

October 4, 2010

Mr. Anthony Hood
Chair, D.C. Zoning Commission
441 4th Street, N.W.
Washington, D.C. 20001

Re: ZC Case No. 08-06-12, ZRR-Planned Unit Developments

Dear Chairman Hood and Zoning Commission Members,

I have ANC 3C Historic Preservation Committee and Planning and Zoning Committee meetings, which I chair, tonight so I am unable to attend the Zoning Commission hearing on the Office of Planning's ("OP") recommendations for rule changes affecting Planned Unit Developments ("PUD"). I am submitting comments that I respectfully request be included in the record of this proceeding.

My first comment is will the recommended PUD changes bring about the actual changes that most people want and that are reflected in the rather vague language on PUDs in the Comprehensive Plan?

There are no policies regarding PUDs in the Comprehensive Plan ("CP") Land Use Element. The discussion of PUDs in the Implementation Element focuses on criticism heard throughout the Comprehensive Plan rewrite of the PUD process. High on the list of concerns is the density level that applicants can achieve that is often not consistent with the density levels depicted in the city plan. There is citywide frustration that developers can re-plan the city parcel by parcel through the map amendment and PUD process. In the Zoning Regulation Rewrite working group on PUDs there was strong support for limiting the reach of PUDs and scaling back their use. Many of the recommendations before you would do just the opposite.

In summary, I urge the following

Recommendation 1 – Reject Option 1 and consolidate Options 2 and 3 with a separate map amendment process. Continue setback requirement for PUDs and map amendments but allow Zoning Commission to hear from interested parties as well as Office of Planning.

Recommendation 2 – Reject a uniform percentage bonus density allowance for PUDs. This would result in changing the Comp Plan designations for PUD projects in a significant way, in some cases resulting in low density areas being able to build to high density standards. Zoning Commission should also not allow inclusionary zoning bonuses to be used to alter the base MOR standards that are used to determine PUD bonus densities.

Recommendations 3 and 4 – Table. The conceptual changes in residential zones demonstrate that PUDs aren't necessary to gain density and that going beyond the contemplated changes in residential zones would likely conflict with established neighborhood building patterns. The Zoning Commission should wait to consider changing the lot dimension requirements for all PUDs until it has considered OP's recommendations for changes to high density residential and commercial zones and it can evaluate those changes against recommended PUD changes, especially related to minimum lot area.

Recommendations 5, 6, and 9 – Create a benefit system that provides flexibility for ANC to negotiate benefit package that reflects the real needs of community. Make sure that final order includes mitigation promises and that non-compliance has a meaningful remedy that protects the community.

Recommendation 7 – Require full disclosure of all material aspects of PUD project before 45 day clock is activated. Failure to do so should stop the clock. Applicant should not be able to argue later that material aspects of project were not available when ANC was notified.

Recommendation 1

Creating 3 PUD processes will increase applications and will reduce community participation in zoning decisions.

Regarding Type 1, policies in the CP Land Use Element repeatedly state that the planning goal is to protect residential scale and building patterns. Yet, the Zoning Commission has already endorsed the Office of Planning's recommendations on smaller side yard requirements, eliminating rear yards to achieve rowhouse additions, MOR building footprints that would exceed lot occupancy, new smaller minimum residential lots for subdivisions, and other changes that seem to conflict with Comp Plan policies and the established form of development in many of our neighborhoods. Now the Office of Planning is suggesting that these changes aren't enough to achieve the density they envision in neighborhoods. It recommends that you open the PUD process to achieve taller or more massive structures in neighborhood developments of 2 acres or more. Why? So that developers can get more height (Comp Plan calls for reduced zoning height limits to reflect the actual building pattern) or more lot coverage than the footprint would provide (Comp Plan calls for sliding scale of lot coverage to reduce excessive building mass) or waivers of whatever will remain of side or rear yard requirements.

The OP argues that floor area ratios (FAR) would not be affected so what does it matter if the distribution of the FAR is altered? It matters. OP also argues that this process could benefit historic building reuse. In historic districts or in cases of landmark sites, the Historic Preservation Review Board determines compatible and sensitive design regardless of zoning constraints and the Zoning Commission has already endorsed the concept of expanded MOR uses of historic buildings in residential zones, so there is no reuse benefit resulting from this recommendation. I urge you to flatly reject using PUDs in all low and moderate residential areas; the PUD process is an unadvised encouragement of heights and mass in residential areas that will be at odds with Comp Plan land use policies that seek to protect the established form of development in residential zones.

