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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

Forest City has a long record of developing mixed-income housing and working in partnership with cities to redevelop blighted areas. We are supporters of many of the recommendations of the Comprehensive Housing Strategy Task Force's recent recommendations to increase the production of affordable housing in the District. However, we feel the Mandatory Inclusionary Zoning (MIZ) program must be amended according to the recommendations listed below if it is to create additional affordable housing without unduly burdening the Small and Disadvantaged Business development community or further delaying the long-awaited revitalization of certain neighborhoods of the District.

1. Adopt a two-year grace period from the time of adoption of the MIZ regulations in order to avoid an adverse affect on transactions already negotiated. Additionally a twenty-four month period would allow land prices to adjust gradually, and not create a massive devaluation of the housing market.
2. Exclude revitalization projects, PUDs, and government sponsored disposition projects. A key recommendation of the Comprehensive Housing Strategy Task Force was to call for more market rate housing in long-blighted areas and more mixed income housing in areas where displacement looms as a threat to long-time neighborhood residents. If a revitalization project is burdened with meeting MIZ tests, the return on investment will decrease, making it more difficult for the District to attract needed private investment to communities that have been passed over by the recent economic resurgence. Further, these projects often independently address the affordable housing objectives in relation to broader community goals.
3. Regarding high-rise, concrete construction, the percentage of bonus density to be set aside for affordable housing at 80% of AMI should be 28% not 50% in order to provide enough market-rate unit profit to pay for the "loss" on selling an affordable unit well below cost.
4. Remove the 8% of matter-of-right minimum affordable unit requirement as affordable units should only be required if bonus density is available. For example historic buildings generally cannot receive increased density and would still be subject to this requirement.

ZONING COMMISSION
District of Columbia

CASE NO.

04-33

EXHIBIT NO.

207

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ZONING COMMISSION
District of Columbia
CASE NO.04-33
EXHIBIT NO.207

5. Exempt from the MIZ requirements conventional and subsidized (e g., LIHTC) developments which already produce affordable housing selling or renting below a specified percentage of the AMI
6. 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. Control periods "for so long as the inclusionary developments exist" are unduly restrictive and raise serious homeowner equity issues. We suggest that the District recapture 100% of its subsidy if a unit is sold within two years of purchase by an affordable buyer and thereafter, an affordable buyer begin to share in appreciation on their purchased unit in a manner to be determined. In the case of rental properties, the perpetual affordability requirement could act as a disincentive for repair and renovation, because they could extend far beyond the useful life of the properties
7. Independent of the effective date of the MIZ regulations, in no event should the regulations become effective until
 - i. The Mayor and DC Council pass the required legislation to administer the MIZ program,
 - ii. The Mayor and DC Council fund the administration of the MIZ program with a minimum of five employees and a budget of \$750,000 per year for personnel, and
 - iii. The Zoning Commission has "mapped" the areas of the District where MIZ applies.
8. 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
9. Raise the minimum size project to fifty residential units from ten units as (a) smaller projects will not add significantly to the production of affordable units, and, (b) the costs of MIZ compliance cannot be spread over enough bonus market-rate units for smaller developers.

Without these amendments, Proposed Rulemaking ZC Case Number 04-33 will result in a program that does not provide "just compensation", is not efficiently administered and possibly threatens the financial viability of projects executed by our Small and Disadvantaged Business community. Policymakers must balance the need for the production of mixed-income housing with the need to further develop our local business and investment capacity here in the District.

Thank you very much for this opportunity for comment.

Sincerely,



Deborah Ratner Salzberg
President, Forest City Washington

cc: Mayor Anthony A. Williams
Council Chair Linda Cropp