

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
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ZONING COMMISSION
+ + + + +
PUBLIC HEARING
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-----: :
IN THE MATTER OF: : :
TEXT AMENDMENT : Case No. 05-02
RESIDENTIAL RECREATION SPACE :
-----: :

Monday,
November 6, 2006

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The further Public Hearing of
Case No. 05-02 by the District of Columbia
Zoning Commission convened at 6:30 p.m. in
the Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., 20001, Carol
Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
GREGORY JEFFRIES	Commissioner
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON

ON BEHALF OF THE OFFICE OF THE ATTORNEY
GENERAL:

ORI MONROE, ESQ.

The transcript constitutes the
minutes from the further Public Hearing held
on November 6, 2006.

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P-R-O-C-E-E-D-I-N-G-S

6:39 p.m.

CHAIRPERSON MITTEN: Good evening,
ladies and gentlemen.

This is a Public Hearing of the
Zoning Commission of the District of Columbia
for Monday, November 6th, 2006. My name is
Carol Mitten and joining this evening are Vice
Chairman Anthony Hood and Commissioners
Michael Turnbull and Greg Jeffries.

The subject of this evening's
hearing is Zoning Commission Case No. 05-02.
The Office of Planning proposed Text
Amendments to Title XI of the Zoning
Regulations to reduce the residential
recreation space requirements in the C, CR and
SP Zones.

At a Public Meeting held on June
27th, 2005, there was overwhelming testimony
in favor of eliminating the residential
recreation space requirement altogether.

At our September 15th, 2005,

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public meeting, the Commission decided to hold a hearing on whether the recreation space requirement should be repealed in its entirety.

On March 3rd, 2006, the Office of Planning recommended linking the elimination of the recreation space requirement with the provision of affordable housing in accordance with the IZ Regulations.

At our March 13th, 2006, we decided to hold a hearing on whether recreation space requirements should be repealed entirely and to set down in the alternative OP's recommendation.

If the Commissioner does not take action to repeal the requirement then we'll go ahead and consider the alternative proposal.

Notice of today's hearing was published in the D.C. Register on July 21st, 2006. And copies of that hearing announcement are available to you and they're in the wall bin near the door.

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This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3021 and the order of procedure will be as follows:

We'll take any preliminary matters. Then we'll have the presentation by the Office of Planning, reports of any other Government agencies, reports of any ANCs and then we'll have organizations and persons in support and organizations and persons in opposition.

The following time constraints will be maintained in the hearing:

Organizations will have five minutes and individuals will have three minutes. The Commission intends to adhere to these time limits as strictly as possible in order to hear the case in a reasonable period of time.

The Commission reserves the right to change the time limits for presentations, if necessary, and no time shall be seeded.

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All persons appearing before the Commission are to fill out two witness cards. They look like this and these cards are on the table by the door. Upon coming forward to speak to the Commission please give both cards to the Court Reporter who is sitting to our right.

Please be advised that this proceeding is being recorded by the Court Reporter and is also being Webcast live. Accordingly, we ask you to refrain from making any disruptive noises during the hearing.

When presenting information to the Commission ask you to take a seat at the table and then turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, please turn the microphone off because they tend to pick up the background noise.

The decision of the Commission in the case must be based on the public record. To avoid any appearance of the contrary, the

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Commission requests that persons present not engage the members of the Commission in conversation during a recess or at any other time. And Mrs. Schellin will be available throughout the hearing to answer any procedural questions that you might have.

I ask you to turn off all beepers and cell phones at this time so as not to disrupt the hearing and we'll take up any preliminary matters now.

Mrs. Schellin anything? All right. Then we're ready to proceed with the presentation of the Office of Planning.

Mr. Lawson, good evening.

MR. LAWSON: Good evening, Madam Chair and members of the Commission. My name is Joel Lawson. I'm with the D.C. Office of Planning and, of course, here with me tonight is Jennifer Steingasser also with the D.C. Office of Planning.

As a result of the many requests for relief from residential recreation space

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requirements and the requests from the Board of Zoning Adjustment and the public, the Zoning Commission has been for some time now reviewing various options for the elimination or amendment of residential recreation space requirements applicable in the commercial special purpose and commercial restricted zones.

Most recently the Zoning Commission sat down for a public hearing. The proposal to eliminate the recreation space requirement altogether and as you know, in the alternative, a proposal to permit reallocation of some of this space, some of this amenity space towards the provision of affordable housing as an amenity of equal value to the building and to the community at large.

The elimination or reduction of residential recreation space would not result in smaller buildings. But rather the space would become additional residential square footage within the building. Under the OP

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proposal some of this space could be reallocated to affordable units.

The OP proposal would overall allow for reduction in the amount of required on-site recreation space and possibly increase the amount of housing market rate within IZ areas and a combination of affordable and market rate in areas not subject to IZ requirements.

For areas not subject to IZ, a developer would have the option of providing some or all of the required residential recreation space instead of the combination of market and affordable housing.

The alternative would be to eliminate the requirement altogether. For future developments within the zones for which recreation space is currently required, space devoted to recreation space could instead be devoted to other uses, presumably more or larger housing units.

