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Washington, D.C 20015
October 5, 2005

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
Suite 210-S
441 4th Street, N W.
Washington, D C. 20001

ZONING COMMISSION
District of Columbia

CASE NO. 04-33A
EXHIBIT NO. 37

Re Zoning Commission Case 04-33A (Map and Text Amendments, Inclusionary Zoning Overlay District)
Comments in Opposition to a Broad Mapping of the Overlay District and
in Opposition to the inclusion of the Wisconsin Avenue Corridor in the Inclusionary
Zoning Overlay District

Dear Ms. Mitten:

The Office of Planning is proposing a very broad mapping of the Inclusionary Zoning Overlay District precisely when it is most appropriate to move with caution, and adopt a more focused mapping that will allow for an evaluation of the impact of this program.

The broad, city-wide mapping under consideration will set into motion a dynamic which will.

- Accelerate the displacement of low income households from low-cost market rate housing in neighborhoods such as Columbia Heights which are experiencing a boom in the development of luxury condominiums
- Displace low-income households in many parts of the District to provide subsidized luxury housing for households with a higher target income than those displaced.
- Provide the most valuable bonus densities in neighborhoods where development of luxury condominiums is already attractive, and where the increased development is taxing the available infrastructure
- Discourage the development of new and rehabilitated market-rate housing that would be affordable to the households targeted by this program.¹

As pointed out in earlier testimony, there are several perverse incentives built into the formulas for bonus densities and the associated affordable housing requirements.²

- Since developers can count affordable units that are being provided pursuant to federal and other District housing programs toward the requirements of this overlay, the actual addition of affordable units is below the amounts estimated by OP. Many of those units would likely have been produced absent this overlay based on the other programs that apply.

¹ The program will increase the profitability of development of luxury condominiums in neighborhoods with the highest prices relative to the profitability of projects that would produce market-rate housing affordable to target households. This diverts resources from those neighborhoods which can support market-rate affordable housing to the neighborhoods with higher market-rate prices.

² These points along with the incentives discussed in the paragraph above are discussed in my detail in the letter dated April 19, 2006, and included as Attachment 2.

- For some projects, the subsidized units will actually be larger in square footage than many of the market-rate units in the same project with the same number of bedrooms.
- The bonus density will be far more valuable in those parts of the District where developers already find luxury condominiums to be very profitable, accelerating development in those areas, while slowing development in other parts of the District where additional development would be desirable

We need to begin this experiment gradually and evaluate and map the overlay district in small and carefully evaluated increments: It is imperative that the mapping of the Inclusionary Zoning Overlay District proceed slowly and deliberately so that we can evaluate (1) how the program is working, (2) how well the provisions can be enforced; and (3) how it affects developers' incentives. This means beginning by mapping small carefully targeted areas, and evaluating the program through time before expanding it. That is the same strategy that was recommended to the Office of Planning by this Commission earlier this year.

In reaching this conclusion, I also note the many other things that OP did not consider in its Setdown Report or in the recently filed Final Report.

- **Failure to evaluate the capacity of the available infrastructure and ability to economically expand the infrastructure to serve the specific areas where increased density is likely to occur with the proposed mapping:** OP did not provide any infrastructure analysis that actually examined whether the infrastructure is available or can be economically expanded in the areas where development is likely to occur if this overlay is mapped as proposed. Instead, OP refers to the Technical Report on Infrastructure filed with the draft Comprehensive Plan. I have attached a copy of my testimony, filed with the D.C. Council, reviewing the elements of the infrastructure for which the Technical Report failed to take into account where the increases in density and demand for infrastructure will occur if the Comp Plan is adopted or if the IZ overlay is mapped as proposed.³
- **Failure to do a serious evaluation of the impact of a 20% increase in density on the scale and character of neighborhoods across the District:** OP did not seriously consider whether the increase in density allowed in the various overlay areas would alter the character of those zoning districts. Instead, the analysis provided by OP is extremely superficial. The analysis seems to be limited to determining whether it is necessary to increase height and/or lot occupancy.
- Where there is no need to increase height or lot occupancy to achieve the higher FAR, the discussion ends, and OP concludes that there is no impact.
- Where there is a need to increase height or lot occupancy, it appears as though it is generally assumed that there is no change in the scale and character of the area, if the increased density can be achieved through an increase in height or through an increase in lot occupancy without violating the minimum side and rear yard requirements.
- **OP does not address the elephant in the room: Does a 20% increase in the maximum size of the building change the scale and character of the surrounding area?**
- **OP does not consider the impact of the increased density, and possible increases in height and/or lot occupancy, on the adjoining neighborhoods.** OP did not even consider whether the 20% increase in density in commercial or higher density residential zones would have an impact on low-density residential neighborhoods or rowhouse neighborhoods that abut those zones.

³ A copy of that filing is included as Attachment 1, below.

The Wisconsin Avenue Corridor should not be considered for inclusion in the mapping of this overlay: It is also imperative that mapping of the Inclusionary Zoning Overlay District not include the Wisconsin Avenue corridor. For this area, a 20% increase in the allowed density would not be appropriate to the scale and function of development in the adjoining neighborhoods. It has already been demonstrated that the infrastructure cannot even support the amount of development allowed as a matter-of-right, nor can it be economically expanded to support that amount of development, much less a 20% increase in the amount of development allowed.⁴

Resolution of ANC 3E and similar resolutions passed by several community groups: In connection with concerns about mapping the Inclusionary Zoning Overlay District on the Wisconsin Avenue corridor, I am attaching a copy of a resolution passed by ANC 3E on March 9, 2006.⁵ The top of the third page of that resolution contains the following statement:

“BE IT FURTHER RESOLVED that the ANC 3E requires that no portion of the Wisconsin Avenue corridor be considered for inclusion in programs which grant bonus heights or densities.”

