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RECORD NOS.
730991 and 740029

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

Appellant,

v.

ROY G. ALLMAN, ET AL.

Appellees.

APPENDIX TO THE BRIEF

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

VOLUME I

AGREEMENT OF COUNSEL
ON APPENDIX

Counsel for Appellant and Appellees hereby agree and stipulate that the following table of contents contains those parts of the record which are both germane and reasonably reproducible. The exhibits are germane but on the whole are not reasonably capable of reproduction and are therefore included by reference in the appendix, but are not reproduced therein.

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

BY: George A. Symanski Jr.
Counsel for Appellant

ROY G. ALLMAN, ET AL.

BY: Francis A. McDermott
Hazel, Beckhorn & Hanes
Counsel for Appellees

VOLUME I

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Exhibits incorporated in the appendix by reference but not reproduced by agreement of counsel

STIPULATION EXHIBITS

No. 1 (verbatim transcript of zoning hearing)

No. 2 (Staff report on C-222)

No. 3 (Upper Potomac Comprehensive Plan)

No. 4 (part of minutes of Oct., 1971)

No. 5 (Memorandum of Understanding)

No. 6 (tax map assemblage)

No. 6 (Herndon tax map)

No. 7 (development plan)

No. 8 (Fairfax County Grid Map)

No. 9 (Reston tax map)

No. 10 (aerial photograph)

No. 11 (County watershed map of Fairfax)

No. 12, 12-A & 12-B (preliminary plat for Hidden Brook, plats for Sections One and Two)

No. 13 and 13-A (Loudoun County water & sewer lines)

No. 14 (Loudoun County tax map assemblage)

No. 15 (Fairfax County Budget for Fiscal 1972)

No. 16 (Planning Commission minutes Oct. 12 & 18, 1972)

No. 17 (Bd of Supervisors zoning resolutions in Case No. 1583)

No. 18 (Bd of Supervisors zoning resolutions in B-445 with staff report)

No. 19 (Bd of Supervisors zoning resolutions in A-960 with staff report)

No. 20 (transcript of Bd of Supervisors minutes June 16, July 21 & June 30, 1971)

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No. 21 (Order of Judge Plummer)

No. 22 (contracts of sale)

No. 23 (staff report in Bd of Supervisors minutes Sept. 22 & Dec. 15, 1971, in Clinch case)

No. 24 (Opinion of Court in Clinch case w/answer & complaint)

No. 25 (Reston Master Plan)

No. 26 (Herndon Master Plan)

No. 27 (part of Zoning Application 222, Crestbrook)

No. 28, 28-A, 28-B & 28-C (development plat, water distribution, sanitary distribution, & construction phasing plans)

COMPLAINANTS

A (soil coloring chart)

B (letter dated 10-26-66)

C and D (Staff reports)

E (Supplementary staff report)

F (Loudoun County map)

G (Loudoun County Master Plan)

NOTE: Fairfax County Code, stipulated by counsel at Page 13 of Transcript I to be included as part of the record, is hereby incorporated herein by reference.

MOTION FOR DECLARATORY JUDGMENT

TO: THE HONORABLE JUDGES OF THIS COURT

Come now the Complainants herein, by counsel, and represent as follows:

1. The Defendant, The Board of Supervisors of Fairfax County, Virginia, is the legislative body of Fairfax County, Virginia, charged with the responsibility of adopting and amending the zoning ordinances and maps of Fairfax County.

2. Complainant Allman is a taxpayer in Fairfax County and the owner of that parcel of land containing approximately 200 acres of land located in Fairfax County, Virginia, described on the Fairfax County Property Identification Map as Parcel 10-2-((1))-3 (said property to be hereinafter referred to as the "Allman Tract"). Complainants Babson and Bryant are the contract purchasers of said 200 acres, more or less, and Complainants Horne and Ingersoll are contract purchasers of that contract between Allman and Babson and Bryant.

3. Complainants Swart are taxpayers in Fairfax County and the owners of that parcel of land containing approximately 100 acres of land in Fairfax County, Virginia

described on the Fairfax County Property Identification Map as Parcel 5-((1))-5 (said property to be hereinafter referred to as the "Swart tract"). Complainants Horne and Ingersoll are the contract purchasers of said 100 acres. The "Allman Tract" and the "Swart Tract" will be hereinafter referred to as "subject property" when appropriate.

4. The "subject property" is zoned RE-1 under the existing zoning ordinances of Fairfax County, Virginia, and has been so zoned since 1959, but has not been developed and has remained vacant since its purchase by the present owners in 1946 (Swart Tract) and 1965 (Allman Tract).

5. The property contiguous to "subject property" on the Southwest is presently zoned R-12.5, and is currently being developed to the permitted R-12.5 density. Substantially all of the property adjacent to "subject property" is presently planned for 2.5 dwelling units per acre as permitted in the R-12.5 zoning district, with the exception of an area to the north of "subject property" which was held in abeyance by Defendant Board in the current master plan and must, accordingly, be considered "unplanned."

6. Several years ago, Defendant Board adopted a series of zoning ordinances titled "Planned Development Housing," (commonly referred to as PDH districts) with various

density allowances. The purpose of said PDH districts as set forth in the referenced ordinances is essentially to encourage innovative design, provide for open space and in general improve and assure high quality land development, substantially in accord with adopted comprehensive master plans. The densities allowed in PDH districts are equated with comprehensive planned densities per acre. Zoning applicants, pursuant to Defendant Board's general policies and the representations of the planning and zoning staff of Defendant Board, are encouraged to utilize PDH zoning districts in lieu of other zoning categories, commonly referred to as "conventional" zoning districts.

7. On January 6, 1971, Complainants filed zoning application C-222 with appropriate officials of Fairfax County, Virginia, requesting the "Allman Tract" be rezoned from the RE-1 district to Planned Development Housing District 3. The plats and other data filed with and made a part of application C-222 are by reference incorporated herein and made a part hereof for a more particular description of the details of application C-222.

8. On July 27, 1971, Complainants amended zoning application C-222 to include the "Swart Tract" bringing the total acreage for rezoning to PDH-3 to approximately 300 acres.

9. A major trunk sanitary sewer owned and operated by Defendant Board, the construction of which was funded by the issuance of bonds duly voted by taxpayers of Fairfax County, is located on a portion of the "subject property." All utilities, including sanitary sewer trunk and treatment capacity were available on all dates relevant to the filing and processing of Application C-222 and are currently available.

10. The "subject property" is planned for development at a density of 2.5 units per acre on the Upper Potomac Planning District Comprehensive Plan and was so planned at all times relevant to the subject case. The planned density is equivalent to that permitted in both the PDH-3 and R-12.5 zoning districts and has been so conceded by the planning and zoning staff of Fairfax County.

11. The Planning Commission of Fairfax County, after hearings on October 12, 1971 and October 18, 1971, failed by tie votes to recommend either denial or approval of subject application and, accordingly, the application was forwarded to Defendant Board without recommendation of the Planning Commission.

12. On October 20, 1971, the Defendant Board, after proper advertisement and notice, held a public hearing on

the subject application, as amended, and voted to deny the application by a vote of five to three.

13. Before the Planning Commission and before the Defendant Board, evidence was produced by the Complainant to show the reasonableness of the proposed land use, conformity with the comprehensive plan, a change in circumstances in the surrounding area occurring since the original zoning of the "subject property" to RE-1, and to show an error would result from retaining the property in the RE-1 zoning district.

14. The preparation, filing and prosecution of a PDH application pursuant to policies, practices and ordinances of the Defendant Board caused Complainants to incur substantial expenditures in reliance upon the master plans and policies of Defendant Board.

15. The action of Defendant Board in denying Application C-222 was illegal, arbitrary, capricious, unreasonable, without substantial relation to the public health, safety and general welfare, an unlawful taking of Complainants' properties and a discrimination against the rights and properties of the Complainants, and a denial of equal protection and other rights guaranteed by the Constitutions of the United States and the Commonwealth of Virginia and the

ordinances of Fairfax County.

