

Government of the District of Columbia
Office of Zoning



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Jernly R. Kress, FAIA 
Director

DATE: May 24, 2005

SUBJECT: Publication for the Office of Zoning

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Office Of
Documents And
Administrative
Issuances

Please publish the following in the *D C Register* on June 3, 2005

- 1 Z C Notice of Public Hearing (Case No 04-33)

Attachments

ZONING COMMISSION
District of Columbia

CASE NO. 04-33

EXHIBIT NO. 22

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, July 25, 2005, 6:30 P.M. and
Thursday, July 28, 2005, 6:30 P.M. (if needed)**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

**Case No. 04-33 (Text Amendments to Require the Provision of Affordable Housing –
Inclusionary Zoning)**

THIS CASE IS OF INTEREST TO ALL ANCs

This proceeding was initiated through the filing of a Petition by the Campaign for Mandatory Inclusionary Zoning (“CMIZ”). The Petition requested the Zoning Commission to require new housing projects with ten or more units to set aside a certain percentage of units at prices affordable to households within a specified income range. The requirement would not apply to all such projects, but only 1) those mapped in Inclusionary Zoning Overlay areas, which the Petition also sought to create, and 2) those properties that sought density increases through variances or Planned Unit Developments. Projects subject to the program would receive bonus density and be able to request waivers from compliance

In its report to the Commission, the Office of Planning (OP) recommended advertising the concepts presented by the Petitioner, but also recommended that the Commission advertise a somewhat different type of mandatory inclusionary zoning program, as well as an incentive-based approach. The principal difference between the two mandatory programs is that, under CMIZ’s proposal, the number of units that must be set aside in a particular development is determined by applying a percentage to the number of units that are proposed to be built as a matter of right. Bonus density of up to 20% would be made available to accommodate the inclusion of the affordable units and additional market rate units as well. In contrast, OP’s requirement is based upon a proportion that expresses the relationship between the amount of bonus gross floor area that must be occupied by affordable units versus the amount that may be sold or rented at market rate. Both programs recognize that the Height Act and Comprehensive Plan place limitations on the amount of bonus density that is available. The Petitioner and OP, therefore, only proposed to map areas where the Comprehensive Plan supports increased density, particularly areas that have been targeted for increased development and are transit-accessible. In addition, CMIZ proposed to phase in the requirement in the Downtown Development Overlay, where residential uses may already exceed that matter of right density. A map illustrating the likely geographic reach of the program based on these constraints was provided by OP as

Attachment 1 to its report That report and all its attachments are available at the Office of Zoning or at [http //planning dc gov](http://planning.dc.gov)

At its Public Meeting of May 9, 2005, the Zoning Commission decided not to advertise OP's incentive-based program and to defer consideration of the proposed map amendment until it had considered the merits of the mandatory programs described in the Petition and the OP report. Because this hearing will not consider the question of where the program's requirements should be imposed, no testimony will be permitted concerning either the locations where the proposed inclusionary zoning requirements should apply or the impact (whether favorable or adverse) of either proposal on a particular location.

The Commission is also not advertising those aspects of the Petition that recommended how the program should be administered and enforced. The Petition requested that the Commission direct the Mayor to, among other things, determine a project's compliance with the program, inform the public about the program, review requests and determine the eligibility of persons seeking housing under the program, establish maximum rents and purchase prices, deny all permits to non-complying property owners, and to place liens on a project's market rate units for each affordable unit permitted to be accounted for off-site, until a certificate of occupancy for the affordable unit is issued. The Zoning Commission has no authority to direct the Mayor to undertake these or any other functions. To the extent the Mayor does not already possess such authority, the Council of the District of Columbia will need to bestow it. Until the Council does so, the authority to "administer and enforce" this and all other zoning regulations will continue to reside in Department of Consumer and Regulatory affairs pursuant to Part II, E of Reorganization Plan No. 1 of 1982, effective July 3, 1982 D.C. Official Code § 1-15-07 (2001) and Part III, B, 1 of Reorganization Plan No. 1 of 1983, effective March 31, 1983 D.C. Official Code § 1-15-9).

In addition, because this program will be a zoning regulation, any request to waive its requirements, which would involve the exercise of discretion, must be heard and decided by the Board of Zoning Adjustment or the Commission. The requirement that such proceedings involve full evidentiary hearings, parties, and other procedural safeguards results from the requirements of Section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat 1206; D C Code § 2-509). Any relaxation of these requirements must also come from the Council.

The Commission wishes the hearing to focus solely on the merits of what is being proposed, rather than how it has been expressed by the Petitioner. For this reason, the Commission is not advertising the Petitioner's text, but instead is summarizing the concepts presented. Other than the areas addressed above, it is the intent of the Commission that all concepts presented in the text are within the scope of the hearing. Therefore, if the chart below fails to describe an element of the Petitioner's proposal that appears in its text, that element should be deemed to be part of this advertisement.

Finally, the Commission granted the Petitioner's request to submit supplemental materials no later than 20 days prior to the hearing date. These materials will be available for public inspection at the Office of Zoning.

