Zoning Commission of the District of Columbia
Case No. 04-33G
Amendments to Chapter 26, Inclusionary Zoning

Testimony of Larry Hargrove for Kalorama Citizens Association
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ZONING COMMISSION
District of Columbia
CASE NO. 04-33G
EXHIBIT NO. 197

Kalorama Citizens Association joins in the widespread consensus that the District confronts a severe shortage of housing affordable by low- and moderate-income residents, particularly families with children, and that the Inclusionary Zoning Program (IZ) is one mechanism by which this problem may be addressed. To that end:

- We support the petitioners' proposal for increased set-aside, to require all inclusionary developments to set aside for inclusionary units either the greater of 12% of gross floor area devoted to residential use or 75% of available bonus density, in an effort to increase the number of inclusionary units produced;

- We support the Office of Planning's approach to targeting more IZ units to low income residents;

- We urge you to substantially tighten the currently very elastic criteria that must be met in order to qualify for off-site compliance, and include requirements ensuring that the neighborhood amenities of an offsite location will be comparable to those of the primary location – to avoid emergence of a system by which, under the mantle of Inclusionary Zoning, lower income residents are shunted off to housing that, while physically comparable to that of market rate-renters or owners, is otherwise markedly deficient as to quality of life.

- We urge you enact Development Standards that ensure that a reasonable proportion of IZ units will have two or more bedrooms,

- We support OP's proposed definition of "bedroom" as a room with "immediate access to an exterior window and a closet".

- At the same time, we oppose the proposals from either side to increase bonus height and gross floor area and eliminate lot occupancy maximums -- largely for the reasons cited by OP having to do with the Comprehensive Plan and neighborhood character.

These positions are detailed in our written submission. Tonight I want to address two proposals from OP that raise important issues only tangentially related to Inclusionary Zoning.

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First: OP's proposal to eliminate the basic-requirement that an IZ development have a minimum of 10 dwelling units, which applies to all projects except those that increase GFA of an existing building by 50% or are conversions in the R-4 zone.[1] This would be done by allowing a developer to obtain the available floor area and height bonuses by simply voluntarily agreeing that a project for "any semi-attached, attached or multifamily residential development" will comply with IZ requirements and provide at least one IZ unit.[2]

This arrangement would obviously be a radical change in the character, scope and impact of the Inclusionary Zoning Program, from one that deals with fair-sized or larger multi-dwelling buildings, where some economies of scale are achievable, to one that explicitly targets individual rowhouses and other small residential buildings and penetrates deep into residential and mixed use neighborhoods. As OP may well be acknowledging in its very brief discussion of this far-reaching proposal,[3] it would be ready-made for rowhouse popup (or pop-back) developers as a device for circumventing existing height and/or floor area limits by simply tucking one IZ unit into an intrusively oversized building that might be crammed with seven or eight market-rate units.

This would be the most inefficient possible way for the city to promote the objectives of the Inclusionary Zoning Program: the community would get one unit per pop-up project, which the developer would be incentivized to keep no larger than necessary to just meet the 8 or 10 (or 12) per cent set-aside requirement. This one small unit would be achieved at greatly disproportionate costs in terms of impact on the values of neighborhood integrity that the Comprehensive Plan requires to be protected. The heaviest impact would appear to be on R5-B, C2-A and C2-B areas. A typical three-story rowhouse in these areas can be expected to qualify for an IZ bonus payoff of the equivalent of at least an additional floor's worth of gross floor area. And this would be applied to a building which, more often than not, is so far under the existing height and gross floor area limits as already to permit an additional floor's worth of expansion matter-of-right – which is a big part of what has generated the rowhouse pop-up problem up till now.

Speaking for an organization whose constituency is in Adams Morgan, where zoning is exclusively R-5, C2-A or C2-B, where row houses predominate in all zones, and which is under increasing pressure from pop-up developers as a result of the

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[1] See 11 DCMR 2602.1 and .2.

[2] Proposed §2602.1(d). See Exhibit 119, Memorandum from OP Director Eric Shaw, February 15, 2016, p. 2. Please note that the proposed §2602.1 does not parse grammatically, and needs work.

[3] See Exhibit 8, Memorandum from OP Director Eric Shaw, July 3, 2015, p. 4.

greater restrictions adopted for R-4 in ZC 14-11, the question is "What could they possibly have been thinking?"

This proposal for a major change in the nature of the IZ Program was put forward with only a few lines of explanation and no projection of its impact across the city. We strongly urge you to reject it.

The second proposal comes from OP also. In an effort to increase the residential floor space from which the required set-aside is calculated, OP proposes that cellar space, and interior space projecting into public space, that the permit would allow to be included in a dwelling unit, henceforth be included in the total residential floor area on the basis of which the required minimum set-aside is calculated pursuant to §§2603.1 and .2.[4] We support that proposal, which seems obviously appropriate --- but only on the condition that such space is also included in the calculation of the total gross floor area of the project.

We do so because to us it is clear that the Zoning Administrator should not have allowed residential floor area at be located in the cellar in the first place, since allowing habitable rooms to be located in cellars is in plain contravention of the definition of "habitable room" in §199.1. But if this use is nevertheless allowed in a project, then it is also entirely appropriate that this cellar residential space be included, along with all other residential space, in the calculation of that project's total GFA, rather than omitting in on the basis of the definition of GFA in §199.1 as has been done.

This selective adherence to the plain language of the regulations – ignoring the regulations so as to *allow* the use, but invoking them so as to *exclude it from FAR* -- thus allowing popup developers a floor's worth of free FAR -- has been the other principal generator of rowhouse popups. We strongly urge the Commission to take the opportunity in this case to correct this harmful practice at least in regard to Inclusionary Zoning projects.

While this case is principally about finding ways to enhance the effectiveness of the Inclusionary Zoning Program, it tangentially raises important issues of the same sort that the Commission addressed in ZC 14-11 regarding R-4, having go do with protecting the integrity of rowhouse neighborhoods. As the Commission was aware in that case, this is a subject on which the Comprehensive Plan in numerous provisions provides the Commission with a clear mandate, and we urge you to act accordingly.

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[4] Proposed §2603.8.