



March 5, 2021

ZC Case 20-02: Comments by the Committee of 100 on the
Notice of Second Proposed Rulemaking on Amendment to Subtitles B, C, F, G, I, K, U, X and Z for
Inclusionary Zoning Plus

This letter responds to the Notice of Second Proposed Rulemaking for Inclusionary Zoning Plus published in the DC Register on February 26, 2021 (the “Notice”). The Committee of 100 on the Federal City (“C100”) has consistently advocated for more affordable housing within the City. We share with the Zoning Commission (the “Commission”) the goal of creating more affordable units, which we see as a moral imperative.

It should be understood that IZ Plus is triggered by map amendments that increase density. Our concern with the Office of Planning’s (“OP’s”) proposal is that the related affordable housing benefits will, at best, be minimal, and could result in the displacement of the very families IZ Plus is intended to help. As discussed in detail below, in some instances fewer affordable units may be produced under IZ Plus than would be generated under regular IZ. Overall, the proposal benefits developers and investors without making much of a dent in the City’s affordable housing need, especially at the lowest income levels. As stated in the FY2019 Inclusionary Zoning Annual Report, inclusionary zoning produced only 196 affordable units in 2019.¹ That same report states that at the end of FY2019, 8,025 households were registered under the IZ Program.² Thus, despite the need and demand for affordable housing, results under the IZ Program have been meager. It is hard to see how IZ Plus will do much to address the problem.

Regulatory History of OP’s IZ Plus Proposal

The record for IZ Plus reveals OP’s willingness to bend over backwards to adopt the positions of the District of Columbia Building Industry Association (“DCBIA”). On December 28, 2020, the final day for the public to comment on the original Notice of Proposed Rulemaking, DCBIA submitted a comment requesting that: (1) the IZ Plus requirement be calibrated to the density that is 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. DCBIA describes its proposed calculation as an “apples to apples” measure. (Exhibit 33.)

In response, on January 21, 2021, OP revised its IZ Plus proposal, discarding the measure it had advertised to the public and substituting for it DCBIA’s formula. In effecting the 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

¹ FY2019 Inclusionary Zoning Annual Report (Exhibit 32), published by Mayor Muriel Bowser and the Department of Housing and Community Development, p. 4.

² Id., p.8, footnote 8.

FAR utilized by the IZ Plus Inclusionary Development in the new zone. (Exhibit 34A.) On these two points, OP appears to have been singing DCBIA's tune.

The Commission has now reopened the comment period for seven days to allow the public to respond to the new proposed formula. For the following reasons, C100 believes that the proposal merits further analysis and revision, before the Commission acts, in order to assure that IZ Plus does not result in a reduced affordable unit set-aside.

Concerns and Comments

a. **IZ Plus Could Lead to Less Affordable Housing.** First, OP needs to provide real-life examples of how the new IZ Plus calculation would work (as it did in its Set-Down Report dated January 3, 2020 and Set-Down and Prehearing Report dated September 4, 2020³), together with an economic analysis. Because the IZ Plus proposal has changed several times since those reports were issued, those examples are no longer relevant. Examples would reveal the extent of the increase or decrease in any affordable housing benefit between IZ Plus and regular IZ. On initial review, it would appear that a map amendment that increases total FAR utilized in non-stick construction by 20% would result in a 0.3% increase in the otherwise required set-aside (i.e., 300 SF for each 100,000 SF of additional FAR, not even enough for a small studio apartment). In the attachment, we show the impact of IZ Plus on a possible redevelopment of the Mazza Gallerie site, **where IZ Plus with a map amendment could result in a significantly lower IZ set-aside than the current IZ requirement with current zoning.**

b. **Bonus Density Arm of IZ Formula is Eliminated.** Second, the bonus density arm of the Inclusionary Zoning formula is missing. Under Subtitle C, Section 1003.1 of Title X of the DCMR, a development employing "stick" construction which is located in a zone with a by-right height limit of fifty feet (50 ft.) or less shall set aside for inclusionary units the **greater of** ten percent (10%) of the gross floor area dedicated to residential use *or* seventy-five percent (75%) of bonus density utilized. A similar formula is used for steel and concrete construction, with the formula being the **greater of** eight percent (8%) of the gross floor area dedicated to residential use or fifty percent (50%) of bonus density utilized.⁴ The bonus density calculation would apply if the resulting number turns out to be higher. However, this arm of the two-prong test has been deleted in the Notice. Thus, in any case where the bonus density formula would otherwise apply, the affordable housing requirement under IZ Plus could very well be lower than under current law.

c. **Planned Unit Developments.** One issue that deserves further analysis is whether IZ Plus will remove the opportunity for community input on major developments by facilitating map amendments outside of the PUD process. It is certainly possible that IZ Plus will inadvertently accelerate the trend away from PUD's. While the public may weigh in on the desirability of a proposed map change, absent a PUD, its ability to address a particular project or to negotiate for benefits will be lost. Is this the Commission's intent?

d. **Proposal Reflects Advances in Construction Technology.** We are pleased that the proposal eliminates the height restriction to the higher affordable housing requirements for Type II (stick) construction. We hope that this change, which reflects advances in construction technology, will also be incorporated into regular IZ.

e. **Uncertainty Arising from "Density Utilized" Formula.** One issue with the new "density utilized" formula that should be considered is what would happen at a later time if the property were sold. Specifically, what happens when a developer is granted a map amendment but only partially utilizes the full density permitted in the new zone? It would appear that there is nothing that would prevent the new owner from redeveloping the property to greater density without further zoning review. This would be particularly troublesome if community and Commission support for the up-zoning was based on the modest density increase proposed by the original developer.

