goulston&storrs
counsellors at law

March 2, 2016

Chairman Anthony Hood and the Members of
the District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Zoning Commission Case No. 04-33G – Goulston & Storrs Comments

Dear Chairman Hood and Members of the Commission:

We are happy for the opportunity to provide comments on the proposed amendments to the Zoning Regulations governing the inclusionary zoning program. We appreciate the Coalition for Smarter Growth ("CSG") bringing this issue before the Zoning Commission and we appreciate the Office of Planning's ("OP") thorough analysis of the proposal. We have reviewed both the CSG's and OP's proposal and we are writing to indicate our support for the refinements proposed by OP in its report dated February 25, 2016. Nevertheless, we would like to highlight a few areas in its proposal where we think additional adjustments should be made. Our comments are as follows:

I. Substantive Comments

A. Section 2602.1(b)

Section 2602.1(b) extends the Inclusionary Zoning ("IZ") program to additions that did not previously trigger an affordable requirement. Previously, only additions that exceeded 50% of the gross floor area of the existing building triggered an affordable requirement; however, this section will now apply the IZ requirements to any addition that includes 10 residential units, regardless of the size of the addition. While we appreciate the desire to capture as much affordable housing as possible, it shouldn't be done at the cost of discouraging adaptive reuse projects. The existing IZ scheme excluded additions that did not meet the 50% GFA threshold because the Commission did not want to discourage the conversion of non-residential buildings or the rehabilitation of historic structures, as a physical addition is often what makes these projects financially feasible. Accordingly, the Commission determined that additions would not trigger an affordable requirement unless it was at least 50% of the gross floor area of the existing building (see Commission deliberation from the November 10, 2005 Zoning Commission meeting, pages 26-30). To impose the affordable requirements on any addition that includes 10 units, regardless of its size, would undermine any number of projects that would otherwise bring about the renovation of a historic landmark or the conversion of a commercial office building.

Imposing the affordable requirement on these projects could mean that these buildings remain vacant and detract from the greater community for a longer period of time. Goulston proposes eliminating this section altogether.

B. Sections 2603.1 and 2603.2

The Office of Planning proposes eliminating the word "utilized" with respect to determining the affordable set aside when using the bonus density. Under the existing regulations, the required set aside is the greater of 8% of the residential density or 50% of the bonus density utilized (assuming the project utilizes steel and concrete construction methods). If "utilized" is removed, does the calculation assume the entirety of the bonus is utilized, even when it isn't? If that is the case, the requirement will always be 50% of the bonus density utilized and there is no reason to reference the 8% threshold. Rather than eliminating the 8% threshold, however, we propose retaining "utilized" in both Sections. It makes sense to provide a sliding scale requirement. The idea behind the IZ program is to offset the expense of setting aside affordable housing in market-rate projects, which is done with the density bonus. If a project cannot accommodate additional density, for whatever reason (ie. historic concerns, neighbor concerns), it should have the benefit of the lesser set aside requirement. Such a project should not share the same set aside requirement as a project that utilizes the entire 20% bonus density.

C. Vesting

OP proposes that the amendments should become effective six months after adoption; however, this will have a significant effect on those projects in the pipeline in the C-2-B, C-2-B-1, C-3-A, W-2 and SP-1 Zone Districts. Goulston proposes that the Commission adopt language to vest projects that have already received entitlement approval, similar to the language adopted for the vesting of the GAR program. Otherwise, there are approved PUDs, BZA and HPRB projects that may be put in jeopardy because the new required MFI levels will have a significant effect on the underwriting of the project, which wasn't taken into account when the project was designed. Goulston proposes the following:

"The provisions of this chapter shall not apply to any application for a building permit:

(a) That has been officially accepted by the Department of Consumer and Regulatory Affairs as being complete prior to [September 3, 2016]; or

(b) Filed on or after [September 3, 2016] if the building permit plans are consistent with:

(1) An unexpired approval of a first stage, second stage, or consolidated planned unit development, variance, special exception, design review under the CG or SEFC

(2) Overlay, or concept design by the Historic Preservation Review Board or Commission of Fine Arts; provided the vote to approve occurred prior to [September 3, 2016];

(3) An unexpired approval of a variance, special exception or design review under the CG or SEFC Overlays granted on or after [September 3, 2016], but which was set down for a public hearing prior thereto;

(4) A Large Tract Review completed prior to [September 3, 2016].

If vesting language is not adopted, Goulston suggests that the amendment to Section 2603.3 be reconsidered. The change proposed by Section 2603.3 is not insignificant. To impose a change in required MFI levels, after the project has been designed and vetted, completely changes the financial underwriting of a project. If appropriate vesting language is not adopted, many approved projects will either be abandoned or be required to go through the modification process, neither of which is ideal if the common goal is to create more affordable housing as soon as possible.

II. Technical Comments

A. **Section 2603.2**

OP states in its preamble that projects in the C-2-B, C-2-B-1, C-3-A, W-2 and SP-1 Zone Districts will be required to set aside only 8% of its residential density to affordable housing, regardless of the amount of bonus density utilized. Section 2603.2 does not reflect this. A separate section should be incorporated to address the set aside requirements for these zone districts.

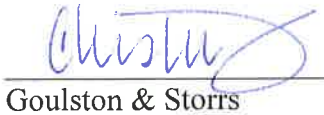
B. **Section 2607.2**

This section allows for satisfying the inclusionary zoning requirement with off-site affordable housing so long as an economic hardship can be proven. The section goes on to say "[a]mong the factors that may be considered by the BZA in determining the existence of economic hardship are:" but does not list the examples. OP's report dated July 3, 2015, listed factors for consideration, including condominium fees, which should be incorporated here.

III. Conclusion

We are happy to provide any additional information the Commission should require in their consideration of our comments.

Respectfully submitted,



Goulston & Storrs