Regarding the proposed Type 2 and Type 3 PUDs, the working group sought to separate map amendments from PUDs. Many of the working group members and task force members believe that map amendments should be considered outside the PUD framework and that the current process of assuming approval of map amendments during the review of a PUD application should end. Having a separate map amendment and PUD processes is the multiple processes that OP says the working group sought and not that there be multiple paths to PUD review. I urge the Zoning Commission to reject Type 1, consolidate Types 2 and 3 into one process, and remove map amendments from PUD review. Map amendments should be carefully considered and should not be as automatic as they are now in granting PUDs.

Recommendation 2

This recommendation deserves careful scrutiny to determine what it really accomplishes. The premise that there is merit in having a single percentage of bonus density across all zones assumes that there is no interest in limiting bonuses in certain zones and encouraging bonuses in other zones. Parity may be a zoning concept in terms of distribution of affordable housing or community based residential facilities but in those instances it is founded on social principles and less on land use principles. Zoning concerns height, mass, and use of structures to promote public health, safety, and general welfare. More specifically, zoning ensures light and air, efficient distribution of residents, businesses, and institutions, and land uses that are conducive to public policies as represented in the Comp Plan. The Comp Plan Future Land Use Map, which depicts all the Land Use Element policies, and the Generalized Land Use Map, both of which are law, show where development is to be encouraged and where conservation is the goal. There are no policies in the Comp Plan Land Use Element that suggest that there should be a universal 20% or 30% bonus for any PUD project in any part of the city. If percentages were approved along with a checklist for public benefits the outcome would likely be a pro forma PUD process that becomes a routine checking of boxes, which is not what most residents envision as reform of PUD process.

The Office of Planning is misinterpreting the call for predictability. The Comp Plan connects certain development heights and uses with desired densities for every part of the city, but map amendments and PUDs throw those predictable development patterns out the window. That is where unpredictability occurs. The solution is not to grant universal bonus percentages because that wouldn't address the problem of PUDs widely deviating from the expected land use and density established in the Comp Plan. OP has incorrectly defined the problem and then offered a solution that doesn't address the real problem...and, in fact, would make it worse.

The OP is using a clever, but wrong, device for persuading you that a 20% or 30% rule wouldn't have a bad result. The OP report states this recommendation would be consistent with Comp Plan land use designations and "the zone districts associated with each of those land uses." That is the first problem. As you know, D.C. Council has exclusive authority to assign density levels and uses in the city plan. The Zoning Commission has exclusive authority (except for NCPC review) to relate the city plan density and use designations to actual zoning classifications. The Zoning Commission should not rely or even pay any attention to the zone classifications mentioned as examples in the Framework Element because the Council has no authority to tell the Zoning Commission what zones should be applied to their density designations. No previous Comp Plan has attempted to tell the Zoning Commission what zones should apply to low density, moderate density, etc. and it is unfortunate that the 2006 version does this, but the Zoning Commission should ignore it. Then OP proceeds to present its recommendations only in terms of zone districts. Absent from the discussion are the actual policies related to each density classification. There is no way for the Zoning Commission to establish that this recommendation is consistent with the Comp Plan based on the way OP is presenting it. The analysis that OP should be presenting is whether the percentage concept is consistent with the density levels assigned to different parts of the city in the Comp Plan.

The only concrete dimension that the Comp Plan provides in describing the characteristics of the different density and use categories is height in terms of stories, which the Zoning Commission has conceptually eliminated. But in order to determine if this recommendation is consistent with the Comp Plan, the Zoning Commission should consider how it will affect the floor number and the relationship or hierarchy of the different density levels. If C-2-A PUD FAR is increased from MOR 2.5 to 3.5 for

residential and MOR 1.5 to 2.0 for commercial what is the result on density? No change for allowable PUD commercial density but a 20% increase in allowable PUD residential density. The jump in allowed density for C-3-A pursuant to this recommendation would go from MOR 4.0 FAR to 6.0 for PUD residential, a 35% increase over the current PUD limit, and from MOR 2.5 to 3.25 FAR for commercial, a slight increase over the current PUD allowance for commercial density. The formula presented in this recommendation would significantly increase the amount of residential density currently allowed through PUDs. A map amendment seeking C-2-A for land zoned C-1, which is considered low density commercial, would as a result of this recommendation allow three times the development allowed as a matter of right. With 75% lot occupancy for residential how would a 3.5 FAR result in maintaining the low density designation which is described as one to three-stories in height?

Similarly, C-2-A is perceived as low density or moderate density depending on the dimensions and use of the existing development. With a map amendment seeking C-3-A plus a PUD, the residential density could rise from the C-2-A MOR FAR of 2.5 to 6.0. An FAR of 6.0 is currently described as high density. It is reasonable to ask whether it is consistent with the hierarchy of densities in the Comp Plan and on the Future Land Use Map to use a map amendment and PUD to elevate a C-2-A parcel, which may be low to moderate density currently, one zone and by so doing allow a high density FAR of 6.0 when you attach a PUD? The Office of Planning is ignoring the density descriptions in the Comp Plan and is urging the Zoning Commission to redefine what low, moderate, medium, and high density will allow.

