

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

Z.C. ORDER NO. 04-33B

Z.C. Case No. 04-33B

(Text Amendment – Inclusionary Zoning – Addition of R-2 Zones, Standards for Certain
Overlays, and Clarifying Amendments)
September 10, 2007

2008 APR 24 AM 10:57

DC OFFICE OF ZONING

RECEIVED

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01), having held public hearing as required by § 3 of the Act, D.C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendment to Chapters 11, 12, 13, 15, 16, 19, and 26 of the Zoning Regulations (Title 11 DCMR). The adopted amendments subject properties in the R-2 Zone District to the requirements of Chapter 26, Inclusionary Zoning ("IZ"), provide specific FAR, lot occupancy, density, and height flexibility for nine overlays, exempt properties within the Eighth Street ("ES") Overlay from the requirements of Chapter 26, and make certain clarifications to the existing IZ text.

The clarifying amendments, among other things, specify that a project's minimum set aside requirement will be based upon the amount of residential gross floor area to be constructed, rather than its entire gross floor area, while its maximum requirement will be based upon the amount of bonus density actually used. The amendments also add a new § 2608.2 to exempt a project approved as a planned unit development from IZ if the approved application was set down for hearing before the date these amendments became effective, *i.e.* the date that this Notice of Final Rulemaking is published in the *D.C. Register*.

Two changes were made to the text contained in the Notice of Proposed Rulemaking published in the August 10, 2007 edition of the *D.C. Register* (54 DCR 7773).

The first is the exemption of properties within the ES Overlay from compliance with IZ. The Notice of Proposed Rulemaking offered for comment the proposal of the Office of Planning ("OP") to increase the allowed height within the overlay by 10 feet to accommodate the bonus density. However, the Commission concludes that this added height would be incompatible with the neighborhood character and original intent of the ES Overlay. Although the Commission wished to provide additional affordable housing within the ES Overlay, it recognized that the overlay was established to, among other things, "restrict .. heights to a low level so as to respect

ZONING COMMISSION
District of Columbia

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone (202) 727-6311

Facsimile (202) 727-6072

E-Mail dcz@dc.gov

Web Site

www.dco.dc.gov/ZONING

CASE NO.

District of Columbia

CASE NO. 04-33B

EXHIBIT NO.

EXHIBIT NO. 46

the historic scale of buildings and the entrance to the adjacent Navy Yard.” (11 DCMR § 1309.2 (b).) The Commission, therefore, decided not to allow the additional height. However, because this additional height was needed to allow ES Overlay properties to utilize the bonus density provided under IZ, the Commission also voted to entirely exempt ES properties from the IZ provisions.

The second change concerns § 2608.1, which establishes the applicability date for Inclusionary Zoning. The section originally provided that the IZ provisions would apply as of the date that the Mayor publishes the first schedule establishing the maximum rents and purchase prices for IZ Units. The Notice of Proposed rulemaking provided that compliance with IZ begin 90 days after the publication date of the purchase price schedule. However, the Commission agreed with the Office of the Attorney General that the effective date of the program was properly handled through the publication process of the administrative regulations.

No other changes were made to the proposed text.

Set Down Proceedings and Public Hearings

OP initiated this case through the filing of a report dated May 4, 2007 in order “to refine and expand the Inclusionary Zoning ... requirements of Chapter 26 of the Zoning Regulations.” The four principal factors leading to OP’s decision to file its petition were:

- Feedback from the development community on certain aspects of Chapter 26,
- The Commission’s request of OP to provide an analysis of expanding IZ to the R-2 Zone District for consideration,
- The need to provide specific guidance on the interaction of IZ bonus density with the building envelope constraints of individual overlays where IZ is applicable; and
- The need for clarification and consistency with the Inclusionary Zoning Implementation Act of 2006 passed by the Council of the District of Columbia on December 19, 2006

The Commission agreed with OP’s conclusion that the amendments should be set down for public hearing. At set-down the commission expressed specific concerns about certain overlays and asked OP to provide analysis on the impact of changes to building envelope on neighborhood character and/or site lines of four overlays: the Eighth Street (“ES”) Overlay, Woodley Park (“WP”) Overlay, Cleveland Park (“CP”) Overlay and the Fort Totten (“FT”) Overlay. In addition, the Commission asked OP to provide an analysis of the potential impact and benefits of applying IZ to the R-2 Zone District.

