MARYLAND-NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION
1738 Elton Road Suite 200 Silver Spring Maryland 20903
(301) 445-5400 / Fax (301) 445-5499
Email building@mncbia.org
Website www.mncbia.org

EXECUTIVE COMMITTEE
JAMES M. KETTLER
President
(Kettler Brothers Homes LLC)

BERNIE SCHULTZ
Vice President/Calvert County
(Bernie Schultz Realty Inc.)

DAVID COOKSEY
Vice President/Charles County
(Loiederman Soltesz Associates Inc.)

JOHN CLARKE
Vice President/Montgomery County
(Elm Street Development)

WILLIAM SHIPP
Vice President/Prince Georges County
(Fossett and Brugger Chartered)

GUY CURLEY
Vice President/St. Mary's County
(Liberty Homebuilder Inc.)

MILES HABER
Vice President/Washington DC
(Monument Construction Inc.)

MICHAEL FAERBER
Associate Vice President
(Samek McMillan & Metro PC)

CHAS STUART JR
Treasurer
(Miller and Smith Homes)

KRISTY MITCHELL SULLIVAN
Secretary
(Mitchell & Best Homebuilders LLC)

CHARLES D. ELLISON JR
Immediate Past President
(Miller and Smith Homes)

RICH THOMETZ
Life Director
(Hailey Development LC)

ROGER D WINSTON
Legal Counsel
(Linowes and Blocher LLP)

SUSAN J MATLICK CAE
Executive Vice President

BOARD OF DIRECTORS
CURT ADKINS
Craftmark/Craftstar Homes
TOM ALLHOFF
Mandrin Homes
G SEVAG BALIAN
Haverford Homes
BILL BILO
Dico Inc
DAVID BLANKEN
Ridan Builders
CHARLES COVELL
Bozzuto Homes Inc
TONY CRANE
Crane Homes
TIM DUGAN
Shulman Rogers Gandal Pordy & Ecker PA
STEPHEN P ELMENDORF
Linowes and Blocher LLP
THOMAS FARASY
MCF Investment Company LLC
ANDRE GINGLES
Gingles LLC
ROBERT HARRIS
Holland & Knight LLP
ROB JACOBS
Acacia FSB
GARY KRET
Steuart Kret Homes Inc
BOB LARKIN
Centex Homes
DAVID LITTLE
Gutschick Little & Weber PA
STEVE NARDELLA
Winchester Homes Inc
NANCI JO PORTEN
Porten Companies Inc.
ANDY ROSENTHAL
Rosenthal Homes
MICHAEL RUBIN
Charleston Homes
JACK SHOPTAW
Hammer Communications
JOSEPH C. SMITH
Georgetown Insurance Svc Inc
STEVE SPANO
Loiederman Soltesz Associates Inc.
RICK SULLIVAN JR
Alliance Homes
JOLENE ZANGARDI
IDI-MD Inc.

2005 JUL 21 PM 3 38

July 19, 2005

Ms. Jerrily Kress, FAIA
Director
Office of Zoning
441 4th Street NW
Suite 210
Washington, DC 20001

Dear Ms Kress,

The Maryland National Capitol Building Industry Association (MNCBIA) would like to submit the attached comments and recommendations for inclusion in the record of the public hearing regarding Case No 04-33 (Text Amendment to Require the Provision of Affordable Housing – Inclusionary Zoning)

MNCBIA (which is the homebuilding industry association affiliated with the National Association of Home Builders) represents Montgomery County and Washington D C , as well as four other neighboring jurisdictions Our comments on the options included for consideration by the Office of Planning in their April 29, 2005 Set-Down Report to the Zoning Commission are based on the MNCBIA's 30-year experience with the Montgomery County Moderately Priced Dwelling Unit (MPDU) program.

