

CASE NO. 08-06-12
Zoning Commission of the District of Columbia
Comprehensive Zoning Regulations Rewrite: Planned Unit Development
Testimony of Marilyn J. Simon, Friendship Neighborhood Association
Monday, October 4, 2010

My name is Marilyn Simon, and I am speaking on behalf of Friendship Neighborhood Association. Zoning regulations have a critical role as a contract between the citizens of the District and their government, a contract which protects homeowners and businesses that have invested in the District and its neighborhoods. Homeowners rely on the protections provided by the zoning regulations when they chose to live and invest in the District's neighborhoods. Zoning regulations provide homeowners with predictability about the development that would be allowed in their neighborhood and in the zones near their neighborhood. This critical function of our zoning regulations is primary if we are to improve our regulations for PUDs. Some of the recommendations that you heard tonight remove the predictability about nearby development on which DC's homeowners depend, reduce community input and fail to assure that these projects will be consistent with the Comprehensive Plan. I will outline some of these issues. More detail is available in my written testimony.

- 7. Formalize the pre-application process for the developer and the community**
- **Require a public meeting between applicant and ANC prior to filing PUD**
 - **Require applicant to document community participation**
 - **Correlate the level of community review w/ process type**

The efforts to revise the pre-hearing process are a step in the right direction, but there are several additional measures that are necessary for the Zoning Commission to benefit from having some issues resolved prior to the hearing and to benefit from well-prepared presentations at the hearing on the relevant issues.

First, the Zoning Commission should have access to input from the community prior to the set-down meeting. This should not be limited to the Applicant's or OP's summary of the community concerns. The Zoning Commission should be able to read comments from the ANC, community organizations and individuals prior to the set-down meeting. In the past, this was possible and based on those comments, the ZC provided the Applicant with guidance for preparing its pre-hearing submission.¹

In addition, in order to encourage parties to prepare informative presentations, the Zoning Commission should determine party status prior to the first hearing night. It is difficult for neighborhood

¹ See, for example, the June 10, 2002 Zoning Commission Hearing, setting down Case 02-17. Vice Chairperson Hood asked several questions based on letters from the public, one of which pointed out that gross square footage allowed as a matter of right on the site was 78,912 SF, while the Applicants were requesting 235,000 SF. Another letter discussed at the set-down meeting included photographs of trees on the site. In the Supplemental Prehearing Submission, the proposed GSF was reduced to 185,000 SF.

organizations to invest the time and resources necessary to prepare a thorough evaluation of the issues if they are not certain that they will be allowed to make their presentation.

2. Base the density increase available within each zone on a standard percentage across zones

Maximum density increase should be:

- **20% above the greater of the current maximum matter-of-right (including IZ) for residential FAR**
- **30% above the maximum current matter-of-right for non-residential FAR**

OP recommends a set percentage bonus density available across all zones. This appears to be based upon a desire for simplicity, rather than any analysis as to what bonus density might be appropriate for PUDs in any of the zones. OP has claimed that having different percentage increases in different zones provides for significant uncertainty about the intensity of development that may occur with a PUD. This is clearly incorrect. Even if the percentage increases are not constant across zones, there is a simple table in the zoning regulations that lists the maximum height and density for each zone. In fact, the current uncertainty about the intensity of development that may occur with a PUD arises from allowing associated map amendments, not from difference in the percentage bonus density.

OP's proposal for a bonus density for PUDs, above that already provided by IZ, is also excessive. In approving IZ, the Zoning Commission provided a 20% bonus density, with the associated public benefit of new affordable housing. In essence, IZ allowed the increased density and required a specific "public benefit" in exchange, the provision of affordable units as defined in the regulations. This preempted a portion of the increase in density that might be consistent with the Comp Plan and appropriate for the area and mandated a specific benefit rather than the menu of benefits that would be provided as part of the PUD process. So the PUD process should only be used for that additional density that might be appropriate, and not a fixed amount above the amount that has already been designated to provide incentives to increase the supply of affordable housing.

