Testimony of Terra Weirich, Vice President, Investments of CIM Group

D.C. Zoning Commission Case # 04-33G – Inclusionary Zoning Amendments

Good evening Chairman Hood and members of the Commission. My name is Terra Weirich and I am a Vice President, Investments for CIM Group, a long-time owner and investor here in the District. Thank you for the opportunity to discuss D.C.'s Inclusionary Zoning program.

CIM Group is a national real estate investment company, with multiple past and current projects in Washington, DC, including many residential buildings. As such, we have followed the proposed amendments and changes to the Inclusionary Zoning Regulations with great interest. We may want to expand some of our residential buildings in the future, and we became concerned about a potentially unplanned consequence of changes to the IZ regulations.

While not directly at the heart of the amendments in this case, a specific change to the IZ program under ZRR impacts rent-controlled buildings. I would like to take a few minutes to discuss the consequences of this change. Since this hearing is a discussion on the overall IZ regulations that will affect ZRR, this forum is the most appropriate place to address our concern.

As you are aware, under the existing IZ regulations, an addition to an existing building greater than 50% triggers the IZ requirements. The Zoning Administrator has determined, in a letter dated July 7, 2014, that we will enter into the record with this testimony, that the IZ requirement applies to only the addition – not to the existing structure.

However, ZRR changes this determination by requiring IZ for both the existing structure and the addition when the addition is greater than 50% of existing density. This departure on already rent-controlled buildings would result in dueling regulatory schemes and logistical impossibilities that will dis-incentivize and/or prevent owners of these pre-1980 residential buildings from expanding and providing additional housing – both market rate and affordable.

First, by requiring IZ for the entire project, constructing an addition of greater than 50% would cause the owner of the building to be subject to clashing regulatory rules. Simply put, rents are set differently under IZ and rent control. And it will not be possible to impose IZ on existing leases under rent control nor possible or desirable to evict tenants to free up units to comply with the newly imposed IZ.

Second, the IZ regulations have requirements that would be impossible to comply with in a rent-controlled, existing residential building. For example, under IZ, units must be evenly disbursed throughout the overall project. However, in this scenario, they can practically only be provided in the addition because of the restraints on the rent-controlled units, thus clustering them together in violation of the IZ regulations.

Third, and finally, such a requirement dis-incentivizes owners of rent controlled buildings who want to provide additional housing in the District. Because of the extraordinary burden of attempting to comply with conflicting regulatory regimes, owners will expand rent-controlled buildings by less than 50%, or not at all, to avoid triggering the IZ requirements. Therefore, the requirement discourages the supply of much needed housing –particularly new affordable units.

Such a strong disincentive does not serve the District's policy toward housing or affordable housing at all.

Exempting rent-controlled buildings from this new regulation does not harm the District's policy for expanding affordable housing. Rent control is designed to retain affordable housing. In fact, rents charged in these buildings are often less than rents required under IZ. Also, because the rent-controlled buildings are older, they often have larger, family-sized units, which furthers an objective this Commission has explicitly favored for affordable housing.

Our intent to testify is not to question the overall wisdom of applying the IZ regulations to an entire building when expansion occurs. However, when applied specifically to rent-controlled buildings, the double-regulation of the existing units through rent control and IZ would create a conflicting and untenable situation for owners. Although there may not be a large number of pre-1980 apartment buildings in the District that will have room to expand by greater than 50%, for those that do exist, such a regulatory regime will discourage additional housing and not serve the District's overall affordable housing policy or objectives.

Therefore, we request that the Commission adopt an exception to Section C-1001.4 of ZRR so that when a building subject to rent control is expanded by 50% or more, IZ will apply to only the addition and not the entire project. During our review of this issue, we have consulted with Eric Rome, an attorney specializing in rent control and tenant's rights, and Eric has concluded that he supports our position. Unfortunately Eric was unable to testify himself tonight, but at his request we are including in our submission a letter from him affirming his support and expanding on the impact of the proposed changes.

