

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Leila Jackson Batties  
202.457.7167  
leila.batties@hklaw.com

Christopher S. Cohen  
202.469.5127  
christopher.cohen@hklaw.com

January 26, 2023

## **VIA IZIS**

Zoning Commission  
for the District of Columbia  
441 4<sup>th</sup> Street, NW, Suite 210S  
Washington, DC 20001

**Re: Z.C. Case No. 22-06  
Applicant's Supplemental Post-Hearing Statement**

Dear Members of the Commission:

This Supplemental Post-Hearing Statement is submitted on behalf of 801 Maine Ave SW PJV, LLC (the "Applicant") in support of the above-referenced application for a Consolidated planned unit development ("PUD") and related Zoning Map amendment (the "Application"). The Zoning Commission (the "Commission") held the public hearing on the Application on October 6, 2022.

At its public meeting on December 15, 2022, the Commission took proposed action to approve the Application. In doing so, the Commission granted the Applicant an opportunity to meet with Councilmember Allen as requested in the Applicant's letter to the Councilmember dated December 9, 2022 (Ex. [123](#)); (ii) clarify the purpose of the monetary contribution to the Capitol Square Place Homeowners Association (the "HOA"), and provide additional information regarding the affordability levels of the proposed Inclusionary Zoning ("IZ") units.

### **1. Meetings with Councilmember Allen and Workforce Housing Units**

The Applicant and Councilmember Allen met on the following dates:

- Thursday, January 11, 2023;
- Friday, January 20, 2023; and
- Monday, January 23, 2023.

During these meetings, the Applicant and the Councilmember reviewed the merits of the project, including the design's consistency with the *Southwest Neighborhood Plan* and the PUD benefits and amenities, and the Applicant's outreach to the community throughout the PUD process.

At the request of the Councilmember, the Applicant also evaluated the feasibility of "workforce units" within the PUD, for households with income ranges up to 120% of the Median Family Income ("MFI"). After consideration, the Applicant agrees to set aside twenty (20) one bedroom workforce housing units in accordance with the term sheet attached as Exhibit A (the "Term Sheet"). The commitment to workforce housing units are not proffered as part of the PUD benefits and amenities package for the PUD. The integration of workforce house units reflects a separate effort by the Applicant to work with District leaders to identify and implement alternative strategies to address the range of housing needs in the District.

The Applicant agrees that, as a condition of the approval of the PUD, a covenant, consistent with the term sheet, shall be recorded in the land records prior to the issuance of the certificate of occupancy for the project. For reference, a draft version of the covenant is attached as Exhibit B. The provisions in the final recorded covenant shall be consistent with the Term Sheet.

## **2. Monetary Contribution to HOA**

As detailed in the Applicant's prior filings, the Applicant will contribute \$100,000 to the HOA. The contribution is intended to facilitate the implementation of any previously identified strategies to mitigate the existing issue of cut-through traffic within the HOA's community. *See* Ex. [112](#). One specific measure is the installation of controlled gates, which are anticipated to cost approximately \$69,000. A copy of the quote and scope of work for the controlled gates is attached hereto at Exhibit C. The HOA, at its discretion, may use the contribution to support the implementation of an alternative mitigation strategy or commission additional studies on the cut-through traffic.

## **3. Affordability**

The Commission asked the Applicant to consider whether the Median Family Income ("MFI") levels targeted for the PUD's IZ units could be lowered to expand inclusivity for all District residents. As discussed below, the proffered IZ set aside, income levels, and unit type distribution far surpass what would otherwise be required through matter-of-right development under existing zoning. Further, based upon recent information prepared by the Office of Planning ("OP") the Applicant believes the IZ proffer is aligned with current IZ program demand and is conducive for all District residents.

### **a. IZ Proffer Far Exceeds the Threshold to be Considered a PUD Public Benefit**

Pursuant to Subtitle X § 305.5(g), affordable housing proffered as part of a PUD is considered a public benefit if it exceeds "what would have been required through matter-of-right development under existing zoning." Matter-of-right development under the PUD site's current MU-12 zoning would require approximately 21,500 square feet of gross floor area ("GFA") of affordable housing for households earning no more than 60% MFI, plus 10% of any penthouse habitable space for households earning no more than 50% MFI.

