

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS}
for Eric Shaw, Director
DATE: October 13, 2016
SUBJECT: ZC 04-33G Inclusionary Zoning (IZ) Amendments review of public comments to the Notice of Proposed Rulemaking.

Per the request of the Zoning Commission, this supplemental report provides the Office of Planning's (OP) review of the written public comment submitted in response to the Notice of Proposed Rulemaking (NOPR) published on September 9, 2016 for Zoning Commission Case 04-33G as well as other issues identified by OP. The report covers three topics, which are:

- A review of the written public comments to the NOPR;
- OP's interpretation of the Commission's intent with regards to the application of the shift in household income targets to IZ requirement resulting from:
 - Conversion of single-family dwellings and flats to multi-family buildings within the RF Zones;
 - The use of habitable penthouse space.
- Omissions and necessary corrections to the text of the NOPR.

REVIEW OF WRITTEN PUBLIC COMMENT

As of the closing of the public record only one comment was received regarding:

Impact on small buildings – the comment discussed the impact on small buildings of IZ along with other regulatory requirements of development in DC including Historic Preservation review, water and energy requirements, Business Improvement District (BID) fees, and DC real property taxes.

In the report dated May 12, 2016, OP provided the Zoning Commission information on how IZ affects small projects in three ways (page 10):

- Small project have fewer IZ units; fewer IZ units may not present the same opportunity for averaging the revenues between the two Median Family Income (MFI) targets that may exist in larger projects. However, the Zoning Commission's decision to shift the household income target to 60 percent of the MFI for rental and 80 percent of the MFI for ownership will balance the disparity between small and large projects.
- Small projects may have to set aside a greater proportion of two-bedroom units, which have lower revenue per square foot than smaller one-bedroom units. This may discourage developers from building two bedroom and larger units in a small project.
- In projects where the set-aside requirement for IZ is small and difficult to match with the available units, a developer may have to set aside a unit that is larger than the IZ requires. In the hypothetical example OP provided in the report, a project had to set aside 40 percent more square feet than what would have been required by the program.

ZONING COMMISSION’S INTENT REGARDING INCOME TARGETS FOR PENTHOUSE AND RF ZONE IZ REQUIREMENTS

The proposed action to shift IZ income targets to 60 percent of the MFI for rental and 80 percent of the MFI for ownership did not specifically address the IZ requirements placed on penthouses or the conversion of rowhouses within the RF zone districts.

OP notes that the lack of uniformity of the income targets within the IZ program creates administrative challenges for both the Department of Consumer and Regulatory Affairs (DCRA) and the Department of Housing and Community Development (DHCD). This is especially true when the square footage required is small. OP therefore recommends that the target for penthouse and rowhouse conversions conform with the new income targets of the broader program. OP envisions the amendments could take the following form:

- In exchange for raising the targeted income required of habitable penthouse space from 50 percent of the MFI to 60 percent of the MFI the square footage requirement could be increased from the current 8 percent-10 percent to 20 percent of the gross square feet of habitable penthouse space or some other increased percentage to be determined after further review.
- The addition of a fourth unit in a conversion of a rowhouse to a multi-family dwelling would require the fourth unit and every other unit thereafter to meet the same target incomes by tenure as the rest of the program (60 percent of the MFI for rental and 80 percent of the MFI for ownership).

Upon the Zoning Commission’s request, OP will begin the process to review alternatives and provide a report recommending appropriate amendments be set down for a public hearing.

OMISSION AND CORRECTION

OP notes that a proposed amendment adding § 2605.7 (1958 Regulations) was erroneously left out of the August 31, 2016 NOPR published using the new ZR16 Regulations. The proposed amendment provided needed flexibility when an addition of ten (10) or more units expands an existing residential use by more than 50 percent thereby triggering an IZ requirement to the existing units. In those cases, the regulation would specifically permit a concentration of the IZ units in the addition if the existing units were occupied at the time of building permits. This provision is important to avoid administrative difficulties and potential legal conflicts with regulations regarding tenants’ rights. The language of § 2605.7 (1958 Regulations) read:

2605.7 In an Inclusionary Development subject to 2602.1 (c) or 2602.2, Inclusionary Units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.

The language was provide in OP’s set down report dated July 3, 2015, published in the Notice of Public Hearing dated September 24, 2015, included in in OP’s hearing report dated February 25, 2016 and in OP’s worksheet of decision points dated June 10, 2016 and deliberated by the Zoning Commission at the Special Public Meeting on July 20, 2016. OP recommends the language be placed in Subtitle X §1005 as follows:

1005.6 In an Inclusionary Development subject to § 1001.4, Inclusionary Units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.