

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 795**

*Case No. 95-2*

*(Text Amendments – Housing Linkage  
Provisions Related to PUDs)*

December 8, 1997

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning (OP) requesting the Commission to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. Amendments to the text of the Zoning Regulations are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)].

The OP petition, filed on March 7, 1995, requested the Zoning Commission to schedule a public hearing to consider text amendments to the planned unit development (PUD) regulations (Chapter 24, 11 DCMR) that would implement the zoning portion of the City's new housing linkage policies and program. As adopted by the D.C. Council as part of the Comprehensive Plan Amendments Act of 1994 [Section 308(a)], housing linkage requires production of or financial support for affordable housing whenever an alley closing or PUD results in an increase in office development rights.

At a regular public meeting held on April 10, 1995, the Zoning Commission authorized a public hearing on the petition. Accordingly, the hearing in this case was properly noticed for July 13, 1995 and was conducted in accordance with the provisions of 11 DCMR 3021.

At that hearing session, the Commission heard the presentations of the Office of Planning, representatives from the law firm of Wilkes, Artis, Hedrick and Lane (WAHL), various community groups, and interested citizens. As the sponsor of the housing linkage legislation and then Chairman of the D.C. Council, David A. Clarke also testified.

By reports dated June 1 and June 28, 1995, and by testimony presented at the public hearing, the Office of Planning recommended approval of the proposed amendments with modifications. The linkage requirements apply only to PUDs where an increase in office density is requested. The proposed new text would be Section 2404 of 11 DCMR, following the new Evaluations Standards section (Section 2403) of the PUD regulations. Existing Sections 2404 through 2409 would be renumbered accordingly.

The first modification OP recommended included adding "flat" (two-family dwelling) and "rooming and boarding houses" to the qualifying housing types for linkage identified in Subsection 2404.5. The second modification involved emergency shelters. The Zoning

Commission would need to review each case for its consistency with the purposes of the housing linkage legislation whenever this type of residential use (i.e., emergency shelter) qualifies for housing linkage.

The former Chairman of the D.C. Council, David A. Clarke, submitted a letter into the record and testified at the hearing that the overall intention of the linkage legislation is to authorize a wide range of housing types that could be linked to PUDs, including single-room occupancy (SRO) housing and transitional housing for the homeless. The Zoning Commission can and should exercise its discretion in further defining the operating rules for housing linkage.

Advisory Neighborhood Commission (ANC) 2A, by resolution submitted into the record and by testimony given at the public hearing, indicated its support for several of the proposed text amendments and urged the Commission to modify others. The issues and concerns raised by ANC-2A are summarized as follows:

1. Earlier PUDs have plagued the Foggy Bottom neighborhood with intensive commercial development without significant benefits accruing to the immediate area from the amenities provided. The neighborhood should also be provided with housing.
2. Only low- and moderate-income housing would be taken into consideration under the linkage proposal.
3. A reference should be provided in the linkage regulations to Section 1200.221(10) of the Ward Two Element of the Comprehensive Plan regarding PUDs.

Testimony in support of the proposed amendments was presented by the Foggy Bottom Association, the law firm of Wilkes, Artis, Hedrick and Lane (WAHL), the Coalition for Non-profit Housing Development, the Coalition of Economic Development Organizations, and MANNA, Inc. A number of suggestions were put forth for incorporation into the text amendments or for the Commission to consider. The issues raised at the hearing and in post-hearing submissions, and the Commission's final disposition of them, are summarized as follows:

1. Actual housing construction should be encouraged to a much greater extent than a financial contribution option. Such funds may languish before being used for actual construction. A higher percentage (e.g. – 75 rather than 50 percent) of the assessed value of the increased office density for financial contributions should be required. The Commission finds that 50 percent of the assessed value for increased office density is appropriate relative to the financial contribution option.
2. The advertised text is an accurate reflection of the housing linkage legislation. However, a substantial portion of the amenities associated with a PUD should benefit the community in which the PUD is located and has impact on. The Commission believes that the applicable provisions of proposed Subsections 2403.13 and 2404.6 adequately address this concern relative to the amount and location of housing provided.