I urge the Zoning Commission to keep in mind that the Comp Plan intends for commercial zones to allow both residential and commercial but the latter is to be the predominate use even at the higher density levels. The areas that are intended to have a more balanced mix of residential and commercial are designated as Mixed Use on the Future Land Use Map and the desired combination of uses is depicted.

I also urge the Zoning Commission to reject OP's attempt to use inclusionary zoning bonus lot occupancy or height to increase the base level of MOR FAR on to which it recommends applying the standard percentage density increases. Inclusionary zoning ("IZ") is a specific program to address affordable housing needs. It is triggered by a certain number of housing units and it requires that a percentage of those housing units be affordable. In exchange the developer receives a MOR 20% density bonus generally applied as a height increase or lot occupancy increase. The program is not applied citywide but where it is enforced the bonus densities are not perceived to be in conflict with the Comp Plan land use designations, but using the IZ allowance for a different purpose, namely to increase the base density level of all zones is using it in a way never contemplated. IZ is not intended to establish new MOR area standards. Also, it makes little sense to reward a developer for MOR affordable housing and then use that already credited affordable housing as the basis for a much greater bonus density through the PUD process. The developer can offer more affordable housing as part of a benefits package for a PUD application. But PUD applicants should not be rewarded twice with increasing bonus densities for the MOR requirement.

These significant increases in allowable residential densities under PUDs would do nothing to stem the interest in map amendments or the number of PUD applications. A more favorable recommendation for developers is hard to imagine. But the more important question is how these blanket percentage density increases could possibly be consistent with the density levels described in the Comp Plan. It is this sort of inconsistency between the Comp Plan map designations and the PUD increases in density that lead to the anger, frustration, and unpredictability perceived in the PUD process.

Recommendations 3 and 4

I strongly urge the Zoning Commission to table this recommendation. In the discussion above on Recommendation 1 I recommended that residential zoned property should not be eligible for PUDs partly because major changes are contemplated in residential area and use standards. Similarly, I think the potential zoning changes for high density residential and commercial zones could preclude some of the PUD recommendations. It seems backwards and not efficient to base PUD changes on existing lot dimensions when those may change.

Recommendation 5, 6, and 9

A standardized benefit list is an appealing way to give direction to applicants and ANCs. But it is susceptible to being a not very meaningful checklist that ensures a PUD application's approval. The list and the related points must be very carefully developed. There is a danger that a community will not be able to negotiate for benefits that are desired specifically by that community and that applicants will simply rely on the checklist. There should be some provision for ANCs to communicate to the Zoning Commission that the points amassed are not in the categories that ANC would prefer. One option might be a set aside of points that can only be awarded by ANC when an applicant has favorably responded to particular ANC requests for tailoring benefits to community. The Zoning Commission might consider establishing categories of benefits rather than a specific list. Then the ANC could fashion a specific list of benefits with the applicant that fits within that category(ies).

I urge the Zoning Commission to also consider how non-compliance with mitigation will be handled. Will mitigation promises always be included as conditions of an order? These features of a PUD application are often the most critical to the community. There should be some predictable remedy that protects the community if the applicant does not follow through on mitigation. Asking the Zoning Administrator for a waiver is not sufficient.

Recommendation 7

This is not an altogether ill-advised recommendation, but it needs refining. The applicant should be required to present all material aspects of a PUD project to the ANC in order to trigger the 45 day clock. Typically, ANCs and other community groups are given outlines of a project and only after the application is submitted do they learn the significant provisions related to traffic, parking, loading, uses, buffering, density, etc. The project should be fully formed and ready for full disclosure to the ANC and then it should be disclosed before the 45 day clock begins to run. The Office of Planning should also be required to be fully informed about the project prior to the ANC meeting. Often the OP does not engage fully with the project details until setdown. In general this recommendation should not benefit the applicant at the expense of the community. If applicant has not conducted a meaningful and transparent exposition of project, the clock should not be activated.

Meetings with the ANC should be required for all PUDs. In addition, ANCs should be allowed to participate in setdown hearing and interested parties should be able to communicate with the Zoning Commission prior to setdown. There was considerable discussion in the working group that setdown practices are only working for the applicant. The Office of Planning report often does not reflect community concerns comprehensively or overstates the progress being made on contentious issues. It is universally perceived that once setdown is approved the community's leverage with the applicant is

greatly diminished. Since this is a pivotal point in the PUD process it ought to be open to ANCs, at a minimum, but probably should include letters if not testimony from interested parties.

Thank you for the opportunity to present my comments.

Sincerely,

Nancy J. MacWood
Member, Zoning Rewrite Task Force