This, along with the basis for this statement, provided in the first pages of the resolution, clearly demonstrates that the ANC recognizes that the mapping of programs with bonus heights and/or densities is inappropriate for this area. The discussion at the ANC meeting included a discussion of this overlay as well as other programs that might be impacted by this resolution.

Other ANCs and community organizations in the area passed similar resolutions. For example, on February 13, 2006, ANC 3F passed a resolution, Resolution 06-05, which includes the following statement:

“BE IT FURTHER RESOLVED, that ANC 3F recommends and strongly urges that no portion of Van Ness/UDC or the Wisconsin Avenue Corridor be considered for inclusion in programs which grant bonus heights or densities;”

On January 27, 2006, Friendship Neighborhood Association passed a resolution, which includes the following statement:

“BE IT FURTHER RESOLVED that Friendship Neighborhood Association requires that no portion of the Wisconsin Avenue corridor be considered for inclusion in programs which grant bonus heights or densities;”

Sincerely,

Marilyn J. Simon
5241 43rd Street, NW
Washington, DC

Attachments To be provided at October 5 Hearing

Attachment 1 Testimony on the Infrastructure Report presented by Marilyn J. Simon at D.C. Council Hearing on September 26, 2006

Attachment 2 Letter from Marilyn J. Simon to Carol Mitten, dated April 19, 2006

Attachment 3 Resolution ANC 3E dated March 9, 2006

⁴ The Setdown Report included statements about the Tenleytown and Friendship Heights areas. I discussed the analysis with OP staff, and questioned some of the underlying assumptions, in light of the relatively intense zoning already mapped in those areas, as well as the fact that Friendship Heights has the highest daily Metro ridership in the District outside the downtown employment areas, and Tenleytown isn't very far behind. I was told that the Metro ridership data would be included in the final report, as well as a detailed description of how the housing units per acre were calculated and the underlying assumptions about relying only on residential development to evaluate density at these stations. The entire discussion was eliminated from the Final Report, so I assume that OP has dropped this point. However, if the record remains open, I will submit additional materials on this point.

⁵ A copy of that ANC 3E resolution is included as Attachment 3.

ATTACHMENT 1 TESTIMONY ON INFRASTRUCTURE REPORT

**Preliminary Summary and Comments on
Final Draft Technical Report on Infrastructure
accompanying the Mayor's Draft**

The Mayor's Draft Comprehensive Plan does not rest on a firm foundation. Residents of the District need a fact-based Comprehensive Plan, one in which the present condition of the District and the market in which it operates are carefully evaluated and it has been determined that the infrastructure is available or can be economically expanded to support the recommendations of the Plan as well as the outcomes that are likely if the Draft Plan was adopted.

A preliminary review of the Final Draft Technical Report on Infrastructure accompanying the Mayor's Draft reveals that OP has not evaluated whether the infrastructure exists to support the development that is likely to occur if this document was adopted or whether the infrastructure can be economically expanded to meet that demand.

Major Issues:

- To the extent that this Report evaluates the ability of the infrastructure to accommodate the recommendations of the revised Comprehensive Plan, the amount of development which is evaluated seems to be based on OP's statements about where development will occur, and not based on the recommendations included in the revised Comprehensive Plan for zoning changes and incentive programs
- In several instances, conclusions about the ability of the infrastructure to support the recommendations of the revised Comprehensive Plan are based on general trends, describing the forecast in the revised Comprehensive Plan as "modest growth," [See, for example, page 4] and does not take into account the specific recommendations for increased growth along particular corridors or in particular sections of the District
- In many instances, the Report notes that components of infrastructure are designed for a population that was larger than at present [See, for example, page 28] The Report acknowledges that it does not evaluate more local capacity issues, leaving that evaluation for a case-by-case analysis as new development permits are issued. However, the revised Comprehensive Plan is proposing major increases in development, and increases in the zoning envelope, even in sections of the District which have not seen a decrease in the number of households or lost population. The planning which should be the foundation of the revised Comprehensive Plan should include an analysis of the infrastructure capacity in areas where increased development is being considered, and a determination of whether that capacity can be economically increased
- To the extent that the Report drills down and looks at specific infrastructure issues, it does not consider the capacity of the distribution networks, i.e., the pipes, conduits, wires, etc., that bring the utilities to our neighborhoods and business centers, or the capacity of the separated sanitary sewer. In considering areas in which the infrastructure capacity might be inadequate, the Report does not consider whether it is economical to increase the capacity, or whether it would be more appropriate to control or redirect development. The Report does not consider the impact that expanding capacity might have on District neighborhoods. For example, it does not consider whether residential neighborhoods will be impacted with additional or larger utility poles on neighborhood streets, by a need to heavy-up electric service to serve adjoining new residential or commercial development

ATTACHMENT 1 TESTIMONY ON INFRASTRUCTURE REPORT, page 2

Examples:

- The basic premise in this report is that, because there had been fewer residents of the District in 1950, it is not necessary to consider the capacity of the infrastructure, but only necessary to meet maintenance and replacement needs. See the following example from page one of the Report [emphasis added]

Like many older historic cities, the District suffers from aging infrastructure, some portions of which are over a century old. The central challenge faced by the District is not that of capacity but one of meeting maintenance and replacement needs. In fact, the number of households in the city today is not substantially different than it was in 1950, though there are 230,000 fewer residents. Consequently, the infrastructure is generally in place to support additional growth, with some exceptions at specific locations where development did not previously exist. The conveyance systems and facilities, however, are suffering from structural deterioration and in need of significant rehabilitation, modernization, and expansion as aging components approach the end of useful life. District agencies strive to balance the need for immediate system upgrades with long term planning and funding strategies to both accommodate the increased demands and prioritize improvements in the areas where the need is most significant, including in those areas that have not been previously developed for more intense uses.