We look forward to continuing to work with the District and other stakeholders on this important issue Thank you again for your consideration of our comments and recommendations

Sincerely,

Miles Haber

Miles Haber, Vice President
Washington DC Liaison Committee
Maryland-National Capitol Building Industry Association

Attachment

[redacted]
04-33
[redacted]
34

ZONING COMMISSION
District of Columbia
CASE NO.04-33
EXHIBIT NO.34

MNCBIA provides the following comments on the proposed DC Inclusionary Housing Amendment based on its 30-year experience with the Montgomery County Moderately-Priced Dwelling Unit (MPDU) program.

*Re: Develop **criteria specific** to SFD development vs. SFA development vs. MF development - Recognize that the constraints/requirements on SF development and building differs from the MF requirements, as well as the differences between new construction vs. rehabilitation of existing buildings.* --- the two mandatory proposals include formulas for 'set asides' that recognize the differences; however the suggested threshold at 10 will in most cases result in a waiver as small sites and projects will be unable to accommodate additional bonus market units.

- **Set SFD/SFA threshold at 30** – to accommodate the lot coverage cap, allowing the bonus density to be integrated on smaller sites
- **Set MF threshold at 20** – again, the higher threshold precludes the review of sites that cannot accommodate additional units.

*Re: Develop **IZ overlay** that waives existing conflicting requirements that impede the ability to achieve bonus density* --- in the event bonus density is not available, the developer's obligation to build IZ units is terminated. MNCBIA supports the component that states "Developers can elect to take a matter-of-right density bonus calculated at approximately 20% extra FAR, provided through an affordable housing overlay in multi-family zones": By matter-of-right, the developer can rely on off-setting the costs incurred to provide IZ units. When there is a mandatory housing overlay premised on bonus density, the bonus density should also be mandatory so as to guarantee the property owner an economic offset; this insures that the market unit buyer is not subsidizing the mandatory units.

However, the cost reduction strategies raise some concerns, resulting in some questions:

- *Re: the 'splitting of fees'... essential building operation and maintenance costs from recreational and amenity costs*
  - Will the IZ unit residents be barred from the use of the recreational amenities, as they do not contribute to the maintenance or operation? Or will they have access to the amenities, and be subsidized by increasing the assessments charged to the market-rate units? In the first scenario, what would then preclude a market-unit owner to demand that he be exempt from the portion of his monthly fee assigned to the maintenance of amenities since he does not use the amenities?
- *Re: Parking should be unbundled from purchase and rental of units*
  - is there reliable data that confirms that the IZ unit buyer or renter will not have a car, and therefore will not need a parking space? In the event he has a vehicle, where will it be parked?

IZ Ratio on Bonus density:

The specific proportion of bonus gross floor area that must be occupied by affordable units and the amount that may be occupied by market rate units needs to be negotiated and needs to reflect the different market conditions for low-rise; mid and high-rise; owner vs rental; and new construction vs substantial rehabilitation of existing buildings. The Text Amendment should provide examples of how these formulas will be used.

Alternatives to On-site IZ units:

Allow developer to provide IZ units off-site, within the same Ward, if sites are available and/or in the neighboring Ward in the event there are no opportunities within the subject site's Ward.

Provide formula to compute IZ units and bonus density – Under the MPDU program, a major source of confusion has been the range of interpretations by staff and applicant when calculating the # of MPDU required under Chapter 25A and the resulting # of units that should result from the bonus density calculation. To avoid confusion and/or inconsistencies, MNCBIA strongly recommends that a formula be included in the regulations, as well as arithmetic example. As the following examples demonstrate, different methods of calculating bonus density and affordable units can yield different results. A formula should be provided to facilitate consistency in the process.