³ Exhibit 2, pp. 7-8; Exhibit 6, pp. 6-7.

⁴ See Subtitle C, Section 1003.2 of Title X of the DCMR. Also, for both stick and steel construction, the formulae include ten percent (10%) of the penthouse habitable space.

Downtown Zones and Office Conversions

We continue to believe that office-to-residential conversions and downtown zones should not be excluded from either the regular IZ program or IZ Plus. As we read the IZ Plus proposal, some downtown zones are covered by IZ Plus, but others are not (i.e., D-2, D-4 and D-8). We find no explanation in the record for this distinction.⁵

In this regard, we support the view of Vice Chair Robert Miller at the January 28 public meeting on IZ XL (Tr., pp. 78-80). Office conversions due to the long-term impacts of the pandemic and residential development in the downtown area offer significant opportunity for expanding affordable housing. They should be covered in both regular IZ and IZ Plus.⁶

Procedural Deficiency

Ancillary to our substantive concerns are problems regarding the way in which revisions to the original proposal have been presented to the Commission. OP's Supplemental Report #2 dated January 21, 2021 (Exhibit 34) states that it is making minor revisions and requirements, and Supplemental Report #3 dated February 16, 2021 (Exhibit 34 B) states that the additional changes being made are not substantive. This is another instance where substantive rule changes are submitted to the Commission as a minor or procedural adjustment. Given the circumstances, C100 believes that the seven-day comment period for the Notice of Second Proposed Rulemaking is inadequate.

Further, OP states that the Zoning Commission must give great weight to the support for OP's original petition filed on September 4, 2020 by ANC3E. (Exhibit 17.) OP fails to mention that the proposal has been changed three times since then, in each case watering down the affordable housing commitment. The ANC3E resolution should not be given great weight.⁷

Conclusion

Given the IZ program's embarrassing results to date, the affordable housing commitment of the Program should be strengthened, not weakened. Would it not be better to come up with a simple formula that maximizes the set aside, lowers the applicable MFI, expands the geographic applicability, and increases the required number of three to four bedroom units? C100 recommends that the program undergo a top to bottom review. OP's new proposal for IZ Plus not only reduces the affordable housing requirement but is so complicated that hardly anyone will be able to figure out what is going on. What kind of public policy is that?

Thank you.

Sincerely,



Kirby Wining, Chair

Committee of 100 on the Federal City

The Committee of 100 on the Federal City

⁵ We note that in our November 13, 2020 comments (Exhibit 19), we asked why certain zones are excluded from Expanded IZ's higher IZ requirements.

⁶ It should be noted that OP states that IZ XL will not apply to an IZ Plus project. This means that without further change office conversions and map amendments in at least the D-2, D-4, and D-8 zones will not be subject to any IZ requirement.

⁷ The Notice also states that on January 28, 2021 the Commission voted to take Revised Proposed Action to adopt the Petition, as published in the Notice of Proposed Rulemaking, with the revisions proposed by the OP 2nd and 3rd Supplemental Reports. Notice, p. 4. This is technically inaccurate, as the 3rd Supplemental Report was not filed until later (on February 16).

Attachment (see below)

Mazza Gallerie Example

Mazza Gallerie

Assumption: a mixed-use building to replace Mazza, with the maximum allowed non-residential and the remainder residential

Land area: 83,294 SF

Currently zoned MU-7

Proposed amendments to the Future Land Use Map would allow up-zoning to MU-10

MU-7: maximum non-residential FAR 2.5; maximum total FAR 4.0; maximum total FAR 4.8 with IZ

MU-10: maximum non-residential FAR 3.0; maximum total FAR 6.0; maximum total FAR 7.2 with IZ

Without a map amendment, with IZ, the maximum FAR would be 4.8, with a maximum of 2.5 non-residential. The IZ set-aside requirement would be 33,318 SF, based on 50% of the bonus density. With a map amendment to MU-10, the maximum FAR would be 7.2, with at most 3.0 non-residential. The IZ set-aside requirement, based on 50% of the bonus density would be 49,983 SF.

Under IZ Plus, the IZ requirement for an MU-10 project would instead be 10% of the residential SF, or 34,983 SF, less than the current IZ requirement for MU-10, and only about 1,660 SF more than the requirement for an MU-7 project.

If the developer configures the units in an MU-10 project so that 20% of the units are 3 bedrooms or more, it will qualify for a 20% reduction in the IZ Plus set-aside requirement. The set-aside thus would be 27,987 SF. This is about 12,000 SF less than the regular IZ set-aside requirement in MU-10, and about 5,330 SF less than the IZ requirement for a MU-7 project.

Bottom line: The developer is granted additional density of nearly 200,000 SF, and the IZ set-aside requirement under IZ Plus (compared with a matter of right project without a map amendment) increases by 5% (less than the equivalent of 3 one-bedroom apartments) or, if the development qualifies for the 20% reduction in the set-aside (§1003.9), decreases by 16% (more than the equivalent of 5 three-bedroom units).⁸

⁸ C100 is available to explain all set-aside calculations.