

Zoning Commission Case No. 18-03  
4611-4615 41<sup>st</sup> Street NW (Dancing Crab Properties)  
Testimony of Marilyn J. Simon  
Monday, October 19, 2018

In this testimony, I address two issues: (1) Eligibility for Residential Parking Permits and (2) Inclusionary Zoning.

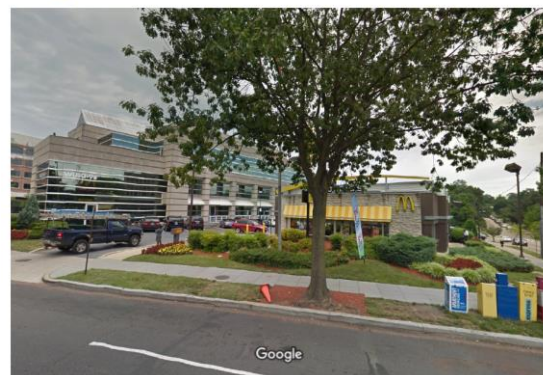
**Residential Parking Permits**

The Commission asked the Applicant to address the issue of eligibility for Residential Parking Permits. According to the Office of Planning,<sup>1</sup> the Applicant responded by noting that “the 4600 block of 41st St. on which the Site is located is not currently in the RPP database. It is unlikely that the block will be added to the RPP database in the future because of the block’s commercial nature.” The Office of Planning considered that response to be adequate.

The Applicant’s response is not adequate inasmuch as the RPP database includes many blocks that have a commercial nature, similar or even more commercial than this block.

As an example, the RPP database (downloaded October 25, 2018) includes both sides of the 4100 block of Wisconsin Avenue. Broadcast House and McDonalds are on west side of this block.

Google Maps 4199 Wisconsin Ave NW



Washington, District of Columbia

Image capture: Jul 2017 © 2018 Google

The RPP database also includes both sides of 4800 block of Wisconsin Avenue and the 4900 block of Wisconsin Avenue and the 5200 block of Wisconsin Avenue between Harrison and Ingomar Streets.

Google Maps 4839 Wisconsin Ave



Image capture: Jun 2017 © 2018 Google

Google Maps 4909 Wisconsin Ave



Image capture: Jun 2017 © 2018 Google

<sup>1</sup> OP Public Hearing Report, ZC 18-03, Sept. 17, 2018, p. 3.

As seen in these photographs, the nature of 4600 block of 41<sup>st</sup> Street NW is no more commercial than several of the other blocks that are in the RPP database.



The Applicant’s assertion that it is unlikely that DDOT would add this block to the RPP database due to its commercial nature is not consistent with the information available about blocks that are currently in the database.<sup>2</sup>

As such, if access to RPP by residents of this building is a concern, it is necessary to include additional, enforceable conditions in a Zoning Order approving this project to prevent the addition of this address to the database. As we have seen in an earlier case, an MOU with the ANC is not sufficient: The address for the nearby Jemal’s Babes PUD was added to the RPP database before the completion of that project, and the ANC did not act to have it removed.

**Inclusionary Zoning**

The current zoning regulations<sup>3</sup> do not define the set-aside requirement when more than half the residential units are not steel and concrete construction and it is in a zone with a

<sup>2</sup> Excerpt from RPP Database (B means that residents on both sides of the street are eligible for RPP)

B	WISCONSIN	AVE	NW	4100	4198	4101	4199
B	WISCONSIN	AVE	NW	4800	4898	4801	4899
B	WISCONSIN	AVE	NW	4900	4908	4901	4909
B	WISCONSIN	AVE	NW	4908	4998	4909	4999
B	WISCONSIN	AVE	NW	5200	5222	5201	5223

<sup>3</sup> Subtitle C, Section 1003 SET-ASIDE REQUIREMENTS (www.dcregs.dc.gov)

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).

MOR height of more than 50 feet:

	Zone with a MOR height of 50 feet or less, for example, MU-4 (C-2-A)	Zone with a MOR height of more than 50 feet, for example, MU-5 (C-2-B)
Does not employ Type 1 construction to construct the majority of the dwelling units	§ 1003.1 ( <u>standard set-aside</u> ) (“10%/75%” rule)	UNDEFINED
Employs Type 1 construction to construct the majority of the dwelling units	§ 1003.2 ( <u>reduced set-aside</u> ) (“8%/50%” rule)	§ 1003.2 ( <u>reduced set-aside</u> ) (“8%/50%” rule)

This Application includes a map amendment from MU-4 to MU-5. In an MU-4 zone, the project would be subject to the standard IZ set-aside requirement, the greater of 10% of the residential square footage or 75% of the achievable bonus density. Under the current regulations, the reduced IZ set-aside in §1003.2 does not apply to a building that does not employ concrete and steel construction for the majority of the dwelling units In an MU-5 zone.

While the regulations do not authorize the reduced set-aside requirement in this case, the Applicant chose to assume that, although they are not employing the more costly construction methods, the project should qualify for the reduced IZ set-aside requirement, based solely on their request for a map amendment.

