

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 902
Case No. 98-16C
(Consolidated PUD and Related Map Amendment at
Oxon Cove – D.C. Correctional Facility)
June 14, 1999

This Decision and Order arises out of an application by Corrections Corporation of America (“CCA” or “Applicant”) for a planned unit development (“PUD”) on a 42-acre site at Oxon Cove, located in Ward 8 in Southeast Washington, D.C. The application requests consolidated review and approval of a PUD and related map amendment pursuant to Chapter 24 and Section 102, respectively, of the D.C. Municipal Regulations (“DCMR”), Title 11, Zoning.

PROCEDURAL HISTORY

On July 31, 1998, the Office of Zoning received an application from CCA requesting approval by the Zoning Commission for the District of Columbia (“Commission”) of a consolidated PUD and a related map amendment from unzoned land to M (General Industry). The proposed PUD would comprise a correctional facility including inmate job training and work programs. In conjunction with the PUD, CCA proffered public benefits including employment and job-training opportunities, a revolving loan fund for new and existing minority-owned businesses, and a scholarship program to fund at least 50 yearly scholarships for Ward 8 residents to attend the University of the District of Columbia.

The project was CCA’s response to a request for proposals (“RFP”) issued by the Federal Bureau of Prisons (“BOP”) for the construction and operation of a correctional facility in the District of Columbia. By letter dated November 27, 1998, CCA indicated its intention to modify the application in accordance with revised directives issued by the BOP, and on March 4, 1999, the Applicant filed a supplemental submission modifying its original application.

Pursuant to notice, the Commission held public hearings on November 16 and 19, 1998, and on May 17, 24, and 27, 1999, to consider CCA’s application. The Commission granted party status to Citizens for a Progressive Ward 8, United Communities Coalition Against a Prison, the Far Southwest Civic Association for a Better Community, and the Fighting 54th Public Service Organization; Advisory Neighborhood Commission 8D was automatically a party to the case. The Commission also heard testimony from approximately 160 witnesses; approximately 50 persons testified in support of CCA’s proposal and the remainder testified in opposition.

SUMMARY OF EVIDENCE

A. Office of Planning

1. The Office of Planning (“OP”) initially recommended approval of the application, provided that CCA demonstrated its ability to operate the facility safely without adverse impacts on the surrounding uses. However, OP expressed concerns with respect to CCA’s ability to deliver the proffered public benefits associated with the project.
2. By memorandum dated April 9, 1999 and testimony at the May 17, 1999 hearing session, OP reevaluated its position and concluded that a correctional facility would have an adverse impact on efforts to achieve economic and community development east of the Anacostia River. OP recommended that the Commission deny CCA’s application because a correctional facility would be an inappropriate use at the proposed location and because the proposal could not meet the applicable PUD evaluation standards.
3. OP disputed CCA’s contention that the PUD proposal was consistent with the Comprehensive Plan. According to OP, the “parks, recreation and open space” designation for the site on the Comprehensive Plan Generalized Land Use Map should not be replaced with a “production and technical employment” designation, as proposed by CCA, without a study to guide an amendment process based on the District’s and the community’s current vision for the area and its critical role in the economic development of Ward 8.
4. OP testified that CCA’s application did not appear consistent with planning objectives and designations, including the Environmental Protection and Urban Design Elements of the Comprehensive Plan applicable to waterfront areas, which state generally that waterfront land should be preserved as open space or developed to accommodate public access. 10 DCMR §§ 405 and 706, respectively. OP stated that the proposed site was designated as parkland by the Comprehensive Plan, which emphasizes that improvements at a waterfront site should establish an interrelationship among the buildings, open spaces and the rivers. However, according to OP, CCA’s proposed facility would take very little, if any, advantage of the site’s waterfront location, because a correctional facility designed to medium security standards is a closed space by its very nature and needs.

B. Advisory Neighborhood Commission

1. Winifred Freeman, Chairperson, testified on behalf of ANC 8D in opposition to CCA's application. The ANC concluded that the proposed correctional facility was not the desired "positive kind of economic development" and that CCA would not likely deliver the promised public benefits or the necessary training and rehabilitation for inmates. The ANC also disputed CCA's contention that the proposed PUD site was isolated, and concluded that approval of the PUD application would unnecessarily limit the economic development potential of the site and further a negative image of Ward 8, reducing the economic development potential of the larger Ward 8 area. With regard to the Comprehensive Plan, the ANC asserted that placement of a correctional facility on the proposed site would not contribute in any way to a relationship between District residents and the rivers, establish attractive pedestrian connections from neighborhoods to waterfront activities, or protect the aesthetic and recreational qualities of the waterfront.

