THE
WILKES
COMPANY

September 15, 2014

Anthony J. Hood
Chairman
D.C. Zoning Commission
One Judiciary Square
441 4th Street NW, Suite 200S
Washington, DC 20001

Delivered By Hand

Re: Revision of Zoning Regulations

Dear Chairman Hood and Members of the Zoning Commission:

The Wilkes Company, a Washington, DC-based real estate development and investment company, is writing first to congratulate all who have labored so long and hard to accomplish this enormous undertaking and, second, to respectfully bring to the Commission's attention certain provisions in the draft that, in our view, warrant further review and final modification:

<u>Subtitle I</u>

<u>§ 807.4</u>: As currently proposed, under this subsection, requests to convert combined lot development (CLD) to "Credits" may only be requested by owners of a residential development. This language could bar a number of conversions where CLD rights have been included as part of a property sale in order to be utilized in a subsequent residential development. This provision should be reconciled with, and strictly follow, the language of Section I 807.2 regarding transferable development rights (TDRs) which allows conversions by persons/entities owning the "rights" to the TDRs.

<u>§ 807.6</u>: The Office of Planning previously proposed to place a three (3) year time limit on the conversion of (i) unused TDRs and (ii) unallocated combined lot development (CLD) to "Credits". In response to grave concerns raised by the development community, it is our understanding that the Office of Planning has, in its proposed Alternative Language, removed this subsection. However, a question may be raised by the Zoning Commission as to why this limit should be removed. The fact is there is really no administrative justification for such a time limit and it would threaten to place at risk thousands of square feet of TDRs and CLD rights, including those for which owners have already entered into lengthy and costly covenants and transfer certificates, not to mention having first undertaken the projects themselves in reliance on generating TDRs and /or CLD rights without a short fuse or abbreviated shelf life.

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§§ 900.13 and 900.16: As currently proposed, these two sections create an onerous documentation requirement for the transfer of Credits among properties, essentially creating a dual-certificate process, which will likely be confusing, certainly cumbersome and not serve the goal of streamlining advanced by the Office of Planning.

§ 900.19: The Office of Planning previously proposed that all Credits (with the exception of those generated by plaza construction) once transferred to a site and with non-residential construction completed, would expire and retain no further rights and value. This would create an inequitable and unsustainable scenario in that in order for a non-residential building constructed with Credits to later be replaced, the property owner would have to return to the Credits market yet a second time in order to acquire new Credits to replace the lost improvements. At the same time, the uses generating the Credits would still be perpetually frozen but not available for future development rights transfers. In response to concerns raised by the development community, the Office of Planning has proposed in its proposed Alternative Language to remove this subsection. It is imperative that this language stay removed in order to accommodate renovation and/or replacement construction in the future and to avoid an unjust result.

Subtitle C

§ 1901.13: This section requires all non-required parking spaces to comply with the applicable provisions of Chapter 19, including access and size. This requirement is a change from the current Zoning Regulations, which permit non-conforming spaces to be provided in a parking garage but, understandably, do not permit such spaces to be counted against the zoning minimum. For example, tandem spaces are commonly provided in below-grade parking facilities, but only count as one space for zoning. This section would eliminate the ability for tandem spaces or other types of non-compliant spaces to be provided above the minimum number of parking spaces required by zoning. Accordingly, the last phrase of this provision should be deleted in Subtitle C, Section 1901.3.

§ 1908: The Alternative Language proposes to eliminate the mandatory requirement for car sharing spaces in all developments. This change is supported.

§ 2004: The Alternative Language proposes some changes with respect to the location of the short-term bike parking spaces, but maintains that the minimum of 10 spaces within 50 feet of a primary building entrance. This may well not be workable, depending upon the use and condition of the public space. Greater clarification is needed for the calculation and location of the minimum number of short-term bike parking spaces.

Applicability of Regulations and Vesting

Vesting provisions are critical given the time it takes to design and develop a building, and the rewrite does not currently include any proposed vesting provisions. We recommend that the Commission consider vesting provisions similar to those incorporated in the new Construction Codes. Specifically, buildings and structures under contract for design on the effective date of the new Zoning Regulations, for which no permit applications have been filed, should be allowed to be filed and processed to issuance of permit. Any work authorized thereby should be allowed to proceed to completion, under the provisions of the current Zoning Regulations, provided that (1) the applicant files the permit application within one year of the effective date of the new regulations, (2) the applicant includes with the permit application a copy of the design contract with a notarized affidavit stating that the contract was effective prior to the effective date of the new regulations, and (3) a permit is obtained and the permit fee paid in full within one year after the filing date.

In addition, we recommend that vested rights be provided to the following types of projects and applications:

- An application for a PUD (First-Stage or Consolidated) or BZA case that has been filed prior to the effective date of the new regulations;
- An application for design review under Capitol Gateway Overlay District or the SEFC District that has been filed prior to the effective date of the new regulations;
- Projects that have received concept approval from the Historic Preservation Review Board or the Commission of Fine Arts prior to the effective date of the new regulations;
- Projects that have completed the Large Tract Review process prior to the effective date of the new regulations; and
- Projects for which a building permit application has been officially accepted by DCRA prior to the effective date of the new regulations.

Finally, we urge the Commission to provide that, going forward, approved PUDs be valid for a period of five (5) years from the date of final approval in order to accommodate changes in market conditions and the availability of financing.

Thank you for your consideration of our views and, again, congratulations on a superb job.

Very truly yours,

Charles C. Wilkes
Chairman

cc: Ellen McCarthy, Director
Office of Planning

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