



June 3, 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 Conversion**

Dear Members of the Zoning Commission:

The Office of the Attorney General (“**OAG**”) submits the following comments on the petition to the Zoning Commission (the “**Commission**”) by the Office of Planning (“**OP**”) to amend the Zoning Regulations in Z.C. Case No. 22-01. OAG believes that OP’s text amendment, as proposed in the petition, is inconsistent with the Comprehensive Plan in its failure to require additional Inclusionary Zoning units for buildings in the Mixed-Use (MU), Neighborhood Commercial (NC), and certain Downtown (D) zones that are converted from non-residential to residential uses, including square footage that does not comply with the development standards of the Zoning Regulations. To ensure that OP’s proposed amendment does address the Comprehensive Plan’s call for more affordable housing, OAG proposes the following revisions:

- To require an additional Inclusionary Zoning (“**IZ**”) set-aside for properties that would now be able to convert by-right under OP’s petition:
  - Two percent (2%) for the converted GFA that complies with the applicable development standards to reflect that the cost of conversion is less than the cost of building a new building; and
  - Twenty percent (20%) for the converted GFA that does not comply with the applicable development standards to reflect that this square footage would not be permitted under the Zoning Regulations for a new building;
- To authorize special exception relief from the additional IZ set-aside to the extent a property owner demonstrates to the Commission’s satisfaction that the additional IZ set-aside renders the conversion financially unviable despite the owner’s best efforts to obtain financial subsidy for the additional IZ set-aside; and
- Minor revisions to clarify the eligibility of properties for the proposed matter-of-right conversion.

OAG asserts that these changes are necessary to address the affordable housing crisis in the District as identified in the Comprehensive Plan (Title 10A of the DCMR, “**CP**” §§ 204.15, 206, 220.5, 500.4, 500.6a, 500.19). The CP calls for additional affordable housing and supports the expansion of the IZ program which it notes is of particular importance because it both retains affordable units for the life of a project and helps provide them in high-amenity, high-cost neighborhoods, leading ultimately to a more diverse and inclusive city. (CP §§ 500.21, 500.36, 503.10, 504.19) OP’s

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ZONING COMMISSION  
District of Columbia  
CASE NO.22-01  
EXHIBIT NO.7

## OP Text Amendment – Office-to-Residential Matter-of-Right Conversions

proposed amendment would help property owners facing a softening office market by enabling them to convert existing buildings to residential use by right, but this substantial benefit should not be unconditionally gifted to property owners as these are many of the same areas that the CP calls out as needing increased affordable housing options (CP §§ 500.25, 504.10). The CP specifically acknowledges the need to consider “greater IZ requirements when zoning actions permit greater density or change in use”, just as OP’s amendment would allow. (CP § 504.26)

OAG notes that despite this clear direction from the CP, there are some who protest that expanding IZ will “kill development”. However, developers have repeatedly demonstrated that they can successfully exceed the baseline IZ requirement using the multiple affordable housing programs including the Housing Production Trust Fund, the Low-Income Housing Tax Credit, and others administered by the Department of Housing and Community Development and the DC Housing Finance Agency. Some of these projects have come before the Commission - including the recent Dance Lofts project (Z.C. Case No. 21-18) that far exceeded the IZ baseline requirements by reserving approximately 60% of the building for IZ units and at significantly deeper levels of affordability than required by the Zoning Regulations. These projects show that developers with a conscience can create socially responsible projects that still are financially feasible - especially given the expansion of affordable housing funding recently adopted by the Mayor and Council. Socially responsible developers should not be effectively penalized for doing the right thing due to competition from less responsible developers seeking to maximize profits at the expense of the community. By adopting OAG’s proposed revisions, the Commission would implement the CP’s call for an “inclusive city.”

Nevertheless, OAG recognizes that there may be circumstances where the additional IZ set-aside would render a proposed conversion financially unviable – and so has proposed authorizing a special exception to allow an owner to demonstrate that despite its best efforts to obtain financing for the additional IZ set-aside, fully complying with the requirement would be too onerous. OAG asserts that this burden shifting will not only provide a measure of flexibility for the property owner but will also provide the Commission with more targeted and specific financial information about the economics of providing affordable housing in high-cost areas which can inform future decisions and text amendments.