As part of the Applicant's benefits and amenities package, 15% of the project's residential GFA will be set aside as IZ units. Within the 15% set aside, all 3-bedroom units within the project will be devoted to IZ units for households earning no more than 50% MFI. The Applicant's IZ

proffer amounts to approximately 65,171 GFA of affordable housing for households earning no more than 60% and 50% MFI, plus 15% of any penthouse habitable space. Thus, not only is the Applicant providing over **three times more affordable housing than would be required under existing zoning**, but the three-bedroom units provided with the project will be set aside as IZ units for households earning no more than 50% MFI. Moreover, the IZ proffer for the PUD is among the highest of recently reviewed / approved unsubsidized PUDs, and no other recent unsubsidized PUD matches the number and income level of 3-bedroom IZ units being provided. In light of the foregoing, the Applicant's affordable housing proffer far exceeds the applicable standard of Subtitle X § 305.5(g) and, as proposed, is the most significant benefit of the project.

b. IZ Proffer is Aligned with Current MFI Level Demand for IZ Units

Within the confines of the IZ program, and based upon observations provided by OP, the Applicant believes the MFI levels of its affordable housing proffer are aligned with current IZ unit demand. The IZ program is one of many affordable housing tools the District can utilize to address the city's need for affordable housing across all income levels. That said, the IZ program has certain limitations. Unlike affordable housing programs that can reach extremely low-income levels by leveraging public subsidies, the IZ program is wholly unsubsidized and is designed to maximize affordable unit production at the 60% and 80% MFI levels, and at the 50% MFI level to a limited degree.

Based on discussions with OP and DHCD, it is the Applicant's understanding that the greatest demand for IZ units is currently from households earning up to 60% MFI. In a recent memorandum, OP communicated its "**preference to continue to have applicants provide as many 50 percent and 60 percent MFI units as possible.**" See Z.C. Case No. 96-13A, Ex. 40, OP Supplemental Memo at p. 9 (emphasis added). Thus, the Applicant's IZ proffer is aligned with current demand. Approximately 89% of the project's IZ units will be devoted to households earning no more than 60% MFI, with the remaining 11% being devoted to households earning no more than 50% MFI (which also comprise all eight 3-bedroom units in the project).

c. Extremely Low Income (30% MFI) Level is not Feasible for the PUD

In order to lower the affordability levels in the PUD, the Applicant would have to provide IZ units at the 30% MFI level.<sup>1</sup> The Applicant submits it is not feasible to provide IZ units at the 30% MFI income level.

As stated above, the IZ program is an unsubsidized affordable housing tool that is not designed to reach the 30% MFI levels of affordability. Affordable units set aside at the 30% MFI (extremely low) level are typically dependent upon public subsidies from Section 8 voucher programs, Low-Income Housing Tax Credits, the Housing Production Trust Fund, and other sources. Absent any subsidy, the rents for an IZ unit set aside at the 30% MFI level are typically insufficient to cover the base operational costs for the unit. Thus, any 30% MFI units within the

---

<sup>1</sup> Pursuant to Subtitle X § 305.5(g)(2), a PUD application proposing IZ units with deeper affordability than what would be required under the IZ regulations (Subtitle C, Chapter 10) must only propose an MFI level included in DHCD's published IZ Rent and Price Schedule.

project would operate at a continual net loss, and add risk and uncertainty to the project's net operating income, particularly given current escalation in construction costs and lending rates.

By design, the IZ program uses the additional market rate units that are available through bonus density to offset the required IZ units set aside at the 60% MFI and 80% MFI levels. OP discussed this relationship in its aforementioned memorandum, stating **“the IZ program was designed to have additional market rate units achieved through bonus density to “cross subsidize” IZ unit rents without providing either federal or local subsidies to property owners.”** See Z.C. Case No. 96-13A, Ex. 40, OP Supplemental Memo at p. 6 (emphasis added). The Comprehensive Plan also expressly acknowledges the IZ program's limitations in reaching deep levels of affordability:

Statutory and regulatory measures, including zoning, are necessary but not sufficient to produce very-low- and extremely-low-income rental housing and ownership opportunities for a range of households. Budgetary decisions at the federal and District levels are also essential to enable the continued operation of quality housing for these income levels. (10A DCMR § 504.7.)

