

Zoning Commission Case No. 16-23
 Valor Development, LLC – Design Review @ Square 1499
 Testimony of Marilyn J. Simon
 Thursday, January 25, 2018

I limit my discussion to the inclusionary zoning (IZ) proposal for this project. As discussed below, the proposal does not satisfy the required inclusionary zoning set-aside for a project of this size.

Based on the tabulations provided by the Applicant, the amount of inclusionary zoning proposed for this project falls far short of the amount required for a building of this size. Valor proposes providing 28,320 square feet of space for inclusionary units. Based on Valor’s zoning tabulations, the set-aside requirement for a project of this size is either 62,856 SF or 42,246 SF, depending on the type of construction. If the project employs Type I construction, their IZ set-aside falls 13,926 square feet short of the requirement, and if the project does not employ Type I construction, their inclusionary zoning set-aside falls 34,536 square feet short of the requirement.

As part of the Design Review process, the Zoning Commission may not grant relief from the Inclusionary Zoning requirements.¹

	IZ Set-aside: Valor proposal	Required IZ Set-aside	Shortfall
If §1003.1 applies (does not employ Type I Construction)	28,320 SF	62,856 SF	34,536 SF
If §1003.2 applies (employs Type I Construction)	28,320 SF	42,246 SF	13,926 SF

While I am basing the IZ requirement on a building of this size, like the Opponents, I also question the Applicant’s analysis of the allowable density on this site. I agree with the Opponents that the gross floor area proposed by the Applicants greatly exceeds that amount that can be considered under the Design Review standards.²

The Applicants and several supporters cited, as a reason for their support, affordable housing in excess of what would be required in their filings.³

¹ Subtitle X, §603.1 clearly states that flexibility under design review process cannot be used to grant flexibility in the inclusionary zoning requirements. Subtitle X §603.1: “As part of the design review process, the Zoning Commission may grant relief from the development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone. The design review process shall not be used to vary other building development standards including FAR, Inclusionary Zoning, or green area ratio.”

² Subtitle X, §603.1 also clearly states that flexibility under design review does not include any increase in the allowable density on the site.

³ ANC 3E, in its resolution (Exhibit 138), includes “Whereas, the Applicant proposes to exceed the Inclusionary Zoning requirements, helping bring badly needed housing for moderate income families to the area.” Ward 3 Vision at the hearing cited the offer of 10% of the units for inclusionary zoning as a reason for their support. The

SET-ASIDE REQUIREMENTS FOR INCLUSIONARY ZONING

The set-aside requirements for inclusionary zoning are set out in Subtitle C, Chapter 10, §1003.1 and §1003.2. [Text attached.]

The requirement depends on the construction type. For each construction type, the requirement is a percentage (8% or 10%) of the habitable penthouse space plus the greater of:

- (1) a requirement based on a percentage (8% or 10%) of the gross floor area dedicated to residential use; or
- (2) a percentage (50% or 75%) of the achievable bonus density.

In all its filings, Valor described the calculation as being based only on the habitable penthouse space and the gross residential floor area.⁴ In these filings, Valor did not refer to the calculation based on achievable bonus density.⁵

Coalition for Smarter Growth (Exhibit 156) cites the project for “providing a commendable 10% of the 219 units as IZ units, all affordable at 60% median family income.”

In addition, in the December 21, 2017 Prehearing Statement (Exhibit 114, p. 34), the Applicants state: “(T)he Project is also far superior to a matter-of-right project in many other respects, including ... affordable housing.”

⁴ See, for example, Exhibit 114A1, Prehearing Submission, 12/21/2017, page G05:

“Requirement: Inclusionary Zoning (IZ):

Building: 10% of residential GFA (including residential building area in cellar space and enclosed building projections that extend into public space)

Penthouse: 10% of non-communal penthouse habitable (sic) space.”

See, also, Exhibit 3B1, Application, 10/26/2-17, page G05:

“Requirement: Inclusionary Zoning (IZ) Building: 8% of residential GFA (including residential building area in cellar space and enclosed building projections that extend into public space) 20,563 GFA Penthouse: 8% of non-communal penthouse habitable (sic) space, 1,131 GFA Total: 21,694 GFA.”

See, also, Exhibit 155A, Applicant’s hearing presentation on design review standards:

“Inclusionary Zoning (IZ): 18,989 sf (8% Concrete Construction), 23,736 sf (10% Wood Construction), Proposed (Voluntary Design Review) 10% 28,320 sf.”

⁵ Valor is not alone in failing to properly calculate the inclusionary zoning set-aside.

UIP in its 100-unit, matter-of-right project on Brandywine Street has two inclusionary zoning units, a studio and a one-bedroom apartment, while the requirement, based on achievable bonus density would be 4,856 SF or 7,283 SF, depending on construction type. In another project, UIP (ZC 16-23) calculated its inclusionary zoning set-aside based on the residential GFA, even though the calculation based on the achievable bonus density gave a higher requirement.

Folger-Pratt (ZC 17-09, Eckington Park, Exhibit 28, Supplemental Hearing Statement, pp. 7-8 and p. G07 and Exhibit 42A) proposes 26,308 SF of IZ units: 8% of the residential floor area (19,580SF) plus five artist’s lofts (6,728 SF). While this exceeds 8% of the residential floor area, it falls short of the requirement based on achievable bonus density. For this project, the achievable IZ bonus density is 54,528.6 SF, so the actual IZ requirement for this project is 27,264 SF, which is 956 SF more than Folger-Pratt is proposing to provide.

