

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-24
Z.C. Case No. 21-24
Office of the Attorney General
(Text Amendment to Subtitle C § 1003.7
[Deeper IZ Affordability by Reducing MFI Levels])
February 8, 2024

DENIAL ORDER

On February 8, 2024, the Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public meeting to consider set down for a public hearing of a petition from the Office of the Attorney General (the “Petitioner” or “OAG”), for proposed text amendments to Subtitle C § 1003.7 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [“Zoning Regulations”], to which all references are made unless otherwise specified) to deepen the levels of affordability required for dwelling units set aside under the Inclusionary Zoning (“IZ”) program.

For the reasons stated below, the Commission hereby **DENIES** the Petition without a hearing.

FINDINGS OF FACT

Petition and OAG Filings

1. On December 2, 2021, the Petitioner submitted a petition (the “Petition”) proposing text amendments to Subtitle C § 1003.7 that would:
 - Lower the income limits of the IZ program from 60% Median Family Income (“MFI”) to 50% MFI for rental IZ units and from 80% MFI to 70% MFI for ownership IZ units;
 - Require a minimum of one IZ unit set aside at 30% MFI; and
 - Incentivize deeper affordable units by authorizing the substitution of two 30% MFI rental units for three of the required 50% MFI rental units and the substitution of two 50% MFI ownership/for-sale units for three of the required 70% MFI ownership/for-sale units.(Exhibits [“Ex.”] 1-3.)
2. The Petition stated the proposed text amendments would not be inconsistent with the Comprehensive Plan (Title 10-A of the DCMR, the “CP”) and would further several CP policies and actions related to: encouraging the provision of adequate housing, particularly affordable housing (CP § 300.2.); conserving, creating, and maintaining inclusive neighborhoods, while allowing new growth that fosters equity, including racial equity, and accessibility (CP § 300.2.); encouraging new mixed-use neighborhoods that retain existing

residents (*Policy LU-1.2.4*); facilitating neighborhood revitalization that creates opportunities for deeply affordable housing (*Policies LU-2.1.2, LU-2.1.3*); encouraging the production of housing in high-cost areas, including affordable housing (*Policies H-1.1.8, H-1.2.1, H-1.2.11; Action H.1.1.D*); considering expanding the IZ program to encourage additional affordable housing production (*Action H-1.2.E*); and other policies and actions (*Policies H-1.1.2, H-1.2.2, H-1.2.3, H-1.3.2, H-1.5.1*) (Ex. 3.)

3. The Petition stated that the proposed text amendments would “restore the IZ program’s initial targeted income levels that have been steadily increasing due to rising District median income levels and housing costs.” The Petition noted that since the IZ program was launched, the District’s MFI and housing costs have both increased, whereas there has been limited wage growth in lower income jobs. These trends have resulted in a loss of affordable housing options which more heavily impacts residents of color and results in worsening racial inequities. In response, the Petition states that “the updated CP highlights the importance of preserving and developing housing affordable to extremely low-income, low-income, and workforce households.” Therefore, the proposed text amendments would address the limited housing options for extremely low-income households by deepening levels of affordability and incentivizing more deeply affordable IZ units. (Ex. 3.)
4. On January 24, 2024, OAG submitted a supplemental report (“OAG Statement”) in response to the OP Setdown Report (defined below) stating that the Commission should set down the proposed text amendments for a public hearing because there is a need for more deeply affordable housing and family-sized units, and the proposal would address racial disparities. In support of its claim that IZ is not adequately serving low-income households, OAG provided data showing that most of the IZ units offered in 2020 went to households earning up to 80% MFI and 60% MFI and that there are many households at lower MFI levels that need affordable family-sized units. The OAG Statement also noted that the Median Household Income for Black households has lagged behind the Median Household Income of White households between 2010 and 2020; and that Black households are more cost-burdened by housing costs. Therefore, adjusting the IZ program to lower income limits would address these racial disparities. In addition, OAG states that its proposal would not constitute a significant departure from the IZ program’s current administration, because developers have access to alternate funding streams for deeper affordable units; the Department of Housing and Community Development (“DHCD”) already administers IZ units at deeper levels of affordability; recent affordable developments have shown that 30% MFI units can be effectively integrated into mixed-income projects; and developers can always seek a special exception from IZ requirements if necessary. (Ex. 13.)

