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**BY HAND**

Ms. Carol Mitten, Chairperson  
District of Columbia Zoning Commission  
Office of Zoning  
441 4<sup>th</sup> Street, NW, Suite 210 South  
Washington, DC 20001

Re. Z.C. Case No. 05-02, Residential Recreation Space  
(RRS) Text Amendment

Dear Chairman Mitten and Members of the Commission:

The District of Columbia Building Industry Association comprises over 400 member firms representing thousands of professionals engaged in the residential and commercial real estate industry in the District of Columbia. Our members have developed a substantial number of residential projects in the District in recent years and have considerable and "real world" experience with RRS zoning requirements.

We commend the Office of Planning (OP) for the comprehensive and thorough set-down report it prepared dated February 14, 2005 with respect to Residential Recreation Space (RRS) matters. The OP Report did an outstanding job of highlighting *inter alia*, 1) the extensive problems to developers, condominium associations and others caused by the RRS requirements; 11) the many public policies that compete with RRS provisions and make it difficult, if not impossible, to comply with such requirements; and 111) the very large number of variance cases approved by the BZA granting significant reductions in the amount of required RRS.

Regrettably, OP's recommendations for text amendments were exceptionally modest and seemed to essentially disregard most of its own findings and analysis of the many deficiencies in the RRS program. The OP recommendations would do little to eliminate the need for BZA review, currently facing most residential projects in commercial zones, since the variance needed in most situations is from the amount of space required. In addition, the OP report did not provide a justification for the existing RRS requirements.

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**ZONING COMMISSION**

District of Columbia

CASE NO. 05-02

EXHIBIT NO. 6

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For the reasons set forth below, we strongly recommend that the Zoning Commission:

- a) give consideration to the elimination of all RRS requirements;
- b) conduct a further public hearing or notice of rulemaking if the notice of the instant proceeding is deemed insufficient to consider the elimination of the RRS program;
- c) take immediate action, as an interim step, to reduce the RRS requirement to five percent (5%) of the GFA devoted to residential uses in all zones in which the current RRS requirement is ten percent (10%), fifteen percent (15%) or twenty percent (20%). While DCBIA believes that no RRS space should be required, the 5% level can be achieved in many projects without requiring BZA review.

We believe the RRS requirements should be deleted from the Zoning Regulations in their entirety, and the interim reduction of the RRS requirement to 5% should be made, for the following reasons.

1) It is fundamentally unfair to require developers of residential projects on land that is zoned C, SP or CR to provide RRS while developers of residential projects on land that is residentially-zoned have no such requirement. This is particularly egregious in situations in which the RRS provisions apply next door to, near by or in the same neighborhood as projects that are exempt from such requirements -- situations that are quite commonplace

2) The requirement for residential recreation space was adopted at a time when there was a perceived need and desire to supply the tenants of a residential building in a commercial zone with safe and secure active and passive recreation opportunities in and about a residential building due to limited opportunities in and about many of the commercial zones where limited amounts of residential development was occurring. Today, the commercial areas of the District where residential uses are being developed have become more of an 18-hour environment, with a variety of uses and amenities to serve the needs of the residents, far different then the environment in most commercial zones of more than 25 years ago when the RRS provisions were put in place.

3) Since the adoption of the RRS requirements in the 1970's, numerous other public policy objectives, restrictions and requirements have been incorporated into the Zoning Regulations. These include mandatory ground floor retail requirements, architectural design provisions, use restrictions, FAR and height reductions, linear street frontage restrictions and numerous others. Such provisions apply throughout the city, including downtown, along South Capital Street and the southeast waterfront, in neighborhoods such as Woodley Park, Reed Cook, Foggy Bottom and 16<sup>th</sup> Street Heights and elsewhere. Because of the cost of these public policy goals and objectives, and their effects on building design and use, it is simply no longer fair or appropriate to require that these same buildings provide RRS. In essence, the RRS requirements have been trumped by newer, much more important, competing and costly public policy objectives.



4) The real impacts of the RRS requirements were apparently not understood when the RRS provisions of the Zoning Regulations were adopted in the 1970s. Furthermore, they were not based on careful study or analysis. As the OP report states, it appears that the RRS issue "did not receive much discussion at the time." Finally, as OP also states, for many years following their adoption, the RRS requirements "rarely applied."

5) The very large number of variances from the RRS requirements granted by the BZA clearly show that these provisions of the Zoning Regulations are burdensome, costly, inappropriate, outdated and/or unnecessary. It is evident that the amount of RRS required is excessive given the other requirements of the regulations; e.g., when the lot occupancy requirements, parking requirements and roof structure enclosure requirements combine to leave insufficient open area on a lot to meet the RRS requirements.

It is true that most applications for variances from the RRS requirements offered to the BZA some amount, generally minimal, of recreation space. However, we respectfully submit that most applicants did so out of concern that if they failed to offer to provide any recreation space, their applications might have been perceived as being "too aggressive" and perhaps rejected. The fact that such applicants provided recreation space does not, however, indicate that they thought the recreation space was desired by tenants or condominium purchasers, or that it was otherwise necessary or appropriate. To the contrary -- in numerous private conversations, these applicants indicated that the RRS requirements were not necessary, were burdensome and competed with their attempts to provide more residential units, ground floor retail or other necessary uses.

The real question before the Commission is: can it acknowledge that a public policy objective adopted over twenty-five (25) years ago is no longer necessary or appropriate, competes with other more pressing and important public policies and is unfair and unduly burdensome?

While DCBIA would prefer that the Zoning Commission take the course outlined above, we also would support adoption of the Office of Planning's specific recommendations contained in its report to the Commission if it determines that abandonment of the RRS provisions is not feasible or appropriate until a further proceeding is scheduled. Certainly the Office of Planning's recommendations together with a reduction in the requirement for Residential Recreation Space to 5%, if adopted, would make satisfaction of RRS requirements more feasible in many projects and would materially reduce the burden on the Board of Zoning Adjustment to address relief requests. But as noted above, we do not believe however that the adoption of the Office's recommendations alone will materially improve the ability of projects to comply with the RRS requirements without Board relief.

As a technical matter, we assume but suggest it be confirmed in the Commission's deliberations that where relief from the RRS requirements is needed that that only a single hearing fee, presently \$1,200, for all relief from RRS requirements be imposed, rather than separate fees for each RRS requirement for which relief is sought.

Ms. Carol Mitten  
June 24, 2005  
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We appreciate your consideration of our views and recommendations.

Sincerely,

A handwritten signature in black ink, which appears to read "David W. Briggs". The signature is fluid and cursive.

David W Briggs  
Co-Chair, Legislative/Governmental  
Affairs Committee

cc: James Williams  
Gail Edwards  
Charles Barber  
Jacques DePuy  
Ms Ellen McCarthy  
Mr. Joel Lawson

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