

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF PLANNING



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**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JS fev*  
Harriet J. Ferguson, Director

**DATE:** May 4, 2007

**SUBJECT:** Inclusionary Zoning Amendments, Case #04-33B

ZONING COMMISSION  
District of Columbia

CASE NO. 04-33B  
EXHIBIT NO. 1

This report recommends language to refine and expand the Inclusionary Zoning (IZ) requirements of Chapter 26 of the Zoning Regulations.

**I. SUMMARY RECOMMENDATION**

The Office of Planning recommends the Zoning Commission set down for public hearing the proposed amendments to Inclusionary Zoning:

- 1) Application of IZ to the R-2 zone district and amendments to the application of IZ to the R-3 and R-4 zone districts.
- 2) Amendments to floor area ratio (FAR), lot occupancy and height for each zoning overlay, to ensure potential access to the 20% bonus density provided by IZ.
- 3) Amendments to §2601 & §2602 to bring it into conformance with the Inclusionary Zoning Implementation Act of 2006.
- 4) Amendments to Sections 2603.1 and 2603.2 to base the minimum IZ requirements on the residential use provided and not on the overall matter of right density of a given site, or the non-residential use developed.
- 5) Amendments to Section 2604.2 to allow additional height for residential projects in the SP-2 and C-2-C zone districts and to reduce the 90% lot occupancy to 80% lot occupancy. In OP's report dated September 26, 2006, OP discussed the problems on light and air created by residential use going to 90% lot occupancy and notes that the same problem exists for residential development in the SP-2 and C-2-C zones. Therefore OP proposes adding height similar to that approved for the CR and W-3 zone districts.
- 6) Deletion of Section 2606 which requires projects to go before the BZA if they are not achieving the full 20%, but are otherwise meeting the language of 2603. This

would avoid causing developers to go to the BZA as long as they are meeting the set aside requirements of §2603.

- 6) Amendment to Chapter 24, Planned Unit Developments (PUD) to define affordability consistent with Chapter 26 Inclusionary Zoning.
- 7) Amendments to §2607 Off-Site Compliance to allow the use of Combined-Lot covenants and clarify the relief process.
- 8) Finally, amendments to §2608 to resolve the date of applicability and projects previously approved by the Zoning Commission.

## A. Background

In November of 2004 the Campaign for Mandatory Inclusionary Zoning (CMIZ) applied to the Zoning Commission to hold public hearings on requiring certain residential development projects to set aside a percentage of units as affordable to target incomes. After meeting with CMIZ and the development community, the Office of Planning recommended three alternatives for set down at public hearings: the CMIZ proposal for a mandatory IZ program; an alternative mandatory program introduced by OP after meetings with the development community and CMIZ; and a voluntary IZ program introduced by OP.

At its April 9, 2005 public hearing the Zoning Commission voted to set down the mandatory alternatives, but divided consideration of IZ into the design of the program, and where it should be applied in the District of Columbia. Case #04-33 first covered the design of the IZ program through three nights of hearings in the summer of 2005. Over the Fall 2005, the Zoning Commission deliberated and voted to have language prepared for the basic elements of IZ including target incomes, percent of units affordable, bonus density, building envelope flexibility, and provisions for zoning relief. After reviewing language in the spring of 2006, the Zoning Commission approved final language in June 2006. Hearings were then held on the areas and zone districts where IZ should be required. The Commission voted to approve the zone districts and exemptions that the Office of Planning recommended. Final action was taken at the public meeting of February 12, 2007.

This report for case 04-33B introduces: changes based on questions from the development community regarding interpretation of the IZ regulations to certain development scenarios; refinements discussed with the Office of the Attorney General (OAG), and issues raised by the Zoning Commission.

## II. APPLICATION OF IZ IN R-2

The Zoning Commission requested that OP investigate applying IZ to the R-2 zone district. OP's supplemental report dated November 2, 2006 first discussed the possibility of applying IZ in the R-2 zone district and concluded that OP would provide the Commission with language for consideration. This section continues the discussion and provides recommended language for set down at a public hearing.

**OP recommends** the following amendments (**bolded/underlined** additions and ~~strike-through~~ deletions) to apply the IZ program to the R-2 zone district, and amendments to the R-3 and R-4 zones:

2602.3 This chapter shall not apply to hotels, motels, inns, dormitories, housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff, housing that is owned or leased by foreign missions exclusively for diplomatic staff, rooming houses, boarding houses, community-based residential facilities, single room occupancy development or developments in R-1, R-2 and C-4 Districts.

AND

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 R-3 through R-5-B District...

AND

2603.3 Inclusionary developments located in R-2 R-3 through R-5-D,...

AND

2604.3 Inclusionary developments in R-2 R-3 through and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

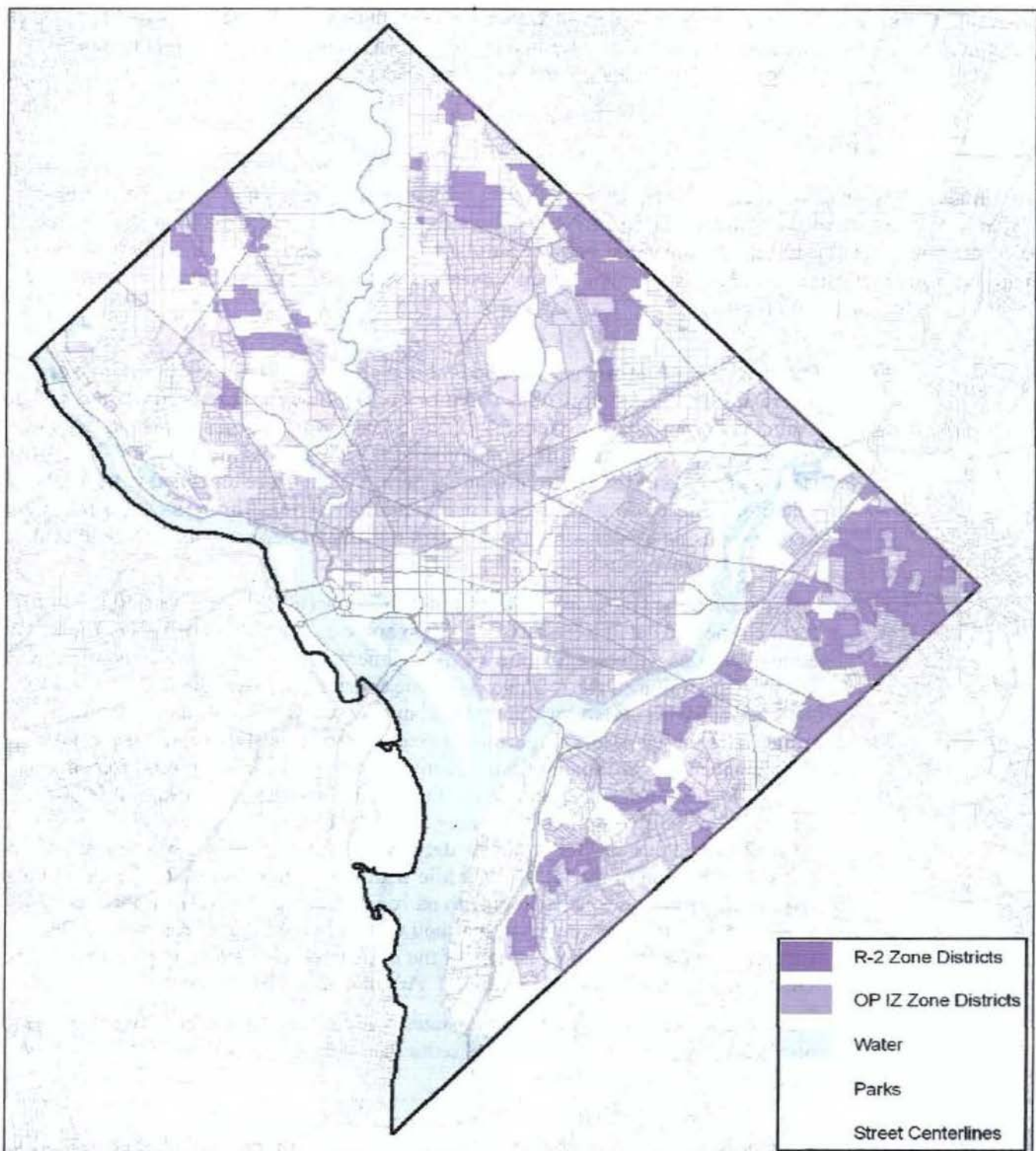
Base Zone	IZ Zoning Modifications		
	IZ Min Lot Area (square feet)	Min Lot Width (feet)	Min Lot Width
			(feet) Special Exception
R-2 Detached	3,200	40.0	32.0
R-2 Semi-Detached	2,500	30.0	25.0
R-3	1,600	20.0	16.0
R-4	1,500	18.0	15.0

#### A. Comprehensive Plan

R-2 is a single family detached and semi-detached zone district that correlates to the Comprehensive Plan's low density residential designation. It is mapped mostly in the outer neighborhoods of the District, and is typically buffered from major roads by other more intensive zones. It represents 7.5% of the District's zoned land.