On the other hand, some developers calculated the IZ requirement correctly. For example, in the Jemal’s Babes PUD (ZC 10-23, Exhibit 36A1, Supplemental ZC Submission, Oct. 12, 2012, page A6), Douglas Development presented two IZ calculations: one based on the residential GFA (3,907.04 SF) and another based on the achievable bonus density (5,096 SF). The tabulation clearly stated that the required inclusionary zoning set-aside was 5,096 SF, the greater of the two.

Given Valor's tabulations, the inclusionary zoning requirement based on achievable bonus density is greater than the presented requirement based on gross floor area dedicated to residential use. Thus, the actual IZ requirement for this project would be the amount calculated based on the achievable bonus density plus the additional requirement related to the habitable penthouse space. Valor did not specify whether they are subject to the inclusionary zoning requirement in §1003.1 or §1003.2, so I am providing both calculations. In either case, the requirement is higher than the amount of inclusionary zoning offered.

CALCULATION OF THE INCLUSIONARY ZONING SET-ASIDE FOR THE VALOR PROJECT

Since Valor did not specify the type of construction for this project, and presented calculations based on both §1003.1 (not Type I Construction) and §1003.2 (Type I Construction), I present both calculations below and compare the actual inclusionary zoning set-aside requirement with the inclusionary zoning set-aside that is in Valor's proposal.

Step 1. Calculation based on percentage of gross floor area dedicated to residential uses:

Based on the Applicant's tabulations, the residential gross floor area for this project is 257,586 SF.⁶ There is also 25,610 SF of habitable penthouse space subject to inclusionary zoning.

If §1003.1 applies, the calculation based on percentage of residential GFA would be 10% of 257,586 SF plus 10% of 25,610 SF. If this is the larger of the two calculations, the requirement would be 28,320 SF. (including 2,561 SF attributable to the habitable penthouse space.)

If §1003.2 applies, the calculation based on percentage of residential GFA would be 8% of 257,586 SF (20,607 SF) plus 8% of 25,610 SF (2,049 SF). If this is the larger of the two calculations, the requirement would be 22,656 SF. (including 2,049 SF attributable to the habitable penthouse space.)

Step 2. Calculation based on percentage of achievable bonus density:

Based on the Applicant's Prehearing Statement,⁷ the matter-of-right GFA for the project is 401,970 SF, and the allowable GFA with IZ is 482,364 SF. The "achievable bonus density" is "the amount of the permitted bonus density that potentially may be utilized within a particular inclusionary residential development." Thus, based on Valor's own submission, the "achievable bonus density" for this project is 80,394 SF.⁸

If §1003.1 applies, the calculation based on achievable bonus density would be 60,296 SF (75% of the achievable bonus density) plus 2,561 SF (10% of the 25,610 SF of penthouse space subject to IZ).

If §1003.1 applies, the required inclusionary zoning set-aside based on achievable bonus density would be 62,857 SF.

⁶ Exhibit 114A1, The Lady Bird Prehearing Submission dated December 21, 2017, Page G05.

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⁸ Note that should Valor present evidence that it is not possible to achieve the full allowable bonus density, they clearly can achieve the 473,502 SF that is in their proposal, so the achievable bonus density is at least 71,532 SF, and the required inclusionary zoning set-aside would be 56,210 SF under §1003.1 or 37,815 SF under §1003.2, both of which are substantially higher than the inclusionary zoning set-aside in Valor's proposal: 28,320 SF.

If §1003.2 applies, the calculation based on achievable bonus density would be 40,197 SF (50% of the achievable bonus density) plus 2,049 SF (8% of the 25,610 SF of penthouse space subject to IZ).

If §1003.2 applies, the required inclusionary zoning set-aside based on achievable bonus density would be 42,246 SF.

Step 3. **The Inclusionary Zoning Set-Aside Requirement is the greater of the two calculations above:**

For both §1003.1 and §1003.2, the calculation based on the achievable bonus density was greater than the calculation based on the percent of residential GFA.

SUMMARY

For this project, the required inclusionary zoning set-aside would be:

**62,857 SF if §1003.1 applies, or
42,246 SF if §1003.1 applies.**

In either case, the Applicant's proposal for 28,320 SF does not meet the inclusionary zoning requirement, and the design review process does not allow flexibility in the inclusionary zoning standards.

SUBTITLE C: CHAPTER 10 INCLUSIONARY ZONING

1001.1 Achievable bonus density is the amount of the permitted bonus density that potentially may be utilized within a particular inclusionary development provided in Subtitle C § 1002.

1003 SET-ASIDE REQUIREMENTS

1003.1 An inclusionary development which does not employ Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit of fifty feet (50 ft.) or less shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or seventy-five percent (75%) of its achievable bonus density to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1001.2(d).

1003.2 An inclusionary development which employs Type I construction as defined by Chapter 6 of the International Building Code as incorporated into the District of Columbia Construction Codes (Title 12 DCMR) to construct the majority of dwelling units shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of its achievable bonus density to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1001.2(d).