



September 20, 2018

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Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street, NW, Suite 200S
Washington, DC 20010

Re: Comments on Z.C. Case No. 04-33I from Cozen O'Connor

Chairperson Hood and Members of the Commission:

The zoning team at Cozen O'Connor appreciates the Office of Planning's continued efforts to clarify the Zoning Regulations regarding the District's Inclusionary Zoning program ("IZ"). Cozen believes the proposed amendments take a very positive step in that process.

In that vein, it provides the following comments recommending additional citations to the regulations of Department of Housing and Consumer Development ("DHCD"); project vesting; and a matter of right process for projects that propose more than 25% IZ. We will be happy to discuss these issues in more detail during the September 20, 2018 public hearing.

1. Cross References to DHCD Regulations Regarding Set-Aside and Unit Allocation sections

While the Zoning Regulations establish the IZ zoning requirements, the IZ program is administered by DHCD¹. Cozen believes the Zoning Regulations could be clearer regarding the interagency aspects of the process.

To that end, while the IZ Regulations refer to DHCD's regulations generally in Subtitle C § 1000.2, Cozen recommends inserting similar citations in the set-aside requirements of Subtitle C §§ 1003.1 and 1003.2, and the unit allocation of Subtitle C § 1005.1.

¹ Specifically, the forms for the required Certificate of Inclusionary Zoning Compliance ("CIZC"), the Inclusionary Development Covenant and the relevant instruction that establish the IZ set-aside calculations, unit counts and locations are created pursuant to DHCD regulations and are hosted on DHCD's website. Further, those forms must be reviewed by DHCD before a building permit can be issued by DCRA.

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The Office of Planning's ("OP") recommendations to these sections could be further amended as follows (all Cozen proposals in **bold and underlined**):

1003.1 An inclusionary development which does not employ Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit exclusive of any bonus height of fifty feet (50 ft.) or less shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or seventy-five percent (75%) of the bonus density utilized to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1001.2(d). **Calculations to be processed in conformance with 14 DCMR §2200 etc.**

1003.2 An inclusionary development which employs Type I construction as defined by Chapter 6 of the International Building Code as incorporated into the District of Columbia Construction Codes (Title 12 DCMR) to construct the majority of dwelling units, or which is located in a zone with a by-right height limit exclusive of any bonus height that is greater than fifty feet (50 ft.) shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of the bonus density utilized to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1001.2(d). **Calculations to be processed in conformance with 14 DCMR § 2200 etc.**

1005.1 The first inclusionary unit shall be a two-bedroom, unless the requirements of Subtitle C § 1003 (excluding any set aside requirement satisfied pursuant to Subtitle C § 1006.10(c)) is less than 850 net square feet, in which case any unit type may be provided. Subsequent inclusionary units after the first two-bedroom unit shall be allocated such that the proportion of studio inclusionary units to all inclusionary units, and the proportion of one-bedroom inclusionary units to all inclusionary units, shall not exceed the proportion of the comparable market rate units to all market rate units for each unit type. **Calculations to be processed in conformance with 14 DCMR §2200 etc.**

2. Vesting

As it has done in the past, Cozen recommends that the Zoning Regulations contain specific vesting language to establish which projects are subject to this text amendment. The date of vesting could be determined later in the process.

3. Matter of right process for projects that propose more than 25% IZ

In an effort to address the District's substantial affordable housing needs and to encourage developers to provide more IZ units, Cozen recommends a streamlined, agency-review development process for projects proposing more than 25% IZ². Such a process would permit a matter of right project to receive bonus density of up to 40% FAR and 20% height.

Such a project would be subject to an agency review to determine consistency with the Comprehensive Plan, and potential impacts on traffic, neighborhood, design, quality of life and the environment. The Zoning Commission could use the Large Tract Review process as a model as that process provides for comment by the Advisory Neighborhood Commission, other neighborhood groups and neighbors as well as interagency coordination.

Cozen proposes adding a new Subtitle C §1002.7 that reads:

1002.7 Inclusionary developments providing IZ set-aside square footage in excess of twenty-five percent (25%) may construct up to forty percent (40%) more gross floor area than permitted as a matter of right, and twenty percent (20%) in excess of the height limitation of the zone, subject to:

(a) all other zoning requirements;

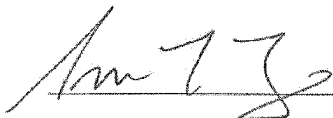
(b) limitations established by the 1910 Height Act; and

(c) an agency-review process conducted by the Office of Planning to determine consistency with the Comprehensive Plan, and potential impacts on traffic, neighborhood, design, quality of life and the environment.

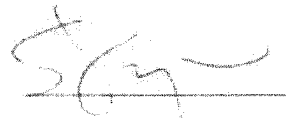
Thank you for your attention to this matter, and we hope you will take our suggestions under consideration.

Sincerely,

COZEN O'CONNOR



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Stephen Varga

² Including projects that are exempt for IZ pursuant to Subtitle C §1006 *etc.*