- While the Report claims to analyze the growth from projected land use changes, that isn't in evidence in the Report. It appears as though the Report is based on demand projections assuming 100,000 new residents, with the geographic distribution described by OP without regard for zoning changes that are likely to follow the adoption of the draft maps or the recommendations for bonus densities and other incentive programs. See the following description on page 3 of the Report along with contradictory description on page 4 [emphasis added]

2.1 METHODOLOGY

Preparation of this technical report for Infrastructure in the District involved four major research tasks: preparation of a baseline report, analysis of growth from projected land use changes, the assessment of the existing infrastructure to meet projected demands, and development of recommendations to help meet projected growth and associated demand.

It is difficult, in an engineering sense, to analyze future capital improvement needs or adequacy of sewers or water without precise locations and requirements. The assessment of this technical report is limited to general trends in growth based on projected population data. It would be expected that for the modest growth that is forecasted in the Comprehensive Plan, needed infrastructure would be site-specific. In order to determine specific systems improvements based on associated growth, detailed information on projected densities on a block-by-block basis would be required, which is currently not available.

The analysis has not been done to determine whether there are additional "site-specific" infrastructure needs. Before adopting a document that recommends major increases in density in certain sections of the District, it is necessary to determine whether the infrastructure can support the development that is likely to occur with implementation of that Plan or whether it is economic to expand the infrastructure in areas where it might not be adequate to support the recommended changes in zoning and other incentives for development.

ATTACHMENT 1. TESTIMONY ON INFRASTRUCTURE REPORT, page 3

- **Potable Water:** The Report, apparently, does not include any analysis of the specific recommendations of the Mayor's Draft of the Comp Plan, but instead simply states that the projected growth is close to that which was used in the most recent WASA projections
- Each of the statements that the District will work proactively to ensure that infrastructure is where it is needed to meet future demands ignores the required analysis to determine whether the infrastructure can economically be added to the particular sectors
- The time for this analysis is in the planning process, before putting into place the revised Comp Plan that will direct new development to these areas where we cannot be certain that the critical infrastructure can be economically expanded to serve the new residents at those locations

See following quotes from Report at pages 28, 30 and 34 [emphasis added]

5.1.1.2 Potable Water Distribution

In general, distribution system capacity is not an issue in the District. The design of the infrastructure was based on a population that at one time was much larger than at present. There will likely be street-specific capacity issues related to expanding development in previously vacant areas, but these issues can only be evaluated on a case-by-case basis as new development permits require site assessments. WASA approaches capacity issues more comprehensively by evaluating current and future District-wide needs and concerns by water service area (Figure 5.2). As noted in Section 4.0, the most recent water demand projections from their 2002 Water System Facilities Plan are reasonably close to demand that would be projected from growth assumed in the Comprehensive Plan, and the evaluation for each service area from the 2002 plan remains valid. The evaluation for each service is summarized as follows.

5.1.2 PLANNED POTABLE WATER SYSTEM IMPROVEMENTS

The existing water system supports the District's future needs for water. The majority of the planned improvements to be made to the water system in WASA's Capital Improvement Program involve normal maintenance and upgrades to keep pace with population growth and new development. This includes the addition of new water storage facilities, increasing the capacity of certain water mains, and upgrading pump stations. The Lead Service Replacement Program removes lead pipes from the distribution system and improves water quality for the public. This, in addition to removing cross-connections, dead ends, and other water quality and reliability projects that WASA is implementing, will improve the water system further and ensure it continues to meet the District's needs. That said, the District must consider the potential impacts of future new development and increased density in areas of redevelopment/revitalization and work proactively to ensure that water infrastructure will be able to meet the potential future demands.

5.1.3 ADDITIONAL POTABLE WATER INFRASTRUCTURE REQUIREMENTS

The detailed WASA analysis that is the basis of the CIP is based on similar growth projections for water demand as for the Comprehensive Plan as well as a current assessment of problems and conditions. These lead to the conclusions that follow.

Overall

Generally, the overall pumping, storage and large transmission water mains appear to be adequate to support the projected land use change. The small diameter water mains and appurtenances serving individual street and blocks may need to be rehabilitated or replaced to support the changes. A detailed analysis of the infrastructure local to the development area will be required to comment further on the improvements needed. A brief description of the

ATTACHMENT 1: TESTIMONY ON INFRASTRUCTURE REPORT, page 4

- For example, the Armed Forces Retirement Home requires an extension of the water mains to the area. No analysis has been presented on the capacity of the water mains that are to be extended and whether they can handle the projected additional requirements. **This cannot be done on a case-by-case basis, but need to be evaluated now, during the basic planning process.**

See following excerpt from the Report at page 35

At the Armed Forces Retirement Home, the waterlines in this area are not owned, operated or maintained by WASA, and this area has limited water service due to present land uses including a graveyard and golf course. The service to this area would require extension of water mains either from Second High or Third High Service Areas.