Public Testimony

A public hearing was held on July 26, 2007. The Commission heard testimony from a variety of District residents and others concerned with the impact of the proposed amendments.

Testimony in support of the amendments focused mostly upon the expansion of IZ to R-2 properties. Among the arguments made in favor of the application of IZ to such properties were.

- Concepts of simplicity, equity, and effectiveness suggest IZ should be applied as evenly as possible across the District;
- The success of IZ in other jurisdictions at the same relative density and building type; and,
- The growing need to provide affordable family-style housing.

Opposition to the amendments was expressed by ANC 6B, the National Capital Planning Commission ("NCPC"), the DC Building Industry Association ("DCBIA") and the Committee of 100. The major concerns expressed were perceptions that:

- The previously approved IZ regulations were adopted when rising prices for market rate housing may have been seen as a way for developers to recover costs incurred for IZ set-asides that would not be covered by density bonuses. The IZ program should be re-considered in light of the current housing market,
- The amendments to §§ 2603.1 and 2603.2 that clarify the IZ minimum set-asides also establish minimums that de-link the concept of connecting IZ set-asides with bonus density, and this could raise "takings" issues;
- IZ set-asides should be tied to net rentable/salable residential area, rather than to residential gross floor area;
- IZ is inappropriate for the ES Overlay, because increasing the maximum permitted height from 45' to 55' to accommodate IZ would make buildings incompatible with the surrounding historic area and particularly with the Navy Yard's historic Eighth Street Gate;
- Property owners in the R-2 Zone District might seek density bonuses above those the amendments propose for including that zone among those covered by IZ,
- The public has lacked input to the crafting of the IZ implementation procedures;
- Inadequate consideration has been given to the application of IZ among different residential building types that can be included in the same zone district; and

- The IZ regulations should be made effective one year after the issuance of the first purchase/rental schedule.

Proposed Action

The Commission discussed the merits of the amendments before it and voted to take proposed action on July 30, 2007. The Commission agreed with the recommendations of the OP regarding the clarifying and conforming amendments. Concerns of the Commission centered on three elements of the proposed amendments: the effectiveness of expanding IZ to the R-2 Zone District; the height increases necessary to accommodate the bonus density in the FT Overlay, and the height increases necessary to accommodate the bonus density in the ES Overlay.

The Commission reiterated its belief that IZ should be applied throughout the District, unless a valid reason could be presented for excluding a zone district or area. Based on this, it concluded that there was no reason not to apply IZ to the R-2 Zone District. The Commission agreed with OP's analysis that the proposed increase in height in the FT Overlay would have only a marginal impact beyond that of matter-of-right development, on the site lines from the historic Fort. However, the Commission disagreed with OP regarding the impact of the height and density bonus in the ES Overlay on that area's character. Nevertheless, the Commission voted to offer the additional height for ES Overlay properties for public comment.

As noted, a Notice of Proposed Rulemaking was published in the August 10, 2007 edition of the *D.C. Register* (54 DCR 7773) for a 30-day notice and comment period. The only comment received was from the U.S. Navy, which objected to the height increase given in the ES Overlay, citing security concerns and the affect on the Historic Latrobe Gate of the Navy Yard.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated September 6, 2007, found that the increase in height for the ES Overlay was contrary to the Federal interest, but that otherwise the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

Final Rulemaking

The Commission took final action to adopt the text published in the Notice of Proposed Rulemaking, except for the two changes noted at the outset of this Order.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR.

Title 11 of the DCMR, ZONING, is amended as follows (new language shown in **bold** and underlined; deleted language in strikethrough):

1. Chapter 11. HOTEL-RESIDENTIAL INCENTIVE OVERLAY DISTRICT, is, amended as follows:

- a. Subsection 1101.7 is amended to read as follows:

1101.7 ~~In the HR Overlay District, the maximum permitted floor area ratio for hotels and apartment houses shall be eight and one-half (8.5).~~ **The following types of bonus density is available in the HR Overlay District:**

<u>Base Zone</u>	<u>IZ Bonus</u>		
	<u>Maximum Height</u>	<u>Lot Occupancy</u>	<u>Bonus FAR</u>
<u>Hotel Residential</u>			
<u>C-3-C</u>	<u>§1101.6(a)</u>	<u>100%</u>	<u>20%</u>
<u>SP-2</u>	<u>§1101.6(a)</u>	<u>80%</u>	<u>20%</u>
<u>Use</u>	<u>General Bonus</u>		
	<u>Maximum Height</u>	<u>Lot Occupancy</u>	<u>Bonus FAR</u>
<u>Hotel and Apartment House</u>	<u>0</u>	<u>0</u>	<u>2.0</u>

