



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT



July 28, 2016

The Honorable Anthony J. Hood
Chairman, Zoning Commission
D.C. Office of Zoning
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Dear Chairman Hood:

On July 25, 2016, the Department of Housing and Community Development (DHCD) requested that the Zoning Commission reopen the record for Zoning Commission Case No. 15-15 relating to a proposed Planned Unit Development (PUD) by The JBG/Boundary 1500 Harry Thomas Way, L.L.C. and JBG/Boundary Eckington Place, L.L.C. (collectively Applicant) to be located at 1500 Harry Thomas Way, N.E. The Applicant requested a complete waiver from Inclusionary Zoning (IZ) requirements in exchange for dedicating eight percent (8%) of gross residential square footage to households up to sixty percent (60%) of Area Median Income (AMI). The Zoning Commission responded to DHCD's request by deferring final approval of the PUD until Thursday, July 28th.

DHCD strongly agrees with and supports Zoning Commission efforts to ensure that Planned Unit Developments provide additional affordable housing, at levels of affordability greater than that required by the regulations, which, in this case, would be 8% of gross square footage for households up to 80% AMI. Even before the IZ program, the Zoning Commission was instrumental in gaining critically needed affordable housing units as part of new PUD developments to serve District residents. DHCD also understands that this is a "proffer" – the Commission cannot unilaterally mandate an affordable housing proffer from the applicant, but must balance the proffer against the extensive extra density gained through the PUD.

DHCD continues to recommend that the applicant has not yet achieved this balance given its current affordable housing proffer. DHCD encourages the Commission to continue to accept a proffer that is consistent with DC law and practice, which can most efficiently be administered and made part of the nationally recognized IZ program, by accepting units, as normally proffered through PUDs, at 50% AMI and /or a significantly greater number of units at 80% AMI. To this end, DHCD approached the Applicant's counsel and offered to discuss modifications to the affordability level by increasing the number of 50% of AMI units in the PUD, however the Applicant declined to negotiate.

The Zoning Commission requested that DHCD clarify its objections and posed several questions by email received July 26, 2016 from Secretary Sharon Schellin. DHCD's responses follow.

Question 1: Why DHCD would not be able to administer units at the 60% AMI level. One Commissioner noted that DHCD has a program that administers units outside the IZ program, using covenants and monitoring agreements. An explanation of why an alternative program would not work in this case would be greatly appreciated.

DHCD's objection is not a matter of administrative expediency, but rather administering Affordable Dwelling Units (ADUs) on a project-by-project basis instead of a uniform application of the IZ statute and regulations. IZ was enacted by DC Council and implemented by regulation to create affordable housing opportunities. As designed, IZ provides equitability, stability, and standardization to housing development. Waiving IZ requirements on a project-by-project basis undermines the efficacy and viability of IZ and invites other developers to evade IZ requirements.

DHCD is capable of administering affordable units at non-IZ thresholds through covenants and monitoring agreements. IZ, however, is a vital cornerstone of the District's affordable housing policy. DHCD would advise that the Zoning Commission, instead of granting waivers to IZ, should encourage developers to work within the statute and regulatory parameters to provide either more IZ units than required by law or IZ units at deeper affordability levels, such as units at 50% of AMI instead of 80% of AMI, as has been standard in past PUDs.

Question 2: Whether the DHCD objection to the proposal is primarily based on policy concerns, or on administrative concerns, and clarification of how DHCD feels this proposal would undercut the District's comprehensive affordable housing strategy and policy.

In our July 25, 2016 letter, DHCD expressed that the Applicant's requested relief from the IZ program would undercut the District's interests and diminish the efficacy of the IZ program, and provided our rationale therefor. Further, administering ADUs instead of applying IZ program requirements operates outside of the scope of IZ law.

Our objection is based on legal, policy and administrative concerns.

First, permitting waivers obviates the IZ law. The law's purpose and objectives would be selectively applied to certain projects and waived from others.