16. The result of the denial of the application as aforesaid is to cause the property to remain zoned to the RE-1 category which is an unreasonable use for the "subject property," not in accord with the existing comprehensive master plans.

17. An actual controversy exists between the parties and Complainants have no remedy other than the relief prayed herein.

WHEREFORE, your Complainants move that this Court enter a Declaratory Judgment declaring:

A. The existing RE-1 zoning of the "subject property" to be arbitrary, capricious and without reasonable relation to the public health, safety, morals and general welfare.

B. The action of Defendant Board of Supervisors on October 20, 1971 denying grant of application C-222 is illegal and null and void.

C. The Court, by appropriate order, direct Defendant Board to process plats as required to develop "subject property" in accord with rezoning sought in application C-222, that zoning records of Fairfax County be revised to show the zoning of "subject property" to the PDH-3 district in accord with the prayer of application C-222 or, in the altermative, the zoning records of Fairfax County be revised to show the zoning of "subject property" to the R-12.5 district.

D. For such other order of this Court as may be appropriate to grant Complainants full and

complete relief.

/s/
Roy G. Allman, Trustee, by counsel

/s/
James H. Swart, by counsel

/s/
Mary F. Swart, by counsel

/s/
William L. Bryant, Trustee, by counsel

/s/
Frederick A. Babson, Jr., Trustee, by counsel

/s/
M. Seth Horne, by counsel

/s/
William B. Ingersoll, Sr., by counsel

HAZEL, BECKHORN AND HANES

BY: /s/
Counsel for Complainants
P. O. Box 547, Fairfax, Virginia

* * *

ANSWER

Comes now the Defendant Board of Supervisors, by Counsel, and for answer to the Motion for Declaratory Judgment heretofore filed by Complainants, represents to the Court as follows:

1. Defendant admits the allegations of paragraph 1.

2. Defendant has insufficient knowledge to either admit or deny the allegations of paragraph 2.

3. Defendant has insufficient knowledge to either admit or deny the allegations of paragraph 3.

4. Defendant admits that the property is zoned RE-1 but has insufficient knowledge to either admit or deny the other allegations of paragraph 4.

5. Defendant admits that property to the southwest of subject property was zoned R-12.5 and that the comprehensive plan shows the area in question planned for 2.5 dwelling units per acre except for a "deferred" area to the north. Defendant further states that, except for the R-12.5 zoning, the area was zoned RE-1 including contiguous land in Loudoun County which had a similar one dwelling unit to the acre zoning classification.

6. Defendant admits that the allegations of paragraph 6 are substantially correct except that Defendant has insufficient knowledge to either admit or deny the allegation of "representations of the planning and zoning staff . ."

7. Defendant admits the allegations of paragraph 7.

8. Defendant admits the allegations of paragraph 8.

9. Defendant admits the allegations of paragraph 9 except that Defendant (a) has insufficient knowledge to either

admit or deny the allegation as to "all utilities," and (b) denies the allegation that actual treatment capacity existed.

10. Defendant admits the allegations of paragraph 10.

11. Defendant admits the allegations of paragraph 11.

12. Defendant admits the allegations of paragraph 12.

13. Defendant denies the allegations of paragraph 13.

14. Defendant denies the allegations of paragraph 14 except that it has insufficient knowledge to either admit or deny the allegation as to expenditures.

15. Defendant denies the allegations of paragraph 15.

16. Defendant denies the allegations of paragraph 16.

17. Defendant denies the allegations of paragraph 17.

WHEREFORE, having fully answered the allegations of the Motion for Declaratory Judgment, your Defendant respectfully prays the Court deny the relief requested, in particular Complainants' request that the Court exercise a legislative prerogative and rezone the subject property to an alternate zoning category if the denial of application

C-222 is upheld. In addition, Defendant prays the Court dismiss the Motion for Declaratory Judgment with prejudice and award it costs herein expended.

THE BOARD OF SUPERVISORS
OF FAIRFAX COUNTY, VIRGINIA

BY: /s/ _____

M. LANGHORNE KEITH
COUNTY ATTORNEY

BY: /s/ _____
George A. Symanski, Jr.
Assistant County Attorney

I hereby certify that a true copy of the foregoing Answer was mailed, postage prepaid, to Hazel, Beckhorn and Hanes, Counsel for Complainants, P. O. Box 547, Fairfax, Virginia, this _____ day of July, 1972.

/s/ _____
George A. Symanski, Jr.

* * *

* * *

ORDER

This cause came on to be heard on the 25th and 26th of April, 1973, upon the pleadings formerly filed and read herein and upon the testimony of the witnesses and the exhibits introduced into evidence.

And the Court being of the opinion that:

1. The Complainants duly filed and prosecuted zoning Application C-222, seeking a change in zoning from the RE-1 category to the PDH-3 category and said application was denied by Defendant Board;

2. Said zoning and density was and is permitted under the applicable Comprehensive Plan;

3. Said zoning does not differ substantially in impact and substance from the R-12.5 district;

4. Other actions of Defendant Board are not consistent with the denial of C-222;

5. An owner has a basic and vested right to use his property for any legitimate purpose as long as it does not constitute a nuisance nor is contrary to the health, safety and general welfare of the public;

6. A local governing body can legislate the use of the property for the purpose of promoting the health, safety and general welfare of the public; however, the limitations must be reasonably related to the health, safety and welfare of the public at large;

7. Applicants for change of zoning have a right to expect equal treatment in the consideration of change of zoning requests;

8. Complainants herein were subjected to discrimination;

9. As a result of discrimination, Complainants were deprived of substantial property rights; and

10. The denial of Application C-222 was not reasonably

related to the public health, safety and welfare and was arbitrary and capricious.

Now therefore, it is

ORDERED, ADJUDGED AND DECREED that Defendant Board, on or before September 11, 1973, reconsider the action of the Board taken on October 20, 1971, denying grant of Application C-222.

To which ruling of the Court Defendant, by counsel, duly excepts.

AND THIS CAUSE IS CONTINUED.

Entered: July 23, 1973 /s/ Percy Thornton, Jr.

* * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Pursuant to Rule 5:6 of The Rules of The Supreme Court of Virginia and § 8-462 of Va. Code Ann. (1957), Defendant Board of Supervisors of Fairfax County, Virginia, hereby gives Notice of Appeal from the Final Order, or in the alternative, from the Order adjudicating the principles of this cause, entered herein on the 23rd day of July, 1973.

The Defendant Board of Supervisors of Fairfax County, Virginia, makes the following Assignments of Error in the above-styled cause:

1. The Court erred in holding that the denial by the Board of Supervisors of the rezoning request was arbitrary, capricious and not reasonably related to the health, safety and welfare or in not holding that the issue was fairly debatable.

2. The Court erred in holding that Defendant's refusal

to rezone the subject property constituted unlawful discrimination.

3. The Court erred in holding that the PDH-3 zoning category is not substantially different from the R-12.5 zoning category.

4. The Court erred in holding Defendant's evidence immaterial or irrelevant unless there was proof that the evidence constituted "input" to the Defendant before the zoning hearing and that the evidence was a "major factor" in Defendant's legislative decision.

5. In the alternative, the Court erred in limiting Defendant's evidence to what could be shown to have been "input" before the rezoning hearing while not requiring the same standard for the Complainants' evidence.

6. The Court erred in admitting Complainants' evidence of facts occurring subsequent to the rezoning hearing which were not and could not have been available to Defendant at the time of its legislative action.

7. The Court erred in holding Defendant's sewage treatment and pollution evidence immaterial or irrelevant because the problems might have been caused by Maryland jurisdictions.

