A TROJAN HORSE IN THE DRAFT CZO

Article 5 Puts Years of Planning at Risk
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INTRODUCTION

If there was one overarching goal the public hoped would be met in the new master plan and comprehensive zoning ordinance, it was to bring clarity and predictability to the land use decision-making process. But “Article 5: Planned Development Standards” in the draft CZO works against this goal by allowing exceptions to all of the most basic zoning rules in exchange for project features that create a “substantial benefit” for the city.

Article 5 provides little guidance as to decision making and allows wide-ranging discretion. It creates confusion and 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.

BGR has raised concerns about Article 5 with each successive draft of the new CZO.1 While the article has improved over time, BGR’s core concerns remain unaddressed.

In this report, BGR describes the concept of planned developments, what types of sites would qualify and the problems posed by Article 5. BGR also makes a recommendation for the most appropriate course of action at this late juncture in the CZO approval process.

This report focuses on Article 5 because of its broad scope and potential for undermining the rest of the CZO. We note that there may be other areas of the draft CZO, as well as formal and informal decision-making practices, which create unnecessary uncertainty and obstacles. These are beyond the scope of this report.

PLANNED DEVELOPMENTS

Article 5 would allow the City Council to grant exceptions from the zoning rules – including those governing use, density, height, area, bulk, yards, parking, loading and signage – for “planned developments.” To be eligible for an exception, the developer would have to demonstrate a “substantial benefit” to the city. The article includes a long, wide-ranging and nonexclusive list of “aspects” that contribute to a substantial benefit. In addition, it sets forth statements of intent for the various zoning districts in which planned developments would be allowed, presumably to guide the application of the regulations in those districts, and the parameters for certain development bonuses. It also contains a list of general requirements that planned developments must meet.

To be eligible for consideration as a planned development, a site would need to be at least five acres. However, in a historic residential district, where planned developments are allowed only for adaptive reuse, the structure need only hold 10,000 square feet of floor area.2 In addition, any size site would be eligible if “there are … exceptional circumstances affecting the property.”3 BGR has pointed out that this language is wide open to interpretation by the City Planning Commission and the City Council.4

Article 5 sets out six categories of zoning districts in which planned developments would be allowed.5 These include Historic Core and Historic Urban Residential Districts, Suburban Non-Residential Districts, Commercial Center Districts, Center for Industry Districts, General Planned Development Districts (for environmentally sensitive areas) and Maritime Mixed-Use Districts.

In order to receive zoning exceptions, planned developments would need to provide project features that create a “substantial benefit to the City.” The features of a project that contribute to a “substantial benefit” include:

- The use of sustainable design and architecture, such as the use of green roofs, blue roofs, bio-swales, solar panels, wind turbines, and other energy efficient design concepts, new building technologies, and Leadership in Energy and Environmental Design (LEED) or LEED-equivalent structures.
- Circulation systems that utilize alleys or traffic-calming techniques.
- A pedestrian-oriented environment.
- Plazas, malls, formal gardens, places to congregate, outdoor seating, public art, and pedestrian and transit facilities.
- Preservation of natural areas.
- Historic preservation.
- Adaptive reuse.
- Open space and recreational amenities such as recreational open space and playgrounds, including athletic fields, dog parks, and natural water features and conservation areas.
- Public infrastructure improvements in addition to the minimum required by the planned development, such as new or repaved streets, provision of bicycle paths, installation of gutters and sewers, and traffic control devices to improve traffic flow.
- Affordable housing.
- Senior housing set-aside.
- Provision of accessible dwelling units with accessible features beyond what is required by the Americans with Disabilities Act (ADA) or any other applicable codes.
- Provision of car and/or bicycle sharing facilities or other transit-oriented development best practices.
Other, unknown project features could be traded for zoning exceptions. Article 5 states that the list above is “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.”

Thus, decision makers could use any project feature they deem to be a public benefit or an amenity in order to justify zoning exceptions. BGR has pointed out that this language leaves too much leeway in decision making.