Thank you for the opportunity to testify this evening.

Sincerely,

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April 13, 2016

Anthony Hood, Chairman
DC Zoning Commission
441 4th St. SW
Washington, DC 20001

Re: Proposed ZRR-Inclusionary Zoning

Dear Chairman Hood:

I am an attorney specializing in representing tenants, and their rights under rent control for over 30 years. I have also been an advocate for affordable housing for my entire career. My office has also been involved in the drafting of much of the legislation that provides protections to existing tenants. I applaud the Zoning Commission's efforts to be part of the solution on this all-important issue.

CIM has shared with me its proposed testimony, and asked for my opinion concerning the potential impact of the proposed ZRR on tenants in rent-controlled buildings. I agree with, and endorse CIM's testimony and would add the following:

1. The City Council has consistently recognized that alternative regulatory schemes are not compatible with rent control. Specifically, buildings with Low Income Housing Tax Credits, project-based Sec. 8, or other similar subsidies are exempted from rent control for this reason. An exemption will not work with respect to IZ, as it would take away any protections for the 90% of the units not covered. Therefore, the only solution is to make IZ inapplicable to existing rent-controlled buildings and, consistent with the ruling from the Zoning Administrator, apply those requirements to the addition only.

2. Existing tenants cannot be forced to submit income information necessary for IZ, nor can they be forced to move for any reason not enumerated by statute. Not providing such information is not a grounds for eviction. A developer therefore has no means to enforce this requirement. It will then face the real possibility of being penalized for failing to adhere to the IZ requirements when compliance is not within its control.

3. Similarly, even if a tenant agreed to voluntarily supply such information, income changes, and a tenant may no longer qualify. In that case, there would also be no basis to evict an existing tenant who is no longer IZ eligible. That too presents an untenable situation.

4. It is my understanding that IZ was created to ensure that new developments encompass an affordable housing component. However, I do not believe it contemplates impacting existing relationships, and potentially altering the established rules and economic assumptions relied upon by all involved for 30 years with respect to rent-controlled buildings. If the economics are destroyed by IZ, tenants would face Hardship Petitions and other methods for raising rents, thereby destroying the existing affordability in those buildings.

Accordingly, it is in the best interest of existing tenants that IZ not be applied to existing rent-controlled buildings where additional units are being constructed, except as to those additional units.

Sincerely,

Eric M. Rome

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

July 7, 2014

Allison Prince, Esq.
Christine Roddy, Esq.
Goulston & Storrs
1999 K Street, NW- Suite 500
Washington, DC 20006

Re: Imposing Inclusionary Zoning Requirements on an Existing Residential Building

Dear Ms. Prince,

We met on April 11, 2014, to discuss the implications of imposing the inclusionary zoning program on an existing residential building. Typically, projects that include an addition that is greater than 50% of a building's existing gross floor area ("GFA") trigger the requirements of the inclusionary zoning ("IZ") program. You questioned whether this is true for surviving density in an existing residential building. I reviewed the materials you provided and I find that an addition to an existing residential building will not trigger the IZ requirements for the existing building. An addition to an existing building that is greater than 50% of the existing GFA will trigger the IZ requirements for only the addition. The existing residential building will neither trigger an affordable housing requirement nor will affordable units be required in the existing building. My rationale for my conclusion is detailed below.

Section 2602.1 of the Zoning Regulations states,

> *[T]he requirements and incentives of this chapter shall apply to developments that:*
>
> *(a)...*
>
> *(b) Have ten (10) or more dwelling units (including off-site inclusionary units); and*
>
> *(c) Are either:*
>
> > *(1) New multiple-dwellings;*
> >
> > *(2) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or*
> >
> > *(3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the*

gross floor area of the entire development by fifty percent (50%) or more.