The Comprehensive Plan Future Land Use (FLU) Map defines low density residential as single family neighborhoods of "detached and semi-detached housing units with front, back, and side yards." OP wishes to highlight that the FLU map definition stresses, unlike the other residential categories, "front, back, and side yards." For IZ to be not inconsistent with the Comprehensive Plan, application of IZ must ensure that adequate yards can still be provided. OP concludes that failure to meet these standards would result in a change of building type that would be contrary to the specific language found in §300.1 of the Zoning Regulations regarding the purpose of the R-2. The section states:

- 300.1 The R-2 District consists of those areas that have been developed with one-family, semidetached dwellings, and is designed to protect them from invasion by denser types of residential development. It shall be expected that these areas will continue to contain some small one-family detached dwellings



Location of R-2 Zone Districts.

Critical to OP's analysis, therefore, was to demonstrate the ability to reduce lot sizes in order to accommodate a 20% increase in the number of lot in a given development, and still be able to meet current front, back and side yard requirements of the R-2 zone District.

## **B. Analysis**

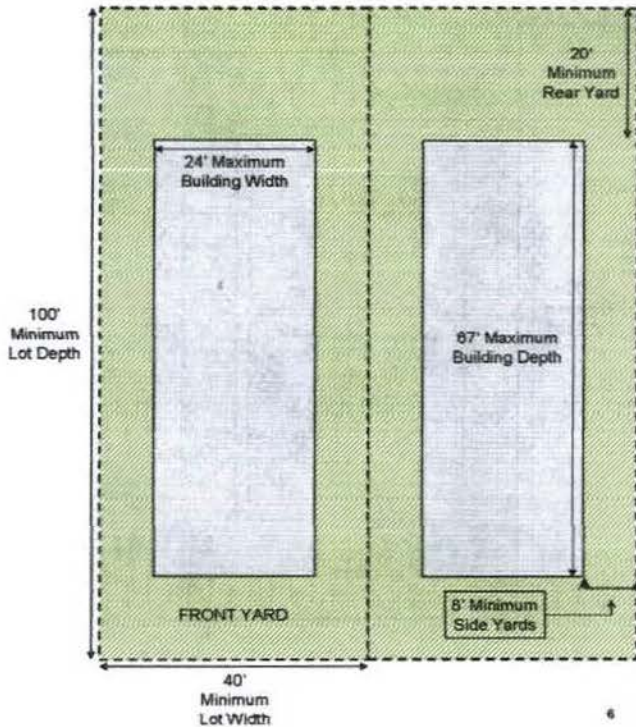
OP's analysis for set down included identifying currently vacant parcels large enough for the 10 unit trigger to take effect, looking at existing R-2 lot sizes common in the District of Columbia, and testing basic site plans. The results are summarized below. Similar to the previous reports, OP will include 3-D architectural analysis and compatibility with specific overlays and historic districts in our report to the Commission for the public hearing.

- 1) OP identified 49 vacant sites zoned R-2 that are larger than 30,000 square feet where at least 10 or more units could be built. Some of these need to be excluded because they are federally owned land in the District's park system or because specific site conditions might limit the ability to build 10 units. However, some of these sites definitely permit 10 or more units and would be suitable for decreasing lot sizes to permit additional units through IZ. In addition to these sites, there are contiguous vacant lots that, when assembled, would also permit 10 or more units to build.
- 2) OP reviewed the Geographic Information Systems (GIS) lot analysis completed for the reported dated September 26, 2006 and expanded that analysis to the R-2 zone district as well (see Section VI. Attachments). After reviewing the work, OP found that, similar to the R-3 and R-4 zone districts, pre-existing R-2 lots smaller than normally permitted by zoning regulations are common in the District. In some cases there are lots that are even smaller than what IZ would allow. 34% of R-2 detached lots are smaller than the minimum 4,000 sf zoning requirements. 70% of R-2 semi-detached lots in the District are smaller than current 3,000 sf minimum currently required by zoning and 47% of lots are even smaller than what IZ would permit. OP's review determined the smaller lots were most often due to a reduction of the lot depth, while width was often similar to the minimums required by zoning. Smaller lots with narrower frontages, similar to those initially proposed by OP for IZ, do exist, but they were less common. Examples of lots smaller than current zoning, aerials of the neighborhood form, and pictures of sample houses are found in Section VI Attachments of this report.
- 3) Finally, OP tested whether or not lot sizes could be reduced to accommodate the bonus lots by narrowing widths and reducing depth, while still maintaining front, rear, and side yard standards.

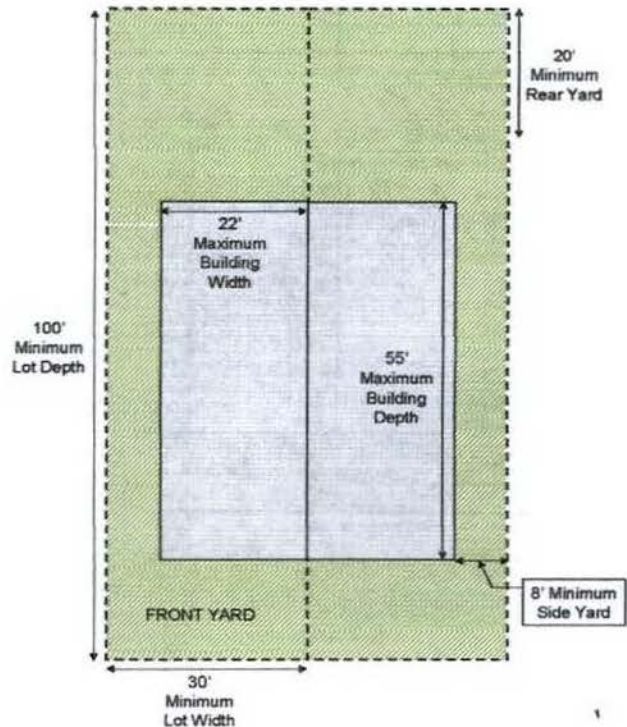
The following example demonstrates that R-2 zoning requires a minimum lot width of 40 feet and/or lot area of 4,000 square feet for a detached single-family house, and a minimum lot width of 30 feet and/or lot area of 3,000 square feet for semi-detached lots. See the example below.



R-2 Detached Base Standards



R-2 Semi-Detached Base Standards



**Sample Site Plan: R-2 Minimum Standards:**

Semi-detached

OP tested two methods by which IZ could permit smaller lot sizes. The first keeps lot width the same but reduces lot area by reducing the lot depth. The second reduces lot area and width. See the following semi-detached example.