OP Filings

5. On April 19, 2022, the Office of Planning (“OP”) filed a letter in response to the Petition stating it did not have a setdown report at the time and that OAG had not submitted any economic impact analysis for OP to review. The letter noted that “[i]t is important to the integrity of the [IZ] program that the economic impacts of amendments and their potential impact on the production of housing and IZ units be understood prior to any changes.” (Ex. 9.)

6. On May 12, 2022, OP filed a supplemental memo stating that it conducted an initial analysis of the Petition and found that OAG’s proposal could result in fewer IZ units because of its potential impact on market rate housing to which IZ units are tied. OP’s preliminary review determined that there are many CP policies with which the Petition may be inconsistent, including policies which call for new requirements for greater affordability to be balanced with incentives or regulatory relief. (*Policies H-1.1.2, H-1.1.3, H-1.1.6, CW-1.1.5; Actions H-1.2.E, CW-1.1.E* and several other policies and actions.) Therefore, given these inconsistencies and the Petitioner’s failure to provide an economic impact analysis, OP recommended that the Commission suspend its decision on setting down the Petition for a public hearing until after more stakeholder engagement is conducted; OP included a proposed timeline for stakeholder engagement to occur between May-September 2022. (Ex. 9A, 10.)¹
7. On December 29, 2023, OP filed a report (“OP Setdown Report”) recommending that the Commission not set down the Petition for a public hearing, based on the following reasons:
- The Petitioner has still not provided an economic impact analysis documenting the potential impacts of the proposed text amendments as requested by the Commission. OP conducted a preliminary analysis which showed that the proposed text amendments could reduce land values by as much as 17% on smaller developments, which could delay new housing and cause rents and sale prices of market rate units to rise faster;
 - The proposed text amendments are inconsistent with the CP because they exclude households which the CP identifies and sets goals for affordable housing, and they do not balance deeper affordability levels with bonus density or other incentives, as encouraged by the CP;
 - The IZ program’s existing MFI levels are the result of Z.C. Case No. 04-33G in which the Commission shifted the targeted household incomes to better align with housing needs;
 - Targeting extremely low-income households (earning up to 30% MFI) requires rents that are too low to cover operating expenses and is an uncommon practice across jurisdictions. OP noted that the affordable housing industry’s preferred practice for providing housing for 30% MFI households is through non-IZ program related rental subsidies such as Local Rent Supplement Program (LSRP) vouchers;
 - The proposed text amendments lack clarity and would create more administrative complexity; and
 - Shifting the IZ income limits would exclude approximately 3,150 households earning between 50% MFI and 60% MFI and 1,300 households earning between 70% MFI and 80% MFI, representing 15% of the households on DHCD’s lottery registration for IZ units, which would not advance the CP’s goal of serving households earning up to 80% MFI.
- The OP Setdown Report indicated that its recommendations represented the consensus of OP, DHCD, and the Zoning Administrator. (Ex. 11.)

¹ Ex. 9A is identical to Ex. 10.