Developers have indicated to OP

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that it is probably that many projects would continue to provide some recreation-type space within, on or around the building as a marketing necessity.

Under either option as noted in our report, the elimination of the requirement will likely result in some increase in the number of dwelling units being provided. But many factors, including the relatively small amount of recreation space per building, market conditions, zoning and other factors should minimize impacts on services, traffic or neighborhood character.

Under either alternative, OP continues to recommend one minor wording change to the roof top structure requirements of Chapter 4, Section 411, to permit additional incidental and accessory roof top enclosed areas for residential recreation space as currently is permitted for swimming pools.

Roof top recreation space is often

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desirable and a benefit to building residents and the proposed change would make such space more usable and enjoyable.

In summary, OP recognizes the existing residential recreation space requirements are problematic. Internal and even external recreation space is sometime considered an expensive luxury contributing to the cost of housing. And sometimes contrary to District objectives to encourage greater use of public space and not always seen as a significant benefit to the residents.

The OP feels that affordable housing is an amenity to the development and to the community which is commensurate with the recreation space currently required. However, given the current word that status of the IZ program, OP is no longer opposed to the elimination of the regulation altogether. This will result in the provision of more housing and/or larger housing units within current zoning FAR caps. In addition to being

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generally in line with objectives to increase housing in the District, this will make residential development more viable in the District.

And that concludes my testimony and we're available for questions.

Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Lawson.

Any questions from the Commission for Mr. Lawson? Any questions? Okay.

Do you have a question?

COMMISSIONER TURNBULL: I just had one question.

The option to link it to the IZ. It sounded like in your -- because I went through your report, the amount of the gain would be -- is very minimal. It's negligible in some cases.

MR. LAWSON: The amount of gain would, of course, depend on the size of the property and the size of the development

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because it's a percentage of the square footage that is being built.

I agree with you that the amount of affordable housing would be relatively small. The amount of market housing would be larger that would be gained through the OP proposal. However, you know, again, I'm not going to argue this point too strenuously. But we do consider the recreation space as amenity space within the building and an amenity to the general community and that's what affordable housing is as well. There's an amenity component attached to both of them.

So, although the number of housing units will be relatively small, it would contribute to the affordable housing stock in the District.

MS. STEINGASSER: And I'd also like to add that on page 2 of our report, there is a percentage requirement of the overall project. And in some of the zones, especially the lower intensity commercial

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zones, that requirement is quite high. It's 20 percent and to be able to convert that to affordable housing would, indeed, add to the smaller lots that already have fairly low density and intensity views.

COMMISSIONER TURNBULL: Would that be a burden or do you see that as a --

MS. STEINGASSER: A burden?

COMMISSIONER TURNBULL: To any development? Do you think that's going to be -- I'm just wondering what the impact is going to be?

MS. STEINGASSER: I don't think it would be a burden. I suspect you're going to hear in a few minutes otherwise. But the space is built. It's not as if there's a notch taken out of the building because the rec space can't be there.

COMMISSIONER TURNBULL: Right.

MS. STEINGASSER: The space is constructed. How it's used is the issue. Is it used for residential rec space? Is it used

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for storage? Is it used -- or is it just integrated back into market-rate units? Nine times out of the ten, the variances that we've seen, the space gets reintegrated into market-rate units. So, there's a definite connection between the rec space that's not used and the residential space that is occupied by it.

We think there is also a good nexus between the fact for the last two and a half three years, affordable housing and recreation space have both been proffered by the developers and accepted by the Commission as amenities that add to the quality of life, to the liveability of both the community and the building.

So, I don't think it's a burden actually. I think it helps with some of the arguments that we heard during the inclusionary zoning testimony, but there wasn't enough market compensation.

If we allow the rec space to be converted to affordable housing, that would

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count towards that IZ requirement.

COMMISSIONER TURNBULL: Okay.

Thank you.

CHAIRPERSON MITTEN: Anyone else?
Questions? Okay.

I don't believe there are other
Government agencies represented here.

Are there any ANCs represented
here tonight? The ANCs?

Then I would just note for the
record that we do have a position from ANC 6B
in favor of eliminating the requirement.
That's Exhibit 34.

Now, I have a witness list for
folks in support and I'll just call the names
on my witness list and then we'll pick up
anyone else on the back.

Ramsey Meiser? Ramsey Meiser?
Please come and take a seat at the table.
We'll put a panel together.

Jacques DePuy, Lindsley Williams,
Al Hedin. Yes? Hedin, I'm sorry. I know who

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you are, I just don't know how to say your name.

Okay. Mr. Meiser, why don't you go first.

MR. MEISER: Good evening, Ms. Mitten and members of the Zoning Commission.

Thank you for this opportunity to testify. My name is Ramsey Meiser. I'm Senior Vice President with Forest City Washington.

I am here in support of the elimination of mandatory residential recreation space requirements and in opposition to the Office of Planning's proposal to require the substitution of mandatory inclusionary zoning requirements for RRS requirements in areas not mapped with the IZ Overlay.