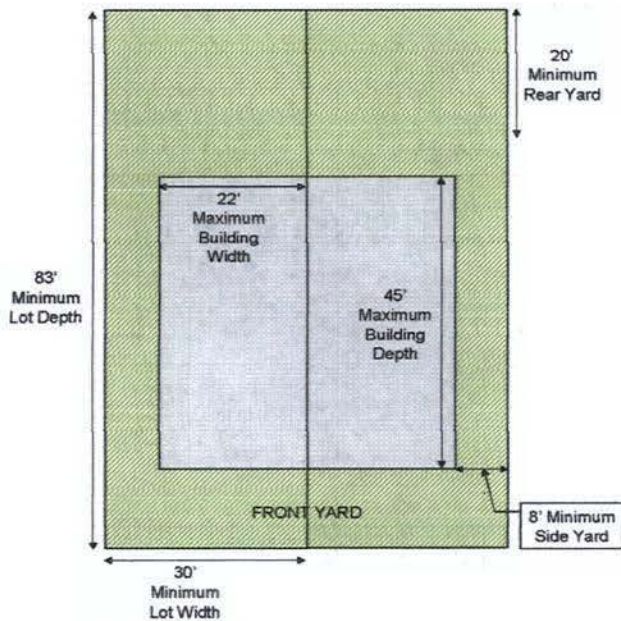
## INCLUSIONARY ZONING AMENDMENTS

May 4, 2007

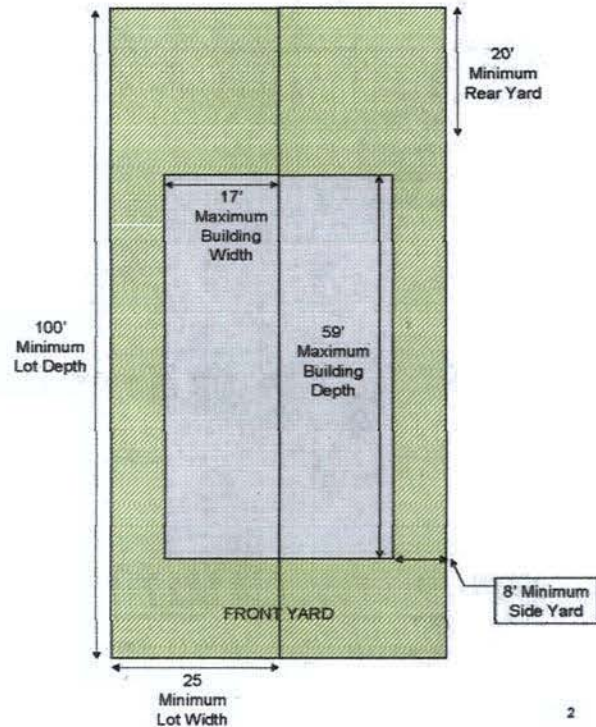
Page 8 of 32

CASE #04-33B

R-2/IZ Semi-Detached Option 1



R-2/IZ Semi-Detached Option 2



### Sample Site Plan: IZ/R-2 Semi-Detached Site Plan Options

OP concluded that while both options were potentially acceptable, the form of Option 1 is similar to the smaller lots already existing in the District today, and therefore is preferred. It is possible, that under certain site conditions such as the width of a block, Option 2 might be necessary and therefore should be an option granted as a special exception.

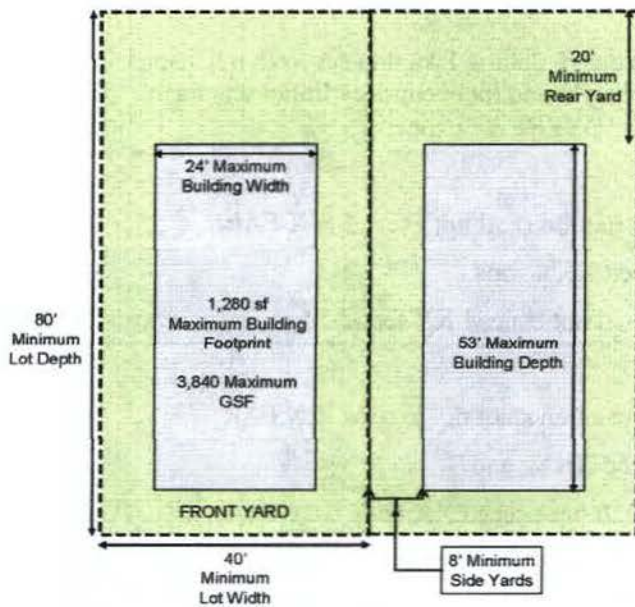
Both options would permit potentially large houses and still meet the existing yard requirements.



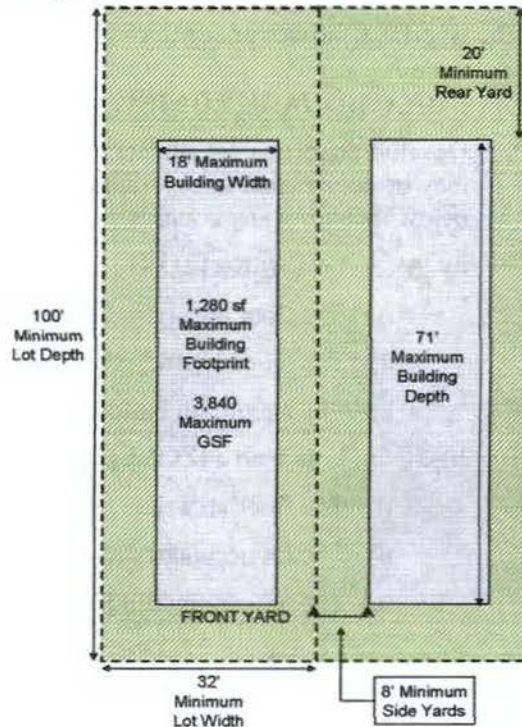
Detached Single Family

The following are samples of how a detached single-family R-2 lot might be reduced to accommodate the IZ bonus.

Section VI. B. R-2 Single-Family Home Sample Site Plan  
Option #1



Section VI. B. R-2 Single-Family Home Sample Site Plan  
Option #2



**Sample Site Plan: IZ/R-2 Detached Site Plan Options.**

Again, Option #1 represents the smaller R-2 lot that is already common in D.C. However, Option #2 still maintains side and rear yard requirements, so OP is recommending Option #2 be allowed by special exception.

### **III. APPLICATION OF IZ IN OVERLAYS**

OP Recommends that language be added to each overlay to provide clarity that IZ applies in a given overlay, how the bonus density is calculated, how the set-aside requirement is calculated and what flexibility is allowed with regards to height and lot occupancy. Below is boiler plate language included in many of the overlays; however some overlays required additional or tailored language.

#### **XXXX INCLUSIONARY ZONING**

XXXX.1 Developments that are subject to the Inclusionary Zoning Program set forth in Chapter 26 may be constructed in accordance with the height and lot occupancy limits sets forth below including any bonuses granted by the [OVERLAY] zone:

- a) Lots with a [ZONE] base zone:
  - i) The floor area ratio for new construction shall not exceed X.X FAR,
  - ii) The lot occupancy shall not exceed XX%; and
  - iii) The maximum building height shall not exceed XX feet.
- b) Lots with a [ZONE] base zone:
  - i) The floor area ratio for new construction shall not exceed X.X FAR;
  - ii) The lot occupancy shall not exceed XX%; and
  - iii) The maximum building height shall not exceed XX feet.
- c) Lots with a [ZONE] base zone:
  - i) The floor area ratio for new construction shall not exceed X.X FAR;
  - ii) The lot occupancy shall not exceed XX%; and
  - iii) The maximum building height shall not exceed XX feet.

To determine the necessary flexibility in the building envelope for each overlay, OP followed the same process completed for the base zones in previous reports. Basic premises included.

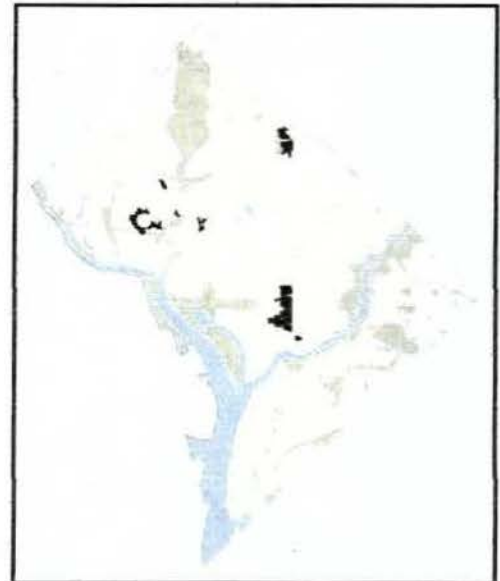
- No change in building type;
- Smallest possible changes to building envelop to minimum changes in neighborhood form; and
- Proposed changes were calculated using lot occupancy up to a maximum of 80% depending on the nature of the zone/overlay and an eleven foot floor to floor average to determine the number of stories and height necessary to accommodate the bonus density.