- **Sewer System:** The text of the Comp Plan would provide for massive increases in the allowed density in the Rock Creek West section of the District. This is in addition to the thousands of additional housing units that can be added in this area as a matter-of-right. The Report does not evaluate the additional development that would occur if the Mayor's Draft of the Comp Plan was adopted.
- It appears as though only limited growth was evaluated for Rock Creek West. This is not consistent with the language and maps in the Mayor's Draft of the Revised Comp Plan, and if the evaluation is based on limited growth, the language of the Comp Plan should be revised to reflect that the zoning envelope should be limited so that only limited growth will be generated in this area, and the maps should be redrawn to reflect the zoning that would be consistent with that statement.

See following excerpt from the Report at page 40, emphasis added

West of Rock Creek Park

The existing separated sewer systems have adequate transmission capacity for the anticipated land use changes in this area. It is important to note that there is only limited growth anticipated in this area, with only small areas anticipated to experience land use changes. However, localized additions or pipeline increases may be needed to accommodate the projected flows of future development depending on their size and density.

ATTACHMENT 1· TESTIMONY ON INFRASTRUCTURE REPORT, page 5

- **Power System:** The planning process should include a determination of whether it is necessary to heavy-up the power supply coming through our residential neighborhoods in order to provide additional power for new development
- In addition, proposed locations for new substations should be part of the planning process, not left for later to be done on a case-by-case basis
- There needs to be more guidance with respect to the feeders and whether they will be routed through the neighborhoods or generally restricted to the corridors.

See following excerpts from the Report at pages 46 and 47, emphasis added.

5.3 ENERGY INFRASTRUCTURE ASSESSMENT

5.3.1 POWER CONSTRAINTS AND ISSUES

Pepco's goal is to continually improve safety and reliability and integrate the best practices of the utility industry. Each year, roughly 15 of the least reliable cables are selected for intensive engineering analysis and redesign. Subsequent diagnostic testing identifies potential overloads that could disrupt electric service. The results of testing are used to develop a corrective action plan for each feeder to improve reliability, including everything from completely rebuilding a line, to installing larger transformers and additional fuses to keep pace with projected employment and household growth.

Pepco is also increasing capacity at three existing substations by adding transformers and/or supplies. Existing substations will be expanded to serve the 7th Street, U Street Corridors, Howard University Town Center, and Historic Anacostia. As for beyond the ten-year horizon, Pepco will site and construct substations to relieve overloads of neighboring substations. Substations will be strategically sited in load growth centers to relieve the overloaded facility(ies) plus adjacent facilities that are approaching 100% of their substation capacity. Pepco cannot determine at this time the locations of new substations beyond the ten-year horizon with any degree of certainty.

5.3.3.2 Planned Feeder Infrastructure Improvements

In regards to feeder capacity, all new services will require some degree of new feeder infrastructure. Because most new developments are required to have underground distribution systems, it can be expected that new conduits, cables, and subsurface or pad-mounted transformers will be required for any new development. Public Utility Easements are often needed to provide buried distribution systems inside multi-building developments. Dense commercial or multi-family residential developments will often require the extension of new mainline underground feeder groups, often in new duct banks. New duct bank construction requires digging in the streets or sidewalks. Less dense commercial and residential development not in the downtown area could require the extension of overhead or underground mainline feeders and possibly installation of new conduit. Feeders may need to be extended all the way from a substation up to one to two miles away.

ATTACHMENT 1 TESTIMONY ON INFRASTRUCTURE REPORT, page 6

- **Natural Gas Distribution System:** There seems to be no analysis of whether the natural gas distribution system has sufficient capacity for the new development that would be associated with the language and maps of the Mayor's Draft Comprehensive Plan

See following excerpt from the Report at pages 50

5.3.5 NATURAL GAS CONSTRAINTS AND ISSUES

Residential and Commercial

The assessment finds that natural gas is responding to market signals under the spur of Public Service Commission policies to promote competition. Natural gas infrastructure should be considered in relation to specific proposed development and allowed to compete with other alternatives (such as electricity, wireless telecommunications, and other options) for providing comparable services

- **Developers Fees:** It is not acceptable to think about the limitations of the existing infrastructure only when the first large development where demand exceeds the available capacity is proposed. This ignores the development that can occur as a matter of right within the commercial areas and the adjoining residential neighborhoods as well as the natural growth in demand for the elements of the infrastructure as families grow and as incomes increase. New development which will cause the adjoining areas to exceed the capacity of the existing infrastructure as demand grows within the neighborhood should be controlled when appropriate or assessed the cost of upgrading the infrastructure if it is determined that the new development does not otherwise have a negative impact on the surround areas. The proposal to use developers fees to fully address these issues, and only after the breaking point has been reached is not sufficient

See following excerpt from the Report at pages 55

6.1.3 DEVELOPER FEES

As developers identify potential project sites and begin to develop site-specific plans, they often face limitations with the existing infrastructure (to include streets, water distribution lines, sanitary sewer lines, stormwater lines, electricity infrastructure, etc.) on or adjacent to the site. One way to reduce costs to utilities and their consumers would be for developers to pay some or all of the costs to Pepco or WASA associated with either extending utilities to the project site or upgrading the existing utilities to the specifications necessary for their proposed project.