- b. By adding new §§ 1101.8 and 1101.9 to read as follows:

1101.8 **Any use of the bonus density provided for in §1101.7 shall be deemed to first utilize the IZ bonus.**

1101.9 **Use of the general bonus shall not count towards the set-aside requirements of §2603.**

2. Chapter 12 CAPITOL INTEREST OVERLAY DISTRICT, is, amended by adding a new § 1204, to read as follows:

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:

- (a) **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**
- (b) **In the CAP/R-5-B, and CAP/C-2-A Overlay Districts:**
 - (i) **The lot occupancy shall not exceed seventy-five percent (75%);**
- (c) **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.**

- 3 Chapter 13 COMMERCIAL NEIGHBORHOOD OVERLAY DISTRICT, is, amended as follows

- a Section 1306, Cleveland Park Neighborhood Commercial Overlay District, is amended by adding a new § 1306 8 to read as follows.

1306.8 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.

- b. Section 1307, Woodley Park Neighborhood Commercial Overlay District, is amended by adding a new § 1307.8 to read as follows:

1307.8 Notwithstanding the requirements of §§1307.6 and 1306.8, 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:

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

- c. Section 1310, Takoma Park Commercial Overlay District, is amended by adding a new § 1310.11 to read as follows:

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

- (a) The floor area ratio for new construction shall not exceed 3.0 FAR;

- (b) The lot occupancy shall not exceed seventy-five percent (75%); and
 - (c) The maximum building height shall not exceed fifty-five (55) feet.
- d. The provisions of the H Street Commercial Overlay District by amending § 1326 to read as follows:

1326 PLANNED UNIT DEVELOPMENT AND INCLUSIONARY ZONING PROVISIONS (HS)

1326.1 A planned unit development (PUD) in the HS Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this Title:

- (a) The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2 and
- (b) The PUD process shall not be used to reduce requirements in this Chapter for designated uses, specifically retail, service, entertainment, and arts uses.

1326.2 The minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be ten thousand square feet (10,000 ft.²).

1326.3 Developments properties 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	<u>IZ Bonus</u>		
	<u>Bonus FAR</u>	<u>Lot Occupancy</u>	<u>Maximum Height</u>
<u>H Street</u>			
<u>C-2-A</u>	<u>0.5</u>	<u>75%</u>	<u>50</u>
<u>C-2-B</u>	<u>0.7</u>	<u>80%</u>	<u>70</u>
<u>C-2-C</u>	<u>1.2</u>	<u>80%</u>	<u>100</u>

1326.4 **The use of bonus density by a property also eligible to use the bonus provided for in § 1324.3 shall be deemed to first utilize the bonus authorized in § 1326.3.**

1326.5 **Use of the bonus authorized in § 1324.3 shall not count towards the set-aside requirements of § 2603. 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.**

4. Chapter 15. MISCELLANEOUS OVERLAY DISTRICTS, § 1563, Height, Bulk, and Use Provisions (FT)¹, is amended by adding a new § 1563 6 to read as follows:

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

(a) **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.**

(b) **In the FT/CR Overlay District:**

- (i) **The floor area ratio for new construction shall not exceed 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. Chapter 16. CAPITAL GATEWAY OVERLAY DISTRICT, § 1601, is amended to read as follows:

¹ “(FT)” signifies that these provisions are applicable to properties located in the Fort Totten Overlay District.

1601 BONUS DENSITY AND HEIGHT (CG)

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:**

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

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

1601.42 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.

1601.23 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09), as amended; provided that in Squares 601, 656, and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a one-to-one (1:1) building setback for any part of a building that exceeds ninety (90) feet in height on the side abutting the residential zone.

1601.34 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of ~~3.5~~ **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.

1601 ~~45~~ In the CG/W-2 District, the Zoning Commission may grant additional density to lots as part of the review and approval process applicable to that area, in the manner set forth in §§ 1603.5 and 1603.6.

1601. ~~56~~ A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 shall be subject to the maximum height and bulk limits of § 1709.21 of this Title

6 Chapter 19. UPTOWN ARTS-MIXED USE OVERLAY DISTRICT, is amended as follows:

a. Subsection 1904.1 is amended to read as follows

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; ~~and~~

(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 available through § 2604.

b. Subsection 1905 1 (c) is amended to read as follows

1905.1 Two (2) or more lots may be combined for the purposes of transferring bonus density and allocating the permitted mixture of uses among development sites, provided.

