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June 24, 2005

BY HAND

Carol J. Mitten, Chairperson
District of Columbia Zoning Commission
Office of Zoning
441 4th Street, NW, Suite 210 South
Washington, DC 20001

~~ZONING COMMISSION~~
~~District of Columbia~~

CASE NO. 05-02
SUBJECT NO. 7

Re ZC 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

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

- give consideration to the elimination of all RRS requirements,
- 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,

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ZONING COMMISSION
District of Columbia
C-322 NO.05-02
EXHIBIT NO.7

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 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) Since the adoption of the RRS requirements in the 1970s, 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 16th 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.

3) The real impacts of the RRS requirements were apparently not understood when the RRS 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 regulations "rarely applied."

4) The very large number of variances from the RRS requirements granted by the BZA clearly show that these 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?

We appreciate your consideration of our views and recommendations.

Sincerely,

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION



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

cc Ellen McCarthy
Joel Lawson