Second, waiving IZ requirements negatively impacts certainty, fairness, and standardization of the program.

Third, the precedential effect of the Applicant's case must be emphasized. DHCD perceives that this matter could be viewed as a test-case by developers, and if successful, will result in other applicants "testing the waters" by proposing non-compliant projects.

Fourth, administering non-IZ affordable units does have implications on DHCD's efforts. DHCD will be required to enter into agreements for every non-IZ affordable unit. These agreements will mimic but will not conform to the IZ administrative rules. Every aspect of administering ADUs—setting rents, marketing units, and selecting eligible households—deviates from IZ processes. These deviations impose unnecessary and unanticipated inefficiencies, particularly as the IZ program continues to grow exponentially.

Further, the targeted residents-consumers, whom are intended to benefit from IZ, will be confused by processes that vary from project to project. For example, will they enter a DHCD-conducted lottery for the unit, or do they contact the property owner directly? Will the individual property owner "target" certain populations? What rent might they pay? Is a mandatory orientation required for the unit or not? Who will ultimately certify their income? Answers to these and other questions differ between non-IZ ADUs and IZ units.

Finally, this case introduces undesirable and unnecessary inefficiencies. The provision of units at 60% of AMI is already addressed by other affordable housing programs, including but not limited to the Low-Income Housing Tax Credit program (which creates units for households up to 50% and 60% of AMI). Rather than accept the Applicant's proffer of the provision of the minimum number of affordable units at a AMI level not currently applicable by the District Inclusionary Zoning program, DHCD continues to encourage the Applicant to propose PUD proffers commensurate with the extensive additional density gained through this PUD, by providing units at 50% affordability and/or a significantly greater number of units than currently proposed.

Question 3: Clarification of what the longer term implications of administering the applicant's proffered alternative to IZ would be to DHCD's overall affordable housing programs.

The Applicant's proffered alternative to IZ will undermine IZ law, policy, and regulations and unnecessarily complicate and perpetuate a bifurcated inclusionary housing program. IZ creates certainty with regulatory-based administrative rules that are known to developers and households. Non-IZ affordable units, with varying affordability levels, rents, and certification and lease-up processes, however do not provide consistency and standardization for stakeholders. DHCD considers the inclusionary housing program as an integral part of the District's complement of affordable housing programs, each of which is targeted at and serves other, non-IZ income levels. DHCD opposes efforts that would cause confusing and unnecessary intricacies within the inclusionary zoning program.

DHCD observes that—of all the existing non-IZ ADUs it currently administers, none were created by a PUD with waived IZ requirements. Instead, these ADUs were developed in the era preceding IZ or created from land dispositions or ground lease agreements between the District and developers. It should also be noted that to DHCD's knowledge, no other cases currently before the Zoning Commission include a request to waive IZ, save for another current submission from the same Applicant (Z.C. 15-24). Those other, active cases instead proffer

more square footage for IZ units and/or IZ units at deeper affordability levels – DHCD encourages all PUD applicants to follow this practice.

In conclusion, DHCD vigorously objects to the premise that IZ requirements can or should be waived. The fundamental issue before the Zoning Commission is not DHCD's ability to administer non-IZ affordable units but whether developers should be required to comport with existing law, policy, and regulations.

As noted, DHCD approached the Applicant's counsel to discuss modifying the affordability level by increasing the number of 50% of AMI units in the PUD, but the Applicant declined to negotiate. DHCD continues to offer to contact the developer again to discuss an opportunity to increase the number of 50% of AMI units and/or increase the number of IZ units overall.

Best regards,

A handwritten signature in black ink, appearing to read "Polly Donaldson". The signature is fluid and cursive, with a large initial "P" and "D".

Polly Donaldson
Director

cc: Deputy Mayor for Planning and Economic Development Brian Kenner
Director Eric Shaw, Office of Planning