

Testimony of Eugene Puryear
Zoning Commission Hearing Z.C. 13-08
On Behalf of the Party in Opposition

January 22, 2015

Commissioners,

I will provide here testimony pursuant to the standards for Planned Unit Development (PUD) evaluation as set forward in Chapter 11 (Zoning) of the DC Municipal Regulations, section 2403 with reference to section 2603 of the same chapter, as well as definitions laid out in section 2601.

In setting out its PUD evaluation, standards section 2403 3 states

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

The impact on the surrounding area can be judged by examining two principal issues the characteristics and needs of the current area on the one hand, and the context of future development insofar as it is known on the other. As it concerns the first, some relevant statistics gathered by the American Community Survey regarding the neighborhood paint the following picture.

- a) 58.4% of children live below the poverty line
- b) 43.2% of the overall population lives below the poverty line
- c) 26.8% are afflicted by unemployment
- d) Median gross rent is \$690 and the vast majority of rents cluster between \$400-\$1000
- e) 47.4% are family households with children with a median income of roughly \$18,500

The demographic snapshot above recognizes the basic reality that Congress Heights is a predominately low-income area, which, like most of Ward 8, is subject to very high rates of unemployment. This underscores the need for economic development of many kinds but also provides crucial context

As stated in the Applicants PUD this development will be directly adjacent to a large development at St. Elizabeth's East. Further, there is the incoming development at Skyland and a number of proposed projects in Anacostia. The bottom line being that the slated development over the next several years will be significant and, based on previous experience with mixed-income developments, has the potential to significantly erode affordable housing stock as well as increase the cost of living.

As stated in Chapter 11, section 2403.8 of the DCMR, evaluation of public benefits must be considered relative to potential adverse effect. It is our contention that the housing element of the stated public benefits do not currently mitigate adverse effects relevant to the issues cited above, but that with changes, mitigation could possibly be achieved.

The Applicant has cited their affordable housing component as a public benefit. Their stated proposal in this regard is not, however, an acceptable benefit as established by zoning regulations. The Applicant specifically cites Chapter 11, section 2403 9(f) of the DCMR. That section states

Housing and affordable housing; except that affordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning In determining whether this standard has been met, the Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for “low-income households” as defined in § 2601 1

The applicant has proposed that 8% of the residential square footage will be developed as “affordable”, defined as up to 80% of the Area Median Income The applicant is seeking to have the subject property rezoned to C-3-B Section 2603 2 of the same chapter states that in a district zoned C-3 8% of the residential gross floor area must be inclusionary units In other words, this is not consistent with section 2403 9(f) which clearly states that a public benefit must *exceed* the matter-of-right requirements

It is possible the applicant is relying on section 2603.7 to make their case That section stipulates that a building in a StE District, or St Elizabeth’s East, shall devote “no less than 8%” of the residential floor space to inclusionary units Again, section 2403 9(f) states that housing as a public benefit must *exceed* that which would be required; 8% is exactly what is required by 2603 7. So, as it concerns both zoning regulations in general and for StE Districts, the housing component of this PUD is misstated as a public benefit.

The applicant further cites the Housing Element of the Comprehensive plan, including Policy H-1.1.3 which states that a sufficient supply of land should be “planned and zoned” to meet the District’s long-term housing needs As is both statistically and anecdotally very clear, the District has a dire need for more affordable housing both currently and in the long-term, and a range of legislation has been passed or proposed by the D C. Council with the aim of facilitating that effect

This project which will be almost entirely “market-rate” units in a climate where affordable housing stock is facing significant erosion does not seem consistent with the stated policy, given the vagueness of the applicant’s proposal. A clear majority of residents in the area, for example, are at incomes that peak at or less than 50% of the Area Median Income The applicant states clearly on page 18 of their submission that one of the goals of the project is to allow “existing residents” to remain in their neighborhood. How that is to be facilitated is not clear, especially given that it is possible every single one of their inclusionary units could be provided to those who are at 60-80% of the Area Median Income, which would have the effect of pricing out a clear majority of area residents

It is stated in section 2403.9(f) that any net-gain in floor area has to be balanced against any net-loss in gross floor area set-aside for “low income” units This is relevant given that one of the buildings (3200 13th St , SE) has 11 units set-aside for exactly this demographic. The Gross Base Area (GBA) of this building is 7,730 square feet The applicant states they are providing 15,515 square feet of affordable space at up to 80% of the AMI It is impossible to evaluate the net loss or gain without some idea of how much of the applicant’s proposed square footage will be for those less than 50% of AMI—the stated measure for “low-income” as outlined in section 2601 of Chapter 11 of the DCMR

Referring again to the Comprehensive Plan Policy H-1 1.3, whereby the recognition of long-term housing needs specifically mentions single family homes The area immediately surrounding the property contains many single family homes that can be described as affordable The proposed property along with St Elizabeth’s East development will dramatically increase the desirability of this area This also undoubtedly will increase home prices The D C Council recently passed the *Affordable Homeownership*

Preservation and Equity Accumulation Amendment Act of 2013, which lifts the resale restrictions on homes purchased via the Housing Production Trust Fund in distressed neighborhoods—a category which would include many census tracts in the Congress Heights area

Ultimately, this means that home prices in the most desirable areas will increase substantially over the long-term. Any project that further increases home values will contribute to this. Whether or not to evaluate this as an adverse effect of the project is difficult to do without even a general sense of the potential square footage designated for low-income individuals (as designated in section 2601) in the applicant's proposal.

To restate the general argument, the applicant has misrepresented their proffered "affordable" housing option as a public benefit, and furthermore has presented a plan so vague that evaluation of its impact on the neighborhood is can either be negative or inconclusive.

As stated in Chapter 11, section 2403.10 of the DCMR:

A project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9, but must be acceptable in all proffered categories and superior in many.

Given that the proffered benefit does not comport with the regulatory definition of such and presents no detailed information that could even potentially outweigh that fact, it is clear that the PUD is not acceptable in all categories.

We believe, however, that there is a potential for improvement in two cases. Firstly, the applicant can revise their PUD proposal and more concretely detail their plans for affordable housing as a public benefit and its impact on the neighborhood, which, given the above facts, would mean significantly more units and/or a more concise range of affordability. Secondly, they could remove the provision in their proffered relocation agreement that requires tenants to give up their rights under the Tenant Opportunity to Purchase Act.

As we stated above, there has been a range of legislation from the D.C. Council in just the past year that offers tenants the opportunity to explore other options than the current proposed PUD. From partnering with non-profit developers, the District of Columbia or some combination of the two, it is certainly possible that a proposal more consistent with the elements of the Comprehensive Plan here could come to fruition. Protecting the rights of the tenants to pursue options more consistent with the comprehensive plan would not stand in the way of the approval of the current proposal; in fact, it would simply open up options more consistent with the proposed new zoning and the comprehensive plan.

While we, for above and other stated reasons, are opposed to the current proposal, we believe that with a firm and binding commitment to allow tenants to retain their legal rights, along with the resolution of several other issues outlined in the testimony of our party, that we would modify our position on the project.