8. The OP Setdown Report stated that the Petition is inconsistent with the CP because the increased requirements derived from deepening the IZ program's MFI income levels are not appropriately balanced by offsetting zoning incentives or relief, as specifically recommended by the CP. The OP Setdown Report cited several policies and actions from the Housing Element (*Policies H-1.1.3, H-1.1.8, H-1.2.1, H-1.3.2, H-1.5.1; Action H-1.2.E.*) which encourage affordable housing policies to balance regulation with incentives to create both market rate and affordable housing in high-cost areas of the District, which would not be advanced by the Petition. (Ex. 11.)
9. As part of its CP analysis through a racial equity lens, the OP Setdown Report provided disaggregated race and ethnicity data showing a significant disparity between white and Black median household incomes, with Black household incomes approximately one-third of white households. The disparity in median income suggests that Black households are more likely to need affordable housing than White households. The OP Setdown Report also included a map/chart titled "2023 Distribution of IZ Affordable Units & Households by Majority Race/Ethnicity" showing that IZ units tend to be developed in diverse neighborhoods where there is no racial majority or the majority ranges between a high of 65 percent white to 65 percent Black. (Ex. 11, p. 14-15.) OP's racial equity analysis concluded that because the proposed text does not provide for bonus density or other alternative ways to compensate and balance the deeper affordability requirements, the proposed text would significantly reduce land values and potentially delay the creation of both market rate and IZ units. This would lead to increased competition for existing supply and a more expensive housing market, which would cause rents to rise even faster and increase economic displacement pressures on lower income households. Moreover, these effects may make it more difficult to develop new market rate and IZ units in higher cost, higher opportunity neighborhoods. (Ex. 11.)
10. On February 1, 2024, OP filed a response to the OAG Statement (summarized above) stating that OP continues to not recommend setdown for a public hearing because the proposal would be inconsistent with the CP and would exclude thousands of households from the IZ program's current lottery list. OP pointed out that while the Petitioner did not provide an economic analysis, OP's rough economic analysis of the proposed text amendments suggests that the potential impacts on the market are large enough, at minimum, to slow housing development and reduce productivity of the IZ program. OP also noted that the OAG Statement's data taken from 2020 is outdated and reflects IZ production levels resulting from the prior version (pre-2016) of the Zoning Regulations. OP stated that the OP Setdown Report includes a chart of IZ production through fiscal year 2023 (Ex. 11, pp. 14-15.), which shows that from 2021 through 2023, production of units at 50% MFI and 60% MFI increased and now represent a majority of IZ production in the District. (Ex. 15.)

Public Meetings

11. On January 9, 2024, OAG filed a request for the Commission to postpone its setdown decision from the January 11, 2024, public meeting to its February 8, 2024, public meeting to allow OAG to file a response to the OP Setdown Report. (Ex. 12.)

12. At the Commission's public meeting on January 11, 2024, representatives of OP testified and presented OP's recommendation that the Commission not set down the Petition for a public hearing. OP's representative restated the issues and arguments identified in the OP Setdown Report. The Commission then granted OAG's postponement request. (Transcript ["Tr."] from January 11, 2024 meeting at pp. 25-36.)
13. At the February 8, 2024, public meeting, the Commission considered the Petitioner's filings and OP's filings. The Commission was not convinced, based on the arguments in the case record presented by both the Petitioner and OP, that making changes to the IZ program to lower the income eligibility thresholds and incentivize more deeper affordable units was an appropriate and supportable policy. The Commission was persuaded by OP's findings that the proposed text amendments are inconsistent with the CP, as viewed through a racial equity lens, including policies that emphasize the need to balance new affordability requirements with appropriate incentives or regulatory relief. The Commission expressed concern that making changes to the IZ program without an economic impact analysis could result in unintended consequences, including a slowdown in housing production across the District. The Commission observed that the IZ program was primarily designed to target middle- and moderate-income level households and that it has resulted in an increase in affordable housing production in recent years to the benefit of lower-income households. The Commission also noted OP's finding that shifting the income thresholds of the IZ program would exclude thousands of households on DHCD's lottery list for IZ units. Accordingly, the Commission concurred with OP's recommendation that the Petition should not be set down for a hearing and voted to deny the Petition without a hearing. (Tr. from February 8, 2024 meeting at pp. 14-23.)