C. Parties and Persons in Support

1. Citizens for A Progressive Ward 8 was recognized by the Commission as a party in support of the application. Joyce Scott, chairperson, testified that a correctional facility should be built in the District of Columbia to ensure proper treatment of D.C. inmates. She stated that the proposed Oxon Cove site was appropriate because the low security levels of the proposed CCA facility would not be inconsistent with community safety and because the site is more than a half-mile from any residential area.
2. About 50 persons, some representing citizen groups, neighborhood organizations, or correctional officers employed by CCA, testified in support of the facility. Grounds for support included generally that a correctional facility located in the District of Columbia would benefit D.C. inmates and their families and would facilitate the reintegration of former inmates into society; the facility would provide economic opportunities for businesses and would create jobs, including those requiring professional training; the community and the District of Columbia would benefit from the scholarship and revolving loan fund programs established by CCA; the privately owned and operated facility would pay real estate taxes, where currently none are paid; and the facility would not have negative impact on the community or on surrounding property values.

D. Parties and Persons in Opposition

1. The United Communities Coalition against a Prison (also known as the Ward 8 Coalition) and the Far Southwest Civic Association were recognized by the Commission as parties in this case. Their testimony in opposition to the

application argued generally that CCA had failed to demonstrate how a prison would increase the quality of life in Ward 8 or how the proffered public benefits would overcome the significant negative impact of a prison. Further, they contended that CCA had not guaranteed that escapes would not occur from the correctional facility into the community. The Ward 8 Coalition and Far Southwest Civic Association concluded that the proposed PUD site could be used for many different purposes and for better uses, such as a golf course or hiker-biker trail, than as a correctional facility.

2. Another party in opposition to the application, Wingate House Tenants Association, testified that residents did not want a prison of any type in their community. The Fighting 54th Public Service Organization testified that the proposed PUD would have an adverse effect on the community's plans to attract positive economic development.
3. More than 100 persons, some representing citizen groups and environmental or professional organizations, testified against CCA's application. Opposition to the proposed PUD was generally on the grounds that the correctional facility would have an adverse impact on the neighboring community, adversely affect economic development in the surrounding area, and exacerbate a perceived negative image of the community. Other grounds for opposition included that the location of a correctional facility on waterfront land would be inconsistent with the Comprehensive Plan, and that Oxon Cove should not be developed without first reassessing the planning policies for the larger area. Some witnesses testified that the environmentally harmful correctional facility should not be built on the parkland of a low-income, minority community; that the Oxon Cove parcel should be used as parkland and to provide access to the Potomac River, thereby enhancing the community's quality of life; and that the site should be included in efforts to preserve the Potomac, because construction of any large building on the site would destroy the bird habitat currently in existence at Oxon Cove. Other witnesses objected that the CCA correctional facility would be privately owned and operated, and thus not subject to the control of local elected officials and potentially dangerous for both inmates and community residents.

FINDINGS OF FACT

1. The proposed PUD site is a 42-acre parcel at Oxon Cove, located in Ward 8 in Southeast Washington, D.C.
2. The site is bounded on the north by the D.C. Impoundment Lot, on the south by Oxon Creek and Oxon Cove, on the east by the D.C./Maryland boundary line, and on the west by the Anacostia Freeway (Interstate 295).