As you may know, Forest City Washington is redeveloping the former Waterside Mall site and has been designated by the U.S. General Services Administration as

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the master developer of the Southeast Federal Center site.

Both the Waterfront and Southeast Federal Center sites will be transformed into mixed-use neighborhoods that will include office, residential and retail uses.

Southeast Federal includes a large five-acre waterfront park. The construction of both Waterfront and Southeast Federal will be highlighted by sustainable development practices including sensitive material selection, restoration of existing buildings and maintenance of new quarters.

The redevelopment of these sites will bring new vitality to these parts of the city with the introduction of a welcoming waterfront community for residents, workers and visitors to enjoy.

The RRS requirements are inappropriate for not only Waterfront and Southeast Federal but for the city as a whole as they reflect an outdated and flawed public

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policy. Therefore, Forest City recommends that these requirements be eliminated in their entirety. Our reasons are as follows:

First and foremost, RRS reflects a public policy that is inappropriate for vibrant urban pedestrian and street scape oriented projects such as Waterfront and Southeast Federal.

Our philosophy for these projects is to provide attractive and exciting environments that bring residents, office workers, shoppers and visitors to Southwest and the Anacostia Waterfront.

We want to encourage people to be out of doors to recreate at the five-acre waterfront park, to shop, to stroll and to dine outdoors. In short, to make active use of the sidewalks and the pedestrian paths along the river, the shops and restaurants and all other services and amenities on these sites 18 hours a day.

RRS by contrast reflects a

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philosophy that is insular and isolating and one that encourages people to remain behind locked doors in their condo or apartment buildings. This philosophy, we submit, is outdated and deeply flawed.

Second, RRS conflicts with many other public policy objectives and requirements that have been adopted by the Zoning Commission since the late 1970s when the RRS requirements were first developed. And many of these more recent public policy objectives are specifically applicable to the Southeast Federal Center Project. These include mandatory ground floor retail requirements, architectural design requirements, use prohibitions, FAR and building height limitations and numerous others.

Complying with RRS on top of the Southeast Federal Center Overlay Requirements is costly. For example, it is expensive to bring an elevator to the roof of a building in

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order to provide a sun deck or swimming pool just to satisfy RRS. It is expensive not only for us as developers, but it is also costly to the condo unit purchaser or renters who are forced without any choice in the matter to foot the bills for ongoing operation, maintenance, repair and replace of such facilities.

Finally, as you may recall, the Southeast Federal Center Overlay mapped a number of different zoning districts within the 42-acre site. These include CR, R5B and R5D. This means that as currently drafted, all of our residential buildings that are located within the CR Zone will have RRS requirements. However, it is also means that none of our buildings in the R5E and R5D Districts will have any such requirements. This seems to us to be an odd result.

Specifically, if the RRS requirements are not repealed some of our condo purchasers or renters will have access

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to RRS facilities and will bear the ongoing costs of such facilities in their rent or condo dues while other kinds of purchasers or renters in buildings located across the street or around the corner will have no such access and will bear no such costs. Such a situation is fundamentally unfair and we think dramatizes one of the many deficiencies in the RRS requirements.

Let me briefly address OP's proposal which ties a repeat of the RRS program to IZ requirements, a proposal which we respectfully submit is ill-conceived and inappropriate.

As you may recall, OP recommended in the IZ Mapping case that the Southeast Federal Center site should not be mapped with the mandatory IZ requirements. I testified in support of such a recommendation and I have been advised that OP's recommendation has also been supported by the GSA as a Southeast Federal Center landowner.

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In the event this Commission agrees with OP, it does not map the IZ program on the Southeast Federal Center site. For all the reasons advanced by OP, GSA and Forest City, why should the site have a back door IZ obligation that the RRS requirements are eliminated from the zoning code?

The IZ program, we submit could stand or fall on its own merits and the RRS program should also stand or fall on its own merits. There is no relationship between the proposes of these two programs and no reason to link them.

Thank you for giving me this opportunity to testify.

CHAIRPERSON MITTEN: Thank you. We'll ask questions of the whole panel.

Mr. DePuy?

MR. DEPUY: Thank you.

Jacques DePuy, attorney with Greenstein, DeLorme & Luchs.

I'd like to basically make three

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points.

First, I'd like to briefly summarize testimony which I gave to this Commission over a year ago to refresh your recollection. And, secondly, because Mr. Turnbull, as I recall, was not on the Commission at the time to bring him to speed on some points that I made previously.

We did a fairly exhaustive research of the original cases from 1974/1978 at which time the RRS requirement was first adopted by the Commission to determine the reasons, the rationale and the record. And we found after looking at 1,600 pages of testimony, though I must admit we didn't read them all that closely. We did look at hundreds of documents in 12 thick jackets.

We found that the residential recreation space proposals generated very little interest or discussion by witnesses and an exceedingly small amount of discussion among Zoning Commission members. These cases

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both in '74 for the west end CR zoning and for the commercial districts in '78 were very significant cases dealing with major issues of FAR and building height and a lot of other subjects, RRS it appears got very little attention at the time.

