



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT



August 22, 2022

Zoning Commission for the District of Columbia
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Zoning Commission Case 21-26 for 301 Florida Avenue, N.E

Dear Members of the Zoning Commission:

The DC Department of Housing and Community Development (DHCD) has reviewed the schematic plans for the Zoning Commission Case 21-26 for 301 Florida Avenue, NE (the “Applicant”), seeking consolidated review and approval of a Planned Unit Development (“PUD”) and related zoning map amendment to rezone the property comprising Lot 3 in Square 772-N from the PDR-1 zone to the MU-30 zone.

DHCD committed funding to this much-needed affordable housing project upon the Applicant’s successful funding application as part of DHCD’s 2021 Consolidated Request for Proposals (RFP)’s for Affordable Housing Projects Priority Round and is supportive of the zoning relief needed to deliver the project. However, I write to state that the District’s interests would not be served by certain conditions that have been proposed for approval. Specifically, any condition requiring the owner/management to terminate the tenant’s lease if the tenant is found to have obtained a Residential Parking Permit (RPP) would be contrary to the District’s interests, policy, and the efficacy of our affordable housing efforts. Such a condition may also result in Fair Housing Act (FHA) and Human Rights Act (HRA) violations.

At her second inaugural address in 2019, Mayor Bowser set forth a bold goal to create 36,000 new housing units by 2025, of which 12,000 will be affordable. Further, on May 10, 2019, the Mayor signed Mayor's Order 2019-036 on Housing, directing District agencies to address housing affordability and increase housing supply.

DHCD and the Office of Planning (OP) worked together to produce the *Housing Framework for Equity and Growth*. The District developed an analysis intended to quantify the needs for affordable and market-rate housing in the District. This analysis aided in understanding the challenges driving current housing production and led to the creation of housing goals specific to each planning area of the City, thus making Washington, DC, the first city in the nation to create affordable housing target by neighborhood.

Currently, affordable housing is unevenly distributed across the city. For example, the Far Southeast and Southwest Planning Areas of Washington, DC, have more than 15,000 affordable units, or about 31 percent of all the District's affordable housing. In contrast, the Rock Creek

West Planning Area has fewer than 500 affordable units or approximately one percent of the District's supply of affordable housing. The Applicant's proposed project will provide 115 affordable housing units in the NoMa and Union Market neighborhood, which is located in the Central Washington Planning Area. The Housing Equity Report established a goal of 1,040 net new affordable units for this planning area, of which, only 351 units have been produced to date.¹

DHCD's position is, for the following reasons, that the requested parking permit-related condition will not serve the District's affordable housing interests and would diminish the effectiveness of the agency's multifamily housing programs:

- RPP prohibition as a lease term may be considered unreasonable and unduly restrictive. The District Department of Transportation (DDOT) manages the RPP zoning process, and any restrictions regarding availability should be addressed through DDOT.
- A leasing term providing a landlord with a basis for lease termination due to obtaining an RPP may be considered extreme and unreasonable, considering violations of the District's RPP are enforced by the Department of Public Works (DPW) and Department of Motor Vehicles (DMV).
- The proposed project will provide 115 affordable housing units. The application of the disparate impact theory as it relates to fair housing and discrimination is that decisions **do not** have to be motivated by illegal considerations, such as discriminating against an intended protected class. When policies, rules, and decisions appear neutral on their face and applied to all in the same way, they may at times hurt members of a protected class. In this instance, this restrictive lease term may disparately impact the District's low-income residents wishing to reside in the project.
- The RPP prohibition and lease term in a 100% affordable housing project may also be considered a discriminatory term and condition under the District's HRA of 1977 as a "source of income" (origination of a person's finances) violation. This protected class is defined as:
 - "means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period; including, but not limited to, money and property secured from any occupation, profession, or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist."

¹ <https://open.dc.gov/36000by2025/>

- Furthermore, in the zoning case of the Village of Arlington Heights,² it was determined that a non-exhaustive list is not required to provide direct evidence of intent to show discriminatory intent. A review of the following can be considered to determine discriminatory intent:
 - Sequence of events leading up to the zoning decision
 - Legislative or administrative history
 - Changes from routine procedures
 - Changes in the substantive rules
 - Historical background
 - Evidence of community opposition from which unlawful motivation can be found
- The impact of this action may also subject members of multiple protected classes to unequal terms in leasing housing units. Most of the District’s low-income residents are members of the following federally protected classes under the FHA: persons with a **disability**, **Black** residents (race), and **females** (sex).³ Disability and Race remain the most common protected classes in FHA violations, and the District may be at risk of approving a PUD with FHA and HRA violations.

We encourage the Commission to approve the PUD without the proposed RPP condition.

I appreciate your consideration of our comments, and we look forward to working with the Applicant to ensure the successful completion and delivery of 115 affordable housing units.

Sincerely,



Tsegazeab Bekele, Chief of Staff, on behalf of
Drew Hubbard
Interim Director
Department of Housing and Community Development

² VILLAGE OF ARLINGTON HEIGHTS et al., Petitioners, v. METROPOLITAN HOUSING DEVELOPMENT CORPORATION et al.

³ See [Washington, DC | Data USA](#) for the latest data on poverty in the District.