January 7, 2015

Mr. Anthony Hood
Chair, District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Act Now to Strengthen Inclusionary Zoning (Case No. 04-33)

Dear Chairman Hood:

We are writing to ask the Zoning Commission to take actions to strengthen the Inclusionary Zoning (IZ) program to ensure it can best achieve its goal to create a mix of low- and moderate-income affordable housing throughout the District. We have laid out several steps, such as lowering the income limits and increasing the total share of IZ units to be produced, that we believe can best help IZ maximize its effectiveness as an affordable housing tool for DC.

In light of the recent report by the Urban Institute reviewing the DC IZ program performance to date, and its recommendations for improvements, we ask the Zoning Commission to delay no longer. The results of the Urban Institute are encouraging – the program is fundamentally sound. However, the report identified many areas for improvement.

The overall social and economic context for IZ has changed since it was first adopted in 2006. DC's housing market is stronger than ever. Housing values and production have fully recovered from the Great Recession and increased substantially over the past several years. At the same time, the District continues to see a dramatic decline in the number of lower priced housing units and tremendous increases in the number of DC households facing unaffordable housing costs as housing prices have risen far faster than wages for most residents. Thus, our need for more affordable housing through IZ, and IZ's potential to produce more housing as part of a strong housing market is much greater than in 2006. Given both the strength and need, it's time to recalibrate DC's IZ program to ensure we are getting the most we can from this fundamentally sound policy.

Although the Zoning Commission has expressed the desire to revisit IZ requirements, more than a year has passed since it requested the Office of Planning present options for strengthening Inclusionary Zoning. Since that time, nothing has been presented to the Zoning Commission, but IZ production has been ramping up.

The Department of Housing and Community Development's (DHCD) 2013 annual report on IZ shows that DC's housing market remains strong and as a result, the production of IZ units is increasing. The report noted that 19 projects that were awarded permits in 2013 have created 95 IZ Units. Further, the Office of Planning has in its pipeline another 99 IZ applicable projects in pre-development that should create another 1,124 Inclusionary Units in future years.

Also, according to more recent information from DHCD, of the 104 IZ units that have been produced, a total of 33 rental units have been leased, 4 were sold, 3 are under contract, and the remainder are in the selection process. Notable projects about to come online include *The Drake* in Dupont Circle with 17 IZ units and *The Swift*, above the new Petworth Safeway, with 18 IZ units. A notable project under construction is the 5333 Connecticut Avenue apartments in Chevy Chase, which will provide 19 IZ units, with 10 of them at the 50 percent AMI level.

Given the acceleration of IZ's implementation as a part of the city's rapid pace of new housing construction, it is urgent that the Zoning Commission assess how IZ can best achieve its goal to help address part of the unmet need for more affordable housing for low- and moderate-income DC residents. Furthermore, DC's IZ program is not taking advantage of national best practices, as noted by the Urban Institute report.

We ask the Zoning Commission to act swiftly to strengthen DC's IZ program. We believe this can be accomplished by: lowering the income limits for IZ units, increasing the share of low income units produced, ensuring that IZ prices are set to be affordable to the households intended to be served, increasing the total percentage of IZ units required to be produced, and ensuring bonus density is available to provide compensation for the cost of the affordable units. Also, the option by the Mayor and nonprofits to purchase IZ units in order to serve lower income households or people with special needs should be clarified. These are explained in greater detail below.

1. Lower the moderate-income limits for IZ units.

As currently structured, the IZ program requires that developments in what are designated high rise zones only provide IZ units to serve households earning 80 percent area median income (AMI). While the 80 percent AMI price is below market in some DC submarkets, it is close to or above it in others. Further, 80 percent AMI (almost $70,000 annually for a two person household) is above DC's Median Household Income ($64,267). Currently, eight out of 10 IZ units are produced at the 80 percent AMI level. Given that DC households earning 50 percent AMI or less by far face the greatest housing challenges, the overwhelming production of IZ units at the 80 percent AMI level should be reconsidered.

The Urban Institute report noted that comparison cities with similar programs set affordability levels for rental housing between 55 and 70 percent of AMI, and for owner housing between 70 and 90 percent AMI. The report indicated that DC should consider following San Francisco's ownership income targeting of 70 percent AMI. We note that 70 percent of AMI is also Montgomery County's high rise building construction and ownership standard. In 2006, the Campaign for Mandatory Inclusionary Zoning also requested that the income targeting be brought down to 70 percent AMI, after the Zoning Commission significantly reduced the amount of 50 percent AMI units that would be produced.

