

September 5, 2005

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Zoning Commission
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Re Zoning Commission Case 04-33 (Text Amendments to Require the Provision of Affordable Housing)

While many people believe that there is a need for more affordable housing, there are many serious problems with the two proposals currently being considered by the Zoning Commission, problems that cannot be solved by tinkering with either or both proposals. Both proposals will also have significant, and unintended, negative consequences that had not been considered by the Office of Planning or DCIZ.

- **The proposals before the Commission were not designed to, and will not, achieve the goals expressed by many of the individuals and groups that have expressed support.** First, while many supporters of these proposals believe that these proposals, if approved, will house thousands of the District's poorest, it is clear that that is not the target population for either proposal, and, in fact, with the OP proposal, the target population for inclusionary units in condominium projects is well above the median income of the District.

OP's recommendation for mandatory inclusionary zoning in condominium developments is that all of the affordable units would be marketed to households with incomes equal to approximately 80% of the regional median income. For a family of three, this would be \$64,300, and for a family of four, this would be \$71,400, well above the District's median income of \$55,750. In other words, well over half the households in the District have incomes below those of the households that will receive the opportunity to purchase this subsidized housing

- **The proposals ignore the very basis for current zoning limits.** Second, and most importantly, both proposals are based on the erroneous assumption that current zoning regulations and zoning maps are not designed with consideration of the character of the respective districts, the suitability of each district for the uses permitted in each district, and encouragement of the stability of districts and of land values in those districts, as required by the zoning regulations

Instead, the proponents make the clearly false assumption that large increases in density can be allowed and encouraged in many areas across the District, and that those increases will not have a negative impact on the character or stability of those districts or the surrounding areas.

- **OP states that the 20% bonus densities do not seem to be inconsistent with the Comprehensive Plan near Metro stations, but ignores the fact that zoning near some of those stations is already relatively intense and takes into account the existence of the**

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Metro stations. Both OP and DCIZ have both recommended that inclusionary zoning, with bonus densities, be applied near transit, and, in particular, near Metro stations. Neither proposal takes into consideration the fact that, for some Metro stations, the surrounding blocks already have relative intensive zoning, and that the development even to the current density limits would have a large negative impact on near-by low-density residential neighborhoods.

In addition, for some Metro stations and “corridors,” it is already clear that the infrastructure cannot support the development currently allowed. A 20% increase in the allowed density will impact school crowding, traffic congestion and demand for on-street parking. In addition, no analysis has been done to determine whether the water and sewer infrastructure can support the population increases in those parts of the District that have not seen a reduction in the number of households. Yet, when asked to include an inclusionary zoning scenario in the infrastructure analysis for traffic on Upper Wisconsin Avenue, where OP has specifically recommended that inclusionary zoning be applied, OP refused to consider including a scenario that examined inclusionary zoning bonus densities.

- **The proposals would create a perverse dynamic, accelerating the already rapid pace of development of luxury condominiums, discouraging development of affordable market-rate housing, and discouraging substantial rehabilitation of existing structures.** Either proposal, if adopted, would create a perverse dynamic, where more valuable bonus densities will be awarded to developers of luxury condominiums in neighborhoods where development is already quite profitable, while granting far less valuable bonus densities for rental buildings, and condominiums in neighborhoods where market-rate units would be affordable to the households targeted in these proposals.

Since the Office of Planning has done all its analysis based on average costs and market-rate prices, rather than examining different costs and prices, OP has failed to consider the important dynamic that will be put in place by their proposal as well as the DCIZ proposal. Both proposals provide significantly larger bonuses for building luxury condominiums than for other projects, and therefore will divert development from neighborhoods that can benefit from development and accelerate development of luxury condominiums in other neighborhoods, some of which do not have the infrastructure to support that development and some of which are close to areas that will clearly be negatively impacted by these generous increases in density.