- (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;

c. By adding a new § 1909 to read as follows:

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.

1909.2 Bonus density achieved via § 1904.2 does not add to the set-aside requirement of § 2603.

7. Chapter 26. INCLUSIONARY ZONING is amended as follows:

- a. Section 2601, Definitions, is amended by striking the definition “Achievable bonus density” and amending the definitions of “the Act” and “Moderate-income household” to read as follows:

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~~ 51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

- b. Section 2602, Applicability, is amended as follows

(i) Subsection 2602 1 is amended by striking the term “R-3” and inserting the term “R-2 “in its place.

(ii) Subsection 2602.3 (e) is amended by inserting the Eighth Street (ES) Overlay in the exemptions as follows

2602.3 This Chapter shall not apply to:

[(a) through (d) are unchanged]

(e) Properties located in any of the following areas:

- (i) The Downtown Development or Southeast Federal Center Overlay Districts;
- (ii) All properties located within The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South receiving zones On February 12, 2007;
- (iii) The W-2 zoned portions of the Georgetown Historic District;
- (iv) The R-3 zoned portions of the Anacostia Historic District; and
- (v) The C-2-A zoned portion of the Naval Observatory Precinct Districts; and

(vi) The Eighth Street Overlay.

(iii) Subsections 2602.5 and 2602.6 are amended to read as follows:

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 of 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. Subsections 2603.1 and 2603.2 are amended to read as follows:

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 for 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 for inclusionary units.

d Subsection 2604 3 is amended to read as follows:

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:

<u>Base Zone</u>	<u>IZ Zoning Modifications</u>		
	<u>IZ Min. Lot Area (square feet)</u>	<u>Min. Lot Width (feet)</u>	<u>Min. Lot Width (feet) Special Exception</u>
<u>R-2 Detached</u>	<u>3,200</u>	<u>40</u>	<u>32</u>
<u>R-2 Semi-Detached</u>	<u>2,500</u>	<u>30</u>	<u>25</u>
<u>R-3</u>	<u>1,600</u>	<u>20</u>	<u>16</u>
<u>R-4</u>	<u>1,500</u>	<u>18</u>	<u>16</u>

e. Section 2606, Exemption From Compliance, is amended by striking the existing text and inserting the following new text in its place

2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant economically viable use of its land.

2606.2 No application for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.

- f. Section 2607 is amended to read 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 located within the same census tract as the inclusionary development;
- (b) Consists of new construction for which no certificate of occupancy has been issued;
- (c) Is at a location suitable for residential development;
- (d) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;
- (e) Has not received any development subsidies from federal or District government programs established to provide affordable housing; ~~and~~

- (f) 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;
- (g) Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and
- (h) Has not utilized bonus density beyond that provided by § 2604.1

- 2607.3 The requirement of 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.: ~~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.~~
- 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. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

[The remainder of this section is unchanged.]

g Section 2608 is amended to read as follows

2608 APPLICABILITY DATE

- 2608 1 The provisions of §§ 2600 through 2607 of this Chapter as adopted by Zoning Commission Orders 04-33, and 04-33A, and 04-33B and all

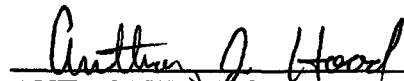
amendments made by Orders No. 04-33A and 04-33B to 11 DCMR Chapters 1, 11 through 14, 15, 16, and 19 §§ 1402.1, 1904.2, and 1999.2 shall become effective upon the publication of the first purchase/rental schedule in the *D.C Register*.

2608.2 **The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior [TO THE EFFECTIVE DATE OF THIS SUBSECTION].**

Vote of the Zoning Commission taken at a special public hearing on July 30, 2007, to **APPROVE** the proposed rulemaking: **4-0-1** (John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten having not participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of **4-0-1** (Anthony J. Hood, Michael G. Turnbull, John G. Parsons to adopt; Gregory N. Jeffries to adopt by absentee ballot; Carol J. Mitten having not participated, not voting)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C Register*; that is, on **MAR 14 2008**.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 04-33B
Z.C. Case No. 04-33B
(Text Amendment – Inclusionary Zoning – Addition of R-2 Zones, Standards for Certain
Overlays, and Clarifying Amendments)
September 10, 2007**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D C Register*