3. The regulations need more flexibility regarding affordable housing for sale. The 20-year holding restriction would be a disincentive for home ownership. A value recapture provision can be placed in a covenant regarding the resale of a home by the original owner. The Commission concurs and believes that the proposed revised amendments address this issue adequately.
4. A minimum average residential unit size of 700 square feet would be more appropriate than the proposed 850 square feet in ensuring that some valuable projects are not excluded, especially in those areas with high land costs. The Commission believes that the 850 square-foot minimum is appropriate except for rooming houses, boarding houses or single-room occupancy housing [see proposed Subsection 2404.6 (c)].
5. Single-room occupancy (SRO) housing and transitional low- and moderate-income housing should qualify for housing linkage. The Commission concurs in part (see proposed Subsection 2404.5).
6. The Commission should consider requiring a certain minimum financial outlay per unit in order to discourage any cosmetic rehabilitation. The Commission concurs [See proposed Subsection 2404.6(d)].
7. The definitions of affordable housing, low-income household, and moderate-income household should be consistent with those of the U.S. Department of Housing and Urban Development (HUD) and the D.C. Department of Housing and Community Development (DHCD). The Commission agrees.
8. The requirement to maintain residential units as affordable housing for a 20-year period appears to contemplate that they would be rental units. This provision as written is not reasonably applicable to units, which are sold to low- or moderate-income families. Rather, it suggests that homeowners in a linkage project would not be entitled to the same appreciation in value that other homeowners would receive. The Commission makes reference to proposed Subsection 2404.6(f) of the revised amendments.
9. The law firm of Wilkes, Artis, Hedrick and Lane (WAHL) maintains that the requirement that off-site housing be located within one-quarter mile of the PUD site or within the ANC boundaries within which the PUD is located are unduly restrictive. The Comprehensive Plan clearly states that housing be assigned citywide. The Commission concurs in part. Reference to the applicable provisions of proposed Subsection 2404.6 [particularly 2404.6(a)(3)] is noted in addressing WAHL's concerns.
10. Housing linkage funds should be made available for a broad range of housing types. The Commission should not constrain itself within the text of the Zoning Regulations as to the type of housing that can be considered for approval in any given case. In this regard, the Commission finds that the proposed revised amendments adequately address this issue.

At the close of the hearing, the Commission left the record open for 50 days for additional submissions. The Commission also requested that OP address several issues that arose during the hearing and provide appropriate text indicating that when housing is provided on or adjacent to a PUD office development site, it need not be limited to affordable housing.

By memorandum, dated July 24, 1995, OP summarized the hearing testimony and recommended that certain subsections under Section 2400 be amended. OP also provided a checklist of issues for the Commission to discuss and decide upon that arose in hearing testimony. OP's recommended amendments and issue checklist are as follows:

1. On-site or Adjacent Site Housing

Subsection 2404.2 should be modified to read:

**2404.2** The housing linkage requirements of this section require the applicant to produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low- and moderate-income people; Provided, that:

- (a) The quantity of such housing that is required **shall be** based upon the requested increase in office FAR;
- (b) **If the required quantity of housing is provided on the site of the office component of the planned unit development or on an adjacent site, the housing is not restricted to low- and moderate-income housing.**

2. Special Provisions for Home Ownership

Subsection 2404.6(e) and (f) should read:

- 2404.6**
- (e) **If the required housing is provided as rental housing, it shall be maintained as affordable dwelling units for not less than twenty (20) years.**
  - (f) **If the required housing is provided for home ownership, the Zoning Commission shall have the authority to devise and adopt suitable provisions appropriate to each case, provided that such provisions shall be consistent with the intent of the housing linkage legislation; and**

Paragraph "(f)" would be changed to "(g)."