In addition, since the Applicant is assuming that they should qualify for the reduced IZ requirement, the IZ set-aside requirement for this much larger building is less than IZ set-aside requirement for a MOR building. The proposed building (a PUD with a map amendment) will have a height 29 feet taller than a MOR building (58% increase in height) and an FAR that is 68% higher than a MOR building, but with less required affordable housing.

The offered affordable housing package in this project meets the IZ requirement, but it exceeds the IZ requirement by only 108 SF, rather than the 1,445 SF claimed by the Applicant.<sup>4</sup>

The amenities offered should be evaluated in this light, and the package should be adjusted to take into account the amount of affordable housing that would be required for a project of this size, with this type of construction. Given that the offer of excess affordable housing is significantly less than claimed, the proffered amenities are probably inadequate.

**Summary**

In conclusion, given that the RPP database includes many blocks with a commercial character similar to this block, a Zoning Order approving this project should include a strong, enforceable condition on RPP eligibility.

The public benefits claimed depend heavily on the amount of affordable housing provided. Given that the proffered affordable housing is not significantly more than the amount required for a building this size, either the affordable housing should be increased or the other public benefits should be enhanced.

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<sup>4</sup> Note further that the Applicant understates the set-aside requirement for a matter-of-right project.

The following table compares the IZ set-aside for a MOR (with IZ) project in an MU-4 with the IZ set-aside for a PUD with Map Amendment to MU-5.

Land area: 6,855 SF Current zone: MU-4 (C-2-A)	<b>MOR with IZ in MU-4</b>	<b>PUD with map amendment to MU-5 Reduced set-aside only if more than half residential units are Type 1 construction</b>	<b>PUD with map amendment to MU-5 Reduced Set-aside rule as assumed by the Applicant</b>
FAR	2.5 plus 20% IZ bonus = 3.0	3.5 plus 20% IZ bonus = 4.2 Plus 20% PUD bonus = 5.04	3.5 plus 20% IZ bonus = 4.2 Plus 20% PUD bonus = 5.04
Height	50 feet	79 feet	79 feet
Building type	Possible Type 1 podium, Type 2 above, Type 1 for less than 50% of residential units	Type 1 podium, Type 2 above, Type 1 for retail and less than 50% of residential units	Type 1 podium, Type 2 above, Type 1 for retail and less than 50% of residential units
IZ Bonus density	0.5 FAR, 3,427.5 SF	0.7 FAR, 4,798.5 SF	0.7 FAR, 4,798.5 SF
Non-residential FAR	0.5 FAR, 3,427.5 SF	0.357 FAR, 2,450 SF	0.357 FAR, 2,450 SF
Residential FAR	2.5 FAR, 17,137.5 SF	4.683 FAR, 32,085 SF	4.683 FAR, 32,085 SF
<b>Total FAR</b>	<b>3.0, 20,565 SF</b>	<b>5.04 SF, 34,535 SF</b>	<b>5.04 FAR, 34,535 SF</b>
Set-aside requirement	§ 1003.1	§ 1003.1	§ 1003.2 (reduced set-aside requirement)
Achievable IZ Bonus Density	3,427.5 SF	4,798.5 SF	4,798.5 SF
Calculation based on Bonus Density	75% of bonus density 2,570.6 SF	75% of bonus density 3,598.875 SF	50% of bonus density 2,399.25 SF
Calculation based on Residential SF incl. projections (219.5 SF)	10% of residential SF Up to 2,056 SF + 21.95 SF = 2,078 SF	10% of residential SF (32,085 SF) 3,208.5 SF + 21.95 SF = 3,477 SF	8% of residential SF (32,085 SF) 2,567 SF + 17.56 SF = 2,585 SF
Set-Aside Requirement (based on PH Space: 140 SF)	10% of 1,754 SF PH habitable space: 175.4 SF	10% of 1,754 SF PH habitable space: 175.4 SF	8% of 1,754 SF PH habitable space: 140 SF
<b>IZ Set-Aside Requirement</b>	2,570.6 SF Plus 175.4 SF for PH <b>2,746 SF</b> (12.18% of total SF)	3,599 SF Plus 175.4 SF for PH <b>3,774.4 SF</b> (10.24% of total SF)	2,585 SF Plus 140 SF for PH <b>2,725 SF<sup>5</sup></b> (7.46% of total SF)
<b>Applicant's Affordable Housing Proposal</b>		<b>3,882 SF</b>	<b>3,882 SF</b>

<sup>5</sup> Note that in the Applicant's September 7 letter, the total IZ requirement using the reduce set-aside formula in §1003.2 is stated to be 2,441 SF, but that is not consistent with the data in the Architectural Drawings submitted the same day which gave a proposed total GFA of 34,535 SF, with 2,450 SF for non-residential, leaving 32,085 SF residential GFA, and a 1,754 GFA penthouse. The Applicant also neglected to include the residential projections, estimated to be 219.5 SF.