8. The Court erred in failing to consider all of the evidence before ruling on the case.

9. The Court erred in failing to afford the Defendant a presumption of legislative validity and regularity.

A transcript of the trial will be hereafter filed.

Dated this 21st day of August, 1973.

/s/ George A. Symanski, Jr.

* * *

PETITION

Come now Complainants herein and petition this Court for further relief herein and state as follows:

1. Pursuant to Order previously entered, Defendant Board was directed to reconsider Application C-222 and determine an appropriate zoning district for the subject property.

2. Defendant Board has indicated it does not intend to reconsider the aforesaid decision and the time for reconsideration having expired and the Board intends to appeal from the prior determination of the Court.

3. Your Petitioners have been advised and therefore aver that a final determination and adjudication of the issues raised herein has not been reached and they are entitled to a review of the existing zoning categories applicable to the subject property and the entry of an appropriate order revising said zoning category as the Court may deem appropriate in accord with its prior opinion.

WHEREFORE, Petitioners pray that the Court by appropriate order provide such relief as may be required to allow Petitioners reasonable use of their property.

Filed 10/3/73.

/s/Roy G. Allman
by John T. Hazel, Jr.

* * *

* * *

ORDER

Came this date the Complainants, by counsel, upon Petition previously filed, requesting relief in accord with the Order of the Court entered July 23, 1973. And it appearing Defendant Board did not reconsider the rezoning of the subject property pursuant to said Order, that the property remains zoned to the RE-1 Category and that Complainants are entitled to have the zoning of the property changed from RE-1 to a higher use and, further, the Court is of the opinion that the PDH-3 District is an appropriate zoning district for the subject property. Now therefore, it is

ORDERED, ADJUDGED AND DECREED that the subject property be and it hereby is, rezoned to the PDH-3 District, and Defendant Board is directed to cause its agents to make appropriate notations upon the zoning records of Fairfax County in accord with this Order.

And it further appearing to the Court that Defendant Board intends to appeal the entry of this Order and has requested a stay pending said appeal and that said stay should be granted. Now therefore, it is

ORDERED, ADJUDGED AND DECREED that the implementation of

this Order is stayed pending the timely filing of an appeal and, in the event an appeal shall be filed, the stay shall be continued until the final disposition of said appeal.

AND THIS ORDER IS FINAL.

Entered: November 15, 1973 /s/ Percy Thornton, Jr.

* * *

NOTICE OF APPEAL AND ASSIGNEMNTS OF ERROR

Pursuant to Rule 5:6 of The Rules of The Supreme Court of Virginia and § 8-462 of Va. Code Ann. (1957), Defendant Board of Supervisors of Fairfax County, Virginia, hereby gives Notice of Appeal from an Order of the Circuit Court of Fairfax County, Virginia, entered on the 15th day of November, 1973.

The Defendant Board of Supervisors of Fairfax County, Virginia, makes the following Assignments of Error in the above-styled cause:

1. The trial court erred in exercising a legislative prerogative, by amending the zoning ordinance of Fairfax County, to place the subject property in a new zoning district.

2. Assuming that the trial court did not so err, it erred in amending the Zoning Ordinance of Fairfax County to place the subject property in an optional and wholly

discretionary zoning district which is dependant upon acceptance by the legislative body of a development plan governing development of the property.

A prior order of the trial court declaring unlawful the Board's refusal to amend the Zoning Ordinance governing this property is before the Supreme Court on Petition for Appeal. Therefore, a transcript of the trial has been filed. The order appealed from herein is a part of the record.

Dated this 14th day of December, 1973

/s/ George A. Symanski, Jr.

ONE-FAMILY RESIDENTIAL 12,500 SQ. FT. (R-12.5)

Column 1 Uses Permitted By Right:

Same as specified for R-17 districts.

Column 2 Special Permit Uses:

Same as specified for RE-0.5 districts.

476.14 Supp. #13, 12-70

30-2.2.2 (Cont'd) Column 3 Minimum Lot Size:

Area: All lots other than in approved subdivisions shall have a minimum area of 12,500 sq.ft. In approved subdivisions, lot area shall have an average of 12,500 sq. ft., and the minimum lot area shall be 10,500 sq. ft.

In subdivisions approved for alternate density development, the minimum lot area shall be 8400 sq. ft.

Width: Interior lots shall have a minimum width of 80 ft. Corner lots shall have a minimum width of 105 sq. ft.

In subdivisions approved for alternate density development, the interior lots shall not have any minimum width.

Column 4 Maximum Percentage of Lot Coverage:

In subdivisions approved for alternate density development, the total number of lots shall not cover more than 70% of the gross acreage of the subdivision and the maximum number of lots per gross acre shall not exceed 2.9.

Column 5 Maximum Height of Building:

Same as specified for RE-2.

Column 6 Minimum Yard Dimensions and Building Location Requirements:

The provisions (a) and (b) listed for R-17 districts in this column 6 shall apply in R-12.5 districts.

Front: 40 feet from the front lot line or 65 feet from the center line of the abutting street, whichever is greater.

In subdivisions approved for alternate density development, front yards shall be a minimum of 30 feet from the front lot line where facing on a local street with 50 feet of right of way or less, and a minimum of 35 feet where facing on a local or major thoroughfare with 60 feet right of way or more.

Side: 12 feet.

In subdivisions approved for alternate density development a minimum side yard of 8 feet and a total minimum of 20 feet.

Rear: 25 feet, except corner lots, which setback shall be the same as side yard requirements.

30-2.2 (Cont'd) Column 7 Floor Area:

NP

Column 8 Minimum Off-Street Parking Space:

Same as specified for RE-2 districts.

Column 9 Other Open Space:

Same as specified for RE-2 districts.

PLANNED DEVELOPMENT HOUSING (PDH) DISTRICT.

Intent and Purpose.

The PDH district is designed to encourage innovative and creative design and facilitate use of the most advantageous construction techniques in the development of land for residential uses of and for families of all income ranges. At the same time, the district regulations will insure ample provision for efficient use of open space, promote high standards in the layout, design and construction of residential development, insure the provision of dwellings within the means of families of low and moderate income and further the purposes and provisions of the comprehensive plan. To these ends, rezoning to and development under this district will be permitted only in accordance with a detailed development plan and after approval of the plan by the Board of Supervisors in accordance with the procedures and standards contained in Article XV.

Column 1 Uses Permitted By Right:

Allowed subject to development plan approval:

1. One-family dwelling (as defined in Section 30-1.8.8.1.3)
2. Garden court dwelling (as defined in Section 30-1.8.8.1.7)
3. Semi-detached dwelling (as defined in Section 30-1.8.8.1.4
4. Two-family dwelling (as defined in Section 30-1.8.8.1.6)
5. Town house dwelling (as defined in Section 30-1.8.8.1.5)
6. Multi-family dwelling (as defined in Section 30-1.8.8.1.2)
7. Accessory uses (as defined in Section 30-1.8.36.1) to the above permitted uses, and accessory buildings (as

30-2.2.2 (Cont'd)

defined in Section 30-1.3.2.1) to the buildings permitted by the above uses.

8. Home occupations (as defined in Section 30-1.8.15)
9. Churches
10. Public uses (as defined in Section 30-1.8.36.3)
11. Commercial uses as follows:
    (a) Office buildings.
    (b) Clinics - as defined in Section 30-1.8.4.1)
    (c) Banks, savings and loan associations and other financial institutions.
    (d) Retail establishments for the sale of works of art and art supplies, electrical goods and supplies, food and food products, furniture, decorator supplies, hardware, luggage, leather goods, optical goods, pets and pet supplies, garden supplies, electronic and phonographic equipment, books, tobacco, confections, drugs, jewelry, music, stationery, toys, newspapers and magazines, office supplies and equipment, medical supplies, clothing and dry goods, flowers, and similar goods and products.
    (e) Establishments for the sale or repair (or both) of household appliances, musical instruments and sporting goods (to exclude major motorized equipment).
    (f) Barber shops and beauty parlors, shoe repair and polishing shops, tailor shops, laundromats and establishments for receiving and distributing articles for laundering or cleaning.
    (g) Cleaning and pressing establishments having not more than four pressing machines and one dry cleaning unit with a capacity not exceeding fifty pounds, using non-flammable synthetic cleaning fluid, and one shirt pressing unit.
    (h) Restaurants (as defined in Section 30-1.8.29) offering no entertainment other than a phonograph, radio or television.
    (i) Schools of special instruction (as defined in Section 30-1.8.32.2), but not to include a public dance hall and riding schools.
    (j) Gasoline stations, provided:

        (1) Such gasoline station shall have been shown on the approved development plan.