3. Citywide Scope of Off-Site Housing

The introductory clause of Subsection 2403.13 should be modified to read:

**2403.13** Public benefits **other than** affordable housing **such as** public facilities or public open space, may be located off-site; Provided, that:

**4.** Checklist of Issues

1. Include emergency shelter as a qualifying housing type;
2. Reduce the average unit size for new construction from 850 s.f. to 700 s.f.;
3. Include reference to the Ward Two policy regarding PUDs in Ward Two;
4. Reemphasize the primacy of the affordable housing objectives in 2404.4(d)(2);
5. Amend the formulas so as to require greater housing production, or to encourage construction more strongly rather than financial contribution or to require a certain financial outlay per unit so as to discourage cosmetic rehabilitation; and,
6. Change the formulas for low- and moderate-income families to be the same as provided in HUD/DHCD rules.

At its regular monthly meeting on September 11, 1995, the Commission received and discussed various post-hearing comments submitted by public hearing participants as well as OP's issue checklist and recommendations. As a result, the Commission modified the proposed text amendments and added a number of new text provisions.

In response to the issues and concerns put forth by ANC-2A, the Commission believes that they were addressed by broadening the types of housing that could be generated through PUD housing linkages. Other issues were also addressed, including special provisions for home-ownership projects, on-site or adjacent housing, citywide off-site housing, and low- and moderate – income definitions. Having considered, discussed, and addressed the concerns of and issues raised by ANC-2A, the Commission determined that it has accorded ANC-2A the “great weight” to which it is entitled.

The Commission opined that divergent views expressed during the hearing proceedings had been reconciled by the modifications, that a reasonable balance had been struck, and that many of the issues had been resolved. Accordingly, the Commission took proposed action to approve the text amendments, as modified.

A notice of Proposed Rulemaking was published in the December 22, 1995 edition of the D.C. Register on January 19, 1994 and was referred earlier to the Zoning Administrator (ZA), OP and the National Capital Planning Commission (NCPC) for appropriate comments. As a result of both the publication and referrals, the Commission received comments from OP, NCPC, the law firm of Wilkes, Artis, Hedrick and Lane, MANNA, Inc., and D.C. Council Chairman David A. Clarke recommending that the proposed text amendments be modified further.

The proposed decision to approve the text amendments was referred to NCPC under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. In a letter dated December 7, 1995, NCPC indicated that the proposed amendments 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.

The combined comments received prompted the Commission to further modify the proposed text amendments. A Notice of Revised Proposed Rulemaking was published in the D.C. Register on July 4, 1997 as a result of the modifications.

The proposed decision to approve the revised text amendments was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated August 1, 1997, NCPC found that the proposed revised amendments 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.

The Zoning Commission believes that the revised text amendments included herein will provide a workable mechanism to implement and achieve the objectives of Section 308(a) of the Comprehensive Plan Amendments Act of 1994. Furthermore, the Commission believes that its decision to approve the text amendments set forth in this order is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia ORDERS APPROVAL of the following amendments to the Zoning Regulations:

1. Add a new Section 2404 HOUSING LINKAGE to read as follows:

**2404 HOUSING LINKAGE**

**2404.1** A planned unit development application that proposes an increase in gross floor area devoted to office space over and above the amount of office space permitted as a matter of right under the zoning **included as part of the PUD** shall comply with the housing linkage requirements of this section, as mandated by the Comprehensive Plan of the National Capital.

**2404.2** The housing linkage requirements of this section require the applicant to produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low- and moderate-income people; Provided, that:

(a) The quantity of low and moderate income housing that is required shall be based upon the requested increase in office FAR; and

(b) No income limits shall apply to housing that is constructed on or adjacent to the site of the PUD.

**2404.3** The applicant may either provide the required housing by means of new construction or rehabilitation as specified in Subsection 2404.6, or may elect to make a financial contribution as provided in Subsection 2404.7.