Example: With the OP proposal, a 600 square foot affordable apartment would sell for \$205,600, or approximately \$342 a square foot. OP estimates the average cost of building the unit at \$120-130 a square foot, and since the unit can have less expensive finishes, it might have below-average costs. Since a bonus density is being provided, there is no additional land cost associated with this unit and for the 600 SF, the developer will make a profit of over \$127,000. Yet, in order to make the developer whole, for providing this “affordable” unit, on which he makes a substantial profit, the Office of Planning proposes to allow an additional bonus density to allow an additional 600-900 square feet of market-rate housing. At current prices, luxury condominiums in some areas for which OP is proposing applying this rule, the additional market-rate housing can be sold for \$585,000-765,000 for each 600 SF one-bedroom affordable condominium provided. While the cost per square foot of the luxury condominiums might be greater than the average construction costs, it is clear that the bonus density allows the developer to make a profit on the affordable unit and a

substantial profit on the market-rate luxury unit, which can also be built within the bonus density. There is no land required for these units, since absent the bonus associated with the mandatory inclusionary zoning proposals, these units would exceed zoning limits. Further, contrary to the assumptions made by the Office of Planning, the additional cost associated with these units should be evaluated at the marginal cost of construction, i.e., at a rate per square foot which is below the average cost of construction, rather than at the average cost per square foot. The marginal cost per square foot is below the average cost per square foot, since the average cost per square foot includes many fixed costs, and, thus, does not accurately reflect the cost of a 20% increase in the size of a building under construction..

However, for non-luxury condominiums or for condominiums in neighborhoods that command a lower price per square foot, the bonus is much less valuable. The proposals, if adopted, will provide a higher incentive to develop luxury condominiums in the neighborhoods that command the highest prices per square foot. For rental buildings, the bonus is substantially less valuable. Thus the proposals, if implemented, would shift development from rental buildings to condominiums. For rehabilitation, it might be difficult for the developer to realize the bonus density. Therefore, if the market-rate prices or rents for units in the rehabilitated buildings are greater than the prices or rents for the affordable units, developers might be deterred from some of those projects.

- **By basing the affordable housing requirement on number of units, rather than on square footage, the DCIZ proposal magnifies this perverse incentive, encouraging accelerated development of luxury condominiums, with a high square footage per unit, in high price areas and discouraging smaller condominium units [with the same number of bedrooms], discouraging development in lower price neighborhoods and discouraging rehabilitation of existing buildings.**

With the DCIZ proposal, the number of affordable units provided is based on the number of units in the building. The minimum unit size for the affordable units is provided in a table in the DCIZ proposal. For luxury condominiums, the unit size for the affordable units is significantly less than the unit size for a market-rate unit with the same number of bedrooms. Thus, for example, consider a luxury condominium building, where current zoning would allow 100 luxury market-rate one-bedroom condominiums, averaging about 1,000 SF each. With the DCIZ proposal, 12% of the units would be set aside as affordable units, and the developer will receive a 20% bonus increase in density. In this example, 40% of the bonus density would be allocated toward the affordable units, half of which are sold for approximately \$205,000, and half of which are sold for approximately \$110,000, with development costs below \$78,000 each. The remaining 60% of the bonus density is allocated toward the market rate units, which would sell for \$700-\$800 a square foot, producing fewer affordable units and yielding a higher profit for the developer than the OP proposal. This exacerbates the perverse incentive encouraging accelerated development of luxury condominiums in the highest price neighborhoods at the expense of development of condominiums and rental apartments in other parts of the District, including those developments where market-rate units are "affordable" to the target households.

In this example, with the DCIZ proposal, 40% of the bonus density will be allocated for affordable units, and for each affordable one-bedroom unit provided, the developer will make a profit of over \$600,000 in high price neighborhoods, over \$400,000 in average price neighborhoods, and \$350,000 in low price neighborhoods.

