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May 28, 2015

Zoning Commission of the
District of Columbia
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ZONING COMMISSION
District of Columbia
CASE NO. 14-11
EXHIBIT NO. 241

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Re: Case No. 14-11: Proposed Text Amendments to Chapters 1, 3, 4, 26, and 31, Maximum Height and Minimum Lot Dimension Requirements and Use Permissions in the R-4 District ("Pop-Ups")

Dear Members of the Zoning Commission:

We are writing to provide comments on the proposed text amendments related to Case No. 14-11 that were published in the DC Register on May 1, 2015. Specifically, we are writing to oppose the proposed amendment to §2602.2 which, in the R-4 District, would subject the conversion of non-residential buildings to apartment houses containing ten or more units to the Inclusionary Zoning (IZ) requirements of Chapter 26 of the Zoning Regulations. We believe the proposed amendment to §2602.2 establishes a new standard that has not had the benefit of public comment and Commission deliberation and is in direct contradiction to the current applicability standard that was established by the Commission during its deliberation of the IZ regulations in November, 2005 (Case No. 04-33). Furthermore, we believe the proposed §2602.2(c) is contrary to other proposed amendments that are intended to encourage the conversion of non-residential buildings to residential use as a way to discourage the conversion of single-family dwellings and flats to apartments.

During the Commission's consideration of the proposed amendments to the R-4 District, it had been stated that conversions of non-residential buildings to an apartment house use with ten (10) or more dwelling units are currently subject to the requirements of Chapter 26 (see Zoning Commission transcript, January 15, 2015, pgs. 32 – 34; DCOP Supplemental Report and Worksheet, pg. 10, Existing Provisions (Case Exhibit 193); and Zoning Commission transcript, March 30, 2015, pgs. 154, 157, and 160). However, these discussions left out an important threshold requirement that was established by the Commission in 2005 during development of the IZ regulations which made IZ applicable only to buildings where there is a 50% increase in gross floor area.

During the development of the IZ requirements, the question of whether the conversion of a non-residential use to a residential use with a certain number of dwelling units should have an affordable housing requirement was specifically addressed by the Commission. At its meeting on November 10, 2005, the Commission specifically decided to treat the conversion of non-residential buildings to residential uses similar to substantial rehabilitations of buildings already

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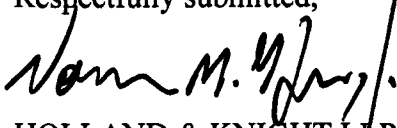
devoted to residential use with regard to the applicability of IZ (see Attachment A, Commission transcript, November 10, 2005, pgs 23 – 37). Noting the testimony received regarding the inherent fiscal and structural challenges of these types of the projects and the difficulties associated with capturing additional density to help underwrite the provision of affordable units, the Commission decided upon a balanced approach to make projects involving substantial rehabilitations and conversions of non-residential buildings subject to IZ only when such projects involve an addition that increases the gross floor area of the entire development by 50% or more. This standard was ultimately adopted and is reflected in the current language of §2602.1(c)(iii).

The proposed amendment to §2602.2 does exactly what the Commission sought to avoid in originally developing the IZ regulations and is in direct conflict with the applicability threshold currently established in §2602.1(c)(iii). Under the proposed amendment, all conversions of non-residential buildings to apartment houses with ten or more units in the R-4 District would be subject to IZ regardless of whether an addition is proposed, including even matter-of-right conversions. Application of the IZ requirement in this manner is contrary to the intent of the IZ regulations where the requirement is only imposed if the density incentive can be offered or captured. Expanding the applicability of IZ to all conversion projects would be substantially burdensome considering the numerous structural and fiscal constraints typically associated with these types of projects. This has the potential to jeopardize conversion projects that are designed to be carried out as a matter-of-right and diminish the success of other proposed amendments intended to encourage the conversion of non-residential buildings and discourage conversion of one- and two-family residential dwellings in the R-4 District.

Based on the foregoing, we recommend the proposed amendment to 2606.2 be modified to exclude the provision pertaining to the conversion of non-residential buildings to an apartment house with ten or more units in the R-4 District and allow the existing applicability standard of §2602.1(c)(iii) to continue to govern such projects.