ATTACHMENT 2 LETTER ON INCLUSIONARY ZONING, DATED APRIL 19, 2006

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April 19, 2006

Carol Mitten, Chairman
Zoning Commission
District of Columbia Office of Zoning
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Re Zoning Commission Notice of Proposed Rulemaking
Case 04-33 (Text Amendment – Inclusionary Zoning)

While many people believe that there is a need for more affordable housing, there are many serious problems with the text amendment proposed by the Zoning Commission. The basic problems cannot be solved by tinkering with the proposed language. The proposed text amendment does not take into account the basis for current zoning and the zoning envelope in many parts of the District, particularly in commercial and higher density residential areas near Metrorail stations, in rowhouse neighborhoods in the inner city, and in neighborhoods that include historic apartment buildings. The proposed text amendment will also have significant, and unintended, negative consequences that had not been addressed.

- **The proposed text amendment ignores the very basis for current zoning limits.** First, and most importantly, the proposed text amendment is based on the erroneous assumption that current zoning regulations and zoning maps were not designed with consideration of the character of the respective districts, the suitability of each district for the uses permitted in each district, and encouragement of the stability of districts and of land values in those districts and in adjoining neighborhoods, as required by the zoning regulations.

Instead, the basis seems to be the clearly false assumption that large increases in density can be allowed and encouraged in many areas across the District, and that those increases will not have a negative impact on the character or stability of those districts or the surrounding areas.

- **20% bonus densities would be inconsistent with the Comprehensive Plan near Metro stations.** The premise behind this proposal ignores the fact that zoning near some of those stations is already relatively intense and takes into account the existence of the Metro stations. Advocates of this text amendment have recommended that inclusionary zoning, with bonus densities, be applied near transit, and, in particular, near Metro stations. However, they have failed to take into consideration the fact that, for some Metro stations, the surrounding blocks already have relative intensive zoning, and that the development even to the current density limits would have a large negative impact on near-by low-density or moderate-density residential neighborhoods.

In addition, for some Metro stations and “corridors,” it is already clear that the infrastructure cannot support the development currently allowed. A 20% increase in the allowed density will impact school crowding, traffic congestion and demand for on-street parking. In addition, no analysis has been done to determine whether the water and sewer infrastructure

ATTACHMENT 2 LETTER ON INCLUSIONARY ZONING, DATED APRIL 19, 2006, page 2

can support the population increases in those parts of the District that have not seen a reduction in the number of households. Yet, when asked to include an inclusionary zoning scenario in the infrastructure analysis for traffic on Upper Wisconsin Avenue, where OP has specifically recommended that inclusionary zoning be applied, OP refused to consider including a scenario that examined inclusionary zoning bonus densities.

- **20% bonus densities would be inconsistent with the Comprehensive Plan in many areas of the inner city.** This is particularly important in areas with rowhouses, and the proposed bonus densities would be in conflict with the Comprehensive Plan land use map. It is also important in areas with apartment buildings whose design is truly historic. Extensions on top of these buildings or through lot expansion would ruin the wonderful existing architecture and be change the fabric of the neighborhood for the worse.
- **The proposed text amendment is not designed to, and will not, achieve the goals expressed by many of the individuals and groups that have expressed support.** While many supporters of these inclusionary zoning believe that this proposed text amendment, if approved, will house thousands of the District's poorest, it is clear that that is not the target population for this text amendment. The target population for all of the inclusionary units in the zone districts that are most likely to be attractive to developers and half of the inclusionary units in all other zones is well above the median income of the District.

For developments located in CR, C-2-B through C-3-C, W-2 through W-3 and SP zone districts, all of the inclusionary units will be set aside for households with incomes up to 80% of the Metropolitan Statistical Area median income. For 2004, that would have been households with incomes less than \$68,320, and in that year, over 65% of District households had incomes below 80% of AMI.

For developments located in R-3 through R-5-E, C-2-A, W-0 and W-1, half the units will be set aside for households with incomes less than 80% of AMI. The other half of the units would be reserved for households with incomes less than 50% of AMI. For 2004, that would have been \$42,700, and over 45% of District households had incomes below 50% of AMI. The lion's share inclusionary units, all the inclusionary units in the areas with the higher zoning limits and half of the inclusionary units in other districts, would be set aside for households whose incomes are over 50% of AMI. These units would go to households whose incomes exceed that of over 45% of District households.

In other words, nearly half the households in the District have incomes below those of the households that will receive the opportunity to purchase or rent most of this subsidized housing, and given the incentives faced by the developers to sell or rent inclusionary units to households at the high end of each category, the income for households receiving this subsidy for the lion's share of the units will approach \$71,400 per year, and far exceed the median income of the District.¹

¹ For 2005, the following income limits for all of inclusionary units in all of the higher zoning category areas and half of the units in the other areas would have been.

For a family of three, this would be \$64,300, and for a family of four, this would be \$71,400, well above the District's median income of \$55,750.

ATTACHMENT 2 LETTER ON INCLUSIONARY ZONING, DATED APRIL 19, 2006, page 3

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- **The proposed text amendment would create a perverse dynamic, accelerating the already rapid pace of development of luxury condominiums, discouraging development of affordable market-rate housing, and discouraging substantial rehabilitation of existing structures.** The proposed text amendment, if adopted, would create a perverse dynamic, where more valuable bonus densities will be awarded to developers of luxury condominiums in neighborhoods where development is already quite profitable, while granting far less valuable bonus densities for rental buildings, and condominiums in neighborhoods where market-rate units would be affordable to the households targeted in these proposals.²

Since the Office of Planning had done all its analysis based on average costs and market-rate prices, rather than examining different costs and prices, OP has failed to consider the important dynamic that will be put in place by this inclusionary zoning proposal. The text amendment provides significantly larger bonuses for building luxury condominiums, particularly in the first category of zoning district, than for other projects. The bonus density is most valuable in the neighborhoods with the highest condominium prices per square foot, and therefore will divert development from neighborhoods that can benefit from development and accelerate development of luxury condominiums in other neighborhoods, some of which do not have the infrastructure to support that development and some of which are close to areas that will clearly be negatively impacted by these generous increases in density.