In light of the foregoing considerations, devoting IZ units solely to households earning no more than 30% MFI is not feasible for the proposed project. However, as discussed below this does not preclude a 30% MFI household from being able to reside in the project.

d. Deeper Affordability May Increase Risk and Reduce the Pool of Qualifying Households for the Project's IZ Units

Assuming the Applicant could set aside IZ units at the 30% MFI level, doing so would reduce the pool of qualifying households that could occupy those units. It is important to note that the IZ regulations (Subtitle C, Chapter 10) call for units to be devoted to households earning “equal to or less than” a specified MFI level. See, e.g., 11-C DCMR § 1300.7. Therefore, a unit set aside at the 60% MFI level may be occupied by any qualifying household whose income does not exceed 60% MFI. Conversely, converting one or more of the 60% MFI IZ units to a 30% MFI IZ unit would eliminate any household earning above the 30% MFI threshold from occupying such units, and effectively reduce the number of qualifying households that could occupy those units.

**A 30% MFI household is not barred from residing in an IZ unit provided with the project.** As discussed in the [above-cited OP report](#), a 30% MFI household that participates in the Section 8 Housing Choice Voucher Program (“HCVP”) and/or Local Rent Supplement Program (“LRSP”) may occupy any of the IZ units in the project. While the monthly rent for an IZ unit in the project may exceed one-third (1/3) of the household's monthly income, the public subsidy provided by the HCVP and LRSP programs would make up the rent differential. As a result of layering various affordable housing mechanisms, the 30% MFI household could reside in the project. By occupying an IZ unit within the project the extent of the public subsidy provided to that household is lower than what would be required if the same household sought a market rate unit in the project. Further, the public subsidy would give the Applicant a greater degree of financial assurance than if the IZ unit was strictly set aside for households earning no more than 30% MFI. In light of the foregoing benefits, coupled with the existing demand for 60% MFI IZ units within the District, the Applicant believes reducing the MFI level of certain IZ units to the

30% MFI level would lead to undesirable outcomes, and that the current affordability levels will benefit a wider range of District residents.

We trust that the information provided herein is responsive to the Commission's requests and that the proposed adjustments to the affordable housing proffer are satisfactory. We appreciate the Commission's favorable review of this Application, and look forward to the Commission considering final action at public meeting on February 9, 2023.

Respectfully submitted,

Holland & Knight LLP



Leila M. Jackson Batties  
Christopher S. Cohen

Enclosures

cc: Certificate of Service  
The Honorable Charles Allen, Ward 6 Councilmember (via e-mail; w/ enclosures)

## CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2023, a copy of the Applicant's Supplemental Post-Hearing Statement filed in support of Z.C. Case No. 22-06 was served on the following via electronic mail:

1. **D.C. Office of Planning**  
Ms. Jennifer Steingasser  
[jennifer.steingasser@dc.gov](mailto:jennifer.steingasser@dc.gov)  
Mr. Joel Lawson  
[joel.lawson@dc.gov](mailto:joel.lawson@dc.gov)  
Ms. Karen Thomas  
[karen.thomas@dc.gov](mailto:karen.thomas@dc.gov)
  
2. **Office of Zoning Legal Division**  
Mr. Dennis Liu  
[Dennis.Liu@dc.gov](mailto:Dennis.Liu@dc.gov)
  
3. **Capitol Square Place Homeowners Association**  
Erin Berg, President  
[eringberg@gmail.com](mailto:eringberg@gmail.com)  
*Party in Opposition*
  
4. **Advisory Neighborhood Commission 6D**  
c/o Frederica “Rikki” Kramer  
[6D@anc.dc.gov](mailto:6D@anc.dc.gov)  
[6D07@anc.dc.gov](mailto:6D07@anc.dc.gov)
  
5. **Commissioner Bob Link**  
Single-Member District Representative, ANC 6D01  
465 M Street, SW  
Washington, DC 20024  
[6D01@anc.dc.gov](mailto:6D01@anc.dc.gov)
  
6. **District Department of Transportation**  
Mr. Jonathan Rogers  
[jonathan.rogers2@dc.gov](mailto:jonathan.rogers2@dc.gov)  
Mr. Aaron Zimmerman  
[aaron.zimmerman@dc.gov](mailto:aaron.zimmerman@dc.gov)  
Ms. Emma Blondin  
[emma.blondin@dc.gov](mailto:emma.blondin@dc.gov)

/s/ Christopher S. Cohen  
Christopher S. Cohen  
Holland & Knight LLP  
Associate