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**BUREAU OF
GOVERNMENTAL
RESEARCH**

938 Lafayette St., Suite 200
New Orleans, LA 70113
Phone 504-525-4152
Fax 504-525-4153
www.bgr.org

August 29, 2014

Mr. Robert Rivers
Executive Director
New Orleans City Planning Commission
1300 Perdido St., Suite 7W03
New Orleans, LA 70112

Re: CZO – July 2014 Public Hearing Draft

Dear Mr. Rivers:

On November 13, 2013, BGR met with several members of the City Planning Commission staff and consultants to provide detailed queries and observations on Article 5, Planned Development Standards, in the City of New Orleans Comprehensive Zoning Ordinance Public Release Draft 2013. We also discussed ways to make the document more user-friendly.

At that meeting, there was a great degree of agreement that Article 5 required revision in a number of areas. We were asked to put our comments in writing to planning staff so that the changes could be executed. We did so, in a letter dated November 25, 2013. Unfortunately, only one of the changes was made in the July 2014 public hearing draft.

The new master plan and CZO were meant to bring clarity and predictability to the land use decision-making process. BGR is concerned about the large degree of discretion Article 5 could afford decision-makers. It would allow exceptions to the zoning rules – including those governing use, density, height, area, bulk, yards, parking, loading and signage – under vague circumstances in various neighborhoods across the city. The article sets out a mélange of disparate “benefits” that might be required of a development in exchange for exceptions, but with little guidance as to decision making.

It is clear that Article 5 creates an Achilles’ heel in the draft CZO. If adopted, it would inject confusion and unpredictability into the zoning. It also potentially opens the way for a return to the let’s-make-a-deal approach that has plagued land use decision making in years past.

Article 5: Planned Development Standards

Article 5 begins by listing the six zoning district types in which Planned Developments would be allowed. It sets forth threshold project requirements and standards that all Planned Developments must meet. Among them is a requirement that a Planned Development must provide

public benefits, and a subsequent section lists the types of public benefits that a Planned Development might be required to yield. Finally, Article 5 sets forth additional standards specific to the various zoning district types. (The procedures and requirements for Planned Development applications are described in a separate article, at Sec. 4.4.)

In the following discussion, we suggest revisions in a number of areas to eliminate inconsistencies and clarify the intent. For your convenience, the issues are treated according to the section or subsection in which they arise.

Eligible Zoning Districts

Sec. 5.2 B sets forth six district types where Planned Developments would be allowed: Environmentally Sensitive Development Districts; Maritime Mixed-Use Districts; Historic Core and Historic Urban Residential Districts (for adaptive reuse); Suburban Neighborhood Non-Residential Districts; Commercial Center and Institutional Campus Districts; and Center for Industry Districts. Numerous zoning districts are subsumed under these various types. When combined, they cover significant portions of the city. At the meeting in November 2013, we discussed issues related to two of the six district types, the Maritime Mixed-Use and the Historic districts.

Sec. 5.2 B(2). Maritime Mixed-Use Districts are included among the types of zoning districts eligible for Planned Developments. It is not clear why. In the draft CZO, the M-MU designation applies only to very limited sections of the city (e.g., South Shore Harbor and Lake Catherine), suggesting that the zoning district itself could be tailored to meet the desired variety of appropriate outcomes for those sites.

Sec. 5.2 B(3). Planned Developments would be allowed within the “Historic Core and Historic Urban Residential Districts for the adaptive reuse of institutional and industrial structures.” In our November 2013 meeting, planning staff indicated that commercial structures, mentioned later at Sec. 5.2 C(2), were inadvertently omitted and should be added. Planning staff also agreed that, as written, it is not clear whether the provision is meant to apply to all Historic Core Districts, or just Historic Core residential districts. We suggest adding the word “Residential” to the phrase “Historic Core.” This clarification should also be made at Secs. 5.2 C(2) and 5.6. Finally, to clarify the distinction between this provision and those listing the other district types – that Planned Developments in the Historic districts are allowed only for adaptive reuse – we suggest inserting the words “but only” in front of the phrase “for the adaptive reuse ...” in Sec. 5.2 B(3).

Site Requirements

In general, Article 5 would allow Planned Developments only on sites of at least five acres. However, there are several exceptions. The language providing those exceptions needs to be tightened up.

Sec. 5.2 C: There could be an exception to the five-acre minimum for Planned Developments if “there are ... exceptional circumstances affecting the property” in question. This language is wide open to interpretation. It should be more limited or eliminated.

Sec. 5.2 C(1): This subsection provides an exception to the five-acre minimum in the Historic Core and Historic Urban Residential Districts, where it would be only a two-acre minimum. Based on our conversation with planning staff, this provision would never come into play. Under *Sec. 5.2 B(3)*, Planned Developments in these districts must be for adaptive reuse, and under *Sec. 5.2 C(2)* adaptive reuses are not subject to any acreage minimum, provided that in order to qualify for a Planned Development, the structure must be at least 10,000 square feet. Therefore, the two-acre minimum should either be imposed as an additional requirement for adaptive reuses or eliminated altogether.

Sec. 5.2 C(2): As mentioned above, this section provides an exception to the five-acre minimum for adaptive reuse of existing industrial, commercial or institutional structures in, as written, “any district.” This could be interpreted as opening up the entire city to Planned Developments. Planning staff stated that the intent was to apply them only to the district types listed in *Sec. 5.2 B*. This should be clarified.

