

DC FOR REASONABLE DEVELOPMENT TESTIMONY
Before the DC Zoning Commission
In re: VACATED ZC ORDER NO. 13-14
March 23, 2017

DC for Reasonable Development adopts and incorporates as our own arguments, claims, citations, facts, appendices, and any and all submissions by our individual participating members (testimonials, petitions, letters of authorization), as well as any contested issues in opposition to the proposed PUD remapping and PUD project in ZC Case No. 13-14 as raised by the public and any other parties, including Friends of McMillan Park.

Legal foundation

The PUD regs say (inter-alia):

11 DCMR § 2403.8 -- In deciding a PUD application, the 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.

11 DCMR § 2403.3 -- The impact of the project on the surrounding area and 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.

11 DCMR § 2403.4 -- The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

The Comprehensive Plan says (inter-alia):

10A DCMR § 2502.1 -- The development review process provides one of the most effective means of carrying out Comprehensive Plan policies. Projects requiring review by staff, the Board of Zoning Adjustment, and the Zoning Commission may be tied to findings of consistency with the Comprehensive Plan, or at least to evaluations that consider relevant Comprehensive Plan policies. Development review also provides a means of evaluating the impacts of major projects on public services and the natural environment, and assessing the compatibility of proposed design with adjacent uses and neighborhood character.

10A DCMR § 2507.6 -- Transparency in Decision-Making: Strongly encourage transparent decision-making in all land use and development matters, making information available and accessible to residents and maintaining open lines of communication with the public as plans are developed.

920

Introduction

In the limited time DC4RD has had to review the Applicant's recent submissions, the first ones since the hearings in 2014, as well as the reports from the Office of Planning and associated other agency reports, it is clear the PUD application to remap McMillan Park, and subsequently to the approval to build high-density medical offices and 600+ residential units on the site must be reversed permanently.

Reversal and denial of the PUD application is the only course of action for the Commission given:

- Fundamental facts that will permanently injure the public services and quality of life currently enjoyed by DC4RD participants living, working, and playing around the PUD site.
- The agency reports put on the record are largely capricious without a baseline understanding of current levels of service and quality of life currently enjoyed by DC4RD members. And further, the reports provide limited evaluation of future service needs given the specific circumstances of this application and potential adverse affects on the surrounding neighborhoods.
- The conclusions of OP and various agencies, as well as the Applicant do not flow from the facts on the record and in many ways are founded on studies and research that omit key data points, provide erroneous data, and lack common sense.
- The Commission has overstepped its authority by remapping the PUD site from unzoned to the high density zoning despite numerous Comprehensive Plan policies, and the Future Land Use Map designations.

KEY CONTESTED ISSUES

The following are key contested issues, among others that DC4RD seeks more time to explore and sub it testimony on as the Applicant presents their case again since the Court vacate.

Remapping

In the PUD application, the Applicant has asked the Commission to conduct two actions, first to amend the DC Zone Map, then to approve the PUD project that fits the remapped zone districts chosen by the Applicant.

The remapping of the PUD site as a discrete action in approving the PUD application is an act that has boundaries of power, otherwise there will no longer be a predictable built environment in the District of Columbia.

The “flexibility” and “broad interpretation” characteristics of the Future Land Use Map and

Generalized Policy Map speaks less to unwieldy powers of the Commission, but more to the fact that there are so many zone districts in the zoning regulations. 10A DCMR 226.1(e).

Further, descriptive designations described by the FLUM and Generalized Policy Map are general in terms and ~~the~~ all the real world scenarios possible in development could not be adequately fixed in text in the plan, unless the plan become a huge tome.

Rather, the flexibility and interpretation offered by the FLUM and GPM depict these exact characteristics as it relates to the Applicant choosing an appropriate remapping from an array of zone districts within the development envelopes described by the FLUM designations themselves.

For example: 10A DCMR 225.9 – **Moderate Density Commercial**: This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.

The applicant has the flexibility to choose any one of many districts, “C-2-A, C-2-B, and C-3-A, although other districts may apply” that fulfill the development enveloped as broadly described in the designation, “Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.”

In this matter, the Applicant wants the site remapped to high-density zone districts, C-3-C and CR, plus then wants additional density by adding a PUD on top.

The FLUM specifically cites the C-3-C zone district as high-density land use designation, and due to its similar development envelope, the CR zone district would fall under “other districts may apply” also as a high-density zone district. DCMR §10A-225.11.

The Commission approved this remapping as the first act in the PUD application approval. Subsequently, the Commission approved proposed buildings across the PUD site that fit into development envelope of the remapped high-density zones.