For the same example with the OP proposal, half the bonus density will be allocated for affordable units, and for each affordable one-bedroom unit provided, the developer will make a profit of approximately \$490,000 in high price neighborhoods, \$350,000 in average price neighborhoods, and \$300,000 in low price neighborhoods

- **Enforcement of conditions to maintain the affordability status of affordable units is difficult, and even if the conditions are enforced, the affordable condominiums created in these programs will not remain part of our affordable housing supply even for the short control period provided in the proposals.** I am attaching an excerpt from a filing in ZC Case 02-17, which described some of the problems associated with selling condominiums far below market prices as a way of providing affordable housing. The filing understates the issue, since the comparable market rate units have been sold for over \$650,000, rather than the \$370,000 assumed in the filing.

In that filing, examples are given of households that would qualify for the affordable unit, but whose income following purchase is substantially higher. Examples include a law school student, who will start a new job as an associate the following year, with an annual salary of \$120,000 a year; a high-income individual, who had taken 6 months as leave-without-pay, but will be returning to his or her regular job at the end of that period; and a household with an income that varies from year-to-year, but applies for the affordable unit in a year in which the household income was relatively low

In that filing, it is also shown that there are three major areas where enforcement is necessary and is infeasible: (a) the conduct of the initial lottery, (b) the conduct of the marketing of each unit on resale, and (c) a determination that the resale of each unit is at no more than the maximum allowable price and that there are no side-arrangements that allow the seller to obtain a higher value than the contract price. For each of these areas, specific examples are given showing ways in which the goals of the program can be subverted, and how there is no feasible enforcement mechanism to deter those strategies

- **The target households that will benefit most from the OP program can afford existing housing in any of the District's eight wards.** As noted above, for condominium developments, which are most profitable in current market conditions and encouraged by the fact that the value of the bonus density is highest for condominiums, OP is recommending that 100% of the affordable units be sold to households whose income is up to 80% of the median income for the Metropolitan area. For a family of three, at 30% of their income, the household can afford to pay \$1,607 a month. For a family of four, it would be \$1,780 a month

A recent check of the listings at Washingtonpost.com for neighborhoods in Ward 3 showed a large number of units, including some accessory apartments, near the lower of these two costs. One building in Ward 3 listed 10 one-bedroom units available, half renting for \$1250 a month and the other half renting for \$1350 a month, as well as a large number of studios renting for \$980-\$1070. Other buildings list apartments in those price ranges but didn't provide unit availability information

According to a recent Fannie Mae Foundation report, the median advertised rents in the District were \$900 for a studio, \$1,150 for a one-bedroom, and \$1,750 for a two-bedroom unit, with half of the advertised apartments renting for less than these amounts. According to that report. "The median rent for a one-bedroom unit in Northwest Washington was \$1,208,

compared with \$773 in Northeast, \$588 in Southeast, and \$1,100 in Southwest. For Northwest neighborhoods with more than five ads, the highest median one-bedroom rents were in Kalorama at \$1,600, followed by Cleveland Park at \$1,500 and Dupont Circle at \$1,475. The lowest rents for a one-bedroom unit were in ads that described their neighborhood only as "Southeast," with a median rent of \$572."

- **The District has available and has used a number of more effective programs for providing affordable housing, and for facilitating home-ownership.** Ellen McCarthy has described a number of effective programs that the District has used to provide affordable housing, to assist in the rehabilitation of existing buildings, and to facilitate home ownership. Existing programs encouraging home ownership include the DC Employer Assisted Housing Program, which provides grants and deferred loans for employees of the District of Columbia government who are first time homebuyers, and the DC Metropolitan Police Housing Assistance Program, which provides assistance for down payments and closing costs, as well as income tax credits and real property tax abatements, for members of the Metropolitan Police Department. There are also programs which provide financing for low-moderate income individuals and tenant groups exercising their rights under the Right of First Refusal law, programs which provide assistance to community development corporations and other non-profits that develop affordable housing, programs to aid in the purchase of tax-delinquent properties and DHCD foreclosures, and programs for rehabilitation, repair and handicapped access improvements for owner-occupied housing. With the exception of the provision of affordable units as an amenity of planned unit developments, which shares many of the problems described above, the programs described by Ms. McCarthy represent a better approach for addressing affordable housing concerns.