Should the Commission desire to establish a new standard for these types of projects, we feel it is important any new standard continue to be tied to a density incentive, similar to projects involving new construction. Because the public has not had an opportunity to comment on this new standard, we would request additional time for public comment and review. Furthermore, as suggested by Commissioner Miller at the meeting held on March 30, 2015, any change to the existing applicability standard currently governing these types of projects should also include an extended transition period so as to avoid adversely affecting current projects that are well into planning, design, and permitting that are based upon the current IZ regulations.

Respectfully submitted,



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1 running with the given of 10.

2 So, if we solicit more focused
3 testimony. Not testimony, but input as a result of
4 the notice, that's the way to get at it, I think.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER PARSONS: Because I don't
7 really see the basis for us to go to 20 today.

8 CHAIRPERSON MITTEN: Okay. All right.

9 Next would be whether or not a
10 conversion of a non-residential use to a residential
11 use with a minimum number of units, whether that
12 would be included to have an affordable housing
13 requirement?

14 COMMISSIONER JEFFRIES: This is
15 considered like adaptive re-use? Adaptive re-use
16 project?

17 CHAIRPERSON MITTEN: I guess so. I
18 mean, I guess one example would be an office
19 building that would be converted to or a hotel that
20 would be converted to residential use?

21 COMMISSIONER JEFFRIES: Just like the
22 Congressional Quarterly building on 22nd Street?

23 CHAIRPERSON MITTEN: Yes. That would be
24 an example.

25 I actually think maybe for purposes of

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1 this discussion, lumping it together with the
2 substantial rehabilitation because there's something
3 that's in common here. And this was raised by
4 people who had a concern about this. Which is, if
5 you can't capture the additional density, then
6 you've imposed the requirement without the
7 incentive. And I think that's a appropriate
8 criticism of a blanket requirement. And whether
9 it's conversion or whether it's substantial
10 rehabilitation, what I would be in favor of is if we
11 figured out a way of capturing that notion which is
12 if the bonus density is available, that the
13 requirement would be imposed. But if it's not
14 available, then it would not be imposed.

15 And I would say that that would not be
16 the developer's choice whether it's available or
17 not. It's a fact. And that's probably a debatable
18 point as well. Because just because there's density
19 there doesn't mean it's economically feasible to
20 capture it.

21 So, I don't know what other folks think
22 about that. But I am definitely opposed to breaking
23 from what I think is one of the fundamental
24 principles here which is to, you only impose the
25 requirement when you offer the incentive.

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1 So, if you can't capture the incentive,
2 you shouldn't impose the requirement.

3 COMMISSIONER PARSONS: Well, I would
4 submit that we should restrict this to new
5 residential for mixed-use development. And not get
6 into rehabilitation or conversions.

7 The definition of substantial is just
8 very difficult. We went through this with fire
9 regulations and so forth to see where--I mean, they
10 had to determine that you had to demolish 75 percent
11 of the building to reach substantial, that is the
12 fire had to.

13 And I see some guidelines in here, but I
14 don't understand them as substantial rehabilitation
15 replacing electrical and heating and ventilating and
16 so forth. I mean, we're giving the BZA or somebody
17 another mess.

18 CHAIRPERSON MITTEN: I think it would
19 the Zoning Administrator in this case.

20 What I would want to capture though is
21 those instances where there's--let's say there's an
22 existing improvement. I wish I could think of a
23 good example off the top of my head, but I'm not
24 coming up with one. But where there would be --I
25 know we've had these where there's like a dwelling

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1 house and then--okay. Here's one.

2 The Mine Workers' Building at 15th and I
3 where there's an existing office building and then
4 they built a residential tower next to it. Okay.

5 COMMISSIONER JEFFRIES: Like just an
6 addition?

7 CHAIRPERSON MITTEN: Yes. So, that was
8 a substantial rehabilitation of the Mine Workers'
9 Building. And then they put an addition on top of
10 it and then they did this power addition. So,
11 that's something I think we would appropriately want
12 to capture because they are capturing the additional
13 density even though someone might say that's just a
14 rehabilitation.