A specific example, using the OP's proposal was provided in my earlier comments filed last summer.³

² For steel and concrete developments, approximately 40% of the bonus density will be allocated to affordable units [See §2603.2.] For each affordable 600 square foot unit provided, the developer might make an additional profit of over \$650,000 in high price neighborhoods, over \$450,000 in average price neighborhoods, and \$400,000 in low price neighborhoods.

³ In my earlier comments, I provided the following example. The proposed text amendment has slightly different requirements and bonus densities, but the same principles apply.

"With the OP proposal, a 600 square foot affordable apartment would sell for \$205,600, or approximately \$342 a square foot. OP estimates the average cost of building the unit at \$120-130 a square foot, and since the unit can have less expensive finishes, it might have below-average costs. Since a bonus density is being provided, there is no additional land cost associated with this unit and for the 600 SF, the developer will make a profit of over \$127,000. Yet, in order to make the developer whole, for providing this "affordable" unit, on which he makes a substantial profit, the Office of Planning proposes to allow an additional bonus density to allow an additional 600-900 square feet of market-rate housing. At current prices, luxury condominiums in some areas for which OP is proposing applying this rule, the additional market-rate housing can be sold for \$585,000-765,000 for each 600 SF one-bedroom affordable condominium provided. While the cost per square foot of the luxury condominiums might be greater than the average construction costs, it is clear that the bonus density allows the developer to make a profit on the affordable unit and a substantial profit on the market-rate luxury unit, which can also be built within the bonus density. There is no land required for these units, since absent the bonus associated with the mandatory inclusionary zoning proposals, these units would exceed zoning limits. Further, contrary to the assumptions made by the Office of Planning, the additional cost associated with these units should be evaluated at the marginal cost of construction, i.e., at a rate per square foot which is below the average cost of construction, rather than at the average cost per square foot. The marginal cost per square foot is below the average cost per square foot, since the average cost per square foot includes many fixed costs, and, thus, does not accurately reflect the cost of a 20% increase in the size of a building under construction."

"However, for non-luxury condominiums or for condominiums in neighborhoods that command a lower price per square foot, the bonus is much less valuable. The proposals, if adopted, will provide a higher incentive to develop luxury condominiums in the neighborhoods that command the highest prices per square foot. For rental buildings, the bonus is substantially less valuable. Thus the proposals, if implemented, would shift development from rental buildings to condominiums. For rehabilitation, it might be difficult for the developer to realize the bonus density. Therefore, if the market-rate prices or rents for units in the

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- **The provisions requiring that affordable units in condominiums be offered for sale [See §2605.1] reduce the likelihood that the affordable units will remain affordable and that qualifying households will be occupying those units.** For-sale units are less likely to remain occupied by qualifying households since the eligibility requirement is only in place on the date that the condominium is purchased. The qualifying purchaser might subsequently graduate law school or change careers and see a dramatic increase in income. In addition, effective enforcement of the purchase eligibility conditions is virtually impossible, especially on resale. As shown below, conditions on leasing the subsidized condominium are also impossible to enforce.
- **For projects with a large variation in square footage for comparable units, the affordable units will be required to be larger than some of the market rate units with the same number of bedrooms, since the text amendment requires that affordable units have a gross floor area no less than 95% of the average size of the comparable market rate units. [See §2605.7]** For example, at Chase Point a condominium at 5401 Western Avenue, there are 75 two-bedroom units according to the developer's web-site. The square footage of those units ranges from 1,070 square feet to well over twice that amount. The average square footage of the two-bedroom units is 1,766 square feet, and 95% of that average square footage is 1,678 square feet. The proposed text amendment would require all the inclusionary zoning two-bedroom units to be at least 95% of the average, or at least 1,678 SF in this example.

For the Chase Point PUD, 35 of the 75 two-bedroom units are smaller than 1,678 SF, the minimum size of an affordable unit if this provision were to be applied. So if a building similar to Chase Point were covered by this text amendment, the affordable two-bedroom units would be required to be larger than 35 of the 75 market rate two-bedroom units.

Does the Zoning Commission really intend to require that subsidized units in some projects be larger than many of the market rate units with the same number of bedrooms?

- **The proposed text amendment specifically provides that the developer can include units that are provided pursuant to federal and other District housing programs towards the inclusionary zoning requirement. [See §2605.3]**

With this provision, a substantial number of units covered by the inclusionary zoning requirement would have been provided absent this requirement, and the developer is being provided a very valuable bonus density, at the expense of the surrounding neighborhoods, with absolutely no public benefit whatsoever.

- **In addition to granting bonus densities, for certain zoning districts, the text amendment recommends increases in the allowed lot occupancy and/or increases in the allowed height.**

The increase in the allowed lot occupancy is particularly problematic, since it is applied to the most intense zoning districts, where lot occupancy limits are critical to maintaining a pleasant, walkable neighborhood.

rehabilitated buildings are greater than the prices or rents for the affordable units, developers might be deterred from some of those projects."