OP's report dated September 26, 2006 outlined the approach to the interaction of overlays with the IZ regulations. In overlays where matter of right development is restricted, the IZ bonus is calculated based on the restricted FAR. In overlays with density incentives, the IZ bonus is calculated from the base zone and is given priority over the overlays' incentives. OP has divided the overlays into three types for ease

of consideration: 1) Overlays with Density Restrictions, 2) Overlays with Density Incentives, and 3) Overlays with Combined Lot.

### A. Overlays with Density Restrictions

In our report date September 26, 2006, the Office of Planning proposed to respect the intent of zoning overlays with density restrictions by calculating the bonus density from the restricted density. The FAR, height and lot occupancy restrictions for IZ are summarized in the following table. The table is a refinement of the one OP provided on page 65 in the report dated September 26, 2006 and is the basis for the recommended language for each overlay.



Base Zone	Base Zone			Overlay Zone			IZ Bonus		
	FAR	Lot Occupancy	Max Height	FAR	Lot Occupancy	Max Height	Maximum FAR	Lot Occupancy	Max Height
<b>Capitol Interest (CAP)</b>									
R-5-B	1.8	60%	50	1.8	60%	40	2.16	75%	40
C-2-A	2.5	60%	50	1.8	60%	40	2.16	75%	40
SP-1	4.0	80%	65	1.8	80%	40	2.16	80%	40
<b>Cleveland Park (CP)</b>									
C-2-A	2.5	60%	50	2.0	60%	40	2.40	75%	45
<b>Eighth Street SE (ES)</b>									
C-3-A	4.0	75%	65	3.0	75%	45	3.60	75%	55
<b>Fort Totten (FT)</b>									
C-3-A	4.0	75%	65	4.0	75%	65	4.80	80%	65
CR	6.0	75%	90	5.0	75%	80	6.00	75%	90
<b>Naval Observatory (NO)</b>									
R-5-A	0.9	40%	40	0.9	40%	40	1.08	40%	40
C-2-A	2.5	60%	50	2.5	60%	40		N/A	
<b>Reed-Cooke (RC)</b>									
R-5-B	1.8	60%	50	1.8	60%	40	2.16	75%	40
C-2-B	3.5	80%	65	3.5	80%	50		(1)	
<b>Woodley Park (WP)</b>									
C-2-A	2.5	60%	50	2.5	60%	40	3.00	75%	50
C-2-B	3.5	80%	65	3.0	80%	50	3.60	80%	55

#### 1) Capitol Hill Interest (CAP) Overlay

The CAP Overlay (11 DCMR, Chapter 12) is mapped approximately within a four block radius of the Capitol. The purpose of the overlay is to control the height and bulk of development around the Capitol Grounds and related areas. It limits the C-2-A and SP-1 districts to an FAR of 1.8 a height of 40 feet.

IZ would permit FAR in those zones to go to 2.2 FAR within the same height and would increase lot occupancy to 75% for the R-5-B and C-2-A zones. **OP RECOMMENDS:**

**1204 INCLUSIONARY ZONING**

**1204.1 Notwithstanding the requirements of §1203.1 and §1203.3, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CAP Overlay's height, lot occupancy and FAR:**

- d) In the CAP/R-5-B, CAP/C-2-A, and CAP/SP-1 Overlay Districts:**
  - i) The floor area ratio for new construction shall not exceed 2.16 FAR**
  - ii) The maximum building height shall not exceed forty (40) feet**
- e) In the CAP/R-5-B, and CAP/C-2-A Overlay Districts:**
  - i) The lot occupancy shall not exceed seventy-five percent (75%);**
- f) In the CAP/R-4 base zone:**
  - i) The minimum lot size shall be 1,500 square feet; and**
  - ii) The minimum lot width shall be fifteen (15) feet.**

**2) Cleveland Park (CP) Overlay**

The purpose of the Cleveland Park Overlay (§1306, 11 DCMR) is to enhance neighborhood shopping areas by providing appropriately scaled development. The overlay limits the C-2-A zone district to a height of 40 feet and an FAR of 2.0. IZ would permit only those projects subject to the requirements of IZ a five (5) foot bonus in height and a maximum FAR of 2.4. **OP RECOMMENDS:**

**1306.6 Notwithstanding the requirements of §1306.6 and §1306.7, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CP Overlay's height, lot occupancy, and floor area ratio restrictions:**

- (a) The maximum building height shall not exceed forty-five (45) feet.**
- (b) The lot occupancy shall not exceed seventy-five percent (75%); and**
- (c) The floor area ratio shall not exceed 2.4 FAR;**

### 3) Eighth Street (ES) Overlay

The Eighth Street overlay (§1309, 11 DCMR) is mapped along 8<sup>th</sup> Street, SE, between the I-395 and M Street, SE. The purpose of the overlay is to encourage commercial development. It is mapped in the C-3-A zone and limits building height to forty-five (45) feet and 3.0 FAR to respect the historic scale of the buildings. IZ would permit heights of fifty-five (55) feet and an FAR of 3.6. OP

#### RECOMMENDS:

**1309.8 Notwithstanding the requirements of §§1309.6 and 1309.7, developments subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the ES Overlay's height, lot occupancy, and FAR restrictions:**

- (a) **The maximum building height shall not exceed fifty-five (55) feet;**
- (b) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (c) **The floor area ratio shall not exceed 3.6 FAR.**

### 4) Fort Totten (FT) Overlay

The Fort Totten Overlay (§1561, 11 DCMR) is mapped in the C-3-A, the CR and other zone districts surrounding the Fort Totten metro station and adjacent to the Fort Circle Park. The purpose of the overlay is to encourage residential and commercial development, but protect views from the historic fortification of Fort Totten. IZ would not increase the height of developments in the FT overlay but would allow up to 4.8 FAR in the FT/C-3-A zone and 6.0 in the FT/CR zone. It would also allow an increased lot occupancy in the FT/C-3-A from 75% to 80%. OP

#### RECOMMENDS:

**1563.6 Notwithstanding §1563.4, overlay properties subject to the requirements of Chapter 26 Inclusionary Zoning, the following modifications to height, lot occupancy, and FAR:**

#### **g) In the FT/C-3-A Overlay District:**

- i) **The floor area ratio for new construction shall not exceed 4.8 FAR;**
- ii) **The lot occupancy shall not exceed eighty percent (80%); and**
- iii) **The maximum building height shall not exceed sixty-five (65) feet.**

#### **h) In the FT/CR Overlay District:**

- i) **The floor area ratio for new construction shall not exceed six (6.0) FAR;**
- ii) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- iii) **The maximum building height shall not exceed ninety (90) feet.**



### 5) Reed-Cooke (RC) Overlay

The Reed-Cooke Overlay (Chapter 14, 11 DCMR) is unlike other restrictive overlays, it does not specify a new FAR. Instead, the overlay simply reduces a development's matter of right height. OP addressed the Reed-Cooke in our comments on the proposed text published in December. However, it was not afforded the opportunity of a public hearing. For this reason OP recommends setting down the language for public hearing. **OP RECOMMENDS:**

- 1402.1 The maximum height permitted in the RC Overlay District shall not exceed forty feet (40 ft.) plus roof structure as defined in this title, provided, that in the RC/C-2-B Overlay District, ~~the Board of Zoning Adjustment may approve a maximum height of fifty feet (50 ft.) with appropriate setbacks from the street, plus roof structures, subject to determination by the Board that the project will be permitted, to provide for the on-site construction or substantial rehabilitation of low and moderate income household units, as defined by the~~ Inclusionary Zoning regulations of Chapter 26 ~~the D-C Department of Housing and Community Development, of for a total gross floor area equal to fifty percent (50%) of the additional gross floor area made possible by the height bonus by this exception~~

### 6) Woodley Park (WP) Overlay

The Woodley Park Overlay (Chapter 13, 11 DCMR) is mapped along the C-2-A and C-2-B portion of Connecticut Avenue around the Woodley Park Metro station. The overlay's primary purpose is to provide for a safe pedestrian environment. The overlay reduces the C-2-A to 40 feet and 2.5 FAR and the C-2-B zone to 50 feet and 3.0 FAR. IZ would permit up to the 20% bonus density and allow C-2-A back up to the 50 foot base height and C-2-B up to 55 feet.

1307.7 Notwithstanding the requirements of §1307.6, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the WP Overlay's height, lot occupancy, and floor area ratio restriction:

a) In the WP/C-2-A Overlay District:

- i) The maximum building height shall not exceed fifty (50) feet;
- ii) The lot occupancy shall not exceed seventy-five percent (75%); and
- iii) The floor area ratio shall not exceed 3.0 FAR.