        (2) Such gasoline station shall be located in a commercial center consisting of not less than three commercial establishments, such commercial establishments to be other than automobile related.

        (3) Such gasoline station shall be listed to three bays, and shall not be used for the performance of major repairs.

        (4) In connection with such gasoline station there shall be no vehicle or tool rental.

        (5) In connection with such gasoline station there shall be no storage of wrecked or inoperable vehicles.

476.341

30-2.2.2 (Cont'd) Any commercial uses permitted under this item 11 shall be designed to serve only the needs of the residents of the planned development in which they are located, and shall be designed so as to maintain and protect the residential character of the planned development and with regard to nearby land uses. In order to accomplish these purposes:

(a) Said commercial uses shall be conducted entirely within an enclosed building, with no outside display of merchandise (with the exception of growing plants).

(b) The total land area, including all at grade off-street parking and loading areas in connection therewith, devoted to said commercial uses shall be as follows:
PDH 1.6 - PDH 3.5 - 400 sq. ft. of commercial/dwelling unit.
PDH 5 - PDH 30 - 300 sq. ft. of commercial/dwelling unit.
PDH 40 - PDH 60 - 200 sq. ft. of commercial/dwelling unit.

12. Private clubs and eleemosynary institutions (as defined in Section 30-1.8.9).
13. Schools of general instruction (as defined in Section 30-1.8.32.1).
14. Nursery schools (as defined in Section 30-1.8.25).
15. Community uses (as defined in Section 30-1.8.36.2).
16. Signs in accordance with Article XVI of this Chapter provided such signs are of a style and construction compatible with the character of the development in which it is located.
17. Light standards not exceeding 15 feet in height.

a. Required Use: Low and Moderate Income Dwelling Units. Except as otherwise provided herein, every planned development of a PDH district shall provide dwelling units for families of low and moderate income. An applicant for PDH zoning (hereafter the "applicant") shall provide or cause others to provide, under the development plan, low income dwelling units which shall be not less (and may be more) than six percent (6%) of the total number of dwelling units in the development. The applicant shall also provide, or cause others to provide, the number of moderate income dwelling units which, when added to the number of low income dwelling units, shall be not less (and may be more) than fifteen percent (15%) of the total number of dwelling units in the development.

The requisite percentages for low and moderate income dwelling units shall be applied, separately, to the total of one-family, semidetached, and two-family dwelling units, if any, and to the total of multi-family, town house, and garden court dwelling units, if any. In addition, the average number of bedrooms proposed for the low and moderate income dwelling units shall generally reflect the average number of bedrooms per dwelling unit for the planned development as a whole.

b. Procedure for Meeting the Requirement. The low

30-2.2.2 (Cont'd) and moderate income dwelling unit requirement shall be met in the following manner:

(1) In order to provide low income dwelling units, the applicant shall propose (a) to sell land or sell and/or lease dwelling units to the Fairfax County Redevelopment and Housing Authority (hereafter the "Authority"); and/or (b) a rent supplement or other plan to provide low income dwelling units which can be arranged directly with the United States Department of Housing and Urban Development (or other source of subsidy funds) without entering into an agreement with the Authority. The proposal shall conform to the guidelines established by the Authority and by the United States Department of Housing and Urban Development with respect to cost limitations, construction, rentals, selling prices, and other standards for public housing development or other relevant low income dwelling unit development. All applicants are hereby deemed to have local official approval to participate in the Federal rent supplement program.

(2) In order to provide moderate income dwelling units, the applicant shall propose application(s) to the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development (or other source of subsidy funds) under programs for homeownership (including condominiums), rental, or cooperative housing. The proposal shall conform to the guidelines established by the United States Department of Housing and Urban Development with respect to cost limitations, construction, and other standards for development of moderate income dwelling units under the applicable subsidy program(s).

(3) Before the applicant's development plan and application for rezoning are submitted to the Planning Commission for review in accordance with Section 30-15.2, the applicant shall furnish to the Director of County Development (hereafter the "Director") or his agent the following documents, which shall be forwarded to the Planning Commission as part of the development plan required under Section 30-15.1:

(a) Unless the applicant proposes a rent supplement or other plan to provide low income dwelling units not involving the Authority, he shall furnish a written agreement with the Authority containing the specific plan under which the applicant and the Authority propose to provide low income dwelling units if funds are made available to the Authority and such units are approved by the

30-2.2.2 (Cont'd)

United States Department of Housing and Urban Development (or other source of subsidy funds). The applicant shall also furnish a letter from the Authority stating the reasons why the particular approach was selected, its evaluation of the proposed site, the availability of the requisite subsidies, and its estimate of the timetable for any further processing of the proposed project required by the Authority or by the United States Department of Housing and Urban Development (or other source of subsidy funds);

(b) He shall furnish any proposal to provide low income dwelling units through rent supplements or other arrangements not involving the Authority but requiring approval by the FHA (or other source of subsidy funds);

(c) He shall furnish any proposal to provide moderate income dwelling units requiring approval by the FHA (or other source of mortgage insurance and subsidy funds);

(d) He shall furnish supporting documents in the form of exchanges of correspondence with responsible officials of the FHA (or other source of subsidy funds), together with affidavits by the applicant reporting its discussions with such officials, (i) indicating, to the extent then possible, whether there are uncommitted funds available for projects to develop low and moderate income dwelling units in Fairfax County of the type proposed by the applicant, as well as for other types of low and moderate income dwelling units, and (ii) disclosing all comments by such officials that have been made at conferences or in writing about the proposed site or sites.

The Planning Commission shall not make its recommendation to the County Board of Supervisors (hereafter the "County Board") until the applicant has furnished the foregoing documents to the Planning Commission, and the applicant's proposal appears to conform to the low and moderate income dwelling unit requirement. A recommendation by the Planning Commission approving the development plan and application for rezoning shall be deemed to constitute approval by the Planning Commission under Section 15.1-456 of the Code of Virginia, Annotated, as amended, of the general location, character, and extent of the proposed low and moderate income dwelling units, to the extent that such approval is or may be required by said Section.

(4) The County Board shall not approve a proposed development plan or application for rezoning until the County Board has received the Plan-

30-2.2.2 (Cont'd)

ning Commission's recommendation, has held the public hearing required by Section 30-15.2, and has received the documents specified in paragraph (3) above, with any revisions deemed desirable by the applicant. The documents specified in subparagraph 3(d) shall be made current as of the date of the public hearing by the County Board.

In evaluating the applicant's development plan and application for rezoning the Planning Commission and County Board shall evaluate, on the basis of all the available information, whether the applicant's proposal will comply with the low and moderate income dwelling unit requirement. If the County Board approves the applicant's development plan and application for rezoning, such approval shall mean that the County Board has deemed the applicant's plan for provision of low and moderate income dwelling units to be an appropriate one for the particular district, and accordingly to be in compliance with this Section. Such approval shall also be deemed to constitute approval by the County Board under Title 36 of the Code of Virginia, Annotated, as amended, of such additional housing.

If the government subsidies do not become available for development of the proposed low and/or moderate income dwelling units, as approved by the County Board, then the applicant shall be excused from developing such units to the extent (and only to the extent) such subsidies are unavailable, in accordance with the procedure set forth in Section 30-15.3, paragraph 6.