- SF parcel yields 35 units, with a ***15% IZ requirement*** and 1:1 ratio

Example: 35 units x 15% IZ requirement = 3.67, round up to 4 IZ units
4 IZ units @ 1:1 ratio yields 4 additional market units
39 units approved

OR

- SF parcel yields 35 units, with a ***20% bonus density*** to incentivize IZ units

Example: 35 units @ 120% = 42 units allowed applicant by right 7 units; 42 units allowed; under 1:1, # of units would be dropped to 41 approved - three IZ units: three market units

Re: On the "Affordability Control Periods". The goal of affordable housing programs and inclusionary housing legislation is to provide housing that is affordable; when affordable units are available to purchase, they provide the first step to home ownership -- the leading component of personal wealth in the US.

MNCBIA proposes a 15-year control period—the limited control period encourages the IZ unit owner to maintain his property, while contributing to the stability of the neighborhood. In addition, it allows the leveraging of the projected appreciation for a move-up, college education, and medical expenses.

Holding Periods –

- **For sale IZ units: 15 year control period** - the goal of IZ is to provide the first step to home ownership [the leading component of personal wealth in the US]; the 15 year control period incentivizes the IZ unit owner to maintain his property, knowing that he will have built equity which can then be leveraged for a move-up, college education, medical expenses, home-improvement, etc

- if unit is *sold during the control period*, the sales price will be set by Department of Housing and Community Development; price will be based on the % increase in real estate values in the Ward during the holding period – DHCD is permitted to adjust the price of the unit up or down to reflect the economic status. Assuming there are proceeds from the sale of the property, the IZ unit owner is entitled to cost of the unit (PITI), and the cost of any capital improvements

- if unit is *sold after the control period,* assuming there are proceeds, from the sale of the property, the IZ unit owner is entitled to cost of the unit (PITI), the cost of any capital improvements; the remaining balance will be split 50/50 between unit owner and the agency designated by the Mayor (Department of Housing and Community Development or the Housing Production Trust Fund)

- **For rental IZ units:** 30 year control period – limiting the control period to 30 years insures that IZ units do not become marginal units as a building is refurbished during its economic life

Re: Grandfather existing projects: Applications that have received preliminary plan approval, at the effective date of the IZ amendment, shall be exempt from the IZ requirements (The plan approval process requires a prolonged 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).

Re: Administrative comments – Because the IZ program is a government program, the program should be administered by the DHCD/OP, and scrupulous care must be exercised to not impinge on the developer or builder's schedule. The applicant must provide DHCD/OP an operating schedule and work with DHCD/OP as to the timing and availability of the IZ units; MNCBIA recommends that the applicant not be made responsible for contacting the IZ certificate holders, nor for inspecting the validity of their qualifications or certificates.

- The applicant/developer/builder should provide preliminary information [# of IZ units, size, projected delivery] to the DHCD/OP when application has been approved

- All eligible Households must be certified --- certification program includes completion of entry-level 'path to home ownership' course; certificate is good for 24 months; renewal requires updated employment and wage history, as well as credit report.

- DNCD/OP contacts IZ certificate holders of the upcoming availability; certificate holders must request that their name be place on 'interested prospect list' for lottery.

- DNCD/OP schedules and conducts lottery per builder's timeline; back-up candidates will be selected for each unit made available

- The builder and/or developer will not be responsible for identifying eligible households, nor for selecting lottery winners

- All eligible certificate holders who contract to purchase an IZ unit must make loan application within 7 days of contract ratification, with a lender approved by both DHCD and the builder/developer.

- In the event an IZ applicant does not meet lender's requirements, the IZ certificate holder must inform both the builder and DHCD/OP so that another candidate can be provided the builder for the available IZ units.

Re: IZ units not absorbed by IZ certificate holders – Although barely imaginable in the current marketplace, there have been occasions, in Montgomery County, that the MPDUs available for sale or rent, do not meet the needs of the certificate holders, because of size and/or location. In those few instances, builders are required by law, to offer those units at MPDU prices to the general public providing a windfall to buyers/renters whose incomes exceed the MPDU household income limits. MNCBIA can provide some input as to more equitable alternatives should this issue need to be addressed.