3. The proposed PUD site is unimproved land currently owned by the federal government and under the jurisdiction of the National Park Service. Congress directed NPS to convey the parcel to CCA in exchange for a tract of undeveloped land in Prince George's County, Maryland. As of the date of this Order, the transfer has not occurred. Nevertheless, NPS authorized CCA to make this application in anticipation of the transfer.
4. The site is currently unzoned. The Applicant has requested that the site be zoned M (General Industry), which is designed to provide areas suitable for development as heavy industrial sites and where development is permitted to a maximum floor area ratio ("FAR") of 6.0, a maximum height of 90 feet, and 100 percent lot occupancy. 11 DCMR § 820.1.
5. CCA proposes to develop the PUD site with a correctional facility housing 1,280 low-security, male inmates from the District of Columbia. The correctional facility would be constructed and operated by CCA pursuant to an anticipated, but not yet awarded, contract with the BOP, and would comprise 10 low-rise structures linked by pedestrian walkways, with electronically controlled access. The proposed facility would encompass 341,020 square feet of gross floor area, with a FAR of 0.186, maximum building height of 25 feet, and lot occupancy of 15 percent. The facility would provide 275 parking spaces.
6. The site is designated as "parks, recreation and open space" on the District of Columbia Generalized Land Use Map.
7. Policies established by the Comprehensive Plan in support of the objective to protect the quality of the land areas include ensuring public access to waterfront areas and the protection and enhancement of their aesthetic and recreational qualities. 10 DCMR § 405.2 (f).
8. The objectives set forth in the Comprehensive Plan with respect to waterfront design areas include to preserve waterfront parks and ensure visual and functional integration of urban and recreational development with present uses; to enhance the character of natural waterfront parks; and to create and enhance relationships between the rivers and District residents, develop urban waterfronts and water-related recreation in appropriate locations, and establish attractive waterfront pedestrian connections from neighborhoods to activities along the waterfronts. 10 DCMR § 706.1
9. Policies established by the Comprehensive Plan in support of the waterfront design area objectives include to promote water-oriented public space uses at the water's edge; to require that waterfront design areas complement and enhance urban development, and respond to the unique waterfront qualities; to require that site planning in waterfront design areas establish, and be sensitive to, the close interrelationships between buildings,

parks, and open spaces and the rivers; and to orient buildings, open spaces, and prominent views toward the water. 10 DCMR § 706.1.

10. The Comprehensive Plan established objectives for urban design in Ward 8 that include the creation and enhancement of relationships between the rivers and Ward 8 residents, development of urban waterfronts and water-related recreation in appropriate locations, and establishment of attractive pedestrian connections from neighborhoods to activities along the waterfronts. 10 DCMR § 1920.1.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality or public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2. The District of Columbia Court of Appeals has stated that:

“the PUD scheme is to be used as a tool of land use development which supports the objectives of the community by permitting the development of large areas as a unit. This package approach is an antidote to the ill effects of traditional Euclidean zoning where limitation on location, lot size, use, square footage, and building height may frustrate the type of growth intended by the community”.

Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n, 426 A.2d 327, 332 (1981)

2. The PUD process does not alleviate the applicant’s burden to demonstrate that the requested zoning designation and the intended PUD use are consistent with sound planning principles. Thus, the PUD process may not be used to “circumvent the intent and purposes of the Zoning Regulations”, 11 DCMR § 2400.4, and the Commission must “find that the proposed planned unit development is not inconsistent with the Comprehensive Plan” 11 DCMR § 2403.4. The applicant must also separately show the appropriateness of the requested map amendment, for “if the rezoning should fall, then the PUD must fall.” *Dupont Circle Citizens Ass’n, supra* at 336.
3. The Commission has considered relevant planning principles in deciding whether to approve the PUD and map amendment requested by CCA. Strong planning policy militates against authorizing a PUD use on the Oxon Cove parcel that could only be permitted in an M zone. The Commission concurs with OP and the ANC that the nature of this and other uses allowed in the M district would not be appropriate on this waterfront site. Through its establishment of Waterfront Districts (11 DCMR, Chapter 9)

and other actions, the Commission has sought to apply more restrictive zoning to waterfront areas so as to "encourage a diversity of compatible land uses at various densities", 11 DCMR § 900.4. Authorizing an M-type use in this area would accomplish just the reverse. The applicant has offered no planning analysis or justification to support such an inconsistent approach for this site.