This is wrong and reflects the Commission as understanding they have limitless power without boundary in the act of amending the DC Zone Map, despite the enabling statute that created the Commission, and that the FLUM is incorporated under this law. § 10A-225.1

It is clear that the remapping of the PUD site has its own destabilizing aspects, as much as any approved PUD project that may sit on the rezoned site. How far is too far as it regards the act of remapping within the boundaries of the law?

There must be a limit to how the DC Zone Map is amended, especially given the recent changes

to the PUD rules that essentially allows the Commission to waive the minimum area requirements for PUD applications.

That is, the Commission with unlimited powers could now allow the ad-hoc (spot zoning) remapping of established low- or moderate-density neighborhoods, just because they can waive the area requirements and can hear an argument for a high-density project and come up with excuses for why the project may be allowed under the remapped zones. This seems fallacious.

This posture defies the predictability and anticipated built environment set forth by the 20-year FLUM interpreted in conjunction with text of Comprehensive Plan policies associated with the PUD site and surrounding area. 10A DCMR 226.1 (d). This cannot hold, and we do not believe unlimited flexibility was the intent of forging the FLUM, Comprehensive Plan Policies, or the Zoning Commission in the first place.

DC4RD reserves the right to add to this argument based on the testimony of the Applicant and the agencies since the public is being compelled to bring this testimony under duress (not within normal procedures in order of presentation – public comes first; without due process in review of the documentation put on the record by the Applicant).

Affordable Housing

The PUD project fails to full the Comprehensive Plan's overarching goal of building an inclusive city and will put increased gentrification pressures on the surrounding existing community (residential and commercial, Policy ED-3.2.6: Commercial Displacement)

Policy H-1.2.4: Housing Affordability on Publicly Owned Sites – Require that a substantial percentage of the housing units built on publicly owned sites, including sites being transferred from federal to District jurisdiction, are reserved for low and moderate income households.

The PUD site is publicly controlled. The PUD application offers affordability at 50% and 80% AMI. The numbers of affordable units under these definitions is less than 15%.

The Merriam-Webster dictionary defines 'substantial' as 'being largely but not wholly that which is specified.' Following on, 'Largely' means in a large manner or to a large extent, as in 'mostly, primarily.' <https://www.merriam-webster.com/dictionary/largely>

Twenty percent of units at rental and home purchase prices defined as 'affordable' cannot be considered 'largely'; even the 30 percent affordable housing now required by law for development of publicly owned sites near major transportation corridors does not meet the definition of 'substantial.' Largely, would mean 51 percent or more of the units would be affordable. But we don't have that in this PUD project. Why not?

Where is the agency analysis of this? Where is OP's consideration of this? Where is the Applicant on this?

DC is in an obvious affordable housing crisis, especially struggling is DC's working families.

The Applicant's proposal also fails Comp Plan guidance and directives seeking more family housing in the District. Policy H-1.3.1: Housing for Families; Policy H-1.3.4: Co-operatives and Co-housing; Action H-1.3.A: Review Residential Zoning Regulations;

This PUD project is a big fail. *NOT TO MENTION, The affordable housing expires over time.*

Other Issues

DC4RD has not been granted the time to respond to each study and report raised on the record by the Applicant, information that would typically be available in a normal proceeding many weeks before the hearing, not nine days.

But we believe the fundamental lack of analysis of OP and the city's agencies show that this is being wired by the co-Applicant and heavily conflicted agency, DMPED. DMPED sits above OP in the organizational structure of DC.

There's no sense of how the public services that exist now are being coordinated, such as emergency access and infrastructure, if this PUD project is built and its impacts are absorbed by the public in the surrounding community.

There no sense of the vulnerability of the surrounding community (residential and commercial) to displacement impacts with baseline demographic studies or community surveys.

The DDOE reporting has major errors, like the fact that this agency concludes there will be no impact to water because there are no water bodies (reservoirs, creeks, rivers) nearby. Really?

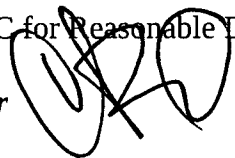
On, and one, it is clear the vast majority of the agency reports are conclusory and not founded on baseline analysis of current conditions before and conditions after the PUD project. How to mitigate issues if you don't do the footwork of identifying those issues given the "specific circumstances" of the case and how the PUD remapping and PUD project may potentially affect adversely the surrounding community.

This is unacceptable, given the legal foundation aforementioned. Also, reference Attachment 2 – the catchall attachment given the unfair time constraints

As such, DC4RD asks the Commission again to defer the hearings to allow due process in review of the Applicant's submissions, and following on to do as the Court suggests, and reach a different conclusion. That is, the Commission must deny the PUD application.

Submitted on behalf of DC for Reasonable Development per our Governing Principles,

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