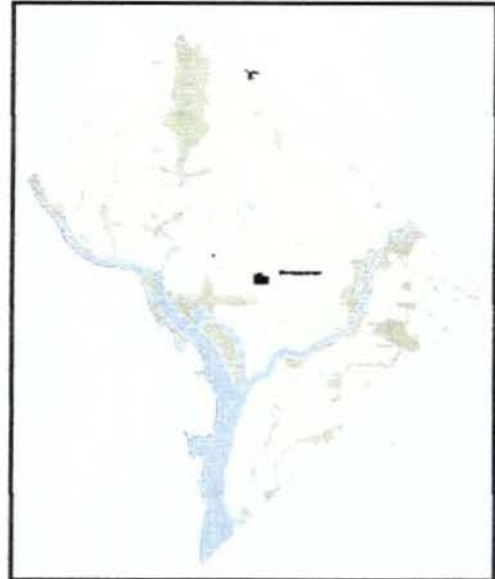
b) In the WP/C-2-B Overlay District:

- iv) The maximum building height shall not exceed fifty-five (55) feet;
- v) The lot occupancy shall not exceed eighty percent (80%); and
- vi) The floor area ratio shall not exceed 3.6 FAR.

## B. Overlays with Density Incentives

In our report date September 26, 2006 report, the Office of Planning proposed IZ bonuses be given priority over other density bonuses for preferred uses in neighborhood overlays because Inclusionary Zoning and diversity of neighborhoods is a city-wide goal. This affects the extent to which those overlay bonuses are still effective. In most cases, after accommodating IZ, there still exists additional development envelope with which to use an overlay bonus, but in two cases there exists little envelope to accommodate those bonuses without adding additional height. The FAR, height and lot occupancy restrictions for IZ are summarized on the following table and are the basis for proposed amendments to overlay's with density incentives.

Based on the table, OP estimates that in the HS/C-2-A 3.4 FAR of the 3.5 FAR is achievable within the building envelop, or 0.4 of the 0.5 FAR bonus. While reduced, a significant portion of the bonus remains. In the HS/C-2-C only 7.3 FAR is achievable, or 0.1 of the 0.5 FAR bonus. However, the HS/C-2-C is mapped only in one location on H Street and it is already under development. The proposed changes will have no affect on that site.



Base Zone	Base Zone			IZ Bonus			Overlay Zone			Combined Overlay + IZ		
	FAR	Lot Occupancy	Max Height	FAR	Lot Occupancy	Max Height	FAR	Lot Occupancy	Max Height	Maximum FAR	Lot Occupancy	Maximum Height
Hotel/Residential (HR)												
C-3-C (110)	6.5	100%	90	7.8	100%	90	2.0	100%	110	8.8	100%	110
(130)							2.0	100%	130	8.8	100%	130
H Street NE (HS)												
C-2-A	2.5	60%	50	3.0	75%	50	0.5	70%	50	3.5	75%	50
C-2-B	3.5	80%	65	4.2	80%	70	0.5	70%	65	4.7	80%	70
C-2-C	6.0	80%	90	7.2	80%	100	0.5	70%	90	7.7	80%	100
Takoma (TK)												
C-2-A	2.5	60%	50	3.0	75%	50	0.0	60%	55	3.0	75%	55
Georgia Ave (GA)												
C-2-A	2.5	60%	50	3.0	75%	50	0.0	70%	55	3.0	75%	55
C-3-A	4.0	75%	65	4.8	80%	65	0.0	75%	70	4.8	80%	70

RED BOLD indicates some sites may not be able to achieve full bonus of IZ and Overlay

#### ASSUMPTIONS

IZ Bonus used before others Bonuses

Changes to height and lot occupancy based on 11' floor to floor average and maximum reasonable lot occupancy of 80%

Includes amended C-2-C bonus height

#### OVERLAY NOTES

Hotel Residential Overlay - IZ bonus reduces overlay bonus from 2.0 FAR to 0.7 FAR.

Georgia Avenue Overlay is based on set-down version.

## 1) Hotel / Residential (HR) Overlay

(Chapter 11, DCMR). The HR is mapped in two locations: 1) the C-3-C zone to the southwest of Union Station along New Jersey Avenue, NW; and 2) the SP-2 along Massachusetts and 15<sup>th</sup> Street, NW. The purpose of the overlay is to provide incentives for hotels and apartment buildings by allowing them the maximum height under the Height Act of 1910 and 8.5 FAR. This is a 2.5 FAR bonus for the SP-2 and a 2.0 FAR bonus for the C-3-C district. The IZ language would permit a development to use the 20% of base density as well as an additional 2.0 FAR from the HR Overlay.

**1101.7 Developments subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use up to the Height, Lot Occupancy and Bonus FAR to the Base Zone in the following table as the basis of calculating the set-aside requirements of §2603.**

Base Zone	IZ Bonus		
	Maximum Height	Lot Occupancy	Bonus FAR
<b>Hotel Residential</b>			
C-3-C	§1101.6(a)	100%	20%
SP-2	§1101.6(a)	80%	20%

**Bonus density achieved through §1101.8 in addition to the above table shall not count toward the set-aside requirements of §2603.**

**1101.87 In the HR Overlay District, the maximum permitted floor area ratio for hotels and apartment houses shall be eight and one half (8.5) may receive up to an additional bonus of 2.0 FAR.**

## 2) H Street (HS) Overlay

The H Street Overlay (§§1320 through 1326, 11 DCMR) is mapped along H Street NE between 3<sup>rd</sup> Street and Florida Avenue, NE. The purpose of the overlay is to implement the *H Street NE Strategic Development Plan* policies and goals, which includes affordable housing, clustering of uses, and protection of existing facades. §1324.3 provides a 0.5 FAR bonus for residential projects that keep facades built before 1958, and permits residential lot occupancy in C-2 Districts to 70%. **OP**

**RECOMMENDS:**

**1327 Inclusionary Zoning**

**1327.1 Developments subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the Height and Lot Occupancy and Bonus to**



**Base Zone FAR in the following table as the basis of calculating the set-aside requirements of §2603.**

Base Zone	IZ Bonus		
	Bonus FAR	Lot Occupancy	Maximum Height
<b>H Street</b>			
C-2-A	0.5	75%	50
C-3-B	0.7	80%	70
C-2-C	1.2	80%	100

**Bonus density achieved through §1324.3 of the HS Overlay that is in addition to the above table shall not count toward the set-aside requirements of §2603.**

### 3) Takoma (TK) Overlay

The Takoma Overlay (§1310, 11 DCMR) is mapped over portions of the C-2-A zone along Blair Road, and Cedar and 4<sup>th</sup> Streets, NE. The intent of the overlay is to provide adequate light and air, pedestrian circulation around the metro, and to require adequate ground floor ceiling heights for retail and other preferred uses. The overlay requires greater setbacks from the curb and provides a five (5) foot height bonus. IZ would not change these parameters. **OP RECOMMENDS:**

**1310.11 Developments subject to the requirements of Chapter 26 may use the following modifications to height and lot occupancy in order to achieve the bonus density:**

- c) **The floor area ratio for new construction shall not exceed three (3.0) FAR;**
- d) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- e) **The maximum building height shall not exceed fifty-five (55) feet.**

### 4) Georgia Avenue (GA) Overlay

The GA Overlay has been set down as part of Chapter 13, §1327 through §1331, and is being considered along Georgia Avenue from Kenyon Street on the south end to Varnum Street on the north, bracketing the Georgia/Petworth Metro Station. Due to the nature of the overlay, a simpler approach is possible.