Plain Language of Section 2602.1

The plain language of Section 2602.1 supports my conclusion that the inclusionary zoning requirements apply only to the addition where there is an existing residential building. Subparagraph (c)(3) notes that the IZ requirements apply to an "existing" "new" residential building. This seemingly conflicting language can be reconciled if read to say that IZ applies to newly-created residential units within an existing building. This application would capture buildings converted from office to residential use. In sum, IZ would apply to an existing building where residential units did not previously exist. This section does not, however, apply to existing residential building. Accordingly, any Addition[1] to a residential building would only apply to the addition and not to the existing building.

This interpretation is consistent where there are residential additions to non-residential buildings. For instance, a residential Addition to a commercial office building, a hotel or a dormitory would only trigger IZ for the addition. It would clearly not apply to the office building, hotel or dormitory. Similarly, an Addition to an existing residential building would only trigger IZ for the addition, not the existing building.

Consistent with other Sections of Zoning Regulations

To read Section 2602.1 any other way would be inconsistent with Section 2602.2, which recognizes that there is a time limit to applying IZ retroactively. Section 2602.2 imposes IZ on new residential units if more than 10 units are constructed over the span of two years. Under the logic of this section, a project that constructs 9 units on "lot 1" in "year 1" would not trigger IZ, nor would the neighboring project that constructs 9 additional units on "record lot 2" in "year 3." It doesn't follow that the same projects would trigger IZ for both buildings if the second building was built as an addition three years later rather than as a neighboring project. Similarly, given the time limit on retroactive application of IZ, it does not follow that an apartment building that has been in operation for over 50 years would trigger IZ by virtue of an addition. Such an interpretation would undermine any incentive for property owners to improve their property.

This is also consistent with our current interpretation of grandfathered conditions. For instance, a project with a non-compliant rear-yard cannot construct an addition that exacerbates the rear-yard nonconformity. Section 2001.3 does not suggest, however, that the existing non-conformity needs to be corrected and that a portion of the existing building needs to be razed in order to create a compliant rear yard. Applying this same analysis to IZ, the Addition must comply with IZ, but the existing building does not need to be reprogrammed to comply with IZ.

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[1] "Addition" refers to those additions that exceed 50% of the existing GFA of a building and include at least 10 new residential units.

Consistency with other District Regulations

I understand that other laws and regulations, namely the Tenant Opportunity to Purchase Act ("TOPA"), would preclude applying IZ to existing units. It is my understanding that TOPA will not permit the displacement of existing tenants in order to establish affordable units in an existing building. It also precludes the recordation of a covenant against the property, which directly conflicts with IZ requirements. Even further, applying IZ to an existing building would violate TOPA because it would devalue the existing tenants' potential property interests.

My interpretation, as set forth in this letter, comports with TOPA, whereas, any other interpretation would create a conflict with another District requirement, making implementation of the IZ requirements all but impossible.

Application of IZ to Only the Addition

Now that I have established that IZ only applies to an Addition where there is an existing building with a certificate of occupancy for residential use, I would like to clarify how the affordable housing requirement is calculated and how it is applied. Where an addition to an existing residential building exceeds 50% of the gross floor area of the existing building, IZ will apply only to the proposed addition. The affordable housing requirement will be the greater of 8% or 10% of the proposed residential density in the addition or 50% or 75% of the bonus density utilized.[2] The 20% bonus density provided in Section 2604, however, is calculated based on the entirety of the site, including the existing residential building. Basing the calculation of the bonus on the entire site will afford an opportunity to capture additional affordable units – the more bonus density used, the more affordable housing that is required. All units can be placed in the addition and still be found in compliance with Section 2605.6.

Please let me know if you would like to discuss this further; otherwise, I confirm my interpretation that the IZ requirements do not apply to existing residential buildings, even where there is an addition that exceeds 50% of the existing gross floor area of the building.

Sincerely,

Matthew Le Grant
Zoning Administrator

cc: Art Rodgers, Office of Planning

File: Det Let re IZ on Existing Residential to Prince 7-7-14

[2] Whether 8% or 10%, or 50% or 75% is required depends on the zone district, as outlined in Sections 2603.1 and 2603.2.