4. In this instance, the Commission's intent with respect to this area coincides with the policies stated in the Comprehensive Plan (Findings of Fact 6-9). The Comprehensive Plan incorporates planning principles indicating that waterfront property should be developed and used in a manner that allows the city and its residents to participate in the waterfront, which is a major asset of the community. The proposed PUD would instead introduce an institutional use that would serve as a barrier preventing public use of the waterfront as well as the interaction between the city and the waterfront. Therefore, the Commission cannot find that the proposed PUD and its accompanying map amendment reflect what it regards as sound planning. Neither can it find that the proposed use and amendment are not inconsistent with the Comprehensive Plan. In view of its findings with respect to these threshold issues, it serves no purpose for the Commission to discuss the applicant's proposed amenities.
5. CCA asserts that it has demonstrated that the proposed PUD is consistent with the Comprehensive Plan. CCA recognizes that the District of Columbia Generalized Land Use Map Element of the Comprehensive Plan designates the proposed PUD site as "parks, recreation and open space," and contends that the designation merely reflects the existing land use and the jurisdiction of the National Park Service. CCA urges the Commission to find that the proposed PUD site constitutes a "local public facility" consistent with the local public facility uses of the properties surrounding the proposed PUD site and the local public facility designation of the Comprehensive Plan. Further, CCA urges the Commission to find that the inmate industries and job component of the proposed correctional facility constitute "production and technical employment" ("PTE") uses consistent with the PTE designation of the Comprehensive Plan.
6. The Commission finds no merit in CCA's position. The "parks, recreation and open space" designation of the proposed PUD site is not merely a reflection of its current use but is also consistent with the Comprehensive Plan policies and designations with respect to waterfront land. Contrary to the Applicant's suggestion, the land-use designations applied to land in the vicinity of the PUD site do not dictate the zoning category that should be applied to the site. We believe that the position of the Office of Planning is persuasive in this regard.
7. The Commission rejects CCA's argument that the application is exempt from the requirements of the Comprehensive Plan by act of Congress in enacting section 11201(e) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (111 Stat. 734; D.C. Code § 24-1201(e)) ("Revitalization

Act”). CCA contends that the Revitalization Act exempts actions by the BOP – and by extension CCA – to provide facilities for D.C. sentenced felons from the National Capital Planning Act of 1952 (40 U.S.C. 71 *et seq.*), which established the requirements and procedures for adoption and subsequent amendment of the Comprehensive Plan, designated the Mayor as the “central planning agency” for the District, and established the authority of the Council of the District of Columbia to consider and act on proposed amendments to the Comprehensive Plan. CCA’s argument is not persuasive.

8. Section 11201(d) of the Revitalization Act directs the BOP – not CCA – to “acquire land, construct and build new facilities at sites selected by the Bureau of Prisons, or contract for appropriate bed space” D.C. Code § 24-1201(d). There is no indication that Congress intended the BOP to acquire the Oxon Cove site or any specific parcel of land. The separate Act that actually mandated the transfer of Oxon Cove is entirely silent on this issue (Applicant’s July 31, 1998 Application, Exhibit C). Thus, there is no indication that Congress intended to afford the BOP or CCA the unbridled authority to locate a correctional facility wherever it pleased.
9. The Commission has accorded ANC-8D the “great weight” to which it is entitled. The affected ANC has a unique vantage point with respect to the appropriate use for this site and offered persuasive testimony that placement of a correctional facility on the proposed site would not contribute to a relationship between District residents and the rivers, establish attractive pedestrian connections from neighborhoods to waterfront activities, or protect the aesthetic and recreational qualities of the waterfront. In addition, the Commission has given due regard to the analysis provided by the Office of Planning.

DECISION

In consideration of the Findings of Fact and Conclusion of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS** that the application for a consolidated planned unit development and map amendment from unzoned to M for a 42-acre of land at Oxon Cove be **DENIED**.

Vote of the Commission taken at a public meeting on June 14, 1999: 4-0 (Anthony J. Hood, Angel F. Clarens, Jerrily R. Kress and Herbert M. Franklin to deny – John G. Parsons, not voting, having recused himself).

This Order was adopted by the Zoning Commission at its regular public meeting on September 13, 1999 adopted the order, by a vote of 3-0 (Anthony J. Hood, Angel F. Clarens, to adopt, Herbert M. Franklin, to adopt by proxy; John G. Parsons, not voting, having recused himself from the case).

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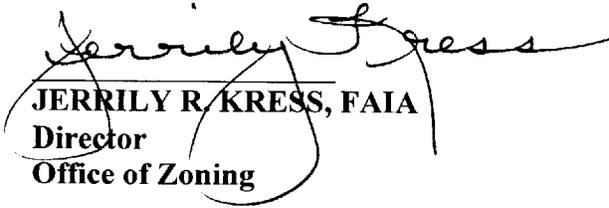
In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the District of Columbia Register that is on OCT 8 1999.



ANGEL F. CLARENS

Chairman

Zoning Commission



JERRILY R. KRESS, FAIA

Director

Office of Zoning