Sincerely,



Marilyn J. Simon
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Attachment:

Excerpts from Friendship Heights Organization for Reasonable Development April 4, 2003 filing on Affordable Housing, Zoning Commission Case 02-17.

**THE REVISED STONEBRIDGE AFFORDABLE HOUSING PROGRAM IS STILL
A POSTER CHILD FOR HOW NOT TO PROVIDE AFFORDABLE HOUSING**

- FhORD noted that the basic approach taken in the affordable housing proposal was fatally flawed, that absent significant, costly, continuous and unacceptably intrusive regulation and enforcement by the District, such a program would not succeed in providing affordable housing opportunities to a reasonable number of households in the target population. Enforcement of the conditions of the Stonebridge Affordable Housing Proposal is not feasible. This would be true for any proposal that involves selling units for significantly less than their market value. Stonebridge and the Office of Planning have not, in their March 21 submissions addressed these problems. The inadequacies of the Stonebridge and Office of Planning responses is discussed in more detail below.
 - Stonebridge proposes to sell to four to six lottery-winners, with incomes less than approximately \$54,400, four to six new, luxury 925-square foot condominiums for \$166,393. According to the information submitted by the Applicants, each unit at this location, if sold as a market rate unit, would yield \$400 a square foot. According to the Applicants, the price of a similar unit, sold as a market-rate unit would be \$370,000.
- The Stonebridge affordable housing proposal provides an opportunity to four to six lottery-winners to buy, for \$166,393, four to six new luxury condominiums valued at \$370,000. Each of the eligible lottery-winners has sufficient income to purchase existing condominiums in Ward 3 and each of the lottery-winners has sufficient income to rent any of more than 68% of the rental units in Census Tract 11, the Census Tract in which the Washington Clinic is located
- The Stonebridge Affordable Housing Program does not add to the economic diversity of the neighborhood.
 - According to Census 2000, 23.26% of households in Census Tract 11 have incomes of less than \$50,000 and 28.70% of households in Census Tract 11 have incomes of less than \$60,000.
 - According to Census 2000, 15.12% of the owner-occupied housing units in Census Tract 11 had a value under \$175,000. According to Census 2000, 68.14% of the rental units in Census Tract 11 have a contract rent of \$1,249 or less, which would be affordable [less than 30% of income] to households with an income of \$54,400
- The Stonebridge Affordable Housing Program does nothing to advance the availability of affordable housing for households that would not otherwise have the opportunity to live in the District or even in Ward 3. On the other hand, the \$1,200,000 value that would be awarded to the four to six lottery winners under the Stonebridge Affordable Housing Program could go a long way toward providing for real affordable housing opportunities.
 - On December 20, 2002, Mayor Williams announced District plans to award \$25 million in local and federal funds for 17 projects that will provide more than 1,850 low-priced housing units as well as a variety of community-based facilities. [“Affordable Housing Plans Chosen; \$25 Million Committed to Finance Proposal for 1,850 Units in District, Washington Post, December 21, 2002, page B03]

- Without even reducing the amount to account for the community-based facilities, that comes to an average cost of approximately \$13,500 per affordable housing unit
- This illustrative example shows that if a more appropriate affordable housing program were used, the District could get as many as 89 affordable housing units with a proportionate amount of community-based facilities, rather than the four to six units promised by Stonebridge for the same \$1,200,000 cost.
- In November 2002, 42 vacant properties, which were in the District's inventory, were awarded, through the Home Again Initiative, to six development teams. Those properties will be developed and become attractive low-income affordable housing, with prices ranging from \$90,000 to \$165,000. According to the Washington Post ["Home-Rehab Program Finally Gets Off Ground, But on a Modest Scale, Builders to Renew 42 Eyesore Properties," January 30, 2003, DC Extra], some of the Developers that were awarded those properties expect to close on the sale in late February or March and begin construction immediately thereafter. The Home Again Initiative seems to be an effective way to provide a significant amount of affordable housing.
- The Stonebridge Affordable Housing Program does not benefit the District and should not be considered as a significant justification for a project that requires an increase in height of over 38 feet and an increase in gross floor area of over 103,000 square feet

