

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director
DATE: February 12, 2018
SUBJECT: **OP Supplemental Report for ZC #16-23, Voluntary Design Review for Valor Development, LLC (Square 1499, Lots 802, 803, 806, and 807)**

BACKGROUND

At its January 11, 2018 public hearing on Design Review Case #16-23, the Zoning Commission requested additional information regarding the ability to aggregate density through the Design Review process.

Background of Design Review Process

A Design Review case was initially considered by the Zoning Commission as a type of planned unit development (PUD) with no density increase or map amendment. A review of the transcript of cases 08-06-12 and 08-06A show that the regulations now titled Design Review in Subtitle X started as a Type 1 PUD. Nowhere is there any suggestion that the FAR aggregation would be limited to one “type” of PUD. Therefore, it is appropriate to conclude that FAR aggregation would be permitted in all three types.

Included is a link to the Zoning Commission’s initial consideration of proposed PUD types 1, 2, and 3, in case number 08-06-12 ([08-06-12 PUD Types 2010](#))

Transcript October 4, 2010

The discussion of the proposed types of PUDs begins on page 8, with detailed discussion about the recommended Type 1 PUD starting on page 12. The type 1 PUD was referred to “a design review.”

Transcript November 8, 2010

The Zoning Commission provided guidance to OP to proceed with draft text for the three types of PUD (Summary worksheet attached).

By 2009 when the first draft of the proposed amendments to the zoning regulations were set down, the Zoning Commission had indicated that they were not interested in proceeding with Type 2 PUD or a codified list of public benefits and Design Review had been moved to a separate chapter within Subtitle X for organizational purposes. The movement of the design review provisions to a separate chapter appears to have resulted in some of the process aspects of a PUD inadvertently being left out of the new chapter.

The design review provisions, contained in Chapter 6 of Subtitle X, clearly contemplates that there may be more than one property within the project boundary of a design review application. Subtitle X § 601.4 states the following:

X-601.4 All the property included in a design review application shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

Furthermore, Subtitle X, Chapter 3, Section 303.2 of the PUD regulations allows for aggregation that was also interpreted to apply to design review although not explicitly stated.

X-303.2 If the PUD includes more than one (1) zone district, the FAR of all buildings shall not exceed the aggregate of the FAR as permitted in the several zone districts included within the PUD area.

When reviewing this application, OP confirmed with the Office of Attorney General and the Office of the Zoning Administrator that the following procedure was consistent with the intent for processing a design review application:

1. A “lot” used for the boundaries of a Planned Unit Development (PUD) or Design Review may be a tax lot or a record lot (hereinafter called the “Project-lot”);
2. The zoning calculations for a PUD or Design Review application must be determined using the Project-lot.
3. If an applicant uses a tax lot as the Project-lot, a request for multiple buildings on a single lot must be included if the following circumstances exist:
 - a. the application is to be zoned Residential;
 - b. the record lot is zoned Residential; and
 - c. there are existing buildings on the record lot, but outside the boundaries of the tax lot.
4. An application for a PUD or Design Review cannot result in creating a non-conformity for a building or property outside the Project-lot (even if the non-conformity is within the record lot) unless relief from the non-conformity is obtained.
5. If the full record lot is used as the Project-lot, then all the owners within the Project-lot must authorize the project.

The subject application is consistent with 1,2,4 and 5; number 3 is not applicable because the site is not zoned residential.

Planned Unit Development (08-06-12)**Public Hearing October 4, 2010; Public Meeting November 8, 2010**

- **Process**

OP Proposal: Divide the existing PUD process into three separate processes:

Type 1 “Design Review” - No density increase above matter of right – flexibility tied to design review
Available city-wide, with some areas potentially mandatory, depending on Zoning Commission

Characteristics:

- Dimensional flexibility available, including lot occupancy, yards and some height limits
- No additional density granted
- No map amendment possible
- Use of process optional except where design review of new building or additions is required by zone (as is currently the case in Capitol Gateway and in H Street NE)
- Process: no setdown and final action (at public hearing or at a separate ZC meeting)