**2404.4** The following exclusions and modifications shall apply:

- (a) Commercial floor area other than office space shall be excluded from these computations for both the proposed planned unit development and the existing, matter of right commercial density; Provided, that the matter of right commercial density of the existing zone shall be reduced by 0.5 FAR to allow for normal retail use;
- (b) If the proposed planned unit development provides an amount of housing equal to or greater than the housing that would be required under this section, no additional housing shall be required;
- (c) No housing requirement pursuant to this section shall apply to a planned unit development that is proposed for property located within the boundaries of the Downtown Development District provisions of Chapter 17 of this title, nor to any PUD application filed by an agency of the federal government, the Washington Metropolitan Area Transit Authority (WMATA), or the Pennsylvania Avenue Development Corporation (PADC).
- (d) An applicant may apply for a reduction or elimination of the housing required under this section as part of the planned unit development application; Provided, that:
  - (1) The property is located in an area classified in the Generalized Land Use Map of the Comprehensive Plan as a Development Opportunity Area, a Production and Technical Employment Area, or a New or Upgraded Commercial Center; and
  - (2) The Zoning Commission finds, after public hearing, that the reduced or eliminated housing requirement is necessitated or justified by the PUD's provision of other public benefits that are exceptional merit and are in the best interests of the city or the country.

**2404.5** Qualifying residential uses for housing linkage shall include **dwelling**s, multiple dwellings, flats, rooming houses and boarding houses, but shall exclude transient accommodations, all as defined in this title.

**2404.6** If the applicant constructs or rehabilitates the required housing, the following conditions shall apply:

- (a) The gross square footage of new or rehabilitated housing shall be based upon the gross square footage of increase in office space that the PUD provides in excess of that allowed as a matter of right **by the zoning included in the**

PUD application; Provided, that the amount of housing required shall be as follows:

- (1) Not less than one-fourth of the gross square feet of increased office space if the required housing is part of the planned unit development or is situated on adjacent property;
  - (2) Not less than one-third of the gross square feet of increased office space if the location of the required housing does not comply with Paragraph (1) but is nonetheless within the same Advisory Neighborhood Commission as the planned unit development or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan;
  - (3) Not less than one-half of the gross square feet of increased office space if the location of the required housing is other than as provided in paragraphs(1) and (2);
  - (4) If any housing exists on the development site and is to be removed in order to allow construction of the planned unit development, the gross square footage of housing removed shall be added to the housing requirement as computed in paragraphs (a), (b) or (c); and, that this provision shall apply to any housing removed beginning **one year** prior to the date of the PUD application.
- (b) The applicant may construct or rehabilitate the housing units, or may secure the housing production by other business arrangements, including but not limited to, joint venture, partnership, or contract construction;
  - (c) If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than 850 square feet; Provided, that no average size limit shall apply to rooming houses, boarding houses or units that are deemed single-room occupancy housing;
  - (d) Rehabilitation for purposes of this section shall mean the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia, 14 DCMR;
  - (e) In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years;
  - (f) If the required housing is provided for home ownership, the Zoning Commission shall have the authority to devise and adopt suitable provisions appropriate to each case; Provided, that:

- (1) Such provisions shall be consistent with the intent of the housing linkage legislation; and
  - (2) The Commission shall consider whether to require the applicant to legally mandate recapture of subsidy funds by the housing sponsor from the home owner if the dwelling unit is sold to a person or household who does not qualify as low or moderate income during a twenty (20) year period after the original occupancy of the dwelling unit, so that the housing sponsor may reuse the funds for other affordable housing projects.
- (g) No certificate of occupancy shall be issued for the office component of a planned unit development that is subject to the provisions of this section until a certificate of occupancy has been issued for the housing required pursuant to this section.

**2404.7** As an alternative to constructing or rehabilitating the required housing as provided in Subsection 2404.6, the applicant may contribute funds to a housing trust fund as defined in Section 2499; Provided, that:

- (a) The contribution shall be equal to one-half (1/2) of the assessed value of the increase in permitted gross floor area for office use;
- (b) The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Department of Finance and Revenue as of the date of the PUD application; and
- (c) The contribution shall be determined by dividing the assessed value per square foot of land that comprises the PUD site by the maximum permitted commercial FAR and multiplying that amount times the requested increase in gross square feet proposed for office use.