OAG also believes that OP’s racial equity analysis failed to fully consider the adverse impacts of allowing these conversions without any additional IZ requirements. OP’s claim that the amendment will have a positive racial equity impact simply because it may “help alleviate the pressure on housing costs overall” thereby “Making room for additional housing, including affordable housing [that] has the potential to benefit non-white populations who on average have lower incomes than white residents” fails to fully consider the entire equation. Without providing requirements for the provision of affordable housing, the amendment risks exacerbating the trends of racial and economic segregation that OP previously identified in its 2020 report on segregation in the District<sup>1</sup> (the “**OP Segregation Report**”, attached at Exhibit A).

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<sup>1</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 June 1, 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).)

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As can be seen in the OP Segregation Report in the maps at Figure 1 on page 12, the District's Downtown core has become increasingly majority white since 1990. In terms of economic segregation, Figure 5 on page 17 demonstrates that "poor" households are increasingly concentrated east of the river in Wards 7 and 8. OAG's concern is that without provisions for the inclusion of more affordable, and inclusive housing, in some of the District's most central and amenity rich areas, the amendment will result in increasingly isolated islands of privilege for their wealthy and predominantly white residents. This is of particular concern in the Downtown (D) zones, which have enjoyed an exemption from the IZ program for the past 16 years. This exemption was due in part to OP's 2005 analysis that the D zones were unlikely include a significant quantity of residential units, an assumption that has been disproved by a surge of recent development in the D zones. The result has been almost exclusively market-rate housing, creating a wealthy, predominantly white enclave at the heart of the District. Despite OP's assertions, even if an amendment does not, on its face, actively harm communities of color, it cannot be considered racially equitable if it is likely to result in an unfair advantage to white residents. As noted in the OP Segregation Report:

"The city's distribution of affordable housing reflects a legacy of racially discriminatory policies enacted for more than a century. These policies displaced thousands of black residents and concentrated their communities in the eastern sections of the District, referred to as "East of the River." These policies also deepened poverty and generated multiple barriers that have severely limited blacks' access to socioeconomic opportunities and kept them out of certain neighborhoods."

**OAG's Proposed Revisions to OP's Proposed Text Amendment**  
**(OP's proposed changes in bold; OAG's proposed revisions in red;**  
**proposed additions underlined; proposed deletions struck through)**

I. Proposed Amendment to Subtitle G, MIXED USE (MU) ZONES Section 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended by revising §§ 200.1 and 200.2 and adding new §§ 200.3 through 200.5, to read as follows:

**200                    GENERAL PROVISIONS**

200.1                The provisions of this chapter apply to all MU zones except as may be modified or otherwise provided for in a specific zone, **except as provided in Subtitle G § 200.3.**

200.2                When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, **except as provided in Subtitle G § 200.3.**

**200.3** ~~A Subject to Subtitle G § 200.4, an existing building or structure in existence<sup>2</sup> with a valid Certificate of Occupancy issued<sup>3</sup> prior to January 1, 2022, may convert change the use of<sup>4</sup> existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof existing GFA to be converted does not comply with the following development standards of this subtitle for residential use:~~

- ~~(a) Courts;~~
- ~~(b) Floor Area Ratio (FAR);~~
- ~~(c) Green Area Ratio (GAR);~~
- ~~(d) Height;~~
- ~~(e) Lot Occupancy;~~
- ~~(f) Waterfront Setback; or~~
- ~~(g) Yards.~~

**200.4** ~~A building in which existing GFA is converted to residential use pursuant to Subtitle G § 200.3 shall set aside for Inclusionary Units in addition to the set-aside required by Subtitle C § 1003:~~

- ~~(a) Two percent (2%) of the total existing GFA to be converted to residential use; plus~~
- ~~(b) Twenty percent (20%) of the existing GFA to be converted that is nonconforming with the following development standards of this subtitle for residential use:~~
  - ~~(1) The maximum permitted FAR, height, and lot occupancy; and~~
  - ~~(2) The minimum requirements for courts, GAR, waterfront setback, and yards.~~

<sup>2</sup> “Structure” is unnecessary and potential confusing because all structures that have a floor and roof are buildings, so the addition of “structure” would only suggest that this requirement applies to non-building structures, that is anything permanently constructed without a floor or roof (see Subtitle B § 100.2, definitions of “Building” and “Structure”).

