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April 24, 2006

Ms Carol Mitten, Chair
D C Zoning Commission
441 4th Street NW
Suite 210
Washington, DC 20001

Re: Inclusionary Zoning Text Amendment Case No 04-33 (Text Amendment – Inclusionary Zoning)

Dear Ms Mitten

The Maryland National Capital Building Industry Association (MNCBIA), the local home building industry association affiliated with the National Association of Home Builders, represents approximately 750 members in the residential building industry doing business in the District, Montgomery County and four other neighboring Maryland jurisdictions. Based on our 30-years of experience with the Montgomery County Moderately Priced Dwelling Unit (MPDU) program, as well as years of experience with residential development in the District, MNCBIA hereby submits the following comments and recommendations for inclusion in the public record of Zoning Commission Case No 04-33, on the draft text amendment published in the DC Register on March 10th, 2006

While the MNCBIA supports the goals of affordable housing expressed by the Council in its resolution of July 6, 2005, as a general point, we do not believe that the proposed inclusionary zoning text amendment, as drafted, would result in the production of the additional affordable housing units sought by the District. The draft text amendment imposes a number of conditions or requirements that would make the development of affordable units economically infeasible for builders and developers. The proposed amendment also contains a number of administrative requirements that would result in an unwieldy, time-consuming and burdensome administrative process that will add to delays and backlogs, and thus costs, thereby failing to produce the intended affordable housing units and escalating the overall costs for development of market-rate housing.

Project Feasibility:

Waiver/Exemption from Affordability Requirements - As written, the proposed text amendment leaves some ambiguity regarding the requirements for inclusionary units based on the availability of achievable bonus density. The language should make clear that the set-aside requirements of Sec 2603 are reduced or eliminated under the provisions for exemption from compliance under Sec 2606 1 where bonus density is not achievable so that there is no loss of by-right or base density. We note that this point was also made in the memorandum to the Zoning Commission, dated January 31, 2006, by Alan Bergstein, Section Chief, Land Use and Public Works, Office of the Attorney General.

BUILDING HOMES, CREATING NEIGHBORHOODS

Representing the Building and Development Industry in Calvert, Charles, Montgomery, Prince Georges and St. Mary's Counties and Washington, D.C.
Affiliated with the Maryland State Builders Association and the National Association of Home Builders

ZONING COMMISSION
District of Columbia

CASE NO. 04-33
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EXHIBIT NO. 220
CASE NO. 04-33
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Unit Size/Type Mix - The requirements of Sec 2605.7, requiring that the gross floor area of an inclusionary unit shall not be less than 95% of that of a comparable market-rate unit, as determined by bedroom size, should be eliminated. This requirement prevents developers from economically producing affordable units in projects that included larger or higher-end units and would be likely to require off-site development in order to comply. We note that the Montgomery County MPDU Ordinance does not require affordable units to be the same size as market-rate units. Allowing inclusionary units to be smaller would allow more inclusionary units to be built within the bonus density. In addition, the language of Sec 2605 4 should be amended to specify that the mix of units be based on unit "type", not unit "size".

Since most condominium fees are based on the square footage of the residential units, the "comparable size" requirement also creates problems in setting condominium fees that both (1) cover the monthly expenses of the project, and (2) are affordable to the owners of the inclusionary units. These requirements would result in condominium fees that exceed the targeted income range for the inclusionary units. It would be unfair to require the market rate units to subsidize the condominium fees of the inclusionary units. The inclusionary units receive the same services and amenities as the market rate units, and thus, should pay condominium fees on the same basis as the market rate units (based on the square footage of the unit). Subsidizing the condominium fees of the inclusionary units would require an increase in the fees for the market rate units. These higher fees could affect the marketability of the market rate units. The alternative to subsidizing the condominium fees of the inclusionary units would be to charge these units lower fees, but restrict the services and amenities offered to the inclusionary unit residents so that the lower fees would cover the amenities they receive. Under this method, inclusionary units would not be charged fees for services and amenities for which they do not contribute towards the operation and maintenance. This approach would create a "second class" of residents within a project. The unit size and mix requirements, as well as the requirements for exterior and interior finishings under Secs. 2605 5 and 2605 6 could hinder the ability to incorporate lower income families into more expensive developments or neighborhoods by increasing the costs of producing inclusionary units and/or raising the costs of living in these units beyond that available to those in the target income groups.

Exterior/Interior Features and Finishings – Secs 2605 5 and 2605 6 require that the interior amenities, such as finishes and appliances, as well as the exterior design, materials and finish be "comparable" to the market-rate units. Sec 2605 6 states that "less expensive" materials and appliances may be used. It should be clarified how the "comparability" of these features is to be determined.

Recreational Space – Another issue that affects both the physical and the economic feasibility of a project is the requirements for recreational space under the DC Zoning Code. The proposed amendment does not appear to address the requirements for additional recreational space that would be required in order to accommodate the 20% bonus density. It is unclear how these requirements would be calculated and provided within a specific building envelope, or through off-site facilities. We feel that relief should be provided from this requirement if bonus density is achieved and set-aside requirements are applied.

Commercial/Residential Space – The proposed text amendment does not distinguish between commercial and residential space. Thus, under these requirements, the square footage in a building that is dedicated for commercial use could also be used in determining the set-aside requirements. The set-aside requirements should be based on residential space alone.

Administrative Procedures:

Exemption From Compliance/Role of BZA – Requiring a Board of Zoning Adjustment (BZA) hearing process in exemption and off-site compliance cases will greatly increase the caseload of the BZA and will likely result in large backlogs and delays and increased costs. Such exemptions should be handled through an administrative process and should be automatically granted upon establishment of defined criteria.

Off-Site Compliance – The provisions of Sec. 2607.3 fail to define what considerations would render an inclusionary or off-site project “economically infeasible”. Further, this provision does not require that the requirements of Sec. 2607(2)(a) be waived, but merely provides that it “may” be waived. These provisions establish subjective standards of proof and provide little predictability. The text amendment should also provide some alternatives to the off-site compliance provisions, such as provisions for in-lieu fees

Grandfathering Provisions and other Administrative Matters - The draft text amendment does not address critical administrative issues such as the delegation of administrative authority for the program and also does not address the grandfathering of projects that are in the system at the time that this program becomes effective. The planning approval process requires a long lead time to identify and address all requirements and requires a substantial up-front economic investment by the applicant, who should not be penalized by changes in requirements that have become effective after he has started the application process. Therefore, the text amendment needs to address the date or point in time at which a project will be vested. We recommend that provisions be added to grandfather projects where a completed application has been accepted by DCRA by the effective date of the Inclusionary Zoning text amendment.

Thank you for your consideration of our comments and recommendations on behalf of the residential building industry

Sincerely,

MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION

Robert C. Larkin (RLB)

Robert C Larkin, Vice President
Washington DC Liaison Committee

Attachment
Cc: DC Office of Planning