

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** *JLS*  
Jennifer Steingasser, AICP  
Deputy Director Historic Preservation and Development Review  
Jonathan Kirschenbaum, AICP, Development Review Specialist  
**DATE:** January 5, 2023  
**SUBJECT:** Request for Consent Calendar consideration of technical corrections to DCMR  
11 Zoning Regulations as adopted in Case No. 20-02 (IZ Plus).

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### **REQUEST FOR LATE FLING**

The attached report concerning a technical correction to Zoning Commission Case 20-02 is being submitted less than 10 days prior to the Zoning Commission's Public Meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept this report into the record.

### **I. RECOMMENDATION**

The Office of Planning (OP) recommends the following proposed technical corrections to the Zoning Regulations and respectfully requests that the matter be placed on the January 26, 2023 consent calendar pursuant to Subtitle Z § 703 of the Zoning Commission's rules.

The proposed technical corrections clarify that when the IZ Plus set-aside requirement is based on the percentage of bonus density utilized, a separate set-aside calculation based on a fixed percentage is required for any penthouse habitable space. It would also clarify when Neighborhood Commercial (NC) zones are subject to IZ Plus.

The Office of Planning will work with Office of Zoning Legal Division to refine the language if necessary.

### **II. BACKGROUND**

#### **Set-Aside Technical Correction**

Regular IZ requires the set-aside requirement for non-penthouse habitable space to be the "greater of" a fixed percentage or a percentage of bonus density utilized. In addition to this calculation, Regular IZ also requires a separate set-aside requirement based on a fixed percentage of penthouse habitable space. Below is an example of the Regular IZ set-aside requirement that demonstrates the separate penthouse habitable space set-side requirement (*emphasis added*):

1003.1 Except as provided in Subtitle C § 1003.11, an Inclusionary Development other than an IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units and which is located in a zone

with a by-right height limit, exclusive of any bonus height, of eighty-five feet (85 ft.) or less, shall set aside for Inclusionary Units the sum of the following:

- (a) The greater of ten percent (10%) of the residential gross floor area as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space or seventy-five percent (75%) of the bonus density utilized; *and*
- (b) *An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1507.2.*

When OP brought forward Case No. 20-02 to create IZ Plus the intent was to modify the structure of the Regular IZ set-aside requirements by prescribing higher set-asides for non-penthouse habitable space and to retain the existing separate set-aside requirements for penthouse habitable space. The OP set down report at [Exhibit 6, page 18](#) and the subsequent OP reports at [Exhibits 12, page 13](#), [Exhibit 34A, page 9](#) for IZ Plus consistently retained the penthouse habitable space set-aside requirements as separate from the IZ Plus set-aside requirement for non-penthouse habitable space.

OP’s supplemental report #4 at [Exhibit 40, pages 2 and 3](#) introduced the “greater of” set-aside requirement based on the sliding scale of fixed percentages, or a percentage of bonus density utilized. In doing so the revision inadvertently omitted the separate penthouse set-aside requirement when the “greater of” results in a percentage of bonus density utilized but correctly retained it when the requirement is based on the sliding scale of fixed percentages.

The zoning text as written could be read that when the “greater of” is based on bonus density utilized, habitable penthouse floor area is not subject to a IZ requirement. This was not the intent of the text amendment and does not follow the structure of the Regular IZ set-aside requirements.

### **NC Zones Technical Correction**

The order for Case No. 20-02 also inadvertently omitted references to the NC zones when a property is either rezoned from a PDR zone or unzoned land. IZ Plus is already required for properties rezoned to a NC zone from all other zoning scenarios pursuant to Subtitle X § 502.1(b). Thus, it was not the intent of the order to omit the NC zone references from either the PDR or unzoned land zoning scenarios.

### **III. PROPOSED TECHNICAL CORRECTIONS**

The proposed technical correction to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~; new text is shown in **bold and underline**):

**Section 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended by revising §§ 1003.3 and 1003.4, to read as follows:**

1003.3 An IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units shall set aside for Inclusionary Units the ~~greater of either ninety-five percent (95%) of the utilized bonus density based on the new zone or the~~ sum of (a) and (b):

- (a) The **greater of the** percent of the residential gross floor area, as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, set forth in the

following table **or ninety-five percent (95%) of the utilized bonus density based on the new zone:**

**TABLE C § 1003.3 SET-ASIDE FOR INCLUSIONARY UNITS**

Type of Map Amendment		Required Set-Aside
From a PDR zone or unzoned land to an ARTS, CG, D, MU, <b>NC</b> , R, RA or RF zone		20%
From any zone other than a PDR zone to a D zone without a prescribed residential FAR		20%
All Other Map Amendments – Percent Increase in Total FAR Utilized as defined in Subtitle C § 1003.5(b)	Up to and including 20%	12.5%
	More than 20% up to and including 40%	14%
	More than 40% up to and including 60%	16%
	More than 60% up to and including 80%	18%
	More than 80%	20%

- (b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11.

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1003.4 An IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units shall set aside for Inclusionary Units the ~~greater of either seventy percent (70%) of the utilized bonus density based on the new zone or the~~ sum of (a) and (b):

- (a) The **greater of the** percent of the residential gross floor area, as defined in Subtitle C § 1003.5(a), excluding penthouse habitable space, set forth in the following table **or seventy percent (70%) of the utilized bonus density based on the new zone:**

**TABLE C § 1003.4 SET-ASIDE FOR INCLUSIONARY UNITS**

Type of Map Amendment		Required Set-Aside
From a PDR zone or unzoned land to an ARTS, CG, D, MU, <b>NC</b> , R, RA or RF zone		20%
From any zone other than a PDR zone to a D zone without a prescribed residential FAR		20%
All Other Map Amendments – Percent Increase in Total FAR Utilized as defined in Subtitle C § 1003.5(b)	Up to and including 20%	8.5%
	More than 20% up to and including 50%	10%
	More than 50% up to and including 75%	12%
	More than 75% up to and including 100%	14%

	More than 100% up to and including 125%	16%
	More than 125%	18%

- (b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11.

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**Section 502, INCLUSIONARY ZONING PLUS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended by revising § 502.1, to read as follows:**

502.1 Except as provided in Subtitle X § 502.2, the requirements of this section shall apply to:

- (a) A map amendment that rezones a property:
- (1) From a PDR zone to an ARTS, CG, D, MU, NC, R, RA or RF zone;
  - (2) From any zone other than a PDR zone to a D zone without a prescribed residential FAR; or
  - (3) From unzoned to an ARTS, CG, D, MU, NC, R, RA or RF zone; or

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