**2404.8** If any housing exists on the development site and is to be removed in order to allow construction of the planned unit development, the total assessed value of the housing removed shall be added to the financial contribution as computed in Subsection 2404.7; Provided, that this provision shall apply to any housing removed beginning **one year** prior to the date of the PUD application.

**2404.9** Not less than one-half of the required total financial contribution shall be made prior to the issuance of a building permit for any part of the office component of the planned unit development, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any part of the office component of the planned unit development.

**2404.10** The Zoning Commission's order granting a PUD that includes housing linkage shall specify reporting, certification and enforcement measures suitable in each case to ensure that the requirements of this section are carried out.

**2404.11** A planned unit development that is subject to the housing requirement of this section shall not be relieved of the requirement to be found meritorious pursuant to the Evaluation Standards of Section 2403 of this chapter.

**2404.12** The Office of Planning shall refer each application for a PUD subject to the provisions of this section to the Department of Housing and Community Development for an analysis of compliance with the housing requirements of this section and a recommendation.

**2499 DEFINITIONS**

**2499.1** The provisions of Subsection 199 of Chapter 1 of this Title, and the definitions set forth in that Section, shall be incorporated by reference in this Section.

**2499.2** When used in this chapter, the following terms shall have the meaning ascribed:

**Housing trust fund** - either the fund established under section 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989, D.C. Law 7-202, or an organization that qualifies as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat 163; 26 U.S.C., Par.501(c)(3), and that also:

- (a) Exists primarily for the purpose of assisting in the production of affordable housing units;
- (b) Operates a trust fund that disburses money for affordable housing development;
- (c) Receives applications for funds directly from developers of affordable housing;
- (d) Has adopted criteria for selection of projects and allocation of funds among various types of affordable housing developments; and
- (e) Has been certified by the Director, D.C. Department of Housing and Community Development, as a qualifying nonprofit organization that also complies with the requirements of paragraphs (a) through (d) of this definition.

**Affordable Housing** - housing where the occupant is paying **no more than 35** percent of gross income for gross housing costs, **excluding** utility costs.

**Low-income households** - households whose incomes do not exceed 80 percent of the median income for the area, as determined by the U.S. Department of Housing and Urban Development

(HUD) with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. NOTE: HUD income limits are updated annually and are available from local HUD offices.

**Moderate Income households** - households whose incomes are between 81 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

2. Add new Subsections 2403.13 and 2403.14 as follows:

**2403.13** Public benefits other than affordable housing, such as public facilities or public open space, may be located off-site; Provided, that:

- (a) There is a clear public policy relationship between the planned unit development proposal and the off-site benefit; and
- (b) The off-site benefit(s) shall be located within one-quarter mile of the PUD site or within the boundaries of the Advisory Neighborhood Commission that includes the PUD site.

**2403.14** If the off-site public benefit is housing, it shall be provided according to the requirements of Section 2404 of this chapter.

Vote of the Commission taken at its regular monthly meeting on September 11, 1995: 4-0 (Maybelle Taylor Bennett, John G. Parsons, William L. Ensign, and Jerrily R. Kress, to approve as amended).

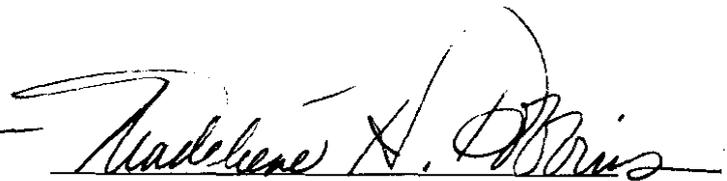
Vote of the Commission taken at its regular monthly meeting on May 23, 1996: 3-0 (Maybelle Taylor Bennett, John G. Parsons, and Jerrily R. Kress, to approve as amended).

This order was adopted by the Zoning Commission at its public meeting on December 8, 1997: 3-0 (John G. Parsons and Jerrily R. Kress, to approve as amended, Maybelle Taylor Bennett, to approve as amended by absentee vote, Herbert M. Franklin, not voting, not having participated in the case).

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In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on FEB 6 1998.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. DOBBINS  
Director  
Office of Zoning

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