**OP RECOMMENDS:**

- 1328.1 The design requirements of §§ 1328.2 through 1328.14 shall apply to any lot in the GA Overlay District for which a building permit was applied after December 11, 2006. **Where there is a conflict with regards to height, lot occupancy, or FAR between this section and Chapter 26, the less restrictive shall apply to developments subject to the requirements of Chapter 26.**

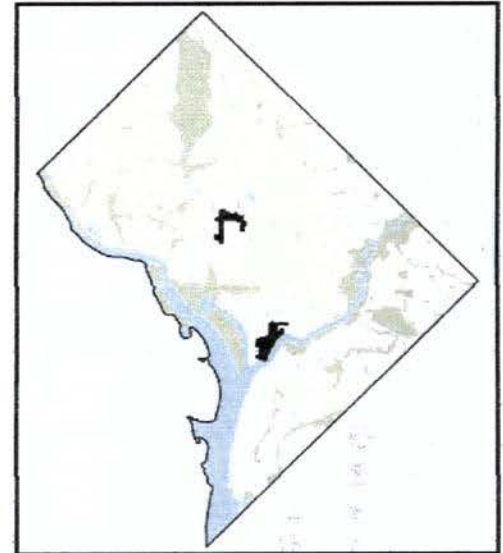


### C. Overlays with Combined Lot

Combined lot provisions create special circumstances that require separate consideration. Combined lot in the ARTS and CG overlays permits two sites to transfer greater intensity of use on one site as long as the total floor area ratio (FAR) meets the regulations when compared to the land area of both sites.

The table below provides an analysis of the interaction of IZ with these overlays. The table starts with the constraints of the base zone and then adds the IZ changes to FAR, height and lot occupancy. The fourth and fifth sections are the bonuses of the ARTS and CG overlays along with the combined lot potential.

The final section merges the IZ bonuses with those of the overlays. Highlighted in **bold red** text are zones where there is difficulty using both IZ and overlay bonuses due to either caps set by the overlay or constraints due to limits on height or lot occupancy. The ARTS Overlay is constrained by caps in the regulations whereas the CG Overlay is affected by height and lot occupancy.



Base Zone	Base Constraints			IZ Bonus			Overlay Zone			Overlay with Combined Lot			Combined Overlay + IZ		
	FAR	Lot Occupancy	Maximum Height	FAR	Lot Occupancy	Maximum Height	FAR Bonus	Lot Occupancy	Maximum Height	Maximum FAR	Lot Occupancy	Maximum Height	Maximum FAR	Lot Occupancy	Maximum Height
<b>Capitol Gateway</b>															
C-2-C	6.0	80%	90	7.2	80%	100							7.2	80%	110
C-3-C	6.5	100%	90	7.8	100%	90							7.8	100%	90
CR (110') (130')	6.0	75%	90	7.2	75%	100	1.0	75%	110	8.0	75%	110	8.2	75%	110
							1.0	75%	130	8.5		130	8.2	75%	130
W-1	2.5	80%	40	3.0	80%	60							3.0	80%	50
W-2	4.0	75%	60	4.8	75%	80	1.0	75%	70	???			4.8	75%	80
W-3(110') (130')	6.0	75%	90	7.2	75%	100	1.0	75%	110				8.2	75%	110
							1.0	75%	130				8.2	75%	130
R-5-E	3.5	75%	90	4.2	75%	90							4.2	75%	90
<b>Uptown Arts (ARTS)</b>															
C-2-A	2.5	60%	50	3.0	75%	50	0.5	60%	60	3.5***	60%	60	3.0	75%	60
C-2-B	3.5	80%	65	4.2	80%	70	1.0	80%	65	5.0***	80%	65	4.6	80%	70
C-3-A	4.0	75%	65	4.8	80%	65	0.5	75%	75*	5.0***	75%	75*	4.8	80%	75
CR	6.0	75%	90	7.2	80%	100		75%	90*	6.5***	75%	80**	7.2	80%	100

RED BOLD indicates some sites may not be able to achieve full bonus of IZ and Overlay

#### ASSUMPTIONS

IZ Bonus used before others Bonuses

Changes to height and lot occupancy based on 11' floor to floor average and maximum reasonable lot occupancy of 80%

Includes amended C-2-C bonus height

#### NOTES FOR CG OVERLAY

\*CG Overlay also allows ZC to grant additional density on a lot to compensate for the requirement for a dedicated 75' waterfront setback, with FAR 2.0 bonus as a "guideline"

CG Overlay grants a 1 FAR bonus for residential purposes in the W-2 and CR Districts only, and allows height up to the maximum permitted under the Height Act to accommodate this density

CG Overlay allows Combined Lot as follows:

Transfer of some density FROM CG/W-2 to CG/CR, but not within CG/W-2 and not from CG/CR to W-2

Transfer of density WITHIN CG/CR to a maximum FAR of 8.0 where the Height Act allows 110' or less, and 8.5 where 130' is allowed.

Cumulative density of the lots involved cannot exceed the density that would otherwise be allowed

Additional height is "only to the extent necessary to accommodate any additional density received from another parcel"

There is no combined lot provisions for the C2C, C3C, W1, W2, W3, or R5E areas

#### NOTES FOR ARTS OVERLAY

\* For C-3-A zone, building must be setback at 45 degree angle above 50 feet for sides adjacent to or across alley from residence zone

\*\* For CR zone, building must be setback at 45 degree angle above 50 feet for sides adjacent to or across alley or street from residence zone

\*\*\* The Zoning Administrator has interpreted Section 1905.1 as permitting the FAR of development on an individual parcel within a CLD in the Arts Overlay to exceed by up to 0.5 FAR what would be permitted on it by Section 1904.) without a CLD agreement, pending clarification of ambiguities between the sections.

### 1) ARTS Overlay District

Uptown Arts (Arts) Overlay (Chapter 19 11DCMR) is mapped along 14th Street generally between Rhode Island Avenue and V Street and along U Street between 14th and 7th Streets. It provides density bonuses and some height bonuses to encourage the provision of arts, entertainment and retail uses, as well as market rate and affordable housing. The bonuses in the Arts Overlay are based on ratios of the amount of square footage dedicated to preferred uses up to a cap above the base FAR. These bonuses are relatively modest:

- In the C-2-A zone: Capped at 3.0 FAR (0.5 FAR bonus); 10 feet in height
- In the C-2-B zone, Capped at 4.5 FAR (1.0 FAR bonus); no height increase
- In the C-3-A zone, Capped at 4.5 FAR (0.5 FAR bonus); 10 feet in height
- In the CR zone, no FAR or height increase.

OP Recommends that the following language and table be inserted in the ARTS overlay to outline the interaction between IZ bonuses and the existing bonuses of the overlay.

#### 11-1904. BONUS DENSITY

1904.1 A project shall be eligible for bonus gross floor area for space devoted to one of the preferred uses listed in §1904.2; provided:

- (a) Bonus density may be used either to increase the gross floor area of the building for any permitted use up to the maximum floor area ratio (FAR) specified in paragraph (b) of this subsection, or to provide nonresidential uses or development in excess of the otherwise applicable limitation on the gross floor area of nonresidential uses in the underlying zone district; and
- (b) No building that uses bonus density shall achieve a maximum FAR in excess of 6.0 in the underlying CR District, 4.5 in the underlying C-3-A and C-2-B Districts, or 3.0 in the underlying C-2-A District.

**(c) No property subject to Chapter 26, Inclusionary Zoning, shall be eligible for bonus gross floor area unless it has met the set-aside requirements of §2603 and used all the bonus density of §2604. ..**

AND

1905.1 (c) Bonus floor area earned by the provisions of § 1904 may be developed on any lot or combination of lots governed by the covenant required by paragraph (f) of this subsection; provided, no development on any lot shall exceed the maximum height and bulk standards in § § 1902 and 1904.1(b), **unless otherwise permitted by § 1909**; and provided further, the ground level uses required by § 1901.1 shall not be transferred, but shall be provided on each lot;

AND

1909 INCLUSIONARY ZONING

1909.1 ARTS Overlay developments subject to the affordability requirements of Chapter 26 Inclusionary Zoning may use the following modifications to height and lot occupancy in order to achieve the bonus density permitted by §2604.1:

a) In the ARTS/C-2-A Overlay District:

- i) The floor area ratio shall not exceed 3.0 FAR;
- ii) The residential lot occupancy shall not exceed seventy-five percent (75%); and
- iii) The building height shall not exceed fifty (50) feet.

b) In the ARTS/C-2-B Overlay District:

- i) The floor area ratio shall not exceed 4.2 FAR;
- ii) The residential lot occupancy shall not exceed eighty percent (80%); and
- iii) The building height shall not exceed seventy (70) feet.

c) In the ARTS/C-3-A Overlay District:

- i) The floor area ratio shall not exceed 4.8 FAR;
- ii) The residential lot occupancy shall not exceed eighty percent (80%); and
- iii) The maximum building height shall not exceed seventy-five (75) feet and shall be subject to the setback requirements of § 1902.1 (b).

d) In the ARTS/CR Overlay District:

- i) The floor area ratio for new construction shall not exceed 7.2 FAR;
- ii) The residential lot occupancy shall not exceed eighty percent (80%); and
- iii) The maximum building height shall not exceed one-hundred (100) feet and shall be subject to the setback requirements of § 1902.2.