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- **Enforcement of conditions to maintain the affordability status of affordable units is difficult, and even if the conditions are enforced, the affordable condominiums created in these programs will not remain part of our affordable housing supply.** I had attached to my earlier comments an excerpt from a filing in ZC Case 02-17, which described some of the problems associated with selling condominiums far below market prices as a way of providing affordable housing. The filing understates the issue, since the comparable market rate units have been sold for over \$650,000, rather than the \$370,000 assumed in the filing.

In that filing, examples are given of households that would qualify for the affordable unit, but whose income following purchase is substantially higher. Examples include a law school student, who will start a new job as an associate the following year, with an annual salary of \$120,000 a year, a high-income individual, who had taken 6 months as leave-without-pay, but will be returning to his or her regular job at the end of that period, and a household with an income that varies from year-to-year, but applies for the affordable unit in a year in which the household income was relatively low.

In that filing, it is also shown that there are three major areas where enforcement is necessary and is infeasible: (a) the conduct of the initial lottery, (b) the conduct of the marketing of each unit on resale, and (c) a determination that the resale of each unit is at no more than the maximum allowable price and that there are no side-arrangements that allow the seller to obtain a higher value than the contract price. For each of these areas, specific examples are given showing ways in which the goals of the program can be subverted, and how there is no feasible enforcement mechanism to deter those strategies.

- **The target households that will benefit most from the OP program can afford existing housing in any of the District's eight wards.** As noted above, for condominium developments, which are most profitable in current market conditions and encouraged by the fact that the value of the bonus density is highest for condominiums, especially in zoning districts where OP is recommending that 100% of the affordable units be sold to households whose income is up to 80% of the median income for the Metropolitan area. For a family of three, at 30% of their income, the household can afford to pay \$1,607 a month. For a family of four, it would be \$1,780 a month.

A recent check of the listings at Washingtonpost.com for neighborhoods in Ward 3 showed a large number of units, including some accessory apartments, near the lower of these two costs. One building in Ward 3 listed 10 one-bedroom units available, half renting for \$1,250 a month and the other half renting for \$1,350 a month, as well as a large number of studios renting for \$980-\$1,070. Other buildings list apartments in those price ranges but didn't provide unit availability information. In addition, many accessory units in low-density neighborhoods in Ward 3 advertised apartments in these price ranges.

According to a recent Fannie Mae Foundation report, the median advertised rents in the District were \$900 for a studio, \$1,150 for a one-bedroom, and \$1,750 for a two-bedroom unit, with half of the advertised apartments renting for less than these amounts. According to that report: "The median rent for a one-bedroom unit in Northwest Washington was \$1,208, compared with \$773 in Northeast, \$588 in Southeast, and \$1,100 in Southwest. For Northwest neighborhoods with more than five ads, the highest median one-bedroom rents were in Kalorama at \$1,600, followed by Cleveland Park at \$1,500 and Dupont Circle at

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\$1,475 The lowest rents for a one-bedroom unit were in ads that described their neighborhood only as “Southeast.” with a median rent of \$572 ”

- **The District has available and has used a number of more effective programs for providing affordable housing, and for facilitating home-ownership.** Ellen McCarthy has described a number of effective programs that the District has used to provide affordable housing, to assist in the rehabilitation of existing buildings, and to facilitate home ownership. Existing programs encouraging home ownership include the DC Employer Assisted Housing Program, which provides grants and deferred loans for employees of the District of Columbia government who are first time homebuyers, and the DC Metropolitan Police Housing Assistance Program, which provides assistance for down payments and closing costs, as well as income tax credits and real property tax abatements, for members of the Metropolitan Police Department. There are also programs which provide financing for low-moderate income individuals and tenant groups exercising their rights under the Right of First Refusal law, programs which provide assistance to community development corporations and other non-profits that develop affordable housing, programs to aid in the purchase of tax-delinquent properties and DHCD foreclosures, and programs for rehabilitation, repair and handicapped access improvements for owner-occupied housing. With the exception of the provision of affordable units as an amenity of planned unit developments, which shares many of the problems described above, the programs described by Ms. McCarthy represent a better approach for addressing affordable housing concerns.

Sincerely,

Marilyn J. Simon
5241 43rd Street, NW
Washington, DC.

ATTACHMENT 3· RESOLUTION OF ANC 3E, page 1

ADVISORY NEIGHBORHOOD COMMISSION 3E
TENLEYTOWN • AMERICAN UNIVERSITY PARK • FRIENDSHIP
HEIGHTS

5425 Western Avenue NW
Suite 219
Washington DC 20015
Tel 202-244-0800

RESOLUTION OF THE
ANC 3E
REGARDING THE PROPOSED REVISED COMPREHENSIVE PLAN
March 9, 2006

WHEREAS the Comprehensive Plan is a legal document that provides policy and planning guidance in the District of Columbia on the physical development and redevelopment of the city, and

WHEREAS the Comprehensive Plan will determine the District's land use policies for the next twenty years, and

WHEREAS Ward 3 is a developed area with a network of established neighborhoods,

WHEREAS the current Ward 3 Element of the Comprehensive Plan includes a major theme of "protecting the Ward's residential neighborhoods," [§1400 2 (a)] and "it is a major theme of the ward plan to protect and maintain the low-density, high quality character of the ward," [§1400 2 (a) (2)], and

WHEREAS the current Ward 3 Element of the Comprehensive Plan includes a major theme of "controlling redevelopment" [§1400 2 (b)], and