(5) The following modifications of the low and moderate dwelling unit requirement are acceptable:

(a) To the extent that the applicant is unable to work out an agreement with the Authority with respect to the minimum required low income dwelling units after making a bona fide offer, he shall propose to fulfill that requirement through a rent supplement or other program not involving the Authority; but in the event that such other program(s) not involving the Authority pertain(s) only to rental housing, the applicant, shall not be obliged to utilize such program(s) if his development plan provides exclusively for sales housing, and in lieu of low income dwelling units he may provide moderate income dwelling units to fulfill the fifteen percent (15%) requirement of this Section.

(b) Development plans providing exclusively for rental housing in three (3) or fewer detached structures need not provide for moderate income dwelling units, but if such units are not provided the development plan shall provide for low income

30-2.2.2 (Cont'd)

dwelling units to fulfill the fifteen percent (15%) requirement of this Section.

(c) An applicant may propose to locate some or all of the requisite low and moderate income dwelling units in a suitable area (where he can make land available) other than the area which is the subject of the application. If the Authority has agreed with respect to all low income dwelling units proposed to be developed in conjunction with the Authority, the County Board may approve the substitution of land or dwelling units outside the proposed development for land or dwelling units within the development; provided, however, that the Board finds the substitution will further the purposes of the low and moderate income dwelling unit requirement and will not result in an undue concentration of low and moderate income families in a particular geographical area.

c. Satisfaction of Requirement Without a Subsidy. An applicant may propose to satisfy all or part of the low and moderate income dwelling unit requirement without utilizing a government subsidy program; provided, however, that prior to rezoning the applicant clearly demonstrates and warrants in writing that the proposal will benefit the same number of families at the same income levels, and for the same rentals or prices, which the low and moderate income dwelling unit requirements are intended to assure.

d. Effective Date. The foregoing provisions shall be effective September 1, 1971, and shall be applicable to all land now lying within the district or hereafter placed in the district with respect to which no final development plan has been approved; provided, however, that any applicant with respect to land lying within this district (or subject to a pending application for a zoning map amendment duly filed) before September 1, 1971, shall be entitled to the density bonus in Column 3, paragraph 7 if he voluntarily provides low or moderate income dwelling units.

Column 2 Special Permit Uses

None

Column 3 Minimum Lot Size

Density: For purposes of computing density, the PDH district is divided into sub-districts in which the residential density, in dwelling units per acre, is limited as follows (subject to the general standards contained in Section XV):

30-2.2.2 (Cont'd)

Sub-District	Number of Dwelling Units
PDH-1.6	1.6 dwelling units per acre
PDH-2	2 dwelling units per acre
PDH-2.5	2.5 dwelling units per acre
PDH-3	3 dwelling units per acre
PDH-3.5	3.5 dwelling units per acre
PDH-5	5 dwelling units per acre
PDH-10	10 dwelling units per acre
PDH-15	15 dwelling units per acre
PDH-20	20 dwelling units per acre
PDH-30	30 dwelling units per acre
PDH-40	40 dwelling units per acre
PDH-50	50 dwelling units per acre
PDH-60	60 dwelling units per acre

The Board of Supervisors may, in its sole discretion, increase the maximum number of dwelling units in a planned development, as permitted by the table above and the general standards in Section 30-15.4, up to a maximum of 25 per cent in accordance with and when the development includes one or more of the following:

1. provision of open space (common or dedicated) or for public school sites (dedicated) in addition to the minimum required under (a) of Column 9 -- not more than .4% for each 1% increase in open space;
2. provision of developed recreational open space (common)
   (a) in addition to the minimum developed recreational open space per dwelling unit required under (b) of Column 9, but not in addition to the minimum open space per dwelling unit required under (a) of Column 9 -- not more than .5% for each 1% increase in developed recreational open space;
   (b) in addition to the minimum developed recreational open space per dwelling unit required under (b) of Column 9, and in addition to the minimum open space per dwelling unit required under (a) of Column 9 -- not more than .6% for each 1% increase in developed recreational open space, in addition to the increase in density permitted by paragraph number 1 of this provision;
3. provision of developed recreational open space (dedicated) in addition to the minimum developed recreational open space per dwelling unit required under (b) of Column 9, and in addition to the minimum open space per dwelling unit required under (a) of Column 9 -- .8% for each 1% increase in developed recreational open space (dedicated) in excess of the minimum open space required by (a) of Column 9, in addition to the increase in density permitted by paragraph number 1 of this provision;
4. provision of unique design features and amenities in the planned development which require unusually high development costs and which achieve an especially attractive and

30-2.2.2 (Cont'd)

stable development, such as, but not limited to, terraces, sculpture, reflecting pools and fountains -- as determined by the Board of Supervisors in each instance, but not to exceed 5%;

5. provision of underground parking facilities -- not more than 5% for each 50 parking spaces;
6. preservation and restoration of buildings, structures or premises having historic or architectural significance -- as determined by the Board of Supervisors in each instance, but not to exceed 5%.

In addition to the above provision, the applicant shall be permitted an increase in the number of dwelling units equal to one additional unit for each two low income dwelling units and/or moderate income dwelling units provided within the development to a maximum increase not to exceed twenty percent of the number of dwelling units permitted in the table above. In no event, however, shall the total number of dwelling units within any project exceed 132 1/2 percent of the number indicated in the table above.

Column 4 Maximum Percentage of Lot Coverage:

Size of Development: For each of the sub-districts designated in Column 3, the following minimum acreage shall be required for development:

Sub-District	Minimum Development Size
PDH-1.6	100 acres
PDH-2	80 acres
PDH-2.5	65 acres
PDH-3	55 acres
PDH-3.5	50 acres
PDH-5	40 acres
PDH-10	25 acres
PDH-15	20 acres
PDH-20	15 acres
PDH-30	10 acres
PDH-40	7.5 acres
PDH-50	6 acres
PDH-60	5 acres

Column 5 Maximum Height of Building

The height of buildings within a development shall be controlled by the general standards in Section 30-15.4, except as follows:

Immediately adjacent to the minimum building setback line for this district required under Column 6, buildings shall not exceed a height of 35 ft. above the mean finished grade along the boundary line adjacent to said setback line; provided, however, that this maximum height may be increased in accordance with the following:

1. When a building within a planned development is adjacent to a one-family, two-family or town house residential

30-2.2.2 (Cont'd) district, or is separated from such a district by a street, alley or way only, the maximum height may be increased by one foot for each two feet of setback provided in addition to the minimum requirements of Column 6.

30-2.2.2 (Cont'd) 2. When a building within a planned development is adjacent to any district other than a one-family, two-family or town house residential district, or separated from such a district by a street, alley or way only, the maximum height may be increased by a distance of one foot for each one foot of setback, provided in addition to the minimum requirements of Column 6.

Column 6 Setback and Side Yard Requirements:

Setback requirements for each building and use within a PDH development shall be controlled by the general standards in Section 30-15.4.

All structures in the PDH district shall be set back at least 35 ft. from the boundary of a PDH district or 60 ft. from the center line of any street, alley or way adjoining such boundary, whichever distance is greater; provided, however, that when a PDH district adjoins a one-family, two-family or town house residential district, one-family dwellings, two-family dwellings and town house dwellings adjacent to such districts shall be set back from the boundary line of the PDH district the same distance as the front yard requirements for such adjoining districts, and all buildings other than one-family, two-family and town house dwellings shall be set back at least 100 ft. from the boundary line of the PDH district.

Column 7 Floor Area:

Not applicable, except as governed by the general standards contained in Section 30-15.4.