More than half of Article 5 is devoted to what it calls “standards” that are specific to each category of zoning district. In fact, they are not standards in most cases, but statements of intent followed by sets of criteria for obtaining density bonuses, height bonuses or parking reductions. In some cases the statement of intent is clear, in some cases not. The following is a description of where each district-specific section applies and the bonus provisions, if any:

1. **Historic Core and Historic Urban Residential Districts** include residential zoning districts across the city developed prior to World War II, such as the Vieux Carre and Creole Faubourgs, Algiers Point, Uptown and Mid-City. In these neighborhoods, planned developments would be allowed only for the adaptive reuse of commercial, industrial and institutional buildings, such as old schools and warehouses, and the only use exception would be for multi-family residential. Projects would be eligible for density bonuses of up to 30% if they provide low-income housing, use innovative stormwater management, stand adjacent to real or proposed mass transit lines and provide “multi-modal transportation features,” or are LEED-certified.

2. **Suburban Non-Residential Districts** include neighborhood commercial zoning districts in Lakeview, Gentilly, Algiers and eastern New Orleans. Height bonuses of up to 25%, density bonuses of 30% and parking reductions of 30% would be offered in exchange for low-income housing, innovative stormwater management, water quality treatment, environmentally sensitive site plans, or LEED certification.

3. **Commercial Center Districts** include large individual and strip commercial sites sprinkled across the city in areas such as eastern New Orleans, Gentilly, Central City, Mid-City, the Uptown riverfront and Algiers. Height bonuses of 50%, density bonuses of 30% and parking reductions of 20% would be offered in exchange for low-income housing, innovative stormwater management, water quality treatment, proximity to mass transit with multi-modal features, or LEED certification.

4. **Center for Industry Districts** include most of the Port of New Orleans’ assets, which cover large swaths of the riverfront and the area of the Industrial Canal; areas along the Pontchartrain Expressway; the Lakefront Airport; and large portions of eastern New Orleans. Height bonuses and parking reductions vary among the different industrial zones. They would be offered in exchange for innovative stormwater management, water quality treatment, environmentally sensitive site plans or LEED certification.

5. **General Planned Development** designation includes zoning districts in eastern New Orleans near I-510 and Lower Coast Algiers. This section is unlike the other district-specific sections. Instead of focusing on potential bonuses, it sets forth requirements aimed at preserving environmentally sensitive areas.

6. **Maritime Mixed-Use** designation includes sites such as South Shore Harbor and Lake Catherine. The geographic reach of this category is very limited. Rather than discussing bonuses, this section focuses on creating developments with a waterfront orientation and preserving natural features.

It should be remembered that, beyond the parameters set forth in the district-specific sections, other zoning regulations can be waived.

Article 5 contains a set of protective requirements. Exceptions to underlying regulations would have to be recommended by the City Planning Commission, and the planned development would have to be authorized by the City Council via ordinance. The planned development would have to be compatible with the Master Plan and with the character of the place-based district that contains it. It would also have to be consistent with the character and nature of “existing and future development” in the vicinity. Use exceptions would have to be compatible with existing or anticipated uses on adjacent sites. The planned development would have to provide proper screening and buffering to minimize potential negative impacts to adjacent properties. The physical characteristics of the planned development could “not adversely affect the future development of adjacent undeveloped areas,” and the use exceptions could “not negatively affect the value and enjoyment of surrounding property” or negatively affect the flow of traffic. Access streets would have to be adequate to serve the development. And the development
could not adversely affect the natural environment.

**OPENING THE WAY FOR NEGOTIATED DEVELOPMENTS**

The concept of a planned development as set forth in the CZO goes far beyond the original concept of a planned unit development, or PUD. Decades ago, planners developed that tool as a way to provide flexibility with regard to density requirements. PUDs allowed land use decision-makers to look at a tract of land as a whole, rather than on a lot by lot basis. The developer of a large tract of suburban land could cluster residential development at a higher density than normally allowed, placing it in one portion of a site and leaving the rest as natural or recreational space. However, the average density for the project could not exceed the underlying requirements. PUDs have also been used to created mixed-use master planned communities covering hundreds or thousands of acres.17 A traditional PUD does not resemble a “spot zone,” but rather serves as a mechanism to provide flexibility for large-scale developments, while in a broad sense respecting the underlying zoning.18