For the purposes of the public hearing, the following proposals are presented for public comment:

TOPIC	CMIZ PROPOSAL	OP PROPOSAL
PROJECT THRESHOLD SIZE	10 or more newly constructed or substantially rehabilitated units, with provisions to include phased and contiguous development	The same
PROJECTS MEETING THRESHOLD THAT ARE SUBJECT TO PROGRAM REQUIREMENTS	Properties mapped within an Inclusionary Zoning Overlay District or Properties for which applications have been filed for variances or planned unit developments that seek additional gross floor area. Density increases achieved solely through PUD-related map amendments would not trigger the requirement.	Same, except does not apply to variance applications
AFFORDABLE SET-ASIDES	For all properties subject to the program, a percentage of the total number of residential units that can be built under matter of right zoning as follows 15% of Residential Units for Low-Rise Buildings. 12% of Residential Units for Mid-Rise and High-Rise Buildings 7.5% of Residential Units for Substantial Rehabilitation Projects	For properties in the Overlay, the proportion of bonus gross floor area that must be occupied by affordable units and the amount that may be occupied by Market rate units, as follows: High-Rise Rental: 1:1 High-Rise For-Sale: Between 1:1 and 1:1.5 Low-Rise: 3:2 Case by case determination for PUDs.
BONUS DENSITY TO ACCOMMODATE AFFORDABLE AND ADDITIONAL MARKET RATE UNITS	Up to 20% increase over base density, height & area, provided that height must be consistent with Height Act and density not inconsistent with the District Elements of the Comprehensive Plan	Same as well as possible relaxation of some additional zoning restrictions
ELIGIBLE INCOMES AND PERCENT OF SET ASIDE THAT MUST BE DEVOTED TO THAT	50% of set-aside @ 80% AMI* 50% of set-aside @ 50% AMI *AMI means the Area Median Income for a household in the Washington Metropolitan Area as determined annually by the US	<u>Rental Low-Rise</u> 50% of set-aside @ 50% AMI, 50% of set-aside at 70% AMI <u>Rental Mid & High-Rise</u> 50% of set-aside @ 70% AMI, 50% of set-aside at 80% AMI

POPULATION	Department of Housing and Urban Development	<u>For-Sale</u> Up to 80% AMI
DEVELOPMENT STANDARDS	<u>Unit Types</u> No less than same average # of bedrooms as market-rate units, higher percentage of IZ units permitted with more bedrooms than market rate <u>Unit Sizes:</u> Studio 450 sf, 1 BR 600 sf, 2 BR 850 sf, 3 BR 1050 sf, 4 BR 1120 sf <u>Unit Distribution</u> Reasonably disbursed throughout project <u>Exterior Finishes:</u> Same as market <u>Interior Finishes:</u> May vary	<u>Unit Types</u> Reflect range and types in the overall project. <u>Units Sizes.</u> Average SF of IZ units could be less than for market rate units, as long as prescribed minimum standards (see CMIZ Proposal) were met <u>Unit Distribution:</u> Evenly distributed vertically and horizontally throughout all buildings and/or phases of project <u>Exterior Finishes:</u> Same as market rate units <u>Interior Finishes and Appliances.</u> Requires additional study
PRICING METHODOLOGY	Rents and prices to based on HUD-established AMI so units are affordable to low and moderate income households, not to exceed 30% gross income	Initial housing cost determined through Low Income Housing Tax Credit methodology, with particular consideration given to the impact of condo fees on affordability.
CONTROL PERIOD (I.E. THE PERIOD DURING WHICH A UNIT MAY ONLY BE RENTED AND SOLD IN ACCORDANCE WITH THE IZ RESTRICTIONS).	<u>Rental:</u> 50 years <u>Ownership.</u> 20 years Renewable for 20 years when sold in less than 20 years	<u>Rental.</u> TBD, between 30 and 40 years <u>Ownership</u> OP suggests a range Between 10 and 20 years, renewable if sold during control period.

RELIEF FROM REQUIREMENTS	<u>Partial Relief</u> BZA can grant hardship variance (e.g , high, non-severable condo fees, historic preservation, etc) If Hardship Found, Requirement Can be Met By. • Off-Site Units similar in size/number as on-site • Buyout Contribution to a fund designated by the Council of an amount equal to ○ <i>Rental</i> 20 yrs of the market rent for the units that would have been set aside minus affordable rent ○ <i>For-Sale</i> market price for the units that would have been set aside minus affordable price <u>Full Relief:</u> BZA determines that compliance would deny an owner economically viable use of his or her land <u>Caveat:</u> Failure of BZA to approve parking relief is not grounds for relief from IZ	To the maximum extent possible, permit non-discretionary administrative waivers based upon objective criteria so as to minimize need to go through a BZA-type process
ELIGIBILITY REQUIREMENT FOR PERSONS SEEKING HOUSING MADE AVAILABLE THROUGH THE PROGRAM	<u>Priorities.</u> - 1st priority to DC residents - 2nd priority to those employed in DC - Must Be Primary residence - Must have not owned home in DC for past 5 years <u>Financial Status:</u> Mortgage or rental credit qualifiable <u>Public Purchase Option</u> DCHA & non-profit housing providers have right of 1st refusal for 40% of affordable units, and for purchase of units sold before 20 yr control ends	<u>Priorities</u> - 1st priority to DC residents - 2nd priority to those employed in DC - Must Be Primary residence - Must have not owned home in DC for past 5 years <u>Financial Status.</u> Mortgage or rental credit qualifiable <u>Public Purchase Option</u> DC or non-profit housing provider should have 1st refusal for percent of IZ units Details TBD
CONTINUING RENTER/OWNER ELIGIBILITY	<u>Rental</u> Annual income-certification. Must move at lease-end if income exceeds guidelines	<u>Rental.</u> Annual income-certification Eligibility if income exceeds guidelines to be determined

	unless landlord sets aside an existing market rate unit to replace the affordable unit lost <u>For-Sale</u> Primary residence Income may increase <u>Both</u> (Sub) Lease w/mayoral permission	<u>For-Sale</u> Must be primary residence Income may increase <u>Both</u> . Sub-lease only with permission
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This public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Regulations, 11 DCMR § 3021. The Commission will impose time limits on the testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY JEFFRIES, JOHN G. PARSONS, AND KEVIN HILDEBRAND, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, OFFICE OF ZONING.