Column 8 Minimum Off-Street Parking and Loading:

Parking Spaces:

1. One-family detached dwellings, semi-detached dwellings, two-family dwellings, and town houses: a minimum of 1 1/2 spaces per dwelling unit.
2. Multi-family dwellings: a minimum of 1 1/4 spaces per dwelling unit.
3. Office facilities: a minimum of 1 space per 250 square feet of floor area (commercial).
4. Commercial (retail) facilities: a minimum of 1 space per 167 square feet of floor area (commercial).
5. Churches: a minimum of 1 space for every 5 seats in the main sanctuary or place of worship.
6. All other uses: a total number of spaces sufficient to accommodate the vehicles of all employees of the establishments, plus those of all persons who may be expected to visit the same at any one time, as determined by the Director of County Development or his agent.

30-2.2.2 (Cont'd) Where a combination of uses is planned, strict application of the above parking requirements may occasionally produce inefficient utilization of space. Upon a determination by the Board of Supervisors that such a situation exists and that individual parking spaces may adequately serve two or more uses by reason of the hours of operation of such uses or otherwise, the Board of Supervisors may reduce the total number of parking spaces required by strict application of said requirements in accordance with the general standards contained in Section 30-15.4. The provisions of Section 30-3.10.3 shall not be deemed to apply to a PDH district.

Loading Spaces:

1. Dwellings other than multi-family dwellings: none required.
2. Commercial uses: a minimum of 1 space for the first 8,500 square feet of floor area (commercial); 1 additional space for each additional 20,000 square feet of floor area (commercial) or major fraction thereof. In no case, however, shall the number of loading spaces exceed five for a single occupancy.
3. All other uses: a total number of spaces sufficient to accommodate all loading or unloading of goods or persons, as determined by the Director of County Development or his agent.

Column 9 Other Open Space:

The following minimum open space areas shall be required in each PDH sub-district:

PDH Sub-District	(a) Open Space required per dwelling unit, (including common open space and developed recreation space	(b) Developed recreational open space per dwelling unit
PDH-1.6	16,740 sq. ft.	760 sq. ft.
PDH-2	13,720 sq. ft.	760 sq. ft.
PDH-2.5	11,240 sq. ft.	760 sq. ft.
PDH-3	9,440 sq. ft.	760 sq. ft.
PDH-3.5	8,150 sq. ft.	770 sq. ft.
PDH-5	5,705 sq. ft.	780 sq. ft.
PDH-10	2,830 sq. ft.	800 sq. ft.
PDH-15	1,830 sq. ft.	805 sq. ft.
PDH-20	1,330 sq. ft.	810 sq. ft.
PDH-30	840 sq. ft.	560 sq. ft.
PDH-40	605 sq. ft.	450 sq. ft.
PDH-50	462 sq. ft.	390 sq. ft.
PDH-60	363 sq. ft.	335 sq. ft.

Plus adequate space for drainage as determined in accordance with the provisions of Section 30-3.6 herein.

Where strict application of the above open space and developed recreational open space requirements may occasionally produce inefficient utilization of space or where a hardship is imposed by such requirements as a result of unusual features of the tract or where unused areas are required for public uses, e.g.

30-2.2.2 (Cont'd) schools, highway and transit facilities, parks, streams, valleys, etc. The Board of Supervisors may reduce these requirements in accordance with the general standards contained in 30-15.4.

Sec. 30-15. Planned developments.

The following standards and procedures shall apply to any application for rezoning to any PDH or PDC district.

30-15.1. *Contents of development plan.*

An application for rezoning to a PDH or PDC district shall be accompanied by fifteen copies of a development plan. Both the development plan and the completed application for rezoning shall be submitted to the director of county development or his agent.

The development plan shall contain the following data, together with supplementary data for a particular development, as reasonably deemed necessary by the director of county development or his agent.

(1) Development Site Information:

(a) Vicinity map at a scale of not less than one inch = 2000′.

(b) Boundary survey including area of the tract related to true meridian or USC-&GS State grid north.

(c) Title Insurance policy or attorney's certificate showing the owner or owners of the subject property, marketable title to the subject property in such owner or owners, the source of applicant's title or interest in the subject property, and the place of record of the latest instrument in the chain of title for each parcel constituting the tract.

(d) Total area of the tract.

(e) Abutting street names, width and route numbers.

(f) Owners, zoning districts and uses, of each adjoining tract.

(g) Topographic map with minimum contour intervals of two feet and a scale of one inch for each fifty feet (horizontal).

(2) Development Design Information:

(a) Land use plan or plans showing—the location and arrangement of all proposed land uses, including the height and number of floors of all buildings (other than one-family and two-family dwellings) both above and below finished grade; the building setbacks from the development boundaries and adjacent streets, roads, alleys and ways; the proposed traffic circulation pattern including the location and width of all streets, driveways, walkways and entrances to parking areas; all proposed off-street parking and loading areas; all proposed open space areas including common open space, dedicated open space and developed recreational open space.

(b) A plan or statement showing the location and design of all screening, and indicating the type and height of such screening.

(c) A plan or statement detailing the

exact manner of improving developed recreational open space, and all covenants, restrictions and conditions pertaining to the use, maintenance and operation of common open spaces.

(d) For a PDH district, a statement in tabular form of the anticipated residential density and the total number of dwelling units, the percentage of the tract which is to be occupied by structures, and the total floor area (commercial) of all commercial uses.

(e) For a PDH district, a statement in tabular form of the extent to which the applicant intends to employ the density bonus provisions (as set forth in column 3 of the PDH regulations, section 30-2.2.2) and the specific development provisions giving rise to such density bonus provisions.

(f) For a PDC district, a statement in tabular form of the anticipated gross floor area and floor area (commercial) of all primary uses and all secondary uses; the floor area ratio; the total number, net liveable floor area and gross floor area of all dwelling units; and the maximum percentage of lot coverage.

(g) For a PDC district, a statement in tabular form of the extent to which the applicant intends to employ the floor area bonus provisions (as set forth in column 5 of the PDC regulations, section 30-2.2.2) and the specific development provisions giving use to such floor area bonus provisions.

(h) Architectural sketches of typical proposed structures, including lighting fixtures and signs, and landscaping.

(i) When the development is to be constructed in stages or units, a sequence of development schedule showing the order of

construction of each principal functional element of such stages or units, the approximate completion date for each stage or unit, and a cost estimate for all improvements within each stage or unit.

(j) A plan or report indicating the extent, timing and estimated cost of all off-site improvements, such as roads, sewer and drainage facilities, necessary to construct the proposed development, which plan or report shall relate to the sequence of development schedule if the development is to be constructed in stages or units.

(k) A statement showing the relationship of the planned development to the comprehensive plan of the county.

(l) For a PDH district, the proposal for providing the required low and moderate income dwelling units, including the estimated timing of the construction of such dwelling units.

30-15.2. *Review and approval of development plan.*

Upon determination by the director of county development or his agent that the content of the development plan is complete in accordance with the above requirements, plan and the application shall be submitted for comment and review to appropriate county divisions, agencies and departments. Upon completion of such administrative review, the plan and application shall be submitted to the planning commission.

The planning commission shall promptly consider the development plan and the rezoning application in accordance with the standards hereinafter set forth and in accordance with the procedures contained in section 15.1-493 of the Code of Virginia Annotated.

Within ninety days of receipt of the development plan and application for rezoning, the planning commission will transmit said plan and application to the board of supervisors to-

gether with its recommendations as to approval or disapproval of said plan.

The board of supervisors shall consider the development plan and application for rezoning in accordance with the standards hereinafter set forth and in accordance with the procedures contained in section 15.1-493 of the Code of Virginia.