In more recent years, some jurisdictions have adopted ordinances for master planned communities that allow for more aggressive negotiated exceptions from the zoning code in order to achieve certain social or environmental goals, such as the preservation of environmentally sensitive areas or the creation of New Urban communities that promote walkability and a mix of jobs and housing types. Article 5 embraces this newer approach with gusto. It goes far beyond providing flexibility within the density requirements. It would open the way to a wide variety of exceptions. And it would allow them on small sites.

For the most part, Article 5 would not tie the exceptions to metrics or to a clear set of project requirements. Indeed, it dangles out a colloquial list of possible public benefits a developer might negotiate in exchange for exceptions. The list of project features is a grab-bag of minor and major public benefits. For instance, the list contains both minor items such as outdoor seating and major items such as the conservation of natural areas. It contains both public art and the repaving of streets.

In some cases, the benefit that a project is required to provide is contained in the list of benefits. For instance, a developer seeking to adaptively reuse and preserve a historic warehouse building in Faubourg Marigny could be considered as providing a public benefit, even though adaptive reuse is a prerequisite to qualifying as a planned development.

A similar issue arises with regard to the bonuses in the district-specific sections. In two district types, developers can obtain density bonuses, height bonuses and parking reductions in exchange for being “adjacent” to transit lines and providing multimodal transportation features. In exchange for providing this undefined benefit – a bike rack perhaps – a development that happens to be next to a real or proposed transit line could receive a significant development bonus.

Moreover, Article 5 provides no guidance as to how decision-makers would use the items on the list to determine whether the public benefits are sufficient to merit exceptions to the zoning law. In the absence of such guidance, the article allows wide-ranging discretion.

Finally, it is difficult to discern a strategy in most of the district-specific sections.

Article 5 introduces a Trojan horse into the CZO and leaves adjacent property owners at sites across the city vulnerable to the very sort of “runaway discretion” that BGR cited in its call for planning reform a decade ago.19 It could also result in situations that resemble spot zoning, just under a different name.

**IN SEARCH OF A RATIONALE**

A variety of motives are evident in Article 5, though some of them can only be inferred. The motives include: to provide flexibility under the zoning in order to respond to unforeseen development proposals; to smooth the way for the adaptive reuse of larger structures in historic neighborhoods; to improve the economics for developers who specialize in low-income housing; to promote good stewardship of our environment; to encourage higher intensity development around mass transit lines to help reverse the long-term decline in transit ridership; and to promote a more pedestrian-friendly environment.

These may be laudable goals. However, the execution is poor. In many cases, there is no obvious correlation between a goal and the basis for granting an exception. Take for instance, the issue of adaptive reuse of larger institutional structures in historic neighborhoods. Clearly, it is important to find a way of redeveloping such structures and addressing zoning impediments that prevent such redevelopment on a basis compatible with a neighborhood. The exceptions, and the basis for granting them, should relate to the impediment. That is not the case in Article 5. Rather than targeting relief
to the perceived obstacles, it bases eligibility for exceptions on extraneous considerations, such as LEED certification and the provision of low-income housing. As a result, Article 5 opens the door to exceptions that do nothing to address the redevelopment obstacles that caused adaptive-reuse structures to be included in the article in the first place.

There may be other ways to accomplish some of the goals of Article 5 that are more effective than opening the way to negotiated developments. For instance, aggressive stormwater management could be rewarded through credits against drainage fees. In addition, impact fees could be imposed to help cover public infrastructure costs related to a project. For certain types of large developments, transit facilities, efficient traffic circulation plans and open space could simply be required.

In short, it is unclear why, in order to achieve the goals of Article 5, the CZO and the years of effort that went into crafting it should be put out on the bargaining table for an untold number of potential developments across the city.

