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July 26, 2007

BY HAND

Ms Carol Mitten, Chair Zoning Commission for the District of Columbia 441 Fourth Street, NW, Suite 200 South Washington, DC 20001

Attn Sharon Schellin

Re Z C Case No 04-33B (Inclusionary Zoning -Addition of R-2 Zones, Standards for Certain Overlays and Clarifying Amendments)

Dear Ms Mitten

I am submitting these comments on behalf of the District of Columbia Building Industry Association (DCBIA) to express its position for the record on certain elements of the proposed rulemaking in Zoning Commission Case No 04338

DCBIA is concerned about the proposed amendments to the calculation of affordable housing set asides (2603 1 and 2603 2), which would establish minimum requirements of 8% and 10% of gross floor area (GFA), regardless of whether bonus density is achieved. We believe that disconnecting set-aside requirements from usable density bonus violates a basic premise of equitable inclusionary zoning Further, this approach contradicts the earlier expressed position of both the Council and the Zoning Commission that the subsidy cost of any set-aside requirement be off-set by bonus density in order to minimize potential harm to competitive market-rate housing development in the District That position is supported by the provision in the current MIZ program that allows the Board of Zoning Adjustment to reduce set-aside requirements "for each square foot of achievable density that can not be accessed " For some observers, the disconnecting of set asides and density bonus cost off-sets raises troubling property taking issues

The proposed amendment could have an adverse impact on market-rate development in particular In the case of steel and concrete construction, that adverse impact will be exacerbated by the requirement to allocate half of affordable units to households earning up to 50% of the area median income in high density zones R-5-D and R-5-E It will already be difficult for developers of the more costly steel and concrete construction to comply with the previously

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mandated 50% AMI requirements With this amendment, such developers face the prospect of providing the more challenging affordable units with no assurance of density compensation.

DCBIA is also concerned that the proposed new minimum set asides are stated in terms of "the gross floor area (GFA) being devoted to residential use" In the case of high-end, high-rise development, net rentable space can amount to as little as 80% of GFA A clarification is called for, therefore, on how 8% of GFA is intended to be applied to a development's actual net rentable space.

The preamble to the final rulemaking on Zoning Case No 04-33 (May, 2006) states: "The Commission is confident that most residential projects will be able to succeed under the IZ program with or without bonus density" A little over a year later, that confidence, DCBIA would submit, is misplaced. According to the research of Delta Associates, as reported in the Washington Business Journal (July 20-26, 2007), sales of new condo units in the District decreased from 1,018 units in the first half of 2006 to 758 in the comparable 2007 period – a decline of 26% – despite price reductions and other seller concessions. Delta further reports that at mid-year 2007 there were over 20,000 condo units available for sale in the region – an inventory sufficient to meet estimated demand for the next three years

As it has consistently testified on this issue, DCBIA is concerned that an overly aggressive program of mandatory inclusionary zoning (MIZ) has been formulated during a period when a robust housing market was seen as allowing builders to easily pass along their subsidy costs to eager market-rate buyers. Market conditions have changed, however, and a more realistic MIZ program – one that takes into account current market forces – is needed. An example of such a program is the MIZ legislation recently passed in Baltimore – far less rigid than the program adopted in the District. We urge the Zoning Commission, therefore, to not only refrain from any tightening of present MIZ requirements, but also to take this opportunity to carefully re-appraise the practicability of the MIZ program as presently structured in light of today's housing market

We further urge the Zoning Commission to provide a transition period of at least one year following the issuance of the first purchase/rental schedule before MIZ becomes effective Such a transition period is necessary for prospective projects to be able to adjust building designs and financing arrangements and to otherwise respond to changing land and market prices While it is true that the concept of

MIZ has been under discussion for more than a year, a transition period can only be effective once the program, with all of its implementing regulations and price schedules, is finalized

Sincerely yours,

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

Charles K Barber

Charles K. Barber

President