Secondly, we found that particularly the commercial case transcripts revealed that most of the testimony with respect to residential recreation space from public witnesses including community organizations expressed opposition to the residential recreation space or concern about the requirements. That was something we did not expect to find.

We also found that the Office of Planning and Management as it was then known conceded in the 1978 commercial zone case map text cases that the only actual experience with residential recreation space in the CR Zone from the CR case four years earlier pertained to one building at the west bridge

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at 26th and Pennsylvania. And that, in fact, the architect of that project had some changes to recommend to the RRS provisions based on that experience. So, there was very limited experience and very little actual cases that involved RRS at the time of its adoption.

Also, the residential recreation space was mentioned only twice in the CR Zone. The first case which adopted RRS requirements and then only from the Office of Planning.

Secondly, I want to remind the Commission that the OP proposal which is before it in the alternative did not arise out of any testimony from this proceeding. It arose out of OP's desire to make a proposal to the Commission. So, all the testimony so far in this proceeding and the discussion by the Commission itself, with respect to residential recreation space, focused on the potential elimination of RRS requirements and it was -- the alternative was initiated solely by the Office of Planning.

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A third with respect to the Office of Planning alternative and as was described in the OP's summary of its report, the reallocation of RRS needs to be looked out very carefully as some of the witnesses later on will indicate.

First of all, as the Commission is aware, much of the RRS space is exterior space, roof top space, out of door space. This will not be converted to any usable space so, therefore, is not available for inclusionary zoning.

Secondly, much of the indoor space is provided as the Commission is aware from sitting on BZA cases in lobby space and in active house areas, in basements, in cellars, in areas that are not appropriate for residential use and not likely to be converted to residential use. So, there is no windfall of space here. There's no great excess of spaces that all of a sudden become available which could be devoted to some other purpose.

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And then finally as Mr. Meiser indicated and other witnesses will indicate, there have been a lot of requirements since 1974 which compete with residential recreation space and we submit are more important and more relevant to today's lifestyle and economy.

Thank you.

CHAIRPERSON MITTEN: Thank you.

Mr. Williams.

MR. WILLIAMS: Ladies and gentlemen, good evening. My name is Lindsley Williams. I'm a land use consultant at the law firm of Holland & Knight and some others and tonight I'm here on behalf of Holland & Knight, associating myself with the recommendation that the regulations be repealed.

Many of us here have said that before. I've said that before and I hope that will be the outcome.

Let me say broadly that what I've

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been trying to do, what we've been trying to do is not to end residential recreation space, but to tend residential recreation space. We feel as we've said over the record that Mr. Turnbull had the opportunity to read, if hasn't already done so, which goes back awhile and when the rest of you grappled with this, that the case is one where the regulations were developed at a time as Mr. DePuy has indicated, as he said others will probably confirm, when the regulations were not being understood in terms of the dynamics that led into a period when there was not a real estate boom. The effect of the regulations, frankly, wasn't felt until the mid-'90s when the District of Columbia, the downtown area, in particular, started to re-emerge as did the periphery of the town and we began to experience development up 14th Street in the Art District around town in general. And all of a sudden with the requirements and the effect of them combined with DD areas where

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first floor space was required to go for retail purposes, it was a confluence of factors that just made it difficult to attain. And we also feel that it makes the projects overall more insular than desirable to have a living downtown.

So, I've developed a letter which is in front of you. I've identified through a series of bullets that are on page 2, a number of reasons why we feel that the regulations should not be extended. They should be repealed.

We do not find it reasonable to establish a tipping point that says, if you don't do -- if you do IZ, then you don't have to do residential recreation space. We do not see a relationship between the two and find that tying the two together is something that is frankly, we think, troublesome under the provisions of the Administrative Procedures Act and possibly other things.

I would like to spend a little bit

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of time looking at the last requirement, which OP spoke favorably about and that is making some amendments to Section 411. And if you could open my letter to page 3, you'll see what I've tried to do there is to suggest a way in which we would could help augment the provision of residential recreation space, not with the required, but just residential recreation space.

We support the changes that OP is recommending to add more recreation space to the 411 rules. But we also want to suggest and we've tried to write this quite carefully. That the language, in addition to correcting a date citation, be expanded so that when you are dealing with an apartment building and inherently residential use, that the penthouses of those buildings could be used, not only for toilets, but also for showers and lavatories, incidental to swimming pools. That's sort of a technical expansion of the thought that's already in what OP has

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recommended.

But, also, where there is communal recreation areas on the roof, we thought it would be possible for you to entertain within the four corners of this case and within the spirit of this case that the area that is not needed for mechanical equipment of the roof, it could be used as well to sort of complement a roof top recreation space that is on the out of doors without changing any of the zoning parameters. This is not, I say to all of you and to Mr. Parsons who is absent this evening, this is not stealth FAR. This is not stealth height changes or stealth changes in penthouses. It's trying to operate within the existing parameters and to build the opportunity for the very types of uses that can thrive up there, if they're not required in the first place. If they can simply come to be as opportunity presents, that we think is a winning combination and that's our recommendation.

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Thank you very much.

CHAIRPERSON MITTEN: Thank you,
Mr. Williams.