ANC Setdown Form

14. The Commission did not receive any ANC Setdown Forms or other reports from any Advisory Neighborhood Commissions ("ANCs").²

CONCLUSIONS OF LAW

1. Once the Commission receives a petition, it must decide whether to schedule a public hearing on the petition. This decision is commonly referred to as "setdown." After considering the petition, the recommendations of OP, and the ANC Setdown Form of the affected ANC, the Commission may decide to dismiss the petition or set it down for public hearing. (Subtitle Z § 500.9.) If the Commission denies or dismisses a petition without a public hearing, it must issue an order that includes a statement of reasons for the denial or dismissal. (Subtitle Z § 500.11.)
2. Pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z

² Other comments were submitted to the record by Empower DC, Edward M. Hindin, Nancy MacWood, Lauri Winter, Ruby Steigerwald, Meg Maguire and Dale Ostrander, Ann F. Hoffman, Justice & Witness Action Network, and Jennifer Ho. (Ex. 16-24.) However, the Commission did not consider these other submissions at setdown and based its setdown decision only on the Petitioner's filings and the recommendations of OP in accordance with Subtitle Z § 500.9.

§ 504.6, the Commission must give “great weight” to the recommendations of OP. The Commission finds the OP Setdown Report, which provided an in-depth analysis of the proposed text amendment and the CP as evaluated through a racial equity lens and recommended that the Petition should not be set down for a public hearing, persuasive.

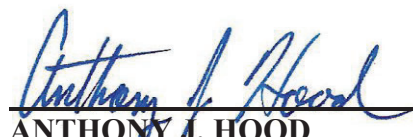
3. After careful consideration, the Commission concludes that the Petition should not be set down and denies the Petition without a hearing for the following reasons. The Commission is persuaded by OP’s finding that the Petition would not advance CP policies that emphasize the need to balance new zoning requirements, such as deeper IZ affordability requirements, with appropriate incentives and/or relief. (Findings of Fact [“FF”] Nos. 6-8, 10.) In this case, the Commission notes that the Petitioner has not provided an economic impact analysis or adequate evidence of how its proposed changes to the IZ program would be properly balanced by incentives and/or relief. The Commission believes the proposal would therefore likely have unintended consequences that may undermine the IZ program’s efficacy. In particular, the Commission is concerned that lowering the current MFI limits of the IZ program would exclude thousands of households who are on DHCD’s IZ lottery registration list. (FF Nos. 7, 10.) While the Commission acknowledges the Petitioner’s argument that its proposed changes will help target lower-income households, the Commission believes that there are other affordable housing programs other than the IZ program, as highlighted in the OP Setdown Report, which are available and better suited to support low- and extremely low-income households with finding housing. (FF No. 7.)
4. The Commission also finds persuasive OP’s finding that the proposal would not advance the District’s racial equity goals because its absence of appropriate incentives and/or relief to compensate deeper affordability requirements would significantly reduce land values and delay the supply of both market-rate and IZ units to the detriment of residents of color across the District who are more likely to need affordable housing than White households. (FF Nos. 6-10.) The Commission acknowledges the Petitioner’s argument that holding a public hearing would allow the Commission to receive additional data about market dynamics and would allow for more community and stakeholder input on the proposal. However, in these factual circumstances, where at setdown, all the Commissioners are not convinced that the proposed changes to the IZ program are appropriate and a majority of the Commissioners are not persuaded that the proposed amendments would further the District’s affordable housing goals, the Commission believes that holding a public hearing would mislead the public.
5. As noted above, no ANCs filed a Setdown Form to the record in this case; therefore, the Commission could not consider any ANC Setdown Form recommendation in making this setdown decision.

DECISION


In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **DENIAL** of the Petition without a hearing.

On February 8, 2024, the Zoning Commission **DENIED** the Petition without a hearing at its public meeting by a vote of **4-0-1** (Joseph S. Imamura, Anthony J. Hood, Robert E. Miller, and Tammy Stidham to deny; 3rd Mayoral Appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-24 shall become final and effective upon publication in the *District of Columbia Register*; that is, on October 4, 2024.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.