15 COMMISSIONER PARSONS: But it was a
16 standalone residential building.

17 CHAIRPERSON MITTEN: No. The tower is
18 not. It's connected to the--I believe it's
19 connected to the Mine Workers' Building.

20 I think that we've had somewhere there's
21 been a dwelling--like an historic dwelling house and
22 then--like, isn't that Warder Apartments on 16th
23 Street? That's another example.

24 COMMISSIONER JEFFRIES: Well, Madam
25 Chair, the case that you provided, I mean I wouldn't

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1 look at that as a rehabilitation. I mean, I'd look
2 at that as a new--an addition. A new construction
3 in addition to and I think that that would qualify.

4 CHAIRPERSON MITTEN: Okay. So, I'm just
5 trying to find the words to express the examples
6 that I've given. Because I actually think that we
7 agree, but we're just--

8 COMMISSIONER JEFFRIES: But I'm really
9 looking at sort of an existing envelope of a
10 building and whether the former use was an office
11 and then it was converted to residential. However
12 it is. If the actual envelope is in place, then
13 that's something that I wouldn't--I don't think--I
14 think should be exempt from this proposal. I think
15 it should be new construction or some addition to an
16 existing structure that might be residential.

17 CHAIRPERSON MITTEN: Okay. Then I
18 would--

19 COMMISSIONER HILDEBRAND: The only thing
20 that I would add to this mix though is in
21 transitioning of an existing building from an office
22 use to a residential use, the office use structural
23 requirements are significantly different than
24 residential. The live loading on floors, for
25 example, for example is higher for an office use

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1 than it is for residential. And in some cases,
2 there's actually the capacity in the existing
3 structure to do a rooftop addition to capture some
4 of that additional bonus without demolishing the
5 entire structure.

6 But that becomes very case specific.

7 COMMISSIONER JEFFRIES: Right.

8 COMMISSIONER HILDEBRAND: It's not a
9 universal thing that you can say. So, it would
10 really require looking at that particular project to
11 determine if the density was available or not. It
12 becomes much more complex an equation.

13 COMMISSIONER JEFFRIES: And,
14 Commissioner Hildebrand, you said addition. I mean,
15 I'm still sort of that word of addition and maybe
16 giving some level of definition of that.

17 CHAIRPERSON MITTEN: Well, what we could
18 possibly do is that we would set a threshold that
19 the square footage would increase by, you know, "X"
20 percent. So, you know, just to throw something out
21 there.

22 I could see where if there were--the
23 examples that I'm thinking of are ones where the
24 addition would be substantial so that you would get
25 the sense that there would be an opportunity for not

1 marginal addition where you might be constrained and
2 couldn't get the bonus. So, I would suggest that if
3 there was an addition to increase the overall
4 density by 50 percent if that would fall into it.

5 VICE CHAIRMAN HOOD: Madam Chair, we
6 would include the conversion from nonresidential to
7 residential increases it 50 percent?

8 CHAIRPERSON MITTEN: If the development
9 included an addition that increased the density
10 above what was existing by 50 percent or more.

11 VICE CHAIRMAN HOOD: Because I'm
12 listening to the discussion. I'm thinking about why
13 this may not help because I'm not in the development
14 business. But I was thinking about. Remember when
15 we did all those tech hotels and how they were
16 designed for techs and then they were pushing the
17 full envelope of development. You can convert it to
18 a--I think most of them convert to commercial office
19 space, I guess, it was. And I'm thinking about that
20 scenario in this case.

21 In other words, I'm supportive of this
22 being included. I'm not too particular about the 50
23 percent. I'm not sure about the 50 percent.

24 CHAIRPERSON MITTEN: I'm sorry.

25 VICE CHAIRMAN HOOD: I just want to make

1 sure we do it. I would like for this to be included
2 and not just do away with it.