**THE TERMS OF THE AFFORDABLE HOUSING PROGRAM ARE NOT ENFORCEABLE
AND THE CHANGES PROPOSED BY THE OFFICE OF PLANNING AND STONEBRIDGE
DO NOT ADDRESS THOSE CONCERNS**

- In its Response to Applicants' Rebuttal, FhORD pointed out that the terms of the Affordable Housing Program are not enforceable, and that enforceability of those terms is actually infeasible. The Zoning Commission asked the Applicants and the Office of Planning to respond to that concern. FhORD also pointed out that even if those terms could be enforced as written, the Affordable Housing Program does not adequately target the benefit to the desired beneficiaries.
- In its March 20 submissions, it is clear that the Office of Planning does not grasp the issues raised by FhORD. The assertion that DHCD is willing to go beyond its usual enforcement procedures does not respond to the concern, when it is apparent that OP and DHCD do not understand the basic enforcement issues. Enforcement of this proposed program is not analogous to enforcement of HPAP requirements. Physical inspections and on-site monitoring addresses only the owner-occupancy requirement, and probably not very effectively. The owner-occupancy requirement is only one of areas in which intense and costly enforcement would be required to assure even a small degree of compliance.
- The Office of Planning's main point is that a compliance survey of the District's HPAP program found a non-compliance rate of less than 2%. One of FhORD's main points is that this program differs dramatically from HPAP, as well as the Homestead Exemption, each of which offer relatively modest benefits and thus have a relatively small incentive for non-compliance.

- HPAP offers low-interest loans to moderate and low-income first-time homebuyers to assist with the downpayment and closing costs. For moderate income homebuyers, the interest rate can be no less than 3%, and the loan amount cannot exceed \$10,000. The term of the HPAP loan is equal to the term of the primary mortgage, so assuming a market interest rate of 7%, a moderate income household will reduce their monthly payment on a \$10,000 loan from \$66 to \$42, saving \$24 a month.
- Compliance with HPAP would be based only on meeting the qualifications at the time of the loan. Continuing enforcement, such as a determination that the unit is owner occupied, is not necessary. Monitoring the resale of the unit to determine that the unit was made available to all eligible applicants, and that there was no bias in the purchaser's selection is not necessary. With HPAP, it is not necessary for DHCD to audit all the contracts associated with the resale of the unit and any other contractual relationship between the seller and buyer, to determine the maximum allowable price and whether the seller is netting more than the maximum allowable price. With HPAP, the benefit terminates with the beneficiary sells the unit.
- The Stonebridge Affordable Housing Program, on the other hand, is selling a unit with a market value of \$370,000 for \$166,393, creating an enormous incentive for non-compliance. This would be evident in the first lottery, through each beneficiary's occupancy, and at each resale of the units.
- DHCD offers physical inspections and on-site monitoring. This is not sufficient. While it appears as though DHCD is proposing physical inspections and on-site monitoring to enforce the owner-occupancy requirement, these methods are not likely to be effective and the owner-occupancy requirement is only one small aspect of the Stonebridge Affordable Housing Program. The ability to make these inspections does not guarantee that the owner-occupancy condition will actually be enforced.
- Owner-occupancy is only one of the conditions of the Stonebridge Affordable Housing Program that requires enforcement. The major other areas where enforcement is both necessary and infeasible are.
 - The conduct of the initial lottery.
 - The conduct of the marketing of each unit on resale
 - A determination that the resale of each unit is at no more than the maximum allowable price and that there are no side-arrangements that allow the seller to obtain a higher value than the contract price.

Each of these conditions are discussed in turn.

