

RECEIVED

DC OFFICE OF ZONING

2007 JUN 29 11 15 AM '07
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARINGS

TIME AND PLACE:

Thursday, July 26, 2007, @ 6:30 P.M.
Office of Zoning Hearing Room
441 4th Street, N.W. , Suite 220-South
Washington, D.C. 20001

THIS CASE IS OF INTEREST TO ALL ANCs

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

The public hearing advertised in this notice will consider the petition of the Office of Planning to amend twelve Overlay Zones and Chapter 26, Inclusionary Zoning (“IZ”). The proposed amendments would add R-2 to the zones where IZ is applicable, conform the IZ Zoning Regulations with provisions of Inclusionary Zoning Implementation Act of 2006 enacted by the Council of the District of Columbia, and modify the text of Chapter 26 to clarify the Commission’s intent and to make technical changes.

Proposed Amendments

Overlays The proposed amendments would codify the Office of Planning’s (“OP”) September 26, 2006 analysis of 12 of the 13 existing zoning overlays that also have IZ requirements. They would tailor increases in FAR, lot occupancy density or height to respect the intentions of each overlay. Zoning overlays tailor base zones to specific neighborhood conditions and concerns. Some restrict density in order to ensure appropriate scale. Others provide for density incentives to promote the inclusion of desirable uses. Two overlays also permit use of Combined Lot Development in order to achieve the overlays’ objectives (combined lot provisions permit two sites to be considered as one for some zoning purposes). The intent of specific IZ/overlay language is to ensure the IZ bonuses are calculated based on an overlay’s FAR, height and lot occupancy requirements where an overlay is more restrictive than the underlying zone district, and to ensure IZ bonuses are used prior to an overlay’s incentives where the overlay provides bonus FAR, height, lot occupancy, and/or permits combined lot. Where the advertised language proposes changes, the increases in FAR due to the 20% density IZ bonus range from 0.18 to 1.2 FAR. Increases in lot occupancy would range from 0% to 15%, and, increases in height would not exceed 10 feet. The affected overlays are: Capitol Interest, Cleveland Park, Eighth Street, Fort Totten, Reed-Cooke, Woodley Park, Hotel/Residential, H Street, Takoma, Georgia Avenue, Uptown Arts, and Capitol Gateway.

Conforming Language The proposed amendments advertised in this Notice would align the Zoning Regulations with the Inclusionary Zoning Implementation Act of 2006, which was passed by the Council of the District of Columbia on December 19, 2006. This Act empowered

ZONING COMMISSION
District of Columbia

CASE NO.

04-33B

ZONING COMMISSION

District of Columbia

EXHIBIT NO.

5

CASE NO. 04-33B

EXHIBIT NO. 5

NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 04-33 B
PAGE 2

the Mayor to create a system to administer the affordable units created by Inclusionary Zoning. The act envisions the use of third-party non-profit entities that would acquire IZ units for resale to eligible households at affordable prices. It is envisioned that such entities, known as Housing Trusts, might be able to purchase the units at prices that would allow the seller to gain a greater profit than if the seller sold the unit to an eligible household. The amendments propose would permit an IZ unit owner to sell its property to these third-parties at a price greater than would be otherwise permitted, but requires the third party to sell the unit at the price prescribed by the Mayor. The amendments also recognize the decision of the Council to permit the Mayor to set resale prices without the use of a price schedule intended to only govern the initial sale of an IZ unit.

Inclusion of the R-2 Zone. The R-2- zone district was not among those zones included in Order No. 04-33. The proposed amendments would make the R-2 zone district subject to Chapter 26, Inclusionary Zoning Program, and provide changes to lot width and area to accommodate the 20% bonus density enabled by Chapter 26.

Low and Moderate Density Neighborhood Form. In order to accommodate the additional lots for a given IZ-related parcel, and to reflect the existing neighborhood form in the R-2, R-3 and R-4 zones, the advertisement proposes that existing width requirements of the base zone be kept, but would permit smaller lot areas through shallower lots. The proposed changes would also permit a developer to achieve bonus density by narrower lots, but only by special exception.

Affordable Unit Set-Aside Calculation: The language clarifies how the set-aside requirement will be calculated. The calculation would be based on the greater of the gross floor area (gfa) devoted to residential use, or the bonus density utilized. This formula would base the set-aside calculation on only the residential gfa within mixed-use projects, or on the IZ bonus density actually used, and not that which is theoretically available. Thus the set-aside is not based upon the maximum potential bonus density that can be achieved on a property, but is based upon either a percentage of the bonus density used or of the residential uses to be constructed, whichever is greater. This affords flexibility to developers while also eliminating the need to seek BZA approval to reduce the set-aside based upon the impact of exceptional conditions affecting the property.

Zoning Envelope Modifications. The proposed amendments would grant 10 feet of additional height to developments in the C-2-C and SP-2 zone districts, and returns these zones' maximum residential lot occupancy to 80%, from the 90% originally permitted by the IZ regulations. This would ensure better access to light and air and would conform these zones with zones having comparable constraints.

