

April 19, 2006

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Zoning Commission
District of Columbia Office of Zoning
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441 4th Street, N W
Washington, D C 20001

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Re. Zoning Commission Notice of Proposed Rulemaking
Case 04-33 (Text Amendment – Inclusionary Zoning)

While many people believe that there is a need for more affordable housing, there are many serious problems with the text amendment proposed by the Zoning Commission. The basic problems cannot be solved by tinkering with the proposed language. The proposed text amendment does not take into account the basis for current zoning and the zoning envelope in many parts of the District, particularly in commercial and higher density residential areas near Metrorail stations, in rowhouse neighborhoods in the inner city, and in neighborhoods that include historic apartment buildings. The proposed text amendment will also have significant, and unintended, negative consequences that had not been addressed.

- **The proposed text amendment ignores the very basis for current zoning limits.** First, and most importantly, the proposed text amendment is based on the erroneous assumption that current zoning regulations and zoning maps were 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 and in adjoining neighborhoods, as required by the zoning regulations.

Instead, the basis seems to be 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.

- **20% bonus densities would be inconsistent with the Comprehensive Plan near Metro stations.** The premise behind this proposal ignores the fact that zoning near some of those stations is already relatively intense and takes into account the existence of the Metro stations. Advocates of this text amendment have recommended that inclusionary zoning, with bonus densities, be applied near transit, and, in particular, near Metro stations. However, they have failed to take 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 or moderate-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

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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.

- **20% bonus densities would be inconsistent with the Comprehensive Plan in many areas of the inner city.** This is particularly important in areas with rowhouses, and the proposed bonus densities would be in conflict with the Comprehensive Plan land use map. It is also important in areas with apartment buildings whose design is truly historic. Extensions on top of these buildings or through lot expansion would ruin the wonderful existing architecture and be change the fabric of the neighborhood for the worse.
- **The proposed text amendment is not designed to, and will not, achieve the goals expressed by many of the individuals and groups that have expressed support.** While many supporters of these inclusionary zoning believe that this proposed text amendment, if approved, will house thousands of the District's poorest, it is clear that that is not the target population for this text amendment. The target population for all of the inclusionary units in the zone districts that are most likely to be attractive to developers and half of the inclusionary units in all other zones is well above the median income of the District

For developments located in CR, C-2-B through C-3-C, W-2 through W-3 and SP zone districts, all of the inclusionary units will be set aside for households with incomes up to 80% of the Metropolitan Statistical Area median income. For 2004, that would have been households with incomes less than \$68,320, and in that year, over 65% of District households had incomes below 80% of AMI.

For developments located in R-3 through R-5-E, C-2-A, W-0 and W-1, half the units will be set aside for households with incomes less than 80% of AMI. The other half of the units would be reserved for households with incomes less than 50% of AMI. For 2004, that would have been \$42,700, and over 45% of District households had incomes below 50% of AMI. The lion's share inclusionary units, all the inclusionary units in the areas with the higher zoning limits and half of the inclusionary units in other districts, would be set aside for households whose incomes are over 50% of AMI. These units would go to households whose incomes exceed that of over 45% of District households.

In other words, nearly half the households in the District have incomes below those of the households that will receive the opportunity to purchase or rent most of this subsidized housing, and given the incentives faced by the developers to sell or rent inclusionary units to households at the high end of each category, the income for households receiving this subsidy for the lion's share of the units will approach \$71,400 per year, and far exceed the median income of the District.¹

¹ For 2005, the following income limits for all of inclusionary units in all of the higher zoning category areas and half of the units in the other areas would have been

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

- **The proposed text amendment 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.** The proposed text amendment, 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.²

Since the Office of Planning had 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 this inclusionary zoning proposal. The text amendment provides significantly larger bonuses for building luxury condominiums, particularly in the first category of zoning district, than for other projects. The bonus density is most valuable in the neighborhoods with the highest condominium prices per square foot, 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

A specific example, using the OP's proposal was provided in my earlier comments filed last summer.³

² For steel and concrete developments, approximately 40% of the bonus density will be allocated to affordable units [See §2603.2] For each affordable 600 square foot unit provided, the developer might make an additional profit of over \$650,000 in high price neighborhoods, over \$450,000 in average price neighborhoods, and \$400,000 in low price neighborhoods

³ In my earlier comments, I provided the following example. The proposed text amendment has slightly different requirements and bonus densities, but the same principles apply.

“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

- **The provisions requiring that affordable units in condominiums be offered for sale [See §2605.1] reduce the likelihood that the affordable units will remain affordable and that qualifying households will be occupying those units.** For-sale units are less likely to remain occupied by qualifying households since the eligibility requirement is only in place on the date that the condominium is purchased. The qualifying purchaser might subsequently graduate law school or change careers and see a dramatic increase in income. In addition, effective enforcement of the purchase eligibility conditions is virtually impossible, especially on resale. As shown below, conditions on leasing the subsidized condominium are also impossible to enforce.
- **For projects with a large variation in square footage for comparable units, the affordable units will be required to be larger than some of the market rate units with the same number of bedrooms, since the text amendment requires that affordable units have a gross floor area no less than 95% of the average size of the comparable market rate units.** [See §2605.7] For example, at Chase Point a condominium at 5401 Western Avenue, there are 75 two-bedroom units according to the developer's web-site. The square footage of those units ranges from 1,070 square feet to well over twice that amount. The average square footage of the two-bedroom units is 1,766 square feet, and 95% of that average square footage is 1,678 square feet. The proposed text amendment would require all the inclusionary zoning two-bedroom units to be at least 95% of the average, or at least 1,678 SF in this example.

For the Chase Point PUD, 35 of the 75 two-bedroom units are smaller than 1,678 SF, the minimum size of an affordable unit if this provision were to be applied. So if a building similar to Chase Point were covered by this text amendment, the affordable two-bedroom units would be required to be larger than 35 of the 75 market rate two-bedroom units.

Does the Zoning Commission really intend to require that subsidized units in some projects be larger than many of the market rate units with the same number of bedrooms?

- **The proposed text amendment specifically provides that the developer can include units that are provided pursuant to federal and other District housing programs towards the inclusionary zoning requirement.** [See §2605.3]

With this provision, a substantial number of units covered by the inclusionary zoning requirement would have been provided absent this requirement, and the developer is being provided a very valuable bonus density, at the expense of the surrounding neighborhoods, with absolutely no public benefit whatsoever.

- **In addition to granting bonus densities, for certain zoning districts, the text amendment recommends increases in the allowed lot occupancy and/or increases in the allowed height.**

The increase in the allowed lot occupancy is particularly problematic, since it is applied to the most intense zoning districts, where lot occupancy limits are critical to maintaining a pleasant, walkable neighborhood.

- **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.** I had attached to my earlier comments 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, especially in zoning districts where 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.

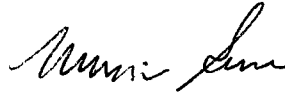
A recent check of the listings at Washingtonpost.com for neighborhoods in Ward 3 showed a large number of units, including some accessory apartments, near the lower of these two costs. One building in Ward 3 listed 10 one-bedroom units available, half renting for \$1250 a month and the other half renting 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. In addition, many accessory units in low-density neighborhoods in Ward 3 advertised apartments in these price ranges.

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,



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