- **The conduct of the initial lottery**
 - IF THE INITIAL LOTTERY IS NOT WELL ADVERTISED, THE INITIAL ALLOCATION OF UNITS WILL BE TAINTED
 - If the initial lottery is not well advertised, the lottery entrants will be skewed towards households that had been advised of the opportunity by the Applicant and

other parties that had been following this proceeding Four to six of those households will win the lottery and be guaranteed a windfall gain.

- If the lottery is not well publicized, many of the intended target beneficiaries will not have the opportunity to enter the lottery
 - THE PROPOSED AFFORDABLE HOUSING AMENITY GUARANTEES A SUBSTANTIAL GAIN TO THE FOUR TO SIX INITIAL LOTTERY WINNERS
 - Using the data on and procedures in “Summary of Affordable Housing Program Revised March 24, 2003,” initial lottery winners are guaranteed an annual resale price increase equal to the change in the CPI, which averaged 3.14% a year from 1984 to 2002.
 - Initial lottery winners will be guaranteed get a return of over 50% per year on their initial investment if they hold their unit less than five years, even if the process for resale of units is not tainted.
 - Initial lottery winners who hold their units 10 years will have a profit equal to 12 times their downpayment, even if the process for resale of units is not tainted. This represents a guaranteed annual rate of return of 29% over 10 years.
 - Initial lottery winners will get a substantially higher return if, as shown below, the conditions for resale of condominium units are unenforceable.
 - A LARGE GUARANTEED PROFIT FOR THE FOUR TO SIX LOTTERY WINNERS MEANS THAT STRONG INCENTIVES EXIST TO DISTORT THE RESULTS OF THE LOTTERY AND THE STONEBRIDGE AFFORDABLE HOUSING PROGRAM DOES NOT INCLUDE ANY SAFEGUARDS AGAINST SUCH DISTORTION.
 - GIVEN THE EXTREMELY LARGE GUARANTEED PROFIT FOR THE FOUR TO SIX LOTTERY WINNERS, EFFECTIVE SAFEGUARDS TO ENSURE THAT ALL ELEGIBLE HOUSEHOLDS HAVE THE SAME ODDS OF WINNING ARE NOT FEASIBLE.
- **Owner-Occupancy.**
 - Given the large guaranteed windfall, the right to purchase a \$370,000 condominium for \$166,393, there is a large incentive to maintain ownership of the subsidized unit even after the purchaser chooses to live elsewhere According to the Applicants, a 925 square foot unit at this location would rent for \$2,405 [Application, March 22, 2002, at Tab G, Table 2.] The Applicants also indicate that the qualified owner of an affordable housing unit would have monthly costs of \$1,360 [March 24, 2003, Affordable Housing Analysis] This means that an owner could earn a profit of \$1,155 a month by purchasing the unit and renting it to a non-qualifying tenant as well as a very healthy return on his investment, his portion of the downpayment.
 - Given this large incentive to rent the affordable housing unit, enforcement becomes difficult. If the owner changes a rent below the market rate, making, for example, a profit of only \$1,000 a month, the tenant is likely to cooperate in creating the appearance of owner-occupancy.