And Mr. Hedin. Sorry about that
the first time.

MR. HEDIN: No problem. That's
common.

Chairman Mitten and members of the
Zoning Commission, thank you for this
opportunity to testify.

My name is Al Hedin, Senior Vice
President of Development at PN Hoffman.

I appear tonight on behalf of the
District of Columbia Building Industry
Association, DCBIA, in support of the
elimination of the residential recreation
space zoning requirements, RRS.

I also appear on behalf of DCBIA
in opposition to the proposal made by the
Office of Planning that would require the
provision of affordable housing pursuant to
the inclusionary zoning program in those areas

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not mapped with inclusionary zoning requirements where RRS requirements now apply.

The DCBIA comprises over 400 member firms representing thousands of professionals engaged in residential and commercial real estate in the District of Columbia. Our members have developed a very large number of residential project in the District in recent years and has considerably real-world experience with RRS zoning requirements.

I might add that my company, PN Hoffman, has done many projects and we have extensive experience with the RRS Program. The DCBIA submitted a letter dated June 24th, 2005, in which it recommends the elimination of the residential recreation space requirements.

In summary, our reasons for such a recommendation are as follows: First, we believe it is fundamentally unfair and discriminatory for the developers of

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residential projects on land that is zone commercial, SB or CR to be required to provide RRS, while at the same to developers of residential projects on land that is residentially zoned have no such requirement.

We believe there is no reason an apartment building on 14th and P Streets should be burdened by RRS requirements while an apartment at Connecticut and Chesapeake Streets should have no such requirement.

Second, to the extent that there was a basis for RRS requirements in the '70s, such a basis no longer applies today.

The commercial areas of the District where residential uses are being developed have become an 18-hour environment with a wide variety of cultural, recreational, social and other uses and amenities that serve the needs of the residents.

We no longer need to supply nor do residents want ping pong tables or party rooms.

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Third, since the 1970s the zoning regulations have been substantially revised to require in those very same commercial zones, a wide variety of items such as mandatory ground floor retail, design standards pertaining to linear street frontage, ceiling heights and other matters, use restrictions, FAR and high reductions and many more expressions of recent public policy.

Because of the cost of these public policy innovations, as well as their effects on the building design and use, it is simply no longer fair or appropriate to require that these same buildings also provide RRS.

Fourth. The real impact of the RRS requirements were apparently not understood when they were first adopted in 1974 for reasons pointed out by OP in its report and by Jacques DePuy in his testimony earlier this evening.

As a result, the BZA has been

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asked on a whole host of cases to dramatically reduce or eliminate RRS requirements on a project-by-project basis. I might add that PN Hoffman has itself prosecuted a number of such cases before the BZA.

The very large number of variances granted by the BZA clearly demonstrates that the RRS requirements are burdensome, costly, inappropriate, outdated and/or unnecessary.

Let me now address the proposal made by the Office of Planning.

This proposal, as you may know, would require that in areas not mapped for inclusionary zoning, affordable housing requirement would nevertheless be required if no RRS was provided. The DCBIA strongly opposes this proposal. We believe that this proposal will essentially nullify the decision of this Commission if it votes to eliminate RRS requirements because developers, given the choice between providing RRS or IZ units, will continue to provide unneeded and outdated RRS

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space or continue to burden the BZA with requests for relief from RRS requirements.

This we submit would be an absurd result. We also believe it is inappropriate and unfair to burden the developers with an IZ requirement in zoned districts where this Commission has determined, that as a matter of public policy, no such IZ requirements should apply.

To substitute IZ's requirements for RRS requirements is truly mixing apples and oranges. It is also the imposition of one public policy in an area deemed inappropriate for such a public policy in lieu of the imposition of another public policy that is badly outdated and flawed. This, we believe, makes no sense.

Let me conclude by reminding the Commission that the cost of the RRS programs are really borne by the economy and purchasers and rental tenants, not the developers. Such purchasers and tenants are the ones who are

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required to insure, maintain, manage, repair and replace the roof top pools, exercise, game rooms and meetings rooms and all the facilities that are provided by the developers in response to the mandatory RRS.

As you will hear from other witnesses, such purchasers and tenants do not want these facilities. Nevertheless, as a result of the outdated policy, they are the ones who must bear the cost.

I would be pleased to answer any questions you may have.

Thank you.

CHAIRPERSON MITTEN: Questions from the Commission? Any questions? No questions.

Thank you all, gentlemen, for your testimony.

I don't see Mr. Pannick here.

MR. KIRSCH: I'm representing him.

CHAIRPERSON MITTEN: Okay.

David Mayhood? Sandy Wilkes?

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Jeff Miller?

CHAIRPERSON MITTEN: Go ahead.

MR. KIRSCH: Hello. My name is Bruce Kirsch. I'm the Director of Acquisitions for metropolis Development Company and I'm here representing Scott Pannick, the owner of Metropolis Development.

Thank you very much for allowing me to share my thoughts this evening on behalf of the company.