Type 2 “Design Review with Bonus Density” – Limited bonus density increase

Characteristics:

- Includes design review
- Dimensional flexibility available
- Limited bonus density available in association with public benefits (See Recommendation 2, below)
- No map amendment possible
- Use of process optional
- Process: setdown with final action

Type 3 “Project Specific Rezoning” – Major density increase – Project Specific Rezoning

Characteristics:

- Includes design review
- Dimensional flexibility available
- Bonus density available above Type 2 limits in association with public benefits
- PUD associated map change permitted
- Use of process optional, would not replace map amendments that do not seek additional density in new zone
- Process: traditional setdown, proposed action and final action

ZC Response: **Unanimous agreement with OP proposal**, provided differences in process included (as done above)

- **Standard Bonus Density**

OP Proposal: 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

ZC Response: **Unanimous agreement with OP proposal in concept**, with support for specific percentages pending subsequent presentation and discussion of final text

• **Lot Size Minimum**

OP Proposal: 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, with Zoning Commission able to waive these minimums.

Zone	Type 1	Types 2 and 3
Low/Moderate Residential	2 acres	N/A
Other Zones, including R-5-B	None	15,000 square feet

ZC Response: **Unanimous agreement with OP proposal**

• **Criteria for Lot Size Waiver**

OP Proposal: Permit Zoning 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

ZC Response: **Unanimous agreement with OP proposal**, provided remove existing limit of maximum waiver of 50% of minimum lot size

• **Public Benefits**

OP Proposal: 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), although materials and/or construction contributions permitted; and
- Should last for life of the project unless specified.

ZC Response: **Unanimous agreement with OP proposal**, but with the inclusion of some language that the community benefits “substantially accrue to the immediately affected community” – perhaps with the Zoning Commission having flexibility to waive any required community

benefits or determine the balance between affected community and the city as a whole on a case by case basis.

- **Value of Benefits**

OP Proposal: 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

ZC Response: **Unanimous agreement with OP proposal**, with comments that a point system or list of potential public benefits will be interpreted by applicants as the minimum required, or that applicants would cherry-pick the low-hanging fruit from the list. Support for language clarifying that

- meeting these standards are necessary but not sufficient for a PUD application and that additional public benefits may be required
- actions required by law (e.g., Green Building Act, etc.) or required to mitigate project impacts (e.g., traffic lights, etc.) do not count as community benefits
- Zoning Commission retains flexibility to waive or substitute listed benefits on a case by case basis

- **Community Input**

OP Proposal: Formalize the pre-application process for the developer and the community to require public meeting between applicant and ANC prior to PUC application filing. The proposed community input process would include the following steps:

1. Pre-application meeting required for all 3 types of PUD processes
2. Applicant notifies ANC and OP of potential project
3. ANC schedules public meeting for the applicant to present the project that OP attends
4. Application may be filed 45 days after initial ANC notification
5. Applicant must provide documentation of community participation and highlight changes, if any, resulting from community input

ZC Response: **Unanimous agreement with OP proposal**, provided it applies to all PUD reviews, not just Types 2 and 3 as originally proposed; also comments that party status be determined in advance of Zoning Commission meeting – but this to be addressed separately

- **Extension and Expiration of PUDs**

OP Proposal: Adopt the following time periods for PUD orders, criteria for extension requests, and limits on number of request:

	Type 1	Types 2 and 3
Original Approval Period	10 years	2 years until filing for building permit
Extension Period	No ne	2 years (or less as deemed by ZC)
Maximum Number of Extensions	None	2 extensions
Criteria for Extensions	N/A	<ul style="list-style-type: none"> • File with OZ, ANC & parties 30-90 days before expiration • No substantial change to material facts • Inability to obtain financing • Delay of governmental approvals • Existing or pending litigation

ZC Response: **Unanimous agreement with OP proposal**, provided the Type 1 PUD approvals expire after ten years with no renewal possible (unlike original proposal with no limit)