

Monument Realty

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April 24, 2006

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

Re: Notice of Proposed Rulemaking ZC Case Number 04-33 on Mandatory Inclusionary Zoning (MIZ)

Dear Ms. Schellin:

I am one of the Principals of Monument Realty, a District based developer. We are currently in the process of developing over 1,500 residential units in Washington D.C. and another 3,500 in Maryland and Virginia. We are in favor of providing affordable housing through an incentive based inclusionary zoning program, however the current text amendment does not work and if it is not modified as listed below we will look to other markets outside of the District to invest in residential development.

1. Remove the 8% of matter of right minimum affordable unit requirement as affordable units should only be required if bonus density is available.
2. Regarding high-rise, concrete construction, the percentage of bonus density to be set aside for affordable housing at 80% of AMI should be 25% not 50% in order to provide enough market-rate unit profit to pay for the "loss" on selling an affordable unit below cost.
3. Allow for the continuation of the current Planned Unit Development process as this allows for other amenities to be made available to the community and for projects where less than 20% bonus density is possible.
4. 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.
5. Remove the perpetual affordability requirement for ownership units as this is inconsistent with true ownership: an affordable unit owner will not participate in most of the appreciation of the unit but would be required to absorb any loss on a unit. We suggest that (a) the District recapture 100% of its subsidy if a unit is sold within ten years of purchase by an affordable buyer and 75% thereafter, and (b) an affordable buyer begin to share in appreciation on their purchase price, adjusted for inflation and home improvements (of which the owner would receive 100%). Starting in the sixth year of 25% and increasing to 80% in the sixteenth

ZONING COMMISSION
District of Columbia

CASE NO. 04-33
EXHIBIT NO. 195

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6. 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.
7. Remove the provision for the right of first refusal of the District government to rent or buy affordable units in a MIZ project as this further complicates a very complicated and untested administrative process.
8. 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.
9. The process for obtaining relief from the MIZ program in cases in which the bonus density simply cannot be used must be streamlined so that developers are not delayed unnecessarily.

Without these amendments, Proposed Rulemaking ZC Case Number 04-33 will result in a program that (1) does not provide "just compensation", nor (2) is efficiently administered.

Thank you very much for this opportunity for comment.

Sincerely,



Michael J. Darby

cc: Mayor Anthony A. Williams
Council Chair Linda Cropp