As my peers in the industry have already noted, it's very difficult to balance the various requirements that are placed upon developers in terms of massing a building and satisfying all of the other ground floor and lot occupancy requirements for multi-family developments.

So, it's perhaps the law which came about in the '70s has not adapted or responded properly to all these subsequent requirements that are perhaps more germane today.

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Secondly, I believe that in general, we need to focus and be more sensitive to encouraging developing of housing, in general, in the District. I think that developers face so many pressures and take on so much risk and putting capital at risk and that what they need to help them and encourage them to develop is the ability to be flexible to provide amenities that are being demanded by the market.

And as my peers have mentioned, a lot of these RRS facilities are perhaps no longer relevant. And developers need to supply the demand for other amenities such as guest parking spaces, etcetera.

I'd like to make a point. It may be a little bit out of scope, but I'd like to make the point that I came here to D.C. a year and a half ago after studying real estate and I was so excited to help develop Washington, D.C., the urban corps. And this is what we have been doing at Metropolis. And around six

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months ago, once mandatory inclusionary zoning became more and more real, I literally had to go out and buy a car so I could go outside of the District to look for properties to invest in. And I really think that it's tragic that, you know, developers have to look outside of the District in order to make investments.

So, I'm hoping, in general, that the city government can take note of that and try to be a little bit more encouraging of development within the city.

CHAIRPERSON MITTEN: Thank you.

Mr. Mayhood.

MR. MAYHOOD: Good evening. I'm David Mayhood, President of The Mayhood Company.

And we have been involved in urban condominium sales. Believe it or not, we sold the West Bridge, the aforementioned West Bridge back in 1978, when this law first came into existence. So, we've had kind of almost 30 years with experience dealing downtown with

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the consumer side of this question.

Obviously, here with the developers, I happen to be involved with three gentleman with me here on different projects. I caught myself in the middle of them. So, I'll try to take the consumer side and let them tell you the developer side.

First of all, you kind of take a step back and say it's even interesting that from a zoning regulation we're getting involved or got involved a long time ago with what the amenities inside a building should be. And that's maybe more a suburban comment than an urban comment.

You step back and say, why do people buy in an urban environment? Well, they buy because there's restaurants and there's shopping and there's theater and there's sports and the museums. And there's the whole walk outside.

I mean, if you kind of take a step back and the concept in suburban housing these

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days is to create village centers, walkable communities. Well, we already have that downtown to some degree. But the idea is, you walk out the front door and you experience the community of more than just a building.

An architectural design premise that the architects use, they say bundling the amenities. What they really mean is bundling the amenities a block or a neighborhood. So, everybody in the neighborhood shares.

So, the idea of turning a building in on itself and creating its own amenities for particular buildings is almost counter to the whole urban living downtown.

When we did West Bridge in 1978, if you remember that was a sealed test area. That's a good trivia question. There wasn't a whole lot else around there other than parking lots and it was very much no-man's land. There might have been sense at that point in time to turn the building back on to itself and create amenities. But you wouldn't

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think of doing that now.

So, to some degree you can see how outdated the whole concept of, let's regulate and make sure there are amenities inside the building. At the same time, we're trying to promote more housing downtown. So, it's kind of counter-culture to what we're trying to create in a village or an urban environment.

The second one goes to the question you all got into a little bit. What happens to the space?

We're all struggling with the affordability factor of housing, whether it is subsidized housing or market-rate housing. And when you've got height limitations and then rec space limitations, you're basically taking away units. You probably can't say that any clearer. If we're designated five or ten or fifteen percent of the gross square footage, something comes out of net square footage, so what we're doing, I think, as mentioned before, we end up giving a party

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room rather than housing, whether it's subsidized or not.

So, you kind of say, if the requirement is there, what really happens is there are fewer housing units or less housing in the building.

Probably the third one and I have served as the chairman of the ULI, Urban Land Institutes affordable housing committee in the District for six, seven years. I spend most of my days dealing in unaffordable housing. Market rate condominiums. And I try on the other side to a little bit give back and bring some sense of understanding of it.

I very much understand the need and laud the city for its attempts to help include to get more affordable housing. I think it is very wrong and just bad business to start putting affordable housing and rec space in competition with each other in a presentation.

What it is really saying is that

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the developer will come in and say, rather than do affordable housing or IZ housing, I'm going to put in a swimming pool or a party room. The two concepts are so different and you start creating very much the we/they. And they are too disconnected and it's just bad to try to say -- you'll end up having advocates for affordable housing in BZA presentations arguing against someone who wants to put in maybe a small fitness center. It's just not healthy to create that.

So, they happen to be two topics on the table at the same time, but they come from different families and really should not be mixed.

Thank you.

CHAIRPERSON MITTEN: Thank you very much.

Mr. Wilkes?

MR. WILKES: Good evening, Madam Chair and members of the Zoning Commission. I'm Charles C. Wilkes, Chairman of the Wilkes

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Company and Principal of MQW, LLC.

Thank you for the opportunity to testify this evening and for your attention and focus on this very important subject.

I appear on behalf of MQW, LLC, owner of property on Third Street between H and K Streets in the Mount Vernon Triangle area just north of Massachusetts Avenue.