3 CHAIRPERSON MITTEN: When you say "this"
4 you mean?

5 VICE CHAIRMAN HOOD: Well, the
6 conversion to nonresidential to a residential use.

7 CHAIRPERSON MITTEN: My only concern
8 with that is that what we're saying. The general
9 theme of the mandatory proposal is that you impose
10 the requirement where you can offer an incentive.
11 And that incentive is additional density. So, a
12 conversion and take an EEF where it was just, you
13 know, say it was a box and you were going to take
14 the box and convert it into a housing box and
15 instead of a tech hotel box. But if there's no
16 additional density, then there's no incentive for us
17 to offer to offset the imposition of the affordable
18 housing requirement. That's why I'm advocating that
19 only on the occasion where it would be a substantial
20 addition where you would get the sense that someone
21 could capture more density.

22 VICE CHAIRMAN HOOD: And that's 50
23 percent?

24 CHAIRPERSON MITTEN: That where the
25 addition would increase the density to 50 percent or

1 more.

2 VICE CHAIRMAN HOOD: Okay. I'm clear.
3 I'm fine.

4 COMMISSIONER HILDEBRAND: Madam Chair,
5 would it possibly be simpler to use 20 percent which
6 is what our typical bonus density is? Why wouldn't
7 that be the trigger? If they can add 20 percent to
8 eh volume, would that not offset then the cost of
9 the affordable units?

10 CHAIRPERSON MITTEN: I'll let Mr.
11 Jeffries take that.

12 COMMISSIONER JEFFRIES: Well, first of
13 all, I think I'm going to go back to Commissioner
14 Parsons' opening statement about, you know, perhaps
15 all the expertise is not here. I think at some
16 point maybe we should sort of leave that as a
17 placeholder to figure out what the percentage should
18 be, whether it's 20 or 50. I mean, I don't know
19 what that number is. But, can we leave it as a
20 placeholder?

21 CHAIRPERSON MITTEN: Well, let me just
22 say something and we'll see.

23 The reason that I didn't say 20 is
24 because keep in mind the bonus as it exists now is
25 over the matter of right. So, if you do an

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1 addition, then all you may be capturing, if you did
2 it an addition of 20 percent, all you may be
3 capturing is what you're entitled to as a matter of
4 right anyway.

5 So, what I was suggesting is that if
6 you--and it might be more difficult if you can make
7 a--you may be able to make a relatively small
8 addition without like--

9 COMMISSIONER JEFFRIES: It's space
10 planning.

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER JEFFRIES: I mean, yes. I
13 mean, you have to get a core. I mean, there's a
14 number of things that might have to happen that it
15 really won't make sense to do 20 percent. It might
16 be 40, 50, 60 or whatever that would make it a
17 working addition. I mean, we just don't know that
18 right now.

19 But, I mean, 20 seems to be, you know,
20 fairly minor if you're adding an addition and
21 perhaps, you know, some different use. So, I think
22 it's a space planning issue and it would depend on
23 how, you know, the architecture would look.

24 CHAIRPERSON MITTEN: I guess what I'm
25 not very effectively trying to express is. Just

1 because you can put on an addition of 20 percent, if
2 you were going to them try and--so that the 20
3 percent would be the trigger for imposing the
4 affordable housing requirement. And I guess I'm not
5 confident that in a more modest addition that you
6 could then assume that someone could then add the
7 kind of addition that would go from 20 percent to 40
8 percent, because that would be the bonus density.

9 But I would be more convinced of that if
10 they were already doing a substantial addition,
11 because maybe that would be something where there
12 would be --it would be set apart and this is not
13 rocket science. I mean, this is more instinctive on
14 my part.

15 So, you know, in the spirit of what we
16 did a minute ago, I guess I'd like to put 50 percent
17 out there because this is a new concept that we
18 didn't really flush out fully in the hearing. It
19 wasn't--

20 COMMISSIONER JEFFRIES: Well, I would
21 concur with that. I'm a little confused as to
22 whether we're talking about conversions or
23 rehabilitations or both.