- If the owner chooses to rent the affordable housing unit to American University students, it would be possible to charge 4 students \$900 each to occupy a 2-bedroom apartment. Those are the rates that approximately 730 American University students are paying to be housed two students in each bedroom for similar units in the 11-story luxury Bethesda Park on Westbard Avenue in Bethesda, owned by American University. The owner of the affordable housing unit could charge the students up to \$3,600 and remain competitive with other offerings, for a profit of \$2,300 per month. If the owner charged only \$750 a month for each student, a total of \$3,000 a month, his profit would be “only” \$1,700 per month, and the students would likely cooperate by forwarding his mail and responding to inspectors that the owner is one of their roommates.
- In addition, as noted below, the Stonebridge Affordable Housing Proposal, as written, would allow a group of individuals to occupy the unit if the owner-occupant member of the group had a qualifying income at the time of the application. This would not be subject to an enforcement action, since it is clearly permitted by the proposal.
- **Conduct of the Marketing of Each Unit on Resale:**
 - The resale process would be tainted if the owner were not required to take all the steps required in the initial lottery and if the selection of the purchaser was to be determined by the owner. Clearly, each individual owner cannot undertake to advertise to all eligible purchasers and to have an unbiased selection process, and given the complexities associated with real estate sales, it is unlikely that the purchaser could be selected without input from the seller.
- **Determination of whether the units are actually be transferred at prices at or below the maximum allowed to qualified purchasers:**
 - Determination of the maximum allowable price and the amount that the seller has actually netted from the sale is difficult.
 - The maximum purchase price is equal to the cost of Initial Unit Price plus the cumulative change in the consumer price index and the cost of permanent improvements to the Unit. The Initial Unit Price and the cumulative change in the CPI are easy to compute. An audit would be required to determine the cost of permanent improvements to the unit. The seller would need to produce detailed information on all improvements. Would interest be applied to improvements done several years earlier? What interest rate would be used? How would special assessments from the condominium association for permanent improvements to the building be handled? Would the seller be able to include his own labor in valuing permanent improvements? Would the seller be able to include labor provided by relatives? How would the DHCD determine that all purchases of permanent improvements were done as arms-length transactions and that the information gives a fair representation of the cost of improvements? Significant audits would be necessary in some instances.
 - Determination of whether the contract price represents the true price at which the unit is being sold is more complex.

- Is the seller providing any financing, and is that financing being done at a rate that is above the market interest rate? If so, the value to the seller is higher than the contract price
- Is the seller getting any other consideration from the purchaser? For example, is the seller being allowed to stay in the unit after closing and paying a below market-rate rent? Is the buyer being allowed to move into the unit prior to the closing and paying an above-market rate rent? If the answer to any of these questions is yes, the seller is paying a price above the maximum allowable price. A full audit would be necessary.
- The District or DHCD would need to determine that there were no other dealings between these parties or their friends or relatives, or that all such dealings were conducted at fair market value.
- For example the home-purchaser might have been required to purchase a vehicle with a value of \$5,000 for \$25,000 from the seller or any relative of the seller as a condition of being selected as the purchaser. This purchase would result in the unit being priced at \$20,000 above the maximum allowable price. Similarly, the home-purchase might have been required to agree to a service contract or job offer at more than the standard rate
- Given that the District could not possibly track every dealing between the seller and the purchaser and friends and relatives of those parties, there is no way in which the District can be certain that the true purchase price does not exceed the maximum allowable purchase price.
- EFFECTIVE ENFORCEMENT OF THIS PROVISION IS NOT FEASIBLE.
- **Revised Stonebridge Affordable Housing Program:** The Applicants offer a new provision: “The District government shall retain all rights to enforce the provisions of the affordability covenants, according to the provisions of this document or such enforcement mechanisms as the District government may deem appropriate. The District government shall have the right to recapture any enforcement costs.”
 - This provision does not create the ability to enforce unenforceable conditions, especially given that the Office of Planning and DHCD do not appear to understand what provisions would need to be enforced and the associated large and continuing costs associated with even a modest level of enforcement.
 - The provision giving the District the right to recover enforcement costs is particularly puzzling inasmuch as enforcement costs are large and continuing, even if the homeowners are in compliance
 - Would the District assess the complying “low-income” homeowners for the continuing cost of monitoring their owner-occupancy and financial dealings to determine that the homeowners are in compliance with the Stonebridge Affordable Housing Program?

