one year, unless a longer period is specified by the Commission, or unless that period is extended by the Commission.

2407.11 The rights granted under such an approval are conditional, and must be exercised within the specified time limit. Unexercised rights shall lapse at the end of the specified time periods, and the zoning shall revert to pre-existing conditions, unless otherwise provided by order of the Zoning Commission.

2407.12 In the case of an application being processed under a consolidated review, the Zoning Commission shall render a final decision on the application after the hearing process. The following shall also apply:

(a) The applicant may file directly for a building permit without filing a subsequent application with the Zoning Commission;

(b) The requirements for the filing of that permit application shall be the same as those following approval of the second-stage of the two-stage process; and

(c) At the point at which a decision is made on a consolidated review application, the Commission may also determine that a second review is required, and rather than approving the application in a consolidated review, grant first-stage approval only, and require that the applicant file additional plans for second-stage approval.

2408 **PROCESSING OF SECOND-STAGE PUD APPLICATIONS**

2408.1 In accordance with the requirements of subsections 2406.12 and 2407.8 through 2407.11, the applicant may file an application for second-stage approval of the planned unit development.

2408.2 The application shall be filed on a form as may be designated from time to time by the Zoning Commission.

2408.3 The Zoning Commission shall review the application. If the Commission determines that the application complies with all of the requirements of the first-stage approval, it shall schedule a public hearing on the second-stage application. It is the intention of the Commission that any second-stage application that is substantially in accordance with the elements, guidelines and conditions of the first-stage approval shall be granted a hearing.

2408.4 The Zoning Commission shall submit the application to the Director of the Office of Planning for coordination, review, report, and impact assessment of the final design. The assessment shall include reports in writing from all relevant district agencies and departments, including, but not limited to, the Department of Public Works, the Department of Housing and Community Development, and, if a historic district or district landmark is involved, the State Historic Preservation Officer.

2408.5 Notice for the public hearing shall be given in the same manner as for amendments to the Zoning Map as contained in chapter 30 of this title. The hearing shall be conducted as a contested case in accordance with those rules.

2408.6 If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the planned unit development process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the decision of the Commission.

2408.7 In granting second-stage approval, the Commission may specify that the project be built in stages and shall specify the timing of the stages.

2408.8 The final planned unit development approved by the Zoning Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit, as specified in subsection 2409.1

2408.9 Construction shall start within three (3) years of the date of final approval.

2408.10 The Commission may extend the periods set forth in Subsections 2408.8 and 2408.9 for good cause shown upon proper request of the applicant before the expiration of the approval.

2408.11 If no application for permit is filed, construction has not started within the period specified, or no extension is granted, the approval shall expire, the zoning shall revert to the pre-existing regulations and map and the approval shall not be reinstated unless a new application is filed, processed, and approved in accordance with this chapter.

2408.12 A change of zoning approved in conjunction with a planned unit development shall not become effective until the covenant required in subsection 2409.3 has been recorded.

2409 IMPLEMENTATION

2409.1 Following approval of an application by the Zoning Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.

2409.2 The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs shall not approve a permit application unless the plans conform in all respects to the plans approved by the Zoning Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Zoning Commission may have applied.

2409.3 The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia, between the owner or owners and the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission.

2409.4 Following the recordation of the covenant, the boundaries of the planned unit development shall be designated on the Zoning Map.

2409.5 The orders of the Zoning Commission issued in accordance with the provisions of this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of section 3201 of this title.

2409.6 The Chief of the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs shall have the authority to approve minor modifications in the final plans as approved by the Zoning Commission. These modifications shall be limited to the following:

(a) A change not to exceed two percent (2%) in the height, percentage of lot occupancy, or gross floor area of any building;

(b) A change not to exceed two percent (2%) in the number of residential units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses;

(c) A change not to exceed two percent (2%) in the number of parking or loading spaces; and

(d) The relocation of any building within five feet (5') of its approved location, in order to retain flexibility of design, or for reasons of unforeseen subsoil conditions or adverse topography.

2409.7 In reviewing and approving any requested modifications, the Chief of the Zoning Regulations Division shall determine that the proposed modification is consistent with the intent of the Zoning Commission in approving the planned unit development.

2409.8 Following its approval of any modifications, under subsection 2409.6, the Zoning Regulations Division shall report to the Zoning Commission the modification approved under this section.

2409.9 Any modifications proposed to an approved planned unit development that cannot be approved by the Zoning Regulations Division shall be submitted to and approved by the Zoning Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in Section 3030 of this title.

2410 **EFFECT ON PENDING APPLICATIONS**

2410.1 These regulations will apply to all applications for planned unit developments filed after the effective date of this revised chapter.

2410.2 A planned unit development that has already received preliminary approval or for which an application was filed before the effective date of this chapter may continue to be processed to completion in accordance with the regulations in effect at the time of filing, or may be processed in accordance with this revised chapter at the option of the applicant with the approval of the Zoning Commission.

2499 DEFINITIONS

2499.1 The provisions of section 199 of this title, and the definitions set forth in that section, shall be incorporated by reference in this section.

Vote of the Commission taken at the regular meeting on March 20, 1995: 4-0 (Maybelle Taylor Bennett, John G. Parsons, Jerrily R. Kress and William L. Ensign, to approve).

This order was adopted by the Zoning Commission at its public meeting on September 11, 1995 by a vote of 4-0: (Maybelle Taylor Bennett, John G. Parsons, Jerrily R. Kress and William L. Ensign, to adopt as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on DEC - 8 1995*

JERRILY R. KRESS
Chairperson
Zoning Commission

MADELIENE H. DOBBINS
Director
Office of Zoning

*This order appears in the December 1, 1995 edition of the D.C. Register which was published on December 8, 1995.

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