24 CHAIRPERSON MITTEN: I'm suggesting that
25 they be together.

1 COMMISSIONER PARSONS: Okay. Thank you.

2 COMMISSIONER HILDEBRAND: That they're
3 together?

4 CHAIRPERSON MITTEN: Yes.

5 COMMISSIONER PARSONS: All right. I
6 would support that.

7 CHAIRPERSON MITTEN: Can you go along
8 with that?

9 COMMISSIONER HILDEBRAND: Yes. If
10 you're lumping a substantial rehabilitations in with
11 that, I would agree too. My concern with
12 substantial rehabilitations was possibly getting a
13 small condominium building that had say 20 condos in
14 it. And it's reaching its end of its life span and
15 you want to go to change the mechanical system that
16 serves the whole building and replace the roof
17 because it's now 20 years old.

18 Does that suddenly mean that, you know,
19 three people have to move out and they have to sell
20 their units at affordable housing rates just because
21 they're maintaining their property?

22 CHAIRPERSON MITTEN: Right.

23 COMMISSIONER HILDEBRAND: And that's
24 what I wanted to avoid.

25 CHAIRPERSON MITTEN: I think we'd

1 definitely avoid that with this approach.

2 Then there's an issue about and this has
3 actually come up in sort of a different context.
4 You know, since a number of units is an issue and
5 then it's a question of what's the project. For
6 instance, if there are multiple lots being developed
7 in some kind of phase, how would we capture that so
8 that somebody couldn't do--if our threshold was
9 going to be 10, that they wouldn't do, you know a
10 nine-unit building here and then next door doing
11 another nine-unit building. And it's really all
12 part of one project but they're under the threshold
13 for purposes of, you know, of avoiding the
14 requirement.

15 So, I don't know how we might want to
16 capture that. But, you know, would we want to say
17 that if the number of units exceeds a certain level
18 within three years on contiguous parcels by the same
19 developer? I don't know if you have thoughts about
20 that or you think that is going to be an issue for
21 us or not? Or would you like to come back to it
22 later?

23 One of the reasons why I might advocate
24 coming back to it later and, Mr. Jeffries I'll let
25 you speak in just a second.

1 Which is we're dealing with some of the
2 major, the broad brush strokes of the proposal and
3 this is, you know, even though it's on point to the
4 threshold, it's a finer point. And we might want to
5 come back to it for that reason. Okay?

6 Okay. So, then there's the issue of
7 what would constitute a residential use and I think
8 there were a series of uses that were suggested as
9 being excluded, which are hotels, motels, inns,
10 dormitories, rooming house, boarding houses,
11 community-based residential facilities and single
12 room occupancy developments.

13 Do we have a consensus that those should
14 be excluded and, if so, are there any others that
15 should be excluded?

16 COMMISSIONER HILDEBRAND: Do we want to
17 include hostiling--

18 CHAIRPERSON MITTEN: Oh, good one.

19 COMMISSIONER HILDEBRAND: -- in that
20 list?

21 CHAIRPERSON MITTEN: Good one.

22 MR. BERGSTEIN: Although it falls within
23 the definition of inn.

24 COMMISSIONER HILDEBRAND: Oh, I'm sorry.

25 CHAIRPERSON MITTEN: But it never hurts

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1 to be sensitive to the topic.

2 COMMISSIONER PARSONS: I'm not sure this
3 is the place to discuss it, but I wanted to advocate
4 for those who are providing low-income housing be
5 exempted from this regulation. I know we had a lot
6 of testimony about that. Maybe this is not the
7 place to discuss that because it's not a zoning
8 category, if you will of use. So, maybe that's
9 later.

10 CHAIRPERSON MITTEN: Yes. Let me just
11 think for a second. I would rather deal with it in
12 a different section.

13 COMMISSIONER PARSONS: Yes.

14 CHAIRPERSON MITTEN: Okay. And I'm on
15 board with these uses. And I think they're
16 distinctly different than what we would be--in
17 configuration as well as--I think the configuration
18 is important because what we also don't want to do
19 is have someone be able to configure a building one
20 way and call it something and then change the use
21 with the same configuration as an apartment house or
22 a condominium and avoid the requirement that way.
23 Not that I think that's going to be a huge issue.
24 But, okay.

25 Okay. Let's go to the PUD requirements.