

The Committee of 100

on the Federal City



January 27, 2021

ZC Case 20-02: Comments by the Committee of 100 on the Office of Planning’s Revisions to Proposed Text Amendment to Subtitles C, F, G, I, K, and X Expanded Inclusionary Zoning

This letter responds to the revised proposal filed January 21, 2021 by the Office of Planning (OP) on Expanded Inclusionary Zoning (Case No. 20-02). (Exhibit 34A). Expanded Inclusionary Zoning (or IZ Plus) is intended to build on Regular IZ by creating higher set-aside requirements for certain zoning applications with map amendments. The Committee of 100 on the Federal City (“C100”) shares with the Zoning Commission (the “Commission”) the goal of creating more affordable units, which we see as a moral imperative. C100 has consistently advocated for more affordable housing within the City. Our concern with OP’s proposal is that it will open the door to more development (and related displacement of the very individuals it is intended to help) that benefits developers and investors without making much of a dent in the City’s affordable housing need, especially at the lowest income levels. OP’s revised proposal underscores our concern.

Ancillary to our substantive concerns are problems regarding the way in which the revised proposal is being presented to the Commission. This is one more instance of a substantive rule change being submitted to the Commission as a minor or procedural adjustment. OP’s revised proposal changes the formula for calculating bonus density for IZ Plus. One of the changes would be to base the IZ Plus requirement on the amount of bonus density actually used at a particular site, rather than on the amount of bonus density potentially available under the zoning map change. The formula is central to the rulemaking, yet OP describes it as a “minor revision.”

This major change came at the last possible minute. The Commission in fact has received three last minute filings on IZ Plus. First, on November 13, 2020, three days before the public hearing on the proposal, OP amended the proposal to supplant the initial approach (which based the added IZ requirement on an escalating Floor-Area-Ratio (FAR) scale) with a system with a sliding scale of percentage-increases in density. In response, C100 stated: “The 11th hour changes to Expanded IZ filed by the Office of Planning on November 13, 2020 underscore the need for further review.” (Exhibit 19.) Second, on December 28, 2020, apparently the final day for the public to comment on the Notice of Proposed Rulemaking, the District of Columbia Building Industry Association (“DCBIA”) submitted a comment requesting that: (1) the IZ Plus requirement be calibrated to the density that is actually utilized as a result of a map amendment; and (2) the IZ Plus requirement be calibrated to the matter of right density gained through the map amendment over the matter of right density in the supplanted zone. OP’s proposal, which DCBIA described as “erroneous,” included the existing, matter-of-right IZ density increase as part of the density gained through the map amendment. DCBIA describes its proposed calculation as an “apples to apples” measure. Finally, on January 21, 2021, OP revised its IZ Plus proposal again, discarding the bonus density measure it had advertised to the public and substituting for it DCBIA’s formula.¹ In effecting the

¹ We also note that OP’s submission was not filed timely, necessitating OP’s request that the Commission waive its rules.

substitution, OP stated that: (1) the proposal should be revised to tie the Expanded IZ set-aside requirement to the “achievable” Expanded IZ density actually utilized in a project in the new zone, not to the potential maximum increase in density between the current and new zones; and (2) the calculation should be “apples-to-apples,” based on the total change in density from the base zone without IZ bonus density to the total FAR utilized by the IZ Plus Inclusionary Development in the new zone. (Exhibit 34A.) On these two points, OP appears to be singing DCBIA’s tune.²

C100 does not find DCBIA’s requested revisions, which OP has adopted without comment, to be facially unreasonable. But they certainly merit further analysis of their impact, which OP has not provided. They warrant an opportunity for public response, which is not available. Whatever else they may be, they are not *minor*, and cannot be issued by the Commission as final without such opportunity. A vote to approve the revised rules at this time would violate the Administrative Procedure Act. Substantively, it is apparent to C100 that these revisions would reduce the affordable housing commitment in some cases. One issue that appears to jump off the page concerns the affordable housing set-aside for Type II construction projects. Under the proposal, the lower requirements for Type II (steel) construction would now apply to any building over 50 feet, a lower threshold height than the 85 feet previously proposed. Another point to consider is that, by basing the IZ requirement on utilized density, the proposal would offer a benefit to developers who decide to underutilize a property. Down the road, the developer apparently would be able to get the benefit of the full density increase when selling the property even though the map amendment approval may have assumed a less dense project. No opportunity has been given to the public to comment on the revisions. In contrast to OP’s Set Down Report (Exhibit 6), no examples are given as to how the calculations would be applied. Further, no economic analysis is offered. We question whether at least some of the individuals who testified in support of OP’s proposal on November 16 (and whose support is mentioned by OP in its recent filing) might feel they are the victim of a “bait and switch” maneuver.

This letter is intended as a response to the changes proposed by OP on January 21. We stand by all the comments made in our previous submission on November 13 (Exhibit 19) and our testimony at the public hearing on November 16. We would be remiss, however, if we didn’t mention that, on November 13, we asked why certain zones are excluded from Expanded IZ’s higher IZ requirements. OP’s filing provides some explanation for the exclusions. Notably however, no explanation is given for the exclusion of downtown zones from IZ PLUS, or the regular IZ Program. Given talk of a flood of office conversions due to the long-term impacts of the pandemic, the proposal misses a significant opportunity for increasing the stock of affordable housing. The downtown area represents tremendous opportunity for more affordable housing. Its exclusion is an omission that needs to be corrected.

Finally, as we stated on November 13, and given the IZ program’s embarrassing results to date, C100 recommends that the program deserves a top-to-bottom review. In any case, C100 again requests that the public be given more time to view the Expanded Inclusionary Zoning proposal.

Thank you.

Sincerely,



Kirby Wining, Chair

The Committee of 100 on the Federal City

² Several other changes, not addressed here, were also made to the proposed rule.