



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
Karl A. Racine

Z.C. Case No. 22-06

ALEXANDRA CAIN
EQUITABLE LAND USE SECTION
PUBLIC HEARING – OCTOBER 6, 2022

What should the
minimum affordable
housing proffer be for a
PUD?

The Zoning Regulations require that:

“[A] PUD ... results in a project superior to what would result from the matter-of-right standards;” (Subtitle X § 300.1, emphasis added); and that

“public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” (Subtitle X § 305.2, emphases added)

Not All PUD Benefits are Created Equal ...

CP “High-Priority” = Affordable Housing & Anti-Displacement

“Specific public benefits are determined through each PUD application and should respond to critical issues facing the District as identified in the Comprehensive Plan and through the PUD process itself. In light of the acute need to preserve and build affordable housing, described in Section 206, and to prevent displacement of on-site residents, the following should be considered as high-priority public benefits in the evaluation of residential PUDs:

- The production of new affordable housing units above and beyond existing legal requirements or a net increase in the number of affordable units that exist on-site;*
- The preservation of housing units made affordable through subsidy, covenant, or rent control, or replacement of such units at the same affordability level and similar household size;*
- The minimizing of unnecessary off-site relocation through the construction of new units before the demolition of existing occupied units; and*
- The right of existing residents of a redevelopment site to return to new on-site units at affordability levels similar to or greater than existing units.” (CP §224.9, emphasis added)*

Matter of Right Equivalent = Map Amendment

Map Amendment Subject to IZ+ → Recaptures some of additional density granted by a upzoning for affordable housing

IZ+ formula = “the greater of”:

- 70% of bonus density above matter-of-right maximum or
- Sum of:
 - % (based on the scale of increase in density from upzoning) of non-penthouse residential square footage; and
 - 8% of non-mechanical penthouse space

IZ+ applied to ZC 22-06

IZ+ Formula Option 1 → 70% of bonus density including PUD bonus density = **60,114 sf**

IZ+ Formula Option 2	
Lot Size	57,636 sf
Maximum by-right density in proposed MU-9A zone (no IZ bonus density)	364,634 sf (6.5 FAR)
Maximum density in existing MU-12 zone (no IZ Bonus Density)	144,090 sf (2.5 FAR)
Increase in density utilized	220,544 sf (5.45 FAR) = 153%
IZ+ set-aside % based on more than 125% density increase	18%
Application's proposed residential GFA	434,475 sf
Application's proposed penthouse habitable space	5,334 sf
18% of residential GFA-penthouse habitable space	77,245 sf (18% of 429,141 sf)
18%* of non-mechanical penthouse space	960 sf (8% = 427sf)
Total	78,205 sf (12,234 sf more than 15% proffer)

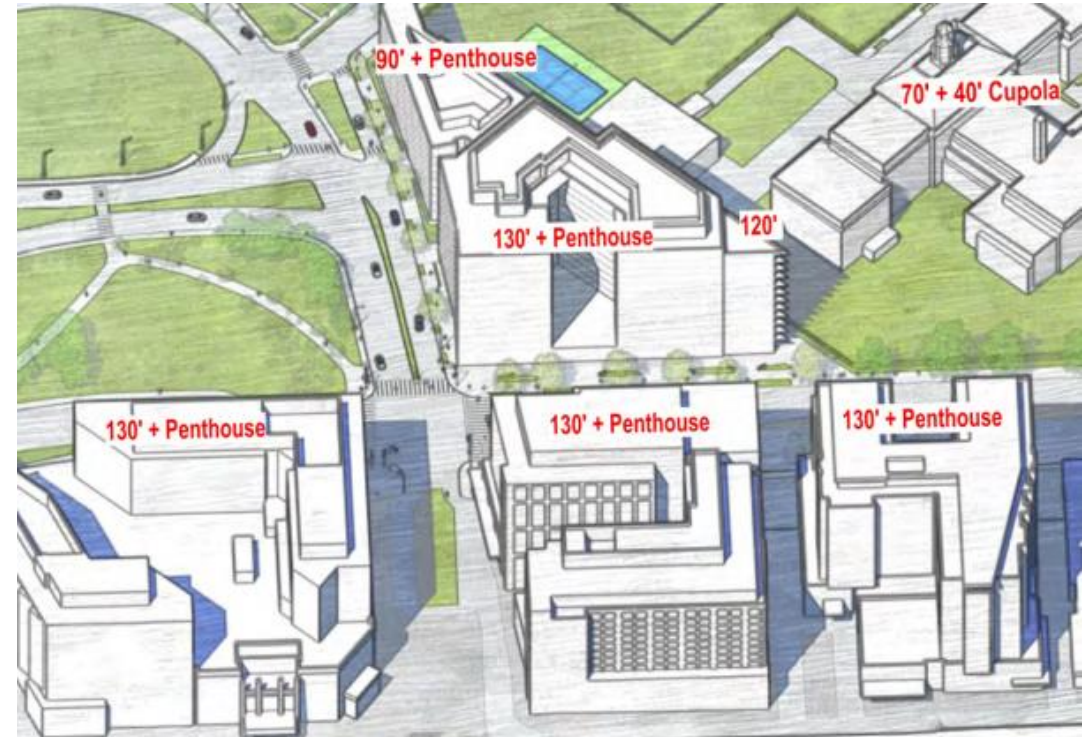
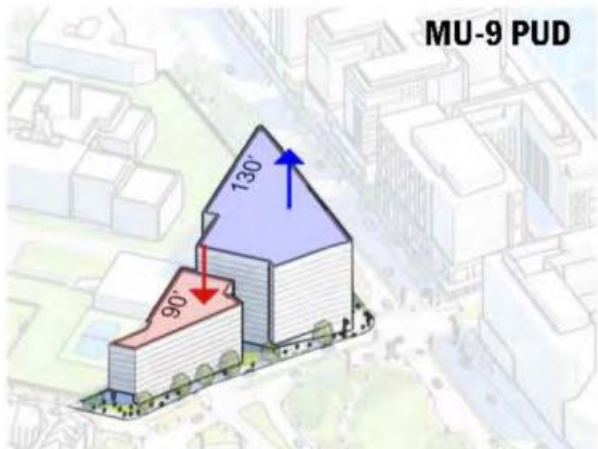
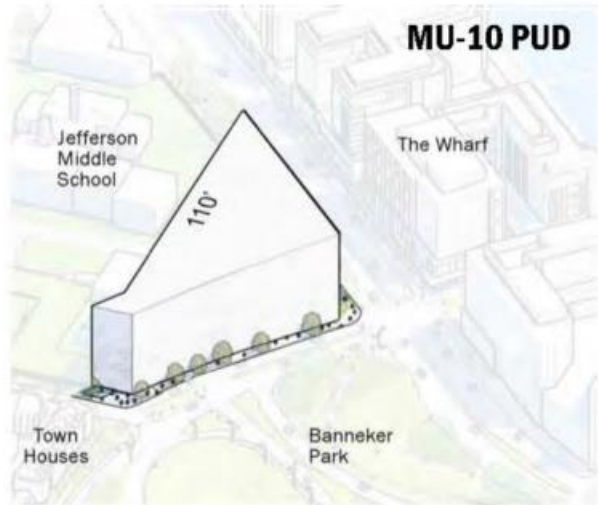
Inconsistencies with the Comprehensive Plan