The board of supervisors shall approve, approve with modifications or disapprove the development plan and application for rezoning within thirty days after a public hearing thereon, upon determination that said plan complies with the standards hereinafter set forth and the applicable district regulations. In approving a plan, the board may establish such conditions and may require such modifications as shall assure compliance with said standards and regulations, and the board may further waive or modify subdivision requirements otherwise applicable to the development when such waiver or modification is not in conflict with said standards and regulations. In approving a plan, the board may authorize a variance in the strict application of specific district regulations including but not limited to maximum height of buildings, minimum setback requirements, minimum off-street parking and loading requirements, and maximum floor area for commercial uses in a PDH district and for secondary uses in a PDC district, whenever (a) such strict application would result in practical difficulty of unnecessary hardship that would deprive the owner of the reasonable use of the particular land or building involved, (b) such strict application would inhibit or frustrate the intent and purposes for establishing such a district, and (c) such variation would promote and comply with the standards hereinafter set forth. In no case shall the maximum density provisions and the low and moderate income dwelling unit provisions under the PDH regulations and

the maximum floor area ratio provisions under the PDC regulations be varied or modified.

In the event that a development plan shall be disapproved by the board of supervisors, the application for rezoning shall be deemed to be denied. In the event that a development plan shall be approved with modifications by the board of supervisors, the board may continue the public hearing on the rezoning application to a date certain in order to permit the applicant to modify the development plan in accordance with such modifications.

30-15.3. *Procedure for site plans.*

Approval of the development plan and the application for rezoning shall constitute authority for the applicant to prepare site plans in accordance with the standards and procedures contained in article XI of this chapter, and in conformity with the approved development plan. Approval of said site plans, the issuance of building permits and the issuance of occupancy certificates shall be in accordance with said article XI, except as follows:

1. Separate site plans shall be submitted for each development stage or unit as set forth in the approved development plan.

2. A site plan for a particular development stage or unit, other than the first, shall not be approved until construction has been initiated on the immediately preceding stage or unit.

3. Minor deviations from the development plan shall be permitted in the site plan when the director of county development determines that such are necessary due to requirements of topography, drainage, structural safety or vehicular circulation, and such deviations will not materially alter the character of the approved development plan including the proposed development sequence. In no case shall such deviations include the addition or elimination of any building shown on the approved development plan, increase the

density of a PDH planned development or increase the floor area of a PDC planned development. Any changes not authorized by this paragraph shall require resubmission of the development plan in accordance with the procedures contained in this article.

4. The first site plan shall be submitted within one year from the date of approval of the development plan. If a site plan is not submitted within said period, approval of the development plan, and consequent authority to submit a site plan, shall terminate, and development by the applicant in accordance with the PDH and PDC regulations shall require resubmission of a development plan in accordance with the procedures set forth in section 30-15.2. Within thirty days prior to the expiration of said one-year period, the applicant may apply to the board of supervisors for an extension of time within which to submit a site plan in conformity with the approved development plan. The board of supervisors may grant such extension, upon good cause shown by the applicant, but such extension shall not under any circumstances exceed an additional one-year period, and no more than two such extensions may be granted. If such application is denied, approval of the development plan, and consequent authority to submit a site plan, shall terminate at the end of said one-year period. Upon termination of authority to develop as herein provided, the board of supervisors may initiate a reclassification of the subject property to an appropriate zoning district other than PDH or PDC.

5. Prior to the erection of any commercial signs within a planned development, a separate site plan for such signs shall be submitted for review and approval by the director of county development or his agent. Ap-

proval of such plan, and consequent authority to erect the sign covered by such plan, shall be granted only if the proposed signs conform to the specific standards and requirements set forth in the applicable district regulations, are consistent with the approved development plan, and promote and conform to the standards set forth in section 30-15.4.

6. Once the development plan and application for rezoning for a PDH district have been approved by the county board, the applicant shall make arrangements for the proposed low and moderate income dwelling unit subsidies as quickly as possible.

If the applicant's development plan provides for only one phase, the applicant's obligation to provide the proposed moderate income dwelling units (and low income units not to be developed in conjunction with the authority) shall be deemed terminated with respect to some or all of the units, as specified, as of the date (1) a responsible official from the FHA (or other source of subsidy funds) confirms in writing either that the application does not propose a feasible project for reasons other than costs, or that irrespective of feasibility the project cannot receive a firm commitment of insurance or funds for at least one year from the date of application, or (2) a period of one hundred eighty days has expired from the date on which the development plan has been approved, or the date on which the applicant (or his proposed mortgagee or other agent) made application for the proposed insurance and subsidy funds, whichever is later, and the FHA (or other source) has not made a firm commitment of insurance or funds; provided, however, that if during the said one hundred eighty day period the applicant receives a feasibility letter or conditional commitment of insurance or funds from the FHA (or other

source), the said period for obtaining a firm commitment shall not expire until the one hundred eightieth day after the last day of the first said one hundred eighty day period. If the applicant's development plan provides for more than one phase, the applicant's said obligation shall be deemed terminated with respect to some or all of the units, as specified, as of the date (1) such responsible official confirms in writing either that the application does not propose a feasible project for reasons other than costs, or that irrespective of feasibility the project cannot be insured or otherwise subsidized by the date that one-half the period of time proposed in the development plan for completion of all sequences of development has expired, or (2) one-half the period of time proposed in the development plan for completion of all sequences of development has expired from the date on which the development plan has been approved, or the date on which the applicant (or his proposed mortgagee or other agent) made application for the proposed insurance and subsidy funds, whichever is later, and the FHA (or other source) has not made a firm commitment of insurance or funds; provided, however, that the said period for obtaining a firm commitment shall in no event be less than one year.

If the applicant's development plan provides for only one phase, the applicant's obligation to provide the proposed low income dwelling units in conjunction with the authority shall be deemed terminated with respect to some or all of the units, as specified, as of the date (1) a responsible official from the authority confirms in writing either that the project is no longer feasible for reasons other than costs, or that the United States Department of Housing and Urban Development (or other source of subsidy funds) has specifi-

cally denied approval of the proposed units or that the authority will not have funds to acquire or lease the units by the time construction of the proposed units is completed, or (2) a period of one hundred eighty days has expired from the date on which the development plan has been approved, and the United States Department of Housing and Urban Development (or other source) has neither approved nor rejected the project at a feasibility conference (for a Turnkey project), or has not made an allocation of sufficient funds for the authority to acquire or lease the units by the time construction of the proposed units is completed (under public housing leasing or acquisition programs); provided, however, that if during the said one hundred eighty day period the said department (or other source) holds a feasibility conference for a Turnkey project and does not reject the project, the applicant's obligation to provide the proposed low income dwelling units under a Turnkey project shall continue through the one hundred eightieth day after the day of the feasibility conference, but shall thereupon expire if the authority and the said department have not issued a letter of intent to the applicant to finance development of the project. If the applicant's development plan provides for more than one phase, the applicant's said obligation shall be deemed terminated with respect to some or all of the units, as specified, as of the date (1) such responsible official confirms in writing either that the project is no longer feasible for reasons other than costs, or that the United States Department of Housing and Urban Development (or other source of subsidy funds) has specifically denied approval of the proposed units or that the authority will not have funds to acquire or lease the units by the time construction of the proposed units is completed, or (2) one-

half the period of time proposed in the development plan for completion of all sequences of development has expired from the date on which the development plan has been approved, and the United States Department of Housing and Urban Development (or other source) has not issued a letter of intent to the applicant to finance the project (for a Turnkey project), or has not made an allocation of sufficient funds for the authority to acquire or lease the units by the time construction of the proposed units is completed (under public housing leasing or acquisition programs); provided, however, that the said period for obtaining a letter of intent shall in no event be less than one year.

