



CITY OF SALEM LEGAL DEPARTMENT


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To: Salem Planning Board

From: Robin Stein 

Re: Planned Unit Developments in the Business Park Development Zone

Date: July 5, 2012

You have asked for guidance in analyzing an application for a Planned Unit Development ("PUD") in the Business Park Development Zone ("BPD").

The Planning Board must review all projects in a uniform and consistent manner as set forth in the City of Salem Zoning Ordinance ("Ordinance"). The Planning Board may, but is not required to, approve a PUD when the requirements of §7.3 of the Ordinance are met. Pursuant to §7.3.8 of the Ordinance, the Planning Board **may** grant a special permit where the following findings are made:

1. The proposed planned unit development is in harmony with the purposes and intent of this Ordinance and the master plan of the City of Salem and that it will promote the purpose of this section.
2. The mixture of uses in the planned unit development is determined to be sufficiently advantageous to tender it appropriate to depart from the normal requirements of the district.
3. The planned unit development would not result in a net negative environmental impact.

The purpose a PUD is set forth as follows:

Planned unit development is designed to provide various types of land use which can be combined in compatible relationship with

each other as part of a totally planned development. It is the intent of this Section to ensure compliance with the master plan and good zoning practices, while allowing certain desirable departures from the strict provisions of specific zone classifications. The advantages which are intended to result from the application for planned unit development are to be ensured by the adoption of a precise development plan with a specific time limit for commencement of construction. §7.3.1

Identified within the Master Plan are many goals for the City including the "development of the commercial and industrial properties which have become contaminated from prior activities." While the Master Plan identifies attracting new business and redeveloping vacant sites as a priority, I do not interpret the Ordinance such that the goals of the Master Plan are to be an absolute bar to projects that depart from those goals so long as the Planning Board, in applying §7.3.8.2 determines that such departure is appropriate. It is illogical to conclude that the Master Plan prevents a PUD in the BPD from having a residential component when the Ordinance explicitly allows such residential use. In reviewing such a project the Planning Board may consider factors including, but not limited to, the history of the property, the likelihood that the property might ever be redeveloped with a commercial use or if including a residential component appears necessary to achieve the overall goal of improving and developing contaminated properties.

"In the BPD district residential uses and associated improvements, such as parking and landscaping, cannot exceed 50% of the land area of the parcel(s); or in the case of mixed use buildings, residential uses cannot exceed 50% of the gross square footage of the proposed development." Ordinance-§7.3.3.3.

As part of a review pursuant to §7.3.3.3 of a project that does not involve mixed-use buildings, the Planning Board must consider each and every part of a site and determine if the land is in residential use or used as an improvement associated therewith. All land that is exclusively used or improved for residential purposes is in residential use. The Planning Board should consider what land is being used to support the residential use or is required to be left unimproved because of the residential use. For example, if land is required between residential buildings or used to access residential buildings it is appropriate to treat the land as in residential use. The Planning Board should also review the land denominated as usable open space pursuant to §7.3.5 and determine if it is appropriate for that land to be so categorized. It is consistent with the Ordinance not to treat such usable open space as being in residential use because the land will be available for use by the public.

For further guidance on §7.3.3.3 and other matters addressed herein, please see the memorandum of Attorney Mark Bobrowski attached hereto. Attorney Bobrowski is a well respected land use attorney and while he did not draft §7.3.3.3, he was involved in drafting the Ordinance and is familiar therewith.