<sup>3</sup> Substituting “issued” Certificate of Occupancy (“CofO”) for “in existence” clarifies that it is the CofO that determines the eligibility for this provision.

<sup>4</sup> Substituting “change the use of” for “convert” fully aligns Subtitle D § 200.7 with the language of Subtitle C § 1001.1 that OP used in referring to Subtitle B § 200.2.

200.5 A reduction in the additional Inclusionary Zoning set-aside required by Subtitle G § 200.4 shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The reduction shall be limited to the amount that the applicant demonstrates to the Commission's satisfaction would render the conversion of the building financially unviable based on the applicant's submission of:

(1) An affidavit with supporting evidence that details the applicant's efforts to obtain financing to support the Inclusionary Units, including applications for financing from:

(A) The Department of Housing and Community Development for:

(i) The Housing Production Trust Fund;

(ii) The Tax Abatements for Affordable Housing in High-Needs Areas;

(iii) The Low Income Housing Tax Credit program; and

(iv) Any other funding programs administered by DHCD;

(B) The District of Columbia Housing Finance Agency; and

(C) All other relevant funding sources including non-governmental funders; and

(2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and

(b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the

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**MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.**

Section 201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be deleted in its entirety:

**~~201 DENSITY – FLOOR AREA RATIO (FAR)~~**

**~~201.1 For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted. [DELETED]~~**

II. Proposed Amendment to Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES Section 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended by revising §§ 200.1 and 200.2 and adding new §§ 200.3 and 200.4, to read as follows:

**200 GENERAL PROVISIONS**

200.1 The provisions of this chapter apply to all zones except as may be modified or otherwise provided for in a specific zone, **except as provided in subject to Subtitle H §§ 200.3 and 200.4.**

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, **except as provided in subject to Subtitle H §§ 200.3 and 200.4.**

**200.3 A Subject to Subtitle H § 200.4, an existing building or structure in existence with a valid Certificate of Occupancy issued prior to January 1, 2022, may convert change the use of existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof existing GFA to be converted does not comply with the following development standards of this subtitle for residential use:**

**(a) Courts;**

**(b) Floor Area Ratio (FAR);**

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(c) Green Area Ratio (GAR);

(d) Height;

(e) Lot Occupancy; or

(f) Yards.

200.4 ~~Notwithstanding~~ A building in which existing GFA is converted to residential use pursuant to Subtitle H § 200.3, shall:

(a) ~~Comply with~~ the requirements for ground floor designated uses of Subtitle H § 1101 ~~shall apply; and~~

(b) Set aside for Inclusionary Units in addition to the set-aside required by Subtitle C § 1003:

(1) Two percent (2%) of the total existing GFA to be converted to residential use; plus

(2) Twenty percent (20%) of the existing GFA to be converted that is nonconforming with the following development standards of this subtitle for residential use

(A) The maximum permitted FAR, height, and lot occupancy; and

(B) The minimum requirements for courts, GAR, and yards.

200.5 A reduction in the additional Inclusionary Zoning set-aside required by Subtitle H § 200.4(b) shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The reduction shall be limited to the amount that the applicant demonstrates to the Commission's satisfaction would render the conversion of the building financially unviable based on the applicant's submission of:

(1) An affidavit with supporting evidence that details the applicant's efforts to obtain financing to support the Inclusionary Units, including applications for financing from:

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(A) The Department of Housing and Community Development for:

(i) The Housing Production Trust Fund;

(ii) The Tax Abatements for Affordable Housing in High-Needs Areas;

(iii) The Low Income Housing Tax Credit program; and

(iv) Any other funding programs administered by DHCD;

(B) The District of Columbia Housing Finance Agency; and

(C) All other relevant funding sources including non-governmental funders; and

(2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and

(b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.