OP points out that ambiguity between two sections of the Overlay's regulations, allowed Zoning Administrators to interpret the Overlay as permitting a site in a Combined Lot Development (CLD) that generates bonus density to exceed the caps by the amount of that extra density, up to a maximum of 0.5 FAR.

Working on the assumption that IZ bonus density must be used for affordable housing before bonus density for preferred ARTS uses, there will be very little bonus density left to use under the caps created for the Arts Overlay. Only the C-2-B zone will have any remaining density bonus, and that will be only 0.3 FAR. If the combined lot interpretation is codified, then the following incentives would remain available in the overlay: 0.5 FAR for the C-2-A and C-2-B zones, and 0.1 FAR for the C-3-A zone. The greater heights noted above would also remain usable.

The following table summarizes the impact of Inclusionary Zoning on bonuses available in the Arts overlay, without CLD.

Base Zone	BASE ZONE			IZ's BONUSES OVER BASE ZONE			OVERLAY'S INCENTIVES OVER BASE ZONE		OVERLAY INCENTIVES REMAINING AVAILABLE AFTER IZ'S BONUSES ARE USED		
	FAR	Lot Occ	Height	FAR	Lot Occ	Height	FAR	Height	FAR	Lot Occ,	Height
C-2-A	2.5	60%	50'	+0.5	+15%	0	+0.5	+10'	0	0	10'
C-2-B	3.5	80%	65'	+0.7	0	+5'	+1.0	0	0.3	0	0
C-3-A	4.0	75%	65'	+0.8	+5%	0	+0.5	+10'	0	0	10'
CR	6.0	75%	90'	+1.2	+5%	+10'	0	0	0	0	0

## 2) Capitol Gateway Overlay

Capitol Gateway (CG) (Chapter 16, 11 DCMR) is mapped primarily from the west side of South Capitol, east along M street to the Southeast Federal Center and then south to the waterfront. The CG follows the Anacostia waterfront to Fort McNair up to Potomac Avenues and back to South Capitol. It also includes W-1 and W-3 areas farther west, but those are now part of Fort McNair. Similarly to the ARTS overlay, the CG requires some set backs, offers FAR and height bonuses, and permits combined lot developments.

**OP Recommends** the following language and table be added to the Capitol Gateway (CG) overlay to outline the interaction between IZ bonuses and the existing bonuses of the overlay.

### 11-1601. Bonus Density and Height.

**1601.1 CG Overlay developments subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the FAR, Height and Lot Occupancy in the following table as the basis of calculating the set-aside requirements of §2603.**

	IZ Bonus
--	----------



Base Zone	FAR	Lot Occupancy	Maximum Height
<b>Capitol Gateway</b>			
C-2-C	7.2	80%	110
C-3-C	7.8	100%	90
CR	7.2	80%	100
W-1	3.0	80%	50
W-2	4.8	75%	80
W-3	7.2	75%	100

**Bonus density achieved via §1601.2 or 1601.4 does not affect the set-aside requirements of §2603.**

- 1601.2 In the CG/CR and CG/W-3 Districts, a building or combined lot development shall be allowed a maximum density of ~~7.0~~ **8.2** FAR; provided that the additional 1.0 FAR in excess of ~~the matter of right maximum of 6.0~~ **§1601.1** FAR shall be devoted solely to residential uses, which, for the purposes of this subsection, does not include hotel uses.
- 1601.4 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of **4.0** FAR and a maximum height of fifty-five (55) feet to accommodate the additional density. The additional 1.0 FAR in excess of ~~the matter of right maximum of 2.5~~ FAR **§1601.1** shall be devoted solely to residential uses unless the building or the combined lot development includes at least 2.0 FAR of residential uses, in which case the additional 1.0 FAR may be devoted to any permitted use in the W-1 zone. For the purposes of this subsection, the term "residential uses" does not include hotel uses.

The analysis in the table on page 14 and the summary table below indicates that three zones will have a reduced capacity to use the incentives provided in the CG Overlay. The CG/CR on streets permitting 110 feet in height may potentially lose 0.2 FAR bonus. The CG/W-2 may lose use of 0.3 FAR of the overlay bonus. Finally the W-3 on streets permitting 110 feet in height may also lose 0.2 FAR bonus from the overlay. OP points out that this theoretical loss is based on the 11 foot floor to floor average and other assumptions. However, in the report dated August 29, 2005, OP demonstrated that residential buildings of such height often have averages from 9.2 to 10.8 foot floor to floor, which enable greater FAR. In addition to this, the W-1 and W-3 zones in the CG have been added to Fort McNair and therefore removed from private development. OP concludes, therefore, that the effect of IZ on the bonuses in the CG is minimal. It would however, reduce a residential site's ability to engage in combined lot.

Base Zone	Combined Overlay + IZ		
	Maximum FAR	Lot Occupancy	Maximum Height
<b>Capitol Gateway</b>			
C-2-C	7.2	80%	110
C-3-C	7.8	100%	90
CR (110')	8.2	75%	110
(130')	8.2	75%	130
W-1	3.0	80%	50
W-2	5.8	75%	80
W-3(110')	8.2	75%	110
(130')	8.2	75%	130
R-5-E	4.2	75%	90

OP will complete further review in the report for a public hearing.

#### IV. REFINING AMENDMENTS

Over the past eight months OP has fielded questions regarding the IZ regulations published in the register in August 2006 and prepared a list of amendments that either clarify or improve the existing regulations.

##### A. Definitions

**OP Recommends** the following language to bring the IZ regulations in conformance with the Inclusionary Zoning Implementation Act of 2006:

##### 2601 DEFINITIONS

2601.1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

~~**Achievable bonus density** — The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical characteristics of the land or restrictions imposed by District or federal laws and agencies.~~

**The Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880).** References to the Act include any Mayor's Order, agency rule, or other administrative issuance promulgated pursuant to that legislation.

\*\*\*

**Moderate-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-~~one~~ percent (50%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

## B. Applicability

OP recommends the following language to bring the IZ regulations into conformance with the Act:

2602.5 An owner/occupant of an inclusionary unit may **not** sell the unit at a price greater than that established by the Mayor pursuant to §103 if the Act, maximum permitted under the purchase/rental schedule if **unless** the price is offered by the Mayor **or a Housing Trust authorized by the Mayor.**

**2602.6 No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.**

## C. Set-Aside Requirements

OP recommends the following language to clarify §2603.1 and §2603.2

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an **R-2 R-3** through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of **the gross floor area being devoted to residential use** ~~its matter of right density~~ or 75% of ~~its achievable~~ **the** bonus density **being utilized** to inclusionary units.

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in §2603.1 or any development located in a C-2-B, **C-2-C**, C-3, CR, R-5-C, R-5-D, R-5-E, SP, W-2 or W-3 District shall devote the greater of 8% of **the gross floor area being devoted to residential use** ~~its matter of right density~~ or 50% of ~~its achievable~~ **the** bonus density **being utilized** to inclusionary units.

The sections currently apply minimum percent affordability requirements to the entire project. In the case of mixed-use projects, as currently written, the text would unfairly apply the IZ requirement to retail and other non-residential uses. In addition, the building envelope changes made to lot occupancy and height theoretically make the full 20% bonus density “achievable”, but this may not be the case given specific site conditions. Finally, the C-2-C zone district, while included in §2603.4 and §2604.2, was inadvertently omitted from §2603.2 of the published regulations.

## D. C-2-C and SP-2 Building Envelope

OP Recommends the table in §2604.2 be amended to read as follows:

May 4, 2007

Page 27 of 33

Base Zone	Matter of Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Height (feet)	Zoning FAR	Lot Occupancy	Height (feet)
CR	75%	90	6.00	80%	100
C-2-A	60%	50	2.50	75%	50
C-2-B	80%	65	3.50	80%	70
C-2-C	80%	90	6.00	80%	100
C-3-A	75%	65	4.00	80%	65
W-1	80%	40	2.50	80%	50
W-2	75%	60	4.00	75%	80
W-3	75%	90	6.00	80%	100
SP-1	80%	65	4.00	80%	70
SP-2	80%	90	6.00	80%	100

There are two amendments found in this table. First, the table eliminates R-5-E which was exempted in case #04-33A but not amended in the table. Second, it reduces lot occupancy from 90% to 80% in the C-2-C and SP-2 zones and increases height in those zones to 100 feet.