Further, it is clear that the bonus density proposed is inconsistent with the Comprehensive Plan.² For example, it would allow an FAR of 3.5 in a C-2-A zone, which is listed in the Comprehensive Plan as one of the categories that is designated as low density commercial.

² The example presented on the bottom of page 5 demonstrates clearly that this recommendation is inconsistent with the Comprehensive Plan. In this example, some calculations are given for the C-2-A zone, stating that it is classified as a moderate density commercial land use in the Comprehensive Plan. It is stated that this will allow an FAR in a C-2-A zone of 3.5 (20% higher than the existing IZ limit). While C-2-A is listed as being one of the zone districts that might be in an area designated as FLUM as "moderate density commercial" [§225.9], it is also listed as one of the zone districts that might be in an area designated in the FLUM as "low density commercial" [§225.8]. Clearly, increasing the allowable FAR in a "low density commercial" area to 3.5 would not be consistent with the Comprehensive Plan.

- 1. Divide the existing PUD process into three separate processes:**
 - a. Type 1 “Design Review”**
– No density increase above matter of right – flexibility tied to design review
 - b. Type 2 “Design Review with Bonus Density”**
– Limited density increase
 - c. Type 3 “Project Specific Rezoning”**
– Major density increase – Project Specific Rezoning

OP proposes dividing PUD applications into three categories with three separate processes. While there is some merit to having separate processes, we have concerns with OP’s specific recommendations for each type.

For example, for PUDs that do not involve an increase in density, OP proposes an extremely streamlined process that minimizes pre-hearing interactions, public notice and public input. Their analysis seems to describe the process as simply design review, and downplays the importance of height, lot occupancy, and side and rear yards in the zoning regulations to “provide adequate light and air,” and the impact that dimensional flexibility can have on neighboring properties.

For PUDs that do not involve a map amendment, OP suggests eliminating a separate set-down meeting. As noted below, the bonus density OP proposes is excessive, and in some zones would be inconsistent with the associated category on the Future Land Use Map. In addition, there are many other factors in the Comp Plan to be considered before set-down to establish that the Application is appropriate for a hearing.

OP lists a third category, PUDs with project specific rezoning. In the working group, the majority participants stated that we should not be considering associated map amendments with PUDs. Including associated map amendments in the PUD process destroys any predictability that homeowners have about neighboring development. Rather than adhering to the limits to the bonus height and density contemplated for PUDs, the Applicant seems to simply pick a zone which includes the height and density desired.

- 3. Retain a relatively large lot size minimum for PUDs in low and moderate density residential zones and relate minimum size for all other zones to the amount of flexibility being requested.**

	Type 1	Type 2	Type 3
Low/Mod Residential Zones	2 AC	N/A	N/A
Other Zones (incl. R-5-B)	None	15K sq. ft.	15K sq. ft.

OP recommends dramatically reducing the minimum lot size for R-5-B, justifying this as a simplification. This zone is frequently used as a buffer between low density residential zones and other more intensive zones. The minimum lot size of one acre should be retained.

In addition, the revised zoning regulations should make it clear that, if map amendments are allowed, the minimum lot size requirement is based on the existing zone and not any zoning requested through a map amendment.

4. Permit Commission to consider minimum lot size waivers for additional categories of projects including:

- **Redevelopment consistent with approved Small Area Plan**
- **Government projects**
- **Compatible infill development**

If lot size waivers are allowed, the criteria should be clear and very limited.

5. Codify a list of specific and measurable public benefits

Benefits would be clearly defined and would have to meet the following standards:

- **Must be measurable and specific;**
- **Cannot include monetary contributions (except to District housing funds); and**
- **Should last for life of the project unless specified.**

6. Create a point system to establish relationship between density and public benefits

Relate benefits to density increases.

- **Provide point value for each benefit**
- **Assign minimum point threshold for Type 2 and Type 3 projects**

The draft amenity and benefit list submitted by OP is unacceptable. It fails to include any mechanism to assure that the benefits proffered are appropriate for the neighborhood. The list also includes items that the developer would include in any project at that site in order to profitably sell or rent the space and items which simply have the developer pay a District agency to provide standard services in the area or to mitigate the impact of the project. These should not be counted as PUD benefits.