2. Increase the production of low-income IZ units.

Less than 20 percent of IZ production is priced at the 50 percent AMI, or low-income, level. This result is far below the intent of the original proposal to provide half of all IZ units at the 50 percent AMI level, and half at 80 percent AMI. The split in income targeting was proposed to reach to the deeper level of a 50 percent AMI affordability level, rather than offering all IZ units at 65 percent AMI.

One of the main factors in the low proportion of 50 percent AMI IZ units is due to the way high rise construction projects are identified as subject to the lesser standard of an 8 percent set aside of units all priced at 80 percent AMI. The distinction to accommodate higher cost high rise construction is not based only on the building type, but also by the zone. Thus lower cost, low rise construction type buildings have been built in designated high rise zones, and have delivered the lesser IZ standard – 8 percent, all at 80 percent AMI. We suggest the commission look at ways to increase the production of low-income IZ units.

3. Income targeting based on tenure rather than construction type is a far more common national best practice.

Nationwide, splitting income and set aside standards based on construction type is rare. Commonly, IZ programs distinguish between rental and ownership units. For rentals, lower income targets are set given the typically lower construction costs for rental buildings, and higher costs for ownership developments, which are associated with higher construction costs, along with higher income thresholds needed for buyers of those units. We suggest the District modify its program to follow this national best practice.

4. Setting prices based on 30 percent of income is too narrow and makes the units too expensive for most applicants.

The percentage of income permitted for housing expenses is calculated at 30 percent. This creates a very narrow margin of eligible households earning just enough to afford an IZ unit. Most surrounding jurisdictions with IZ programs utilize 25 percent, a ratio that permits a reasonable window of affordability below the maximum incomes permitted. This modest change will ensure that more DC households are eligible for IZ units. This change would make matching qualified and interested households to IZ units far easier.

5. DC's 8 and 10 percent set aside levels are lower than similar peer jurisdictions' programs around the country.

The Urban Institute report shows five peer programs that require a set aside of 15-20 percent, and one at 10 percent, and none at 8 percent. We suggest the Zoning Commission look at ways to increase the set aside of IZ units in buildings.

6. The 20 percent bonus density can do more for IZ units, and more bonus may be necessary to support a larger set aside.

Most developments subject to IZ have taken advantage of much or all of the 20 percent bonus density. However, we understand that in some cases, all the bonus density may not be available, due to height or other limitations. If in practice the bonus density is not sufficiently accessible, the Zoning Commission should assess changing standards to achieve full bonus density.

7. The purchase option for the Mayor, the DC Housing Authority, or a qualified non-profit has never been implemented.

Section 2603.6 of Title 11 DCMR Chapter 26 from the Zoning Commission order establishing IZ requires owners to offer for sale up to 25 percent of IZ units to the Mayor or DC Housing Authority as a purchaser. However, the Act passed by DC Council to implement the IZ program included restrictive language that made the purchase option impractical by requiring that the for sale unit may only be purchased for the purpose of reselling. This is a departure from best practices, such as Montgomery County's successful history of enabling non-profit organizations to purchase units, and provide additional subsidies or modifications to serve clients, for example, for those with disabilities. This is a missed opportunity to enable qualified private non-profits to provide additional subsidies and services to serve DC households at even lower income levels than the standards of IZ. This is one important way for the IZ program to offer deeper levels of affordability or assist households with special needs.

Recommendations:

1. Bring income targeting for moderate-income units down below 80 percent AMI to at most 70 percent AMI for ownership units and 50 percent of AMI for rental units.

2. Change the income targeting based on tenure rather than construction type. Consider the range suggested in the Urban Institute report – rental income targeting for 50 percent AMI households, and ownership housing up to 70 percent AMI.

3. Price affordable units based on 25 percent of income rather than 30 percent of income for housing costs paid by the occupant.

4. Affordable unit set-aside – assess requiring low rises or rental buildings to provide 12 percent set-aside (up from 10 percent), and for high rises to provide 10 percent (up from 8 percent).

5. Ensure the bonus density is available by allowing greater flexibility, including increased height to achieve all IZ units and bonus density on site. Consider increasing the bonus density from 20 percent to 22 percent to support deeper levels of affordability and increased set-asides.

6. Clarify the intended role for qualified non-profits, the Mayor and the DC Housing Authority in exercising the right of first refusal to purchase and then rent units to low income and extremely low residents.

If you have any questions or requests, please contact Cheryl Cort at 202-675-0016 x 122; Cheryl@smartergrowth.net.

Thank you for your consideration.

Sincerely,

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