If at any time during the period when the applicant is obligated to provide low and moderate income dwelling units the county executive or his designee determines that the applicant and/or its agents for the development of low or moderate income dwelling units are not making persistent efforts in good faith to obtain the proposed subsidies and provide such dwelling units, the county executive or his designee is authorized to order the appropriate county departments to withhold building permits and other necessary clearances for any or all structures in the development until such time as the applicant and its agents demonstrate such persistent good faith efforts. These efforts shall be judged with reference to the normal processing time and procedures required to obtain the various subsidies applied for, and to any representations by the applicant at the time the plan and application were approved with respect to the obtaining of subsidies, with due allowance being made for unforeseeable circumstances that occur after the county board has approved the plan and application. The applicant shall be entitled to appeal the decision of the county executive or his designee within ten days of such

decision to, and have a determination made by, the planning commission. The applicant may, within ten days of the decision by the planning commission, appeal to and have a determination made by the county board.

30-15.4. *Standards for planned developments.*

All planned developments shall conform to the following standards:

1. Available land shall be efficiently utilized.

2. Structures and open space shall be arranged in such a way as best to serve the needs of residents and commercial users of the planned development, and to minimize any adverse effects on neighboring properties.

3. Scenic assets and natural features, such as trees, streams and topographic features, shall be protected and preserved to the extent possible.

4. Harmonious design, incorporating a variety of building types and variations in building styles, shall be encouraged.

5. The public health, safety and general welfare and the purpose and intent of this chapter and the comprehensive plan shall be maintained and preserved.

In order to accomplish the foregoing standards, all development plans shall conform to the following:

Comprehensive Plan.

The development shall substantially conform to the applicable provision of the adopted comprehensive plan of the county with respect to type, character and intensity of use and public facilities. Residential planned developments shall not exceed the density permitted by the comprehensive plan, except as expressly permitted under the density bonus provisions of column 3 of the PDH regulations (section 30-2.2.2). No residential planned development shall be permitted where the comprehensive plan recommends a density less than 1.6 dwelling units per acre.

Impact on Surrounding Development.

The uses proposed by the development plan shall be designed

to prevent substantial injury to the use and value of existing surrounding development, and shall not hinder, deter or impede development of surrounding undeveloped properties in accordance with the comprehensive plan.

Screening.

Fences, walls or vegetative screening shall be provided at the perimeter of planned developments where necessary to screen improvements, glare, uses or other influences having an adverse impact either on the planned development or on adjacent property. Such screening shall be of sufficient height to eliminate the impact of such adverse elements on the first floor of any use located either within or adjacent to the planned development.

Vehicular and Pedestrian Movement.

Principal vehicular access to a planned development shall be from streets and roads capable of supporting existing traffic and the traffic that will be generated by the planned development. Access points shall be designed to provide smooth traffic flow, controlled turning movements, and minimum hazard to vehicular or pedestrian traffic. Merging and turnout lanes and traffic dividers shall be provided where existing or anticipated heavy flows of traffic indicate such need. No streets or roads within a planned development shall connect to exterior streets in such a way as to encourage use of minor streets for through streets.

Pedestrian access shall be arranged so as to provide safe and convenient routes to and from a planned development. Pedestrian access routes within a planned development need not be adjacent to, or in the vicinity of, vehicular access routes. Pedestrian crossings at the perimeter of a development shall be marked and controlled, and where pedestrians are exposed to substantial vehicular traffic, fencing or other similar barriers shall be erected to prevent crossing at other than designated points.

Bicycle and bridle paths shall be coordinated with the pedestrian system, and street crossings shall be combined.

Traffic visibility, both automotive and pedestrian, shall be preserved as follows: no impediment to visibility between two and one-half and seven feet above center line grades shall exist at the intersection of any street or road within a planned development or at its perimeter within a triangle beginning at

the intersection of right-of-way edges (projected if round corners exist), thence fifty feet along said edges, thence along the line connecting those two points.

Where pedestrian access of any kind exists from within a planned development to a perimeter street or road, without a barrier to prevent indiscriminate entrance into such street or road, no substantial impediment to visibility shall be permitted between two and one-half and seven feet above the center line of the street or road or above the ground level of the access area.

Within a planned development, streets, roads, driveways, and parking, loading and service areas shall be designed so as to provide safe and convenient vehicular access to all uses and facilities. Pedestrian ways to be used by substantial numbers of children shall be located and controlled to minimize contact with vehicular traffic. Pedestrian passages over and under vehicular routes shall be used wherever possible.

Developed recreation space and other open space intended for pedestrian use and pedestrian-oriented structures, such as schools and churches, shall be accsessible from related structures, such as dwellings and office buildings, with a minimum of street crossings. Where possible, such uses shall be interconnected by a common pedestrian system.

Public Facilities.

The planned development shall be located in an area for which police and fire protection and public facilities are available and adequate for the uses proposed; provided, however, that the applicant may provide such facilities which are not presently available, and written assurance of such provision shall be included as a part of the development plan.

Within a planned development, there shall be adequate space to permit accessability to all structures by firefighting and similar emergency equipment.

Common Open Space—Management and Care.

The applicant or developer shall provide for and establish an organization or other legal entity for the ownership and maintenance of any common open space designated on the development plan. Such organization shall be created by covenants running with the land, and such covenants shall be included as a part of development plans and subject to approval by the county attorney and board of supervisors. Such organization shall not be dissolved nor shall it dispose of any common

open space, by sale or otherwise (except to an organization conceived and organized to own and maintain the common open space), without first offering to dedicate the same to the county.

If the board of supervisors shall determine that the public interest requires assurance as to adequate maintenance of common open space areas, the board may require that the covenants creating such organization shall provide that in the event the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the development fail to maintain the common open space in a reasonable order and condition in accordance with the development plan, the county may serve notice in writing upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within thirty days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty days of the notice. At such hearing the county may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said thirty days or any extension thereof, the county, in order to preserve the taxable values of the properties within the development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for one year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said one-year period, the county shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice in writing to such organization or to the residents of such development, to be held by the board of supervisors, at which hearing the organization shall show cause why such maintenance by the county shall not, at the election of the board, continue for a succeeding one-year period. If the board shall determine that such organization is ready and

able to maintain the common open space in reasonable condition, the county shall cease to maintain the common open space at the end of said one-year period. If the board shall determine that such organization is not ready and able to maintain the common open space in a reasonable condition, the county may, in its discretion, continue to maintain the common open space during the next succeeding year, and subject to a similar hearing and determination in each year thereafter.

The covenants creating such organization shall further provide that the cost of such maintenance by the county shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space, and shall become a charge on said properties, and such charge shall be paid by the owners of said properties within thirty days after receipt of a statement therefor.

Unit Development.

When a planned development is to be constructed in stages or units, and includes common open space or dedicated open space, the total area of common or dedicated open space provided at any stage of development shall bear substantially the same relationship to the total open space to be provided in the entire planned development as the stages or units completed or under development bear to the entire planned development.

Low and Moderate Income Dwelling Units (PDH).

All standards and procedures of this article shall apply to the siting, design and construction of low and moderate income dwelling units in PDH planned developments. The exterior of low and moderate income dwelling units should be designed to harmonize with other residential structures in the development.

In devising the PDH development plan the applicant shall make an effort to avoid concentration of low and/or moderate income dwelling units in one part of the proposed district. As one factor in deciding whether to approve a proposed development plan, the county board shall take into consideration whether the plan effectively avoids such concentration.

30-15.5. *Severability.*

If any of the provisions with respect to requiring low and moderate income dwelling units

(other than those in subsection 30-2.2.2 under column 1) are held by a court of competent jurisdiction to be contrary to law, the provisions in subsection 30-2.2.2 under column 1 with respect to such requirement shall remain valid and not be affected thereby.

If any of the provisions for low and moderate income dwelling units in subsection 30-2.2.2 other than those entitled "required use" and "procedure for meeting the requirement" are held by a court of competent jurisdiction to be contrary to law, the said provisions specifying the required use and procedure shall remain valid and not be affected thereby.

If any of the provisions with respect to requiring low and moderate income dwelling units are held by a court of competent jurisdiction to be contrary to law for one zoning district, the said provisions for other zoning districts shall remain valid and not be affected thereby. (8-6-69; 7-7-71.)