Threshold Standards

The word “standards” is used often, and sometimes confusingly, throughout the document. Basic standards are scattered, and sometimes repeated, in separate sections and subsections. In our meeting with planning staff, we discussed some confusing aspects of the threshold standards a project must meet in order for exceptions from the zoning code to be allowed. (*Sec. 5.3.*)

Sec. 5.3 A: Planning staff stated that this section is meant to establish threshold standards that all Planned Developments must meet. However, *Secs. 5.3 A(3)* and *(4)* pertain to issues that might arise due to unique site issues or project features, and therefore would not apply to all developments. Their inclusion raises a question as to whether the rest of the standards must be met. In our discussion, planning staff suggested that *Secs. A(3)* and *(4)* could be moved elsewhere. BGR also suggested revising the introductory language to make clear that all of the threshold standards would be applicable to every Planned Development.

Sec. 5.3 A(2): Part of this provision states that use exceptions should be “aligned with the intent of the planned development.” Planning staff told us that this is meant to refer to the intent the developer sets forth in the development plan, a required part of the application for a Planned Development. This should be clarified.

Sec. 5.3 A(7): This provision requires that a Planned Development provide “a” public benefit to the city as described in the next subsection, which lists a variety of potential benefits. “A” benefit could be interpreted as meaning that providing just one such benefit would be enough to meet the requirement. Planning staff indicated that the intent instead is to require a determination by decision makers that the Planned Development will bring benefits that cumulatively yield a

significant benefit to the public. We suggest clarifying that the development must provide a substantial public benefit as determined pursuant to Sec. 5.3 B.

Public Benefits

Section 5.3 B addresses the types of benefits a project must provide in order for a zoning exception to be granted. It is in need of revisions.

Sec. 5.3 B: Overall, it is not clear how decision-making bodies would arrive at a determination that the benefits are significant or how they would use the list of public benefits included in this subsection to make that determination. As written, the determination would be wide open and introduce excessive uncertainty into the decision-making process. The list of public benefits offers a smorgasbord of project features that vary widely in type and significance. For instance, is the provision of outdoor seating or bike-sharing facilities to be accorded the same significance as preservation of natural areas or the repaving of streets? This list of benefits should be carefully reconsidered, and the section should include detailed guidelines to assist decision-making bodies in making a determination that a Planned Development will yield a substantial public benefit.

Furthermore, the introductory paragraph of Sec. 5.3 B has two problems:

First, it opens with the statement that “The underlying zoning district requirements apply, unless an exception is granted as part of the conditional use approval.” This is the only reference to conditional use-type approval in Article 5. Planning staff indicated that it does not signify anything specific to that subsection. For the sake of clarity, it should be removed.

Second, planning staff indicated that this section is meant to address the public benefits that a development must provide beyond the threshold standards at Sec. 5.3 A. Yet the introductory paragraph states that “Exceptions to district regulations may be granted when such modifications do not negatively affect the value and enjoyment of surrounding property, the provision of municipal services, or the flow of traffic.” These appear to be threshold standards, and therefore should be moved up into Sec. 5.3 A.

Sec. 5.3 B(2): Before setting forth the “aspects” of a development that contribute to a substantial public benefit, this provision states that “The following items are a guide and not an exclusive list of requirements. Additional design characteristics and public benefits and amenities not listed below may be considered as part of the approval process.” This could allow significant leeway in decision making. It would grant further discretion in a section that, as written, already provides limited guidance and no clear directives to decision-makers.

Sec. 5.3 B(2)(a): This provision lists mixed-use development as a beneficial “design characteristic.” How a mix of uses is by its nature beneficial – or how it qualifies as a design characteristic, for that matter – is questionable. It should be removed, or the circumstances under which mixed use would be considered a public benefit should be clarified.

Sec. 5.3 B(2)(a), (d), (e) and (h): These listed benefits include mixed-use development, historic preservation, adaptive reuse and affordable housing. Planning staff indicated that the list is meant to cover public benefits a developer is willing to offer beyond the core elements of a Planned Development proposal. However, in many cases these aspects of the project would not be an additional benefit but an inherent feature of the project that would cause a developer to propose a Planned Development in the first place. For instance, a developer may apply for a Planned Development in order to carry out a mixed-use project that conventional zoning will not allow. In some cases, the “benefit” would actually be a pre-condition to apply for a Planned Development. For example, if the project is in a Historic district, the project must be an adaptive reuse of a structure. Introductory language should be placed before the list of benefits making clear that these are intended to be additional benefits, and that intrinsic or required aspects of a project will not be treated as additional public benefits or developer concessions.

District-Specific Standards

Secs. 5.4-5.9: These sections offer a residential density bonus, height bonus or relief from parking requirements in exchange for elements such as innovative stormwater management, affordable housing, transit orientation or LEED certification. These elements are presented in very broad terms, the potential exceptions are generous, and it is difficult to discern a strategy. As a result of these problems, city government could grant unnecessary exceptions.

Conclusion

Because of the foregoing problems, Article 5 could allow a wide variety of negotiated exceptions to the zoning rules. It would give public officials far too much discretion and open the door to a let’s-make-a-deal approach to decision making. New Orleans has walked that path before. It too often leads to tainted processes and bad decisions for the urban fabric.

We hope that these comments will assist you in creating clear and strong provisions for Planned Developments. The document deserves thorough reconsideration. We look forward to the next draft and stand ready to assist you in the meantime. If you have any questions, you can reach me at janethoward@bgr.org or (504) 525-4152, ext. 107.

Sincerely yours,

Janet R. Howard
President & CEO