CP Map Designations

- **Generalized Policy Map - Neighborhood Conservation Area**
 - “...new development, redevelopment, and alterations should be compatible with the existing scale, natural features, and character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map and Comprehensive Plan policies.” (CP § 225.5)
- **Future Land Use Map - Medium Density Commercial**
 - MU-10 is specifically identified as compatible, but the MU-9A is not
 - MU-9A is defined as a high-density zone (Subtitle G § 400.8)

Applicant chose MU-9A to increase PUD height by 20ft from 110 ft to 130 (X § 303.7) –
Ex. 38A2 at 11

Additional PUD Height



Ex. 38A2 at 15 and 17

CP Inconsistencies Must Be Balanced Out

The Comprehensive Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ... “[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the Plan is not binding.” *Id.* at 1167, 1168 (internal quotation marks omitted). Thus “the Commission may balance competing priorities” in determining whether a PUD is consistent with the Comprehensive Plan as a whole.” *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). ... **[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission “must recognize these policies and explain why they are outweighed by other, competing considerations.”**

(*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016), emphasis added)

More IZ to Balance FLUM Inconsistencies

- Additional two stories relies upon an CP inconsistency and therefore must be balanced by additional PUD benefits
- CP establishes affordable housing is a “high priority” benefit (CP §224.9)
- OAG recommends applying the 33% affordable housing goal established by the Mayor’s 2019 Housing Order to the square footage of these two stories:

33% of GFA of two additional stories (54,614 sf total) = 18,023 sf

Minimum IZ Proffer

18% of residential GFA-penthouse habitable space	77,245 sf
18% of non-mechanical penthouse space	960 sf
33% of total GFA of two additional stories	18,023 sf
Total	96,228 sf

**~22% of Application's proposed 434,475 sf of residential GFA
= 30,257 sf over 15% proffer (65,971 sf)
= ~30 additional IZ units**

CP Support for Increased Proffer

Increased IZ proffer will also support other provisions of the CP including:

- **Housing Element** - emphasizing the importance of the IZ program in increasing affordable housing by expanding the “inclusiveness of high-cost areas” and preventing displacement of current residents by creating new affordable housing (CP §§ 500.5, 500.15, 500.18, 500.19, 500.21, and 504.15).
- **Lower Anacostia Waterfront/Near Southwest Area Element** – Calling to maintain the economic and racial diversity of the planning area (CP §§ 1903.5 and 1906.3) with several policies focused on the preservation and production of affordable housing, including Policy AW-2.5.11:

*“Promote a mix of affordable and market rate residential units that better serve community needs in Southwest. **Prioritize the creation of a greater number of affordable units than the Inclusionary Zoning requirement or more family-sized units as part of a community benefits agreement for any PUDs and by targets on District-controlled sites that exceed overarching affordable housing requirements.**”* (CP § 1914.14, emphasis added)