Subsection 201.4 of §201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be deleted in its entirety:

~~201.4 For a building or structure in existence with a valid Certificate of Occupancy prior to November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted, provided that requirements for ground floor designated uses of Subtitle U §1101 are provided.~~



III. Proposed Amendment to Subtitle I, DOWNTOWN ZONES Section 200, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended by revising § 200.7 and adding a new § 200.8, to read as follows:

200.7 Within the D-3 through D-8 zones, ~~for an existing building or structure in existence~~ with a valid Certificate of Occupancy issued prior to ~~November 17, 1978, or for which an application for a building permit was filed prior to November 17, 1978, a conversion of non-residential GFA to residential GFA, even if in excess of otherwise permitted FAR, shall be permitted, January 1, 2022, may convert~~ change the use of existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the building or structure or portion thereof to be converted is in excess of the maximum permitted FAR for residential use prescribed in this subtitle, provided that the building: subject to

(a) Complies with the requirements for ground floor designated uses of Subtitle I § 601 ~~are provided, if applicable;~~

(b) Is subject to Inclusionary Zoning pursuant to Subtitle C, Chapter 10, as an Inclusionary Development, either Mandatory or Voluntary<sup>5</sup>; and

(c) In addition to the set-aside required by Subtitle C § 1003, sets aside:

(1) Two percent (2%) of the total existing GFA to be converted to residential use; plus

(2) Twenty percent (20%) of the existing GFA to be converted that exceeds the maximum permitted FAR for residential use prescribed in this subtitle for Inclusionary Units.

200.8 A reduction in the additional Inclusionary Zoning set-aside required by Subtitle I § 200.7(c) shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The reduction shall be limited to the amount that the applicant demonstrates to the Commission’s satisfaction would render the

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<sup>5</sup> The D-3, D-4-R, D-5, D-5-R, D-6, D-6-R, and D-7 zones are currently exempt from IZ pursuant to Subtitle I §§ 516.2, 531.4, 539.2, 547.3, 555.2, 562.3, and 569.2, respectively.

conversion of the building financially unviable based on the applicant's submission of:

(1) An affidavit with supporting evidence that details the applicant's efforts to obtain financing to support the Inclusionary Units, including applications for financing from:

(A) The Department of Housing and Community Development for:

(i) The Housing Production Trust Fund;

(ii) The Tax Abatements for Affordable Housing in High-Needs Areas;

(iii) The Low Income Housing Tax Credit program; and

(iv) Any other funding programs administered by DHCD;

(B) The District of Columbia Housing Finance Agency; and

(C) All other relevant funding sources including non-governmental funders; and

(2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and

(b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.

**Appendix: “Clean” version with OP’s proposed changes with OAG’s revisions**

Sections 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES:

**200 GENERAL PROVISIONS**

200.1 The provisions of this chapter apply to all MU zones except as may be modified or otherwise provided for in a specific zone, except as provided in Subtitle G § 200.3.

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, except as provided in Subtitle G § 200.3.

200.3 A Subject to Subtitle G § 200.4, an existing building with a valid Certificate of Occupancy issued prior to January 1, 2022, may change the use of existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the existing GFA to be converted does not comply with the following development standards of this subtitle for residential use:

- (a) Courts;
- (b) Floor Area Ratio (FAR);
- (c) Green Area Ratio (GAR);
- (d) Height;
- (e) Lot Occupancy;
- (f) Waterfront Setback; or
- (g) Yards.

200.4 A building in which existing GFA is converted to residential use pursuant to Subtitle G § 200.3 shall set aside for Inclusionary Units in addition to the set-aside required by Subtitle C § 1003:

- (a) Ten percent (10%) of the total existing GFA to be converted to residential use; plus

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- (b) Twenty percent (20%) of the existing GFA to be converted that is nonconforming with the following development standards of this subtitle for residential use:

- (1) The maximum permitted FAR, height, and lot occupancy; and
- (2) The minimum requirements for courts, GAR, waterfront setback, and yards.