- Would the District recover the cost of monitoring complying homeowners from any home-owners that are determined to be violating the conditions?
- Would the District charge each homeowner, on resale, the cost of monitoring the conditions of resale and associated audits. The monitoring is necessary to determine (1) that the unit was offered to all eligible homebuyers, (2) that the selection of the “winning” homebuyer, who would obtain a unit at a large discount from the market price, is unbiased. The complete audit of all financial and other agreements is necessary to determine that there were no other agreements that might allow the homeowner to receive more than the maximum allowable price.
- The Applicant proposes adding a statement about restrictive covenants and the right of the District to enforce those covenants: “Restrictive covenants shall be active until the affordable housing trust fund receives the appropriate contribution from the sale of the unit.”
 - This proposal by the Applicant does not address the concerns that FhORD raised. Those concerns are not addressed by the existence or non-existence of restrictive covenants, so a simple statement that there should be restrictive covenants in place does not address the issues about the infeasibility of enforcement of the agreement, as enumerated above.
- The Applicant also proposes adding a term about District consent being required to modify deed restrictions: “The substance of any of the above Clauses that are included in deed restriction terms may not be modified without the consent of both the unit owner(s) and the District government. Administrative, monitoring and enforcement mechanisms not included in deed restrictions may be modified at the sole discretion of the District government ”
 - This proposal by the Applicant does not address the concerns that FhORD raised. Those concerns are not related to the control of the deed restrictions, but with the poor design of the Program and with the infeasibility of enforcing even the terms offered. Though clearly, as with all the provisions of this PUD, it is essential that restrictive terms cannot be changed without the express approval of the Zoning Commission

THE REVISED STONEBRIDGE AFFORDABLE HOUSING PROGRAM IS POORLY DESIGNED:

EVEN IF THE TERMS OF THE AFFORDABLE HOUSING PROGRAM WERE ENFORCEABLE, THEY WOULD NOT APPROPRIATELY TARGET THE BENEFIT

- The HPAP criteria is not the appropriate criteria for determining eligibility for this program. As stated above, HPAP eligibility is to determine whether a household is eligible to obtain a small benefit that makes home-ownership possible for some households that have not saved sufficient funds to cover a down-payment and closing costs. The Stonebridge Affordable Housing Program is a long term, extremely valuable benefit, and it is not appropriate to base eligibility on HPAP eligibility Many anomalous results arise from the use of HPAP eligibility.

- One example presented at the hearing was that of a medical student, whose income, while in school was less than \$54,400. That student would be eligible for the program and would continue to receive the benefit even after graduation and entry into a well-paid position
- Another example would be a member of a group that plans to occupy the unit. A group member might have an income of less than \$54,400, while the combined income of the individuals that plan to occupy the unit might exceed that amount. The individual could purchase the unit, and share the benefit with his or her roommates by charging below market or no rent.
- A third example would be a high income individual or family that had a temporary fall in measured income. For example, consider an individual with an income of \$100,000 who had taken a 6-month leave-without-pay. That individual would qualify under the Stonebridge Affordable Housing Program to purchase for \$166,393 a condominium with a market value of \$370,000. The following year, without a leave-without-pay, the individual's income would return to the normal \$100,000 level.
- Another example of an individual that would qualify under HPAP is an individual that just completed law school and in September started a job as an associate for \$120,000. That individual would have an income during that year of \$40,000, qualifying for HPAP, and thereby qualifying for the Stonebridge Affordable Housing Program, and eligible to buy for \$166,393 a condominium with a market value of \$370,000
- The terms of resale guarantee the purchasers of the affordable housing units very large rates of return on their investments.
 - As noted above, purchases of the Stonebridge affordable housing units are guaranteed an annual rate of return on their investment ranging from 29% to 100%, depending on the number of years they hold the unit. The largest return, a rate of return of 100%, doubling their money, would be for a purchaser who sold the unit in one year. If the purchaser sold the unit after 10 years, that purchaser would realize a return of 29% a year on their initial investment. This does not include the value of having housing costs of \$1,360 a month to live in a unit that would have a market rent of \$2,403 a month for 10 years, which has a present value of \$99,650.
 - Purchasers of market-rate units are not guaranteed a return on their investment. and some homeowners in Friendship Heights have lost money on their investment. Some of our former neighbors, who had made relatively low downpayments, actually had to pay money at settlement when they sold their houses in Friendship Heights