Off-Site Compliance. The proposed amendments would authorize the BZA to approve off-site IZ compliance within the same census tract through covenants on land owned by a second party. The regulations currently require common ownership of both parcels.

NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 04-33 B
PAGE 3

Requests for Complete Relief As noted, the set-aside flexibility proposed in the advertised text eliminates the need for BZA relief if a site condition or government restraint does not permit access to the full 20% bonus density. Nevertheless, the Office of the Attorney General is recommending the addition of a provision permitting a property owner to complete relief from the set-aside provision based upon a showing that compliance would deprive the owner of economically viable use of the land. Because of the availability of both this form of relief, and relief from on-site compliance, the need to file for a variance from the set-aside requirement would be rare and would not be ripe for consideration until after the property owner has exhausted the administrative remedies provided. Therefore, the Office of the Attorney General is recommending a provision that, while permitting the simultaneous filing of applications for administrative relief and a variance, would require the Board of Zoning Adjustment to first consider the requests for administrative relief, and only go on to consider the variance request if it votes to deny the other form(s) of relief sought.

IZ Applicability Date: Refinements include language setting a date certain for the application of the IZ regulations and provides that projects that have been approved by that date certain by a final action vote of the Zoning Commission are not subject to IZ requirements. These dates have been intentionally left blank in this notice and the public is invited to offer suggested dates at the public hearing.

The public hearing on this case will be conducted in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to § 3020, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing and indicate the hearing date on which they will appear. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY N. JEFFRIES, JOHN G. PARSONS, AND MICHAEL G. TURNBULL, FAIA, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

APPENDIX TO HEARING NOTICE FOR ZC CASE 04-33 B

**TEXT OF PROPOSED AMENDMENTS TO CERTAIN CHAPTERS GOVERNING
OVERLAYS AND TO CHAPTER 26,
INCLUSIONARY ZONING**

(Changes to existed subsections are shown as follows: **bolded/underlined** additions and ~~strike through~~ deletions.)

The following language is advertised to amend the Hotel/Residential Overlay:

- 1101.7 The following types of bonus density is available in the HR Overlay District:

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

- 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.

The following language is advertised to amend the Capitol Interest Overlay

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.**

The following language is advertised to amend the Cleveland Park Overlay

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.**

The following language is advertised to amend the Eighth Street Overlay

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.**

The following language is advertised to amend the Woodley Park Overlay

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.**

The following language is advertised to amend the Takoma Overlay

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.

The following language is advertised to amend the H Street Overlay:

1327 INCLUSIONARY ZONING (HS)

1327.1 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	IZ Bonus		
	Bonus FAR	Lot Occupancy	Maximum Height
H Street			
C-2-A	0.5	75%	50
C-3-B	0.7	80%	70
C-2-C	1.2	80%	100

1327.2 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 § 1327.1.

1327.3 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.

The following language is advertised to amend the Reed-Cooke Overlay:

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 ~~of~~
~~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~~

The following language is advertised to amend the Fort Totten Overlay

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.**

The following language is advertised to amend the Capitol Gateway (CG) overlay

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:

<u>Base Zone</u>	<u>IZ Bonus</u>		
	<u>FAR</u>	<u>Lot Occupancy</u>	<u>Maximum Height</u>
<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 affect 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.

The following language is advertised to amend the Uptown Arts Overlay

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 available through §2604.

- 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;

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.

The following language amendments are advertised for Chapter 26 of the Zoning Regulations, to bring the IZ regulations into conformance with the Act

CHAPTER 26 INCLUSIONARY ZONING

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

The following amendments are advertised to apply IZ in the R-2 and amend IZ in 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.

- 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 .

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

- 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>

The following language amends the affordable housing set-aside calculation

- 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 following language amends relief from compliance provisions

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.~~
- 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.

The following language amends the off-site provisions

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

(g) The set-aside inclusionary units on the receiving lot do not exceed 30% of the residential use of that lot.

(h) No lot shall receive density beyond that provided by § 2604.1

2607.3 The requirement of 2607.2 (a) 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. **A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.**

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.

The following language amends IZ's applicability date

2608 APPLICABILITY DATE

2608.1 The provisions of this Chapter *as adopted by Zoning Commission Orders 04-33 and 04-33A, and all amendments made by Order No. 04-33A to 11 DCMR §§ 1402.1, 1904.2, and 1999.2, and [ALL AMENDMENTS PROPOSED ABOVE AS ARE ADOPTED]* shall become effective days following the issuance of the first purchase/rental schedule ~~or the publication date in the D.C. Register of Zoning Commission Order~~, establishing the inclusionary zoning overlay, ~~whichever is the last to occur~~ [NOTE: LANGUAGE IN ITALICS WILL BECOME EFFECTIVE UPON THE PUBLICATION OF ORDER 04-33B]

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 _____.