200.5

A reduction in the additional Inclusionary Zoning set-aside required by Subtitle G § 200.4 shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The reduction shall be limited to the amount that the applicant demonstrates to the Commission's satisfaction would render the conversion of the building financially unviable based on the applicant's submission of:

- (1) An affidavit with supporting evidence that details the applicant's efforts to obtain financing to support the Inclusionary Units, including applications for financing from:

- (A) The Department of Housing and Community Development for:

- (i) The Housing Production Trust Fund;
- (ii) The Tax Abatements for Affordable Housing in High-Needs Areas;
- (iii) The Low Income Housing Tax Credit program; and
- (iv) Any other funding programs administered by DHCD;

- (B) The District of Columbia Housing Finance Agency; and

- (C) All other relevant funding sources including non-governmental funders; and

- (2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and

- (b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.

Section 201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR MU ZONES, of Subtitle G, MIXED USE (MU) ZONES:

201 [DELETED]

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Section 200, GENERAL PROVISIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES:

**200 GENERAL PROVISIONS**

200.1 The provisions of this chapter apply to all zones except as may be modified or otherwise provided for in a specific zone, subject to Subtitle H §§ 200.3 and 200.4.

200.2 When modified or otherwise provided for in the development standards for a specific zone, the modification or zone-specific standard shall apply, subject to Subtitle H §§ 200.3 and 200.4.

200.3 Subject to Subtitle H § 200.4, an existing building with a valid Certificate of Occupancy issued prior to January 1, 2022, may change the use of existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even if the existing GFA to be converted does not comply with the following development standards of this subtitle for residential use:

- (a) Courts;
- (b) Floor Area Ratio (FAR);
- (c) Green Area Ratio (GAR);
- (d) Height;

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(e) Lot Occupancy; or

(f) Yards.

200.4 A building in which existing GFA is converted to residential use pursuant to Subtitle H § 200.3, shall:

(a) Comply with the requirements for ground floor designated uses of Subtitle H § 1101; and

(b) Set aside for Inclusionary Units in addition to the set-aside required by Subtitle C § 1003:

(1) Ten percent (10%) of the total existing GFA to be converted to residential use; plus

(2) Twenty percent (20%) of the existing GFA to be converted that is nonconforming with the following development standards of this subtitle for residential use

(A) The maximum permitted FAR, height, and lot occupancy; and

(B) The minimum requirements for courts, GAR, and yards.

200.5 A reduction in the additional Inclusionary Zoning set-aside required by Subtitle H § 200.4(b) shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The reduction shall be limited to the amount that the applicant demonstrates to the Commission's satisfaction would render the conversion of the building financially unviable based on the applicant's submission of:

(1) An affidavit with supporting evidence that details the applicant's efforts to obtain financing to support the Inclusionary Units, including applications for financing from:

(A) The Department of Housing and Community Development for:

(i) The Housing Production Trust Fund;

- (ii) The Tax Abatements for Affordable Housing in High-Needs Areas;
    - (iii) The Low Income Housing Tax Credit program; and
    - (iv) Any other funding programs administered by DHCD;
  - (B) The District of Columbia Housing Finance Agency; and
  - (C) All other relevant funding sources including non-governmental funders; and
- (2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and
- (b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.

Section 201, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES:

**201                    DENSITY – FLOOR AREA RATIO (FAR)**

- 201.1                The maximum permitted floor area ratio (FAR)...
- 201.2                The matter-of-right height, penthouse or rooftop structure, and density limits ...
- 201.3                The development standards for lodging uses shall be those ...

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Section 200, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES:

