



August 27, 2022

Zoning Commission of the District of Columbia  
441 4th Street, NW - Suite 210  
Washington, DC 20001  
**VIA IZIS**

**Re: Z.C. Case No. 22-01 – OP Text Amendment – Office-to-Residential Matter-of-Right Conversions**

Dear Members of the Zoning Commission (the “**Commission**”):

The Office of the Attorney General (“**OAG**”) submits the following comments on the Notice of Proposed Rulemaking (“**NOPR**”) in Z.C. Case No. 22-01 to amend the Zoning Regulations (Title 11 of the DCMR, “Zoning Regulations of 2016,” to which all references refer unless otherwise specified) as proposed by the Office of Planning (“**OP**”) to allow office-to-residential conversions by-right in the Mixed Use (MU), Neighborhood Commercial (NC), and certain Downtown (D) zones. As part of its comments on the NOPR, OAG incorporates its prior filing and testimony in this case challenging OP’s proposed amendments.<sup>1</sup>

OAG reiterates that the NOPR violates the Zoning Act’s requirement that “[z]oning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan” of the District (June 20, 1938, 52 Stat. 797, ch. 534, §2; D.C. Code §6-641.02). OAG asserts that the NOPR’s proposed amendments are inconsistent with the Comprehensive Plan (the “**CP**”, Title 10A of the DCMR) because these amendments fail to address the affordable housing crisis identified by the CP, which calls for the expansion of the IZ program to provide additional affordable housing – specifically “greater IZ requirements when zoning actions permit greater density or change in use.” (CP § 504.26; *see also*, CP §§ 204.15, 206, 220.5, 500.4, 500.6a, 500.19, 500.21, 500.36, 603.10, 504.19) The NOPR would incentivize property owners to redevelop office buildings for residential uses that are currently prohibited and to expand these residential uses into square footage that exceeds the development standards of the Zoning Regulations. Yet the NOPR would impose **no** additional IZ requirement for this incentive of expanded use and increased residential density, despite the CP’s clear guidance to the contrary. OAG believes that the CP calls for zoning incentives such as proposed by the NOPR to also incentivize additional affordable housing needed to address the affordable housing crisis identified by the CP. This is particularly important given that the District is failing to produce sufficient affordable housing to meet the Mayor’s 2019 goal to construct 12,000 affordable housing units by 2025 – currently only 35.7% of this goal has been achieved in the District as a whole with wide disparities between different areas of the District.<sup>2</sup>

<sup>1</sup> Z.C. Case No. 22-01, Exhibits 7 (June 3, 2022, prehearing filing (attached at Exhibit A)) and 11-12 (June 16, 2022, public hearing testimony and PowerPoint (attached at Exhibit B)).

<sup>2</sup> Office of the Deputy Mayor for Planning and Economic Development Economic Intelligence Dashboard available at <http://open.dc.gov/36000by2025/> (last accessed August 25, 2022).

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OAG asserts that the NOPR, by ignoring the CP's call to impose additional IZ set-asides on the additional residential density and expansion of residential uses, risks exacerbating the racial and economic segregation trends that have resulted in the District's Downtown core becoming an increasingly isolated island of privilege of predominantly wealthy and white residents.<sup>3</sup> Given the delay in meeting the Mayor's affordable housing goals, OAG believes that the Commission should seize every opportunity to generate additional affordable housing. Indeed, OAG notes that imposing additional IZ set-asides for the additional residential square footage proposed to be authorized by the NOPR would focus affordable housing in several of the areas of the District that are woefully behind in producing the affordable housing called for by the Mayor and CP:

- The Rock Creek West Planning Area, which has only produced 1.1% of its affordable housing goals established by the Mayor, was identified by OP as “the most likely to support office to residential conversion” in its 2020 report assessing commercial-to-residential conversions (the “**OP Conversion Report**”, attached at Exhibit C).<sup>4</sup> The NOPR would incentivize these conversions in the MU- and NC-zoned corridors along the main arterial streets in Rock Creek West, including Connecticut, Massachusetts, and Wisconsin Avenues, which would be major opportunities for creating new affordable housing.
- The Near Northwest Planning Area, which the OP Conversion Report also identified as having significant potential for commercial-to-residential conversions, has only produced 10.4% of its affordable housing goal.

OAG therefore respectfully requests that the Commission reconsider OAG's tailored proposal to require additional IZ requirements for the NOPR's proposed expansion of residential uses:

- An additional 2% IZ set-aside on the total square footage converted pursuant to the amendments proposed by the NOPR that complies with the Zoning Regulations' development standards; together with
- An additional 20% IZ set-aside on this square footage that exceeds the development standards of the Zoning Regulations.

OAG believes that these additional IZ set-asides would balance the NOPR's proposed incentives of additional residential density and use expansion with additional critically needed affordable housing that would make these new residential developments, and the surrounding neighborhoods, more economically inclusive and diverse in accordance with the CP's direction. OAG recognizes that some properties may not be able to provide this additional IZ set-asides due to the conversion costs – and therefore has proposed that such owners could seek a special exception for relief from these IZ set-asides based on providing the Commission with the specific financial issues facing the property. OAG believes that this special exception relief would address concerns about the

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<sup>3</sup> Chandler, Jamie P., and Philips, Joy, *Racial, Education & Income Segregation in the District of Columbia*, District of Columbia Office of Planning, November 2020. (Last accessed August 17, 2022, available at [https://planning.dc.gov/sites/default/files/dc/sites/op/page\\_content/attachments/Segregation%20Report%2011-18-20%20FINAL.pdf](https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Segregation%20Report%2011-18-20%20FINAL.pdf)); See also; Tristan Navera, *Developer Looks to Convert Former MCI Headquarters into High-End Apartments*, WASHINGTON BUSINESS JOURNAL (Aug. 10, 2022), <https://www.bizjournals.com/washington/news/2022/08/10/downtown-d-c-office-building-residential.html>.

<sup>4</sup> *Assessment of Commercial to Residential Conversions in the District of Columbia*, DC Office of Planning Analysis, Q2 2020 (Last accessed August 17, 2022, available at: [https://planning.dc.gov/sites/default/files/dc/sites/op/page\\_content/attachments/Assessment%20of%20Commercial%20to%20Residential%20Conversions%20in%20the%20District%20of%20Columbia\\_Q2%202020.pdf](https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Assessment%20of%20Commercial%20to%20Residential%20Conversions%20in%20the%20District%20of%20Columbia_Q2%202020.pdf)).

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potential impact of the additional IZ set-asides, while also producing additional affordable housing that the District desperately needs. Requiring a property owner to justify an exemption from the additional IZ set-asides based on the specifics of individual projects would also provide the Commission, and OP, additional economic data that would be valuable to analyze the economics of office-to-residential conversions and whether future changes might be needed. OAG notes that it has provided specific text language that the Commission could adopt, or adapt, to impose these additional IZ set-asides for properties benefitting from this proposed text amendment.

OAG respectfully requests that the Commission consider these comments, including OAG's earlier filing and testimony in this case, in both the Commission's decision to take final action and in the order explaining that decision.

Respectfully submitted,

**KARL A. RACINE**

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Attachments

- Certificate of Service
- Exhibit A – OAG's June 3, 2022, Filing
- Exhibit B – OAG's June 16, 2022, Testimony
- Exhibit C – OP's Commercial to Residential Conversion Report

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing comments on the following by email on August 27, 2022.

**District of Columbia Office of Planning**

Via Email

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**All ANCS**

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