I also appear at the request of and on behalf of William Alsup of Hines who has planned to be here this evening, but left late this afternoon for a meeting in Houston.

For the reasons discussed below, we support the elimination of residential recreation space requirements. We also oppose the, in the alternative proposal, of the Office of Planning to link Inclusionary Zoning to RRS issues.

Our opposition is based on our combined experience on a significant number of development projects. And to explain our opposition, I thought I would focus on one

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current project in particular.

MQW is a joint venture of Mt. Carmel Baptist Church, Quadrangle Development Corporation and the Wilkes Company. We plan to develop on Third Street two residential buildings, a significant amount of affordable housing, 20 percent, an office building currently under construction for a major nonprofit. And in conjunction with Mt. Carmel, an academy for grades K through 3 focusing on math and science.

Our site is zoned C2C and thus has a current requirement that 15 percent of the residential gross floor area be devoted to a residential recreation space. In our case, this would be over 42,000 square feet of floor area.

Because our site is under the jurisdiction of ROALC, we have a wide array of important social policy objectives that we plan to implement and include in the project. I mentioned the affordable housing at the rate

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of 20 percent.

We're also providing much needed parking for a cherished and important church that very much wants to stay in the District of Columbia.

I have in the testimony some additional issues, very technical issues, that have to do with this particular site and its proximity to the I-395 under pass that make the site complex and very expensive to develop.

As a result, the 15 percent requirement is far too costly and impossible to satisfy. As David mentioned and we certainly have seen, condominium purchasers don't look for recreation space beyond the fitness room and certainly don't want to pay to insure, maintain and manage such space.

In addition, the OP proposal to link the RRS program with Inclusions Zoning requirements is not only inappropriate but, frankly, even feels to some extent punitive.

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Mr. Alsup, on behalf of Hines, has asked me to state that he endorses the general position that I've outlined and supports the elimination of RRS requirements. And he and I agree that the proposal is inappropriate and we fail to understand why sites that are exempt from IZ requirements as a matter of sound public policy would then suddenly have, perhaps, an IZ requirement.

Further, we believe that developers faced with the alternative of providing RRS or complying with an IZ requirement will in almost every case choose to proceed with the RRS or proceed as quickly as possible to the Board of Zoning Adjustment. In such event, all of the efforts of the Commission and all of the good thinking that has taken place around this issue would be lost.

Hines, like our company, feels strongly that the elimination of RRS is a much needed step that the Commission can take at a

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time when the development of housing in the city, particularly rental housing, is an enormously difficult challenge.

So, in conclusion, we respectfully urge the Commission to eliminate the RRS requirements and to disapprove of the alternative proposal.

Thank you very much.

CHAIRPERSON MITTEN: Thank you, Mr. Wilkes.

Mr. Miller?

MR. MILLER: My name is Jeff Miller. I represent Lower Enterprises, a developer of mixed-use developments here in Washington, D.C. And I must have picked the short straw to follow my esteem colleagues Sandy Wilkes and David Mayhood.

I come in support of elimination of the residential recreation requirement and in opposition to the linking of the elimination of that to affordable housing.

Reduction of rec space

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requirements should not be seen as an accommodation, but the reversal of a policy regularly recognized by the BZA and in the communities in which we develop as being inappropriate policy.

We're not building gated communities in Loudoun County, but projects that exist within and add energy to the historic urban fabric of the neighborhoods in which they're built.

Thinking about the emerging neighborhoods that we've all been responsible for enlivening in the last five years, Pent Quarter, the Mt. Vernon Triangle, U Street, Columbia Heights, 14th Street and Capitol Hill, these are all neighborhoods that would be stagnant if the residents were inside all day using private facilities.

We feel that life outside the door is the prime amenity for our residents, proven by the success of our project, City Vista, a mixed use project in the Mt. Vernon Triangle,

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where the retail mix is driving strong sales.

To the extent we include some recreational amenity space, we do it with great thought, specificity and anticipate the market's requirements. It may be easy to throw and 10,000 foot deck on a roof and call it a recreational space, but generally that is not responsive to the market, nor does it reflect the intent of any specific policy.

In conclusion, one example of poor application of rec space requirements in the DD is the building near the Verizon Center. On the first floor off the lobby and on street frontage, were placed a rarely used fitness center and a multipurpose room. The space was inappropriate for residential occupancy and had required a BZA variance to convert it to that. But could have, instead, served as retail, a much greater amenity for the residents than a dusty treadmill.

In conclusion, we're in the grips of a developer's perfect storm. We've seen

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increased construction costs, a softening residential market and a strengthening regulatory environment. There's a need to encourage multi-family housing development in the city rather than discourage development with additional burdens.

Thank you.

CHAIRPERSON MITTEN: Thank you, Mr. Miller.

Any questions for the panel?
Don't have any questions. Okay.

Thank you all.

Last but not least, I have Eric Colbert on the list and anyone else who would like to support of either alternative proposal can come forward now please.

MR. COLBERT: Good evening, Madam Chair and members of the Commission.