- 200.1           Gross floor area shall be measured as specified in Subtitle B § 304, except that ...  
...
- 200.6           Additional FAR conditions particular to the following zones are located in ...
- 200.7           Within the D-3 through D-8 zones, an existing building with a valid Certificate of Occupancy issued prior January 1, 2022, may change the use of existing gross floor area (GFA) to the “Residential” use category of Subtitle B § 200.2 as a matter-of-right even in excess of the maximum permitted FAR for residential use prescribed in this subtitle, provided that the building:
- (a)       Complies with the requirements for ground floor designated uses of Subtitle I § 601, if applicable;
  - (b)       Is subject to Inclusionary Zoning pursuant to Subtitle C, Chapter 10, as an Inclusionary Development, either Mandatory or Voluntary; and
  - (c)       In addition to the set-aside required by Subtitle C § 1003, sets aside twenty percent (20%) of the existing GFA to be converted that exceeds the maximum permitted FAR for residential use prescribed in this subtitle for Inclusionary Units.
- 200.8           A reduction in the additional Inclusionary Zoning set-aside required by Subtitle I § 200.7(c) shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:
- (a)       The reduction shall be limited to the amount that the applicant demonstrates to the Commission’s satisfaction would render the conversion of the building financially unviable based on the applicant’s submission of:
    - (1)       An affidavit with supporting evidence that details the applicant’s efforts to obtain financing to support the Inclusionary Units, including applications for financing from:
      - (A)       The Department of Housing and Community Development for:
        - (i)       The Housing Production Trust Fund;



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- (ii) The Tax Abatements for Affordable Housing in High-Needs Areas;
  - (iii) The Low Income Housing Tax Credit program; and
  - (iv) Any other funding programs administered by DHCD;
- (B) The District of Columbia Housing Finance Agency; and
- (C) All other relevant funding sources including non-governmental funders; and
- (2) Detailed financial information demonstrating that despite the applicant's diligent efforts, the financing for the conversion is insufficient to support the portion of the additional Inclusionary Zoning set-aside that the applicant requests be reduced; and
- (b) Notwithstanding paragraph (a) of this subsection, the Commission may discount the required additional Inclusionary Zoning set-aside based on the number of the additional Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, based on the applicant's demonstration through detailed financial evidence that the reduction in additional Inclusionary Zoning set-aside is necessary to subsidize the 30% MFI Inclusionary Units.

OAG respectfully requests that the Commission consider its proposed revisions and concerns as part of its consideration of OP's petition.

Respectfully submitted,

**KARL A. RACINE**  
Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro  
Chief, Equitable Land Use Section  
D.C. Bar No. 1031033

/s/ Alexandra L. Cain  
Assistant Attorney General  
D.C. Bar No. 1674308

Attachments

cc: Certificate of Service  
Exhibit A – OP Segregation Report

**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2022, a copy of the foregoing application was served on the following by email.

**District of Columbia Office of Planning**

Via Email

Jennifer Steingasser  
1100 4<sup>th</sup> Street, SW, Suite 650E  
Washington, DC 20024  
[Jennifer.steingasser@dc.gov](mailto:Jennifer.steingasser@dc.gov)

**All ANCS**

Via Email

ANC 1A - <a href="mailto:1A@anc.dc.gov">1A@anc.dc.gov</a>	ANC 1B - <a href="mailto:1B@anc.dc.gov">1B@anc.dc.gov</a>	ANC 1C - <a href="mailto:1C@anc.dc.gov">1C@anc.dc.gov</a>
ANC 1D - <a href="mailto:1D@anc.dc.gov">1D@anc.dc.gov</a>		
ANC 2A - <a href="mailto:2A@anc.dc.gov">2A@anc.dc.gov</a>	ANC 2B - <a href="mailto:2B@anc.dc.gov">2B@anc.dc.gov</a>	ANC 2C - <a href="mailto:2C@anc.dc.gov">2C@anc.dc.gov</a>
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ANC 4A - <a href="mailto:4A@anc.dc.gov">4A@anc.dc.gov</a>	ANC 4B - <a href="mailto:4B@anc.dc.gov">4B@anc.dc.gov</a>	ANC 4C - <a href="mailto:4C@anc.dc.gov">4C@anc.dc.gov</a>
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ANC 7E - <a href="mailto:7E@anc.dc.gov">7E@anc.dc.gov</a>	ANC 7F - <a href="mailto:7F@anc.dc.gov">7F@anc.dc.gov</a>	
ANC 8A - <a href="mailto:8A@anc.dc.gov">8A@anc.dc.gov</a>	ANC 8B - <a href="mailto:8B@anc.dc.gov">8B@anc.dc.gov</a>	ANC 8C - <a href="mailto:8C@anc.dc.gov">8C@anc.dc.gov</a>
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