Beyond the issue of whether Article 5 is effective at accomplishing its goals, there is a broader problem: the effect of scattered zoning exceptions on the physical environment. Presumably, the zoning rules that exist throughout the CZO were carefully crafted in the light of good zoning practice, citizen concerns and neighborhood character. Presumably, the parameters established for use, height, density, etc., were established for a reason and serve a purpose.

If this is the case, why then does Article 5 allow the City Council to set those requirements aside? The physical impact of a height or density exception on a neighborhood or commercial area is the same regardless of whether a building is LEED-certified. It is the same regardless of whether a building is occupied by low- or high-income residents. It is the same regardless of whether a property includes a dog park.

**CONCLUSION**

Since 2011, BGR has raised concerns with each successive draft of Article 5. While the City Planning Commission has made changes in response to some of BGR’s suggestions, our most critical concerns remain unaddressed. At this late stage of the game, with the City Council moving quickly toward final approval of the draft CZO, the prospects for creating an acceptable revision seem bleak.

**Recommendations**

**For that reason, BGR recommends that the City Council eliminate Article 5.** In its current form, the article puts up for grabs hundreds of pages of zoning rules that have absorbed vast amounts of civic energy and taken years to fashion.

However, should the council proceed with Article 5, it should at a minimum do the following:

- Eliminate the general provision that puts all zoning regulations on the bargaining table in exchange for benefits. Also eliminate the smorgasbord of potential beneficial project features to be used in exchange for zoning exceptions.

- Instead, craft a set of district-specific sections setting forth the relevant challenges the city hopes to address in each area. Each section should contain:
  - A clear statement of intent identifying what problem the section is attempting to solve and how that problem relates to the geographic areas covered.
  - Strategies that flow directly from that statement.
  - A statement specifying which zoning rules can be bent, with a narrative explaining why exceptions to such rules relate to the stated intent and strategies. There should be clear limitations on the exceptions.
  - Detailed guidelines for decision-making bodies to use in determining whether the exceptions requested for a development are necessary to advance the strategy for that district category.

If the challenges and strategies to address them in a given type of zoning district cannot be clarified, the pertinent section should be struck from Article 5. The article could be amended later, if suitable strategies are created.

- Make the minimum site size requirements ironclad. The language allowing exceptions to the minimum if “there are … exceptional circumstances affecting the property” should be struck. Consideration should be given to increasing the minimum site sizes, so that fewer sites across the city are thrown into play.
1 These included oral comments provided to City Planning Commission staff and consultants in November 2011 and November 2013 and letters to the City Planning Commission dated November 25, 2013, and August 29, 2014.

2 BGR conducted an online search of for-sale properties containing 10,000 square feet or more. The search yielded a number of buildings in historic areas, including a former mansion-turned-hotel in the Lower Garden District, a historic commercial building Uptown, a former restaurant in the French Quarter, and warehouses scattered across various historic neighborhoods.

3 Comprehensive Zoning Ordinance, City of New Orleans, City Council Review Draft, September 2014, Art. 5, Sec. 5.2(C).


5 CZO, City Council Review Draft, Sec. 5.2(B).

6 Ibid., Sec. 5.3(B).

7 Ibid., Sec. 5.3(B)(2).

8 BGR, Letter to the City Planning Commission, August 29, 2014.

9 CZO, City Council Review Draft, Secs. 5.4-5.9. It should be noted that it is not stated whether the planned development must have all of these features to qualify for a bonus or just one of them. Given the fact that they could not apply to all projects, BGR assumes that any one of the project features would suffice to qualify for a bonus.

10 Ibid., Sec. 5.6. LEED, or Leadership in Energy & Environmental Design, is a green building certification program in which projects satisfy prerequisites and earn points to achieve different levels of certification.

11 Ibid., Sec. 5.7.

12 Ibid., Sec. 5.8.

13 Ibid., Sec. 5.9.

14 Ibid., Sec. 5.4.

15 Ibid., Sec. 5.5.

16 Ibid., Sec. 5.2(D-J) and 5.3(A).

17 “Understanding Planned Unit Development,” American Planning Association, PAS QuickNotes, No. 22.