My name is Eric Colbert with Eric Colbert & Associates. And I'm here to support the elimination of the requirement for residential recreation space and to not link

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the elimination with other requirements for Inclusionary Zoning.

When I first visited Washington as an adult in 1975, I was walking downtown early in the evening on a week night. I was trying to find a restaurant on M Street near 19th Street, N.W., in the heart of the central business district.

I was struck by the evidence of people on the sidewalks. It was a foreboding ghost town. Needless to say, the restaurant was not open.

At the time, I was visiting a family that had been in Washington for generations. They told me dramatic stories about the riots that were still fresh in their memory, having only happened a few years earlier after the assassination of Dr. Martin Luther King, Jr.

Racial tension and fear were an overwhelming force that caused many business owners to flee downtown. Residential

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construction in or near the center of the city was virtually nonexistent. This is the atmosphere that helped create the introduction of the residential recreation space requirement. It was a fortress-like mentality that assumed that the inhabitants of an apartment building downtown would not be safe on the streets.

Since that time, dramatic changes have created a different environment for folks downtown. There has been a cultural renaissance with a proliferation of galleries and small theaters. Many retail service establishments that were nonexistent are now thriving.

In the past few years, numerous furniture stores have opened along 14th Street, which was at one time known as the riot quarter and its only thriving businesses were strip clubs.

Only a few years ago people were deathly afraid to walk along the 1400 block of

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P Street at night. Now, you can go to the Whole Food at 9:00 p.m. and it is packed full of shoppers. Outdoor greens space is like Logan Circle have been refurbished for the nearby residents.

All parts of the city are dramatically more diverse now than they were in the '70s. The sidewalks are flooded with people at all hours of the day and night. Requiring massive amounts of residential recreation space leads to isolation and works against the current tendency of people of all races and economic classes to mix harmoniously in these newly revitalized areas.

My firm is one of the most active architectural firms designing apartment structures in these commercial and mixed-use zones. At least 75 percent of our projects have had to go through the BZA process to obtain approval to significantly reduce the amount of recreation space required. Other architects have had the same experience.

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I appreciate the dedication of the BZA members and do not want to waste their resources by having them routinely review and approve the same type of variance. Matter of right projects, where we provided the required recreation space, were burdened with unnecessary costs for space that will never be used.

The argument that a reduction in the requirement for residential recreation space should be linked to an increase in the amount of affordable housing required is flawed. The vast majority of residential recreation space we provide is on the roof and reducing this will not allow the developer to provide additional apartments. Most of the interior recreation spaces are located below ground where there is inadequate light and ventilation for apartments.

The Inclusionary Zoning laws are moving forward at a reasonable pace and, therefore, we will have to provide this

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housing anyway.

With the abundance of apartment building construction that has occurred in the last five to seven years, it is easy to forget that prior to that very few market-rate apartment buildings were constructed in D.C. during the previous 25 years. For over a year now, the sales of condominiums has slowed dramatically. Many planned developments are now being put on hold.

The combination of rapidly increasing construction costs and softness in the market has radically changed the market dynamic. The IZ requirements coupled with the pending green building legislation will further impact the viability of many developments. Enormous taxes for the city have been generated from all aspects of the recent apartment building and condominium development and construction.

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lifting this burden. It's a win-win situation.

CHAIRPERSON MITTEN: Thank you.

Any questions? Any questions?

Thank you very much.

Anyone else who would like to testify in support?

Anyone who would like to testify in opposition?

Okay. Well, rather than put this off any longer, what I would like to do is propose that we take proposed action this evening and that we adopt the first alternative, which would be to repeal the provisions as advertised, which was the first instinct of the Commission when we took this up a year or so ago.

And while I would like to give more consideration to Mr. Williams' proposal and so to air on the side of inclusivity, rather than exclusivity, I will include in my motion that we adopt the changes to 411 that

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Mr. Williams proposed. And then if we would like to reduce any of his suggestions for final action, that we could take it up. But at least that way it would all be in for the advertisement of the notice of proposed rule making. And I would move that.

VICE CHAIRMAN HOOD: I would second that and I think we're moving in the right direction. I would especially say that with the amount of questions that we asked on the panels.

Thank you.

CHAIRPERSON MITTEN: Well, they're just convincing of what we convinced ourselves of a year or so ago. But we did want to give the Office of Planning an opportunity to present their case for an alternative. And I'm please that they're willing to accept the first alternative as well.

So, is there a discussion? Any discussion? Okay.

Then all those in favor, please

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say aye.

(AYES)

CHAIRPERSON MITTEN: Any opposed?

Mrs. Schellin.

MRS. SCHELLIN: Staff would record the five four to zero to one to approve Zoning Commission Case No. 05-02, by repealing the provisions as advertised and also adopting the changes to Section 411 as stated in Mr. Williams' proposal.

Commissioner Mitten moving, Commissioner Hood seconding, Commissioners Jeffries and Turnbull in favor. Commissioner Parsons not present, not voting.

CHAIRPERSON MITTEN: Thank you. And thank you all for your participation this evening.

We're adjourned.

(Whereupon, the above matter was concluded at 7:34 p.m.)

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