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April 24, 2006

Ms. Sharon Schellin
Acting Secretary to the Zoning Commission
Office of Zoning
441 4th Street, NW, Suite 200-South
Washington, D.C. 20001

**Re: Comments on Proposed Rulemaking, ZC Case No. 04-33,
Text Amendment on Inclusionary Zoning**

Dear Ms. Schellin:

The District of Columbia Building Industry Association ("DCBIA") is submitting these comments to express its strong sense of concern over the above-referenced draft of the inclusionary zoning text amendments. In our judgment, the limited number of affordable units likely to be produced by this program comes burdened with direct and in-direct costs which are uncertain enough to pose a threat to the recent revival of the District's housing market. This threat has been exacerbated by proposing a mandatory program of inclusionary zoning (MIZ) with density bonuses structured not as true incentives but only as minimum cost off-sets. These off-sets may not apply to the varying economics of different development projects, nor accommodate the changes that are certain to take place in today's market conditions. The risks MIZ poses is greatest for the small and medium sized developers who, if MIZ adversely impacts even a few of their projects, will be forced to stop creating housing in the District of Columbia.

In view of the above, the following specific comments are submitted as an attempt at potential damage control. We first recommend a set of new provisions, and then we suggest modifications to the proposed text.

Proposed New Provisions

A. Establish a transition period to allow time for developers to adjust to the new program. Many of the problems of MIZ could be cured by an appropriate transition period; for example, two years. This time frame would allow land prices to adjust gradually, and permit transactions premised on the regulatory scheme in place today to go forward.

B. Establish a sunset provision that requires a reexamination of the MIZ after a reasonable time to determine whether the program is (a) effective and (b) harmful to the residential development community. We recommend a sunset provision of three years from the effective date of the program.

Proposed Changes to Existing Provisions

Applicability (Section 2602)

(1) The threshold of applicability at "ten or more dwelling units" (Section 2602.2) is set too low to reasonably accommodate the direct subsidy costs and in-direct

BY HAND

**ZONING COMMISSION
District of Columbia**

CASE NO. 04-33

EXHIBIT NO. 186

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administrative costs of the proposed MIZ program for smaller, infill projects. We recommend that the threshold be placed at "50 or more dwelling units."

(2) Planned Unit Developments (PUDs) and government-sponsored property dispositions (e.g., NCRC and AWC) should be exempted from the MIZ program. (Section 2602.3) Such developments already mandate a desired mix of affordable housing and other community amenities, tailored to optimize the public benefits of a given project. The MIZ program would undermine the necessary flexibility in structuring community benefits for these transactions.

(3) Conventional and subsidized housing developments (e.g., those using Low Income Housing Tax Credits) that produce affordable housing selling below a specified percentage of the AMI, should be exempted from MIZ requirements. (Section 2602.3) These projects – by definition already designed to achieve a socially desirable goal – should not be burdened with two sets of regulatory requirements.

(4) Control periods "for so long as the inclusionary development exists" (Section 2602.4) are overly restrictive and raise serious equity issues. In the case of rental properties, they would extend well beyond the useful life of a building's operating systems and, therefore, act as a disincentive for repair and renovation. In the case of for-sale properties, they would penalize low-income home owners by denying them the opportunity to build equity – effectively reducing them to "de facto renters." What is the point of making people homeowners if they can gain no equity? (Enclosed is a recent article by George Rothman, President of Manna, Inc., which fully addresses this issue.)

Set Aside Requirements (2603).

(1) The affordable set-aside requirements on bonus density, at 75% (stick-built) and 50% (steel and concrete) (Sections 2603.1 and 2), are set too high. They pose a risk to housing production because they cannot adequately accommodate a material negative change in market conditions and/or development costs. We recommend that the ratio of affordable to market rate units within the bonus density should be set at 50% (1:1) for stick-built projects, and 25% (1:3) for steel and concrete projects. Both ratios should be maximums.

(2) The allocation of set-aside AMI levels by zone districts appears arbitrary and does not conform to the rationale of relating 80% AMI thresholds to more costly high-rise construction, and lower 50% AMI thresholds to less costly stick-built construction. For example, R-5-D and R-5-E are regarded as high-density zone districts and permit high-rise developments, yet the text amendment requires developments there to allocate half of total affordable set-aside units for house-holds at 50% of AMI. (Section 2603.3)

Development Standards (2605)

The requirement that "inclusionary units shall be reasonably dispersed" (Section 2605.9) should be modified to exempt premium-priced units (e.g., upper floor, full views), in order to reduce subsidy costs.

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Exemption from Compliance (2606)

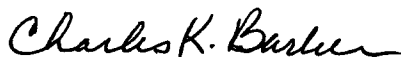
The process for obtaining relief from the MIZ program in cases in which the bonus density simply cannot be used is cumbersome. Developers wishing to provide housing, but finding the bonus density does not work on their site, will be forced to wait months for an official determination. There should be a streamlined process for allowing relief to developers faced with this situation.

DCBIA remains committed to affordable housing. The changes we suggest are intended to decrease the risk that an MIZ program, notwithstanding its good intentions, would undercut housing development in the District of Columbia. In addition to the language of the text amendment, DCBIA is also concerned about where the MIZ would be mandated, an issue scheduled to be addressed in the map amendment case. Perhaps most significantly, DCBIA is concerned about how any MIZ program, if adopted, will be administered and funded. While issues of administration will be addressed by the executive and legislative branches, the Zoning Commission must be mindful of these issues in considering the scope and specific requirements of the text amendment.

In conclusion, it is unfortunate that an incentive-based program, as originally proposed by the Office of Planning as a viable alternative, was not included within the scope of this proceeding. An incentive-based program would have provided a far more flexible alternative to the goal of creating affordable housing, with far less risk to the competitiveness of the District as a destination for residential development.

Sincerely,

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION



Charles K. Barber
President

Enclosure

cc: Mayor Anthony Williams
DC Council Chairman Linda Cropp
DC Council Members
City Administrator Robert Bobb
Office of Planning Director Ellen McCarthy
Deputy Mayor Stanley Jackson
Department of Housing & Community Development Director Jalal Greene