WHEREAS the 5 ANCs and the surrounding community affected by the Upper Wisconsin Avenue Corridor Study (UWACS), a small area plan developed by the Office of Planning focused on increasing the heights and densities and planned unit developments in the upper Wisconsin Avenue area and officially withdrawn by OP from consideration during October 2005 due to community opposition that was determined through three well attended, moderated public meetings hosted by the ANC 3E and 3F, overwhelmingly rejected the plan in favor of retaining the existing Ward 3 Element Comprehensive Plan protections and enhancements and existing matter-of-right development limits, and

WHEREAS the following organizations filed comments opposing the UWACS Friendship-Tenleytown Citizens Association, Tenleytown Neighbors Association, Cleveland Park Citizens Association, McLean Gardens Condominium Association Board of Directors, Committee of 100 on the Federal City, Forest Hills Citizens Association, Fort Games Citizens Association, Friendship Neighborhood Association, the Tenleytown Historic Society, ANC 3B, ANC 3C, ANC 3D, ANC 3E, ANC 3F, and the Coalition to Stop Tenleytown Overdevelopment strongly opposed the UWACS and

WHEREAS Friendship Heights, which is located in the northern half of the ANC is designated as a Regional Center and the "Land Use" chapter of the current Comprehensive Plan provides that Friendship Heights, as a Regional Center, shall evolve in ways which are compatible with other land use policies, including those for "maintaining stable neighborhoods, mitigating environmental impacts, and reducing traffic congestion," [§1108 1(f)] and that heights and densities in Friendship Heights, as a Regional Center, shall be limited to those which are "appropriate to the scale and function of development in adjoining communities," [§1108 1(g)] and

ATTACHMENT 3 RESOLUTION OF ANC 3E, page 2

WHEREAS any serious planning effort must resolve critical infrastructure and capacity limitations facing the Upper Wisconsin Avenue Corridor, such as (a) traffic congestion, (b) cut-through traffic on local residential streets, (c) lack of parking for existing residents, their guests and visitors, and workers and customers at local offices and stores, (d) inadequate fire and emergency medical services, (e) slow response times for all emergency services – i.e., police, fire and emergency medical services, (f) lack of long term capacity for Metrorail to handle hundreds or thousands of new riders at its Friendship Heights station and Tenleytown station, (g) overcrowding at local public schools – especially at Janney Elementary School, (h) lack of water and sewer capacity; and (i) inadequate parks and green space, and

WHEREAS the current Ward 3 Element of the Comprehensive Plan includes the policy with respect to the Transportation element “Improving the level of service at street intersections to ‘B,’ or ‘C’ at worst, is important for the protection of the quality of life, air quality and residential character of the Ward,” [§1404.2 (g)], and

WHEREAS DDOT’s recently released Wisconsin Avenue Corridor Transportation Study and Friendship Heights Transportation Study Addendum clearly project unacceptable levels of congestion for a large number of intersections even in the scenarios which only include a fraction of the development allowed as a matter of right with current zoning, and

NOW, THEREFORE BE IT RESOLVED that the ANC 3E supports retention of the Ward Elements in the revised Comprehensive Plan as the best means for ensuring that city-wide policies and guidelines are tailored to the specific needs of each ward and community and that the political officials and agency employees of the District are engaged with the residents in developing laws, rules, regulations, policies and budgets that are sensitive not only to city-wide needs but to the equities represented in the ward plans, and

BE IT FURTHER RESOLVED that the ANC 3E opposes revision or exclusion of the current Ward 3 Plan language requiring preservation of low density neighborhoods and commercial areas that create stable and attractive living environments in the Ward, and

BE IT FURTHER RESOLVED that the ANC 3E requires that the revised Comprehensive Plan includes the following provisions

- 1 The retention, in the Ward 3 Element and other sections of the Comprehensive Plan, of the existing protections of our stable neighborhoods from the impact on increases in height and density in adjoining areas
- 2 The retention, in the Ward 3 Element of the revised Comprehensive Plan, of the policy with respect to the Transportation Element “Improving the level of service at street intersections to ‘B,’ or ‘C’ at worst, is important for the protection of the quality of life, air quality and residential character of the Ward [3],” and
- 3 The retention of the entire Wisconsin Avenue corridor in the most restrictive land use policy category [currently designated as the Conservation Area in the proposed revision] on the Generalized Land Use Policy Map, or any similar map, provision or language which is developed for inclusion in the revised Comprehensive Plan, and

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4 The retention of the provisions related to controlling the heights and densities in Regional Centers and minimizing the impact of development on adjoining communities currently included in Section 1108 of the Comprehensive Plan,

BE IT FURTHER RESOLVED that the ANC 3E requires that no portion of the Wisconsin Avenue corridor be considered for inclusion in programs which grant bonus heights or densities, and

BE IT FURTHER RESOLVED that the ANC 3E requires the Office of Planning to conduct city-wide public hearings on the draft Revised Comprehensive Plan prior to its being transmitted to the DC Council, and that these hearings be scheduled so that all interested residents, Advisory Neighborhood Commissions, civic associations, community organizations, institutional representatives, business owners, and others who are concerned about and affected by land use policies and decision making are provided an opportunity to testify, and that the Office of Planning revise the draft document in consultation with the Comprehensive Plan Task Force based on the hearing testimony before the revised draft is submitted to the Council

ANC 3E approved this resolution at its regular meeting on March 9, 2006, which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 4-0. Commissioners Amy Hoang Wrona, Lucy Eldridge, Amy McVey and Anne Sullivan were present.

Anne Sullivan, ANC 3E