In OP's report dated September 25, 2006 pages 35-54 included a three dimensional architectural analysis of each zoning category. On the basis of that analysis, OP exempted the R-5-E zone district from IZ requirements and identified problems with allowing project in the C-2-C and the SP-2 zone districts to go to 90% lot occupancy. Given the perfect site, a residential project with light and air requirements can achieve lot occupancy even over 90%. However using 90% as a standard assumption to accommodate the bonus density is not practical and likely to lead to many variance requests. OP therefore recommends adding height instead of lot occupancy to the SP-2 and C-2-C zone districts. OP will conduct the same type of impact analysis on historic districts and neighborhood character for the public hearing report as was completed in the September 26, 2006 report.

## **E. Exemption From Compliance**

**OP recommends deletion of §2606. The section reads:**

### **2606 EXEMPTION FROM COMPLIANCE**

**2606.1 The Board of Zoning Adjustment shall reduce the requirements of § 2603 for each square foot of achievable bonus density that cannot be accessed due to:**

- (a) Site conditions such as shape, slope, or other similar physical conditions, or**
- (b) Development restrictions imposed on the property by District or federal government agencies.**

**2606.2 Applicants seeking relief under § 2606.1 (a) shall submit architectural plans and elevations studies demonstrating the impact of site conditions on achieving the maximum permitted bonus density.**

**2606.3 Applicants for relief under §2606.1 (b) shall include with their application the written order that imposed the relevant development restriction and shall certify that the restriction was not in the original plans submitted by the applicant to the agency, but was either offered in response to the agency's concerns expressed on the record or was unilaterally imposed by the agency.**

**The section permits the Board of Zoning Adjustment (BZA) to reduce the IZ requirement “for each square foot of achievable bonus density that cannot be accessed due to” site conditions and/or District or federal requirements. The section can be misinterpreted. First and foremost, it would require developers to go to the BZA even if they are following the requirements of section 2603, but have not achieved the full 20% bonus density. The intent of Section 2603’s “the greater of” language was to provide flexibility given site requirements without BZA action. The alternative interpretation suggests BZA could permit fewer affordable units than the 8%-10% minimum required by the regulations without having to first pursue off-site compliance or grant a full variance. OP recommends deletion of this section to eliminate this confusion.**

## **F. PUD Regulations**

**OP recommends the following language be amended in the Planned Unit Development (PUD) Chapter 24 for consistency with the IZ:**

**§2499.2 When used in this chapter, the following terms shall have the meaning ascribed:**

**Affordable Housing** - housing where the occupant is paying no more than thirty-five percent ~~(35%)~~ **(30%)** of gross income for gross housing costs, excluding utility costs.



**Low-income households** - households whose incomes do not exceed ~~eighty~~ fifty percent (50%) ~~(80%)~~ of the median income for the area, as determined by the US. Department of Housing and Urban Development with adjustments for smaller and larger families, except that HUD may establish for residential projects receiving federal subsidies, income ceilings higher or lower than ~~eighty~~ fifty percent (50%) ~~(80%)~~ of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. Note: HUD income limits are updated annually and are available from local HUD offices.

**Moderate-income households** - households whose incomes are between ~~eighty-one~~ fifty percent (50%) ~~(81%)~~ and ~~eighty~~ ninety-five percent (80%) ~~(95%)~~ of the median for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish for residential projects receiving federal subsidies, income ceilings higher or lower than ~~eighty~~ ninety-five percent (80%) ~~(95%)~~ of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs, fair market rents, or unusually high or low family incomes.

Definitions found in Chapter 24 of the Zoning Regulations are different from those in of Chapter 26 Inclusionary Zoning. OP's suggested language reconciles the differences and brings the Chapter 24 definition into conformity with the IZ regulations. This will help to eliminate any confusion. At the same time it will add flexibility specifically for projects receiving federal subsidies.

NOTE: The new Comprehensive Plan provides defines "low" and "moderate" income differently. OP will revisit these as part of future zoning consistency efforts.

## **G. Offsite Compliance and Combined Lot**

**OP Recommends** that §2607 be amended as follows:

### **2607 OFF-SITE COMPLIANCE**

2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of §2603 to be constructed off-site ~~on property owned by the applicant~~ upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;
- (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households;  
or

- (c) For a rental development the owner of which wishes to change the property's use to one listed in §2602.3, proof that continuation of the rental use is no longer economically feasible.

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

**(a) Is under covenants of a combined lot agreement to allocate the set-aside requirements of §2603;**

- (a)(b) Is located within the same census tract as the inclusionary development;
- (b)(c) Consists of new construction for which no certificate of occupancy has been issued;
- (e) (d) Is at a location suitable for residential development;
- (d)(e) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;
- (e) (f) Has not received any development subsidies from federal or District government programs established to provide affordable housing; and
- (f) (g) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site.
- (h) **The set-aside inclusionary units on the receiving lot do not exceed 30% of the residential use of that lot.**
- (i) **No lot shall receive density beyond that provided by §2604.1**

2607.3 The requirement of 2607.2 (a)(b) may be waived upon a showing that the applicant; ~~after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off-site projects economically infeasible.~~

**(a) Owns the off-site property;**

**(b) The property is located in the District of Columbia;**

**(c) Has met all the other requirements of §2607.2**

2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.

2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land

records of the District of Columbia between the owner of the off-site development and the Mayor.

2607.6 The covenant shall bind the owner and all future owners of the off-site development to:

- (a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site, in accordance with the plans approved by the Board and the conditions of the Board's order;
- (b) Sell or rent, as applicable, such units in accordance with the provisions of this Chapter and the Act for so long as the off-site development remains in existence;
- (c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;
- (d) Acknowledge that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and
- (e) Not request special exception or variance relief with respect to the obligations accepted or its own obligations under this Chapter.

2607.7 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this Chapter and the Act.

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

**2607.9 No application for a variance from a set aside requirement may be granted until the Board of Zoning Adjustment has considered and denied a request for relief pursuant to this section and then only upon proof that compliance with all or part of the requirement would result in the owner of the property being deprived of all reasonable economic use of the land.**

## **H. Applicability Date**

OP recommends the following language to reduce uncertainty of when IZ will take affect:

### **2608. APPLICABILITY DATE.**

2608.1 The provisions of this Chapter shall become effective     days     following the issuance of the first purchase/rental schedule or the publication date in the D.C. Register.

**2608.2 The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapters 16 or 24 through a final action vote occurring on or before \_\_\_\_\_.**

## **V. CONCLUSION**

The Office of Planning recommends that the amendment language found in this report be set down for public hearing. The recommendations serve to expand and improve the Inclusionary Zoning program by including the R-2 zone district, providing clarity on the application of IZ within various overlay zones, and by refining existing language previously approved. The Office of Planning will provide more detailed analysis of the proposed language in the public hearing report. The analysis will provide:

- Additional land use analysis on the R-2 zone district,
- Three dimensional modeling on the R-2 and overlay zones similar to that provide in OP's report date September 26, 2006,
- Analysis of the potential impacts of changes in building envelope to neighborhood character in overlays and historic districts, and
- Any further analysis requested of the Office of Planning by the Zoning Commission.

**VI. ATTACHMENTS**

A. Existing R-2 Lot Analysis



## Section VI. A. R-2 Existing Lot Analysis

District of Columbia  
Sample R-2 Lots  
Compliant with  
Proposed  
IZ Standards

### Legend

Sample R-2 Lots  
Coded by Land Area

- Less Than 2,500 sf
- 2,500 to 2,999 sf
- 3,000 to 3,499 sf
- 3,500 to 3,999 sf
- Greater Than 4,000 sf



Detached Single-Family Unit Comparable to IZ Lots



Semi-Detached Single-Family Unit Comparable to IZ Lots



Semi-Detached Single-Family Unit Comparable to IZ Lots

\*\*\* Government of the  
District of Columbia  
Adrian M. Fenty, Mayor

Office of Planning - March 20, 2007

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