

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 681-D

Case No. 89-25

(Downtown Development District--Affordable Housing Rules)

January 11, 1993

The Zoning Commission for the District of Columbia initiated this case to consider and adopt appropriate amendments to the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. This initiative is a component of the Downtown Development District overlay zone. The affordable housing amendments would regulate the provision of off-site affordable housing, in place of required on-site housing in the Downtown Development District, and further the implementation of the Comprehensive Plan for the National Capital, as amended.

Amendments to the text of the Zoning Regulations of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed.). The public hearing was conducted in accordance with the provisions of DCMR 3021.

The notice of public hearing containing the proposed text for the affordable housing regulations was published in the D.C. Register on October 26, 1990 (37 DCR 6794), and in the Washington Times on October 25, 1990.

On December 10, 1990, the Zoning Commission conducted a public hearing in this proceeding, in the course of which several District government agencies and five other witnesses spoke.

All Advisory Neighborhood Commissions (ANCs), particularly ANC 2C, were notified of the public hearing in this case. The Zoning Commission received written comments dated December 6, 1990 from ANC 2C; however, no ANC representatives appeared to testify at the public hearing.

The Office of Planning (OP), by memorandum dated December 5, 1990, and by testimony presented at the public hearing indicated that it favored adoption of the affordable housing mechanism regulations, generally, as advertised. OP stated that it wanted to benefit from all the testimony presented at the hearing and submit a further position if warranted by the testimony. OP offered comments on two substantive matters:

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- o That the official assessed values of the City rather than independently ordered appraisals should be used as a basis for computing the amount of the in-lieu payment because they are a matter of public record, and there is a consistent methodology followed by the City's tax assessors; and
- o That OP has offered a rewrite of the Housing Contribution Formula to read as follows:

1706.21 If off-site housing is supplied by a contribution to the Housing Production Trust Fund or to a nonprofit housing sponsor, the amount of the contribution should be computed according to the additional commercial space in the development. The contribution shall be equal to 100 percent of the assessed value of each square foot of linked commercial development, as defined in this chapter.

The Department of Housing and Community Development (DHCD) provided testimony regarding the affordable housing regulations, and restated its support of the "housing alternative", proposed by the Coalition for Nonprofit Housing Developers submitted to the Zoning Commission on September 8, 1990. This alternative included mechanisms for the provision of off-site affordable housing. DHCD stated that it was unaware that the Commission's hearing was to focus on such narrow issues: the mechanism for providing off-site affordable housing and the appropriate value to use in calculations -- assessed or appraised value.

The Department of Housing and Community Development is charged with responsibility for administering the Housing Production Trust Fund and thinks it is an appropriate mechanism for linking development with the production of off-site affordable housing. DHCD does not envision excessive administrative costs because the Department, as currently staffed, would administer the Fund.

The two key issues for decision by the Zoning Commission are identified below, along with a brief summary of the testimony and comments made about the issues at the public hearing:

1. How should the value of the financial contribution for off-site housing be determined?
 - o This payment would be made by a developer/property owner in the DD District for construction of extra commercial density on-site, with the financial proceeds going to assist affordable housing development anywhere in the city.

- o The proposed text provides for the contribution to be 100 percent of the assessed value of the commercial FAR on the subject property, as determined by the tax assessment for the year beginning the previous July 1 (the current tax assessment). Advantages cited for using assessed values as a basis included:
 - A. Impartiality -- The government assessors update the property assessments according to market values each year. There is a specific and consistent methodology.
 - B. Certainty -- Assessments are a matter of public record, the information can be obtained by all parties involved.
 - C. Efficiency -- An individual appraisal, while perhaps appropriate to PUDs, is needlessly cumbersome for a matter-of-right process.
- o An alternative is to have a specific appraisal, probably by the Department of Finance and Revenue or the Office of Business and Economic Development, and to assess 50 percent of the market value of commercial FAR as the financial contribution. Some comments:
 - A. This would provide a more accurate valuation of the commercial FAR and the payment, especially at the time of the transaction, which may be several months after July 1. With property tax assessments lagging substantially behind market values, this would be more accurate.
 - B. Contrary to the above argument, it was stated that commercial assessments in Downtown are running at about 91-92 percent of market values, and that significant assessment lags occur only in boom years. Values may also decline, in which case there is no timing problem with July 1, or there is a different timing problem.
 - C. If assessments typically lag behind market values, the policy solution is simply to adjust the percentage of the assessed value that determines the contribution.

- o The range of testimony was generally between 50 percent of market value and 100 percent of assessed value. Several witnesses noted that the entirety of the value of increased commercial FAR should not be captured, or there would be little incentive to participate.

- 2. What entity or entities should receive the financial contributions? - the D.C. Housing Production Trust Fund, generic governmental housing trust funds, private sector housing trust funds, nonprofit housing sponsors, for-profit housing developers?

Government Trust Funds:

- o D.C. Housing Production Trust Fund. There was a general consensus that this fund should receive some or all of the contributions. Other Comments:
 - A. The reference to governmental housing trust funds should be stated generically (housing trust funds) so that if additional trust funds are created or if the current one goes out of existence, the Zoning Regulations will not need to be amended.
 - B. Governmental trust funds have the advantage of being controlled by the public, with established means of oversight of operations and dispersals of funds, and with criteria for allocating the funds (with competition) among housing producers, according to prioritized needs by housing type and neighborhoods (annual HAP update).
 - C. In response to the question of diversion of trust fund monies to administrative overhead, DHCD responded that, by law, administrative costs cannot be paid from the trust fund.
 - D. As to the potential problem of a contribution from DDD languishing in the fund before being used (i.e., in comparison to a direct contribution from developer to housing sponsor), DHCD noted that it has a back log of nonprofits waiting to do business and that there would be one person as the

clearinghouse/administrator of the fund, and efficient structure compared to a committee board.

- E. When the contribution is to a governmental trust fund, that payment would be required in advance of the issuance of a building permit, and that payment would eliminate the need for a zoning provision tying the Downtown development to the timing of construction of specified affordable housing units. The trust fund would be funding an ongoing series of affordable housing developments and would be responsible for public control and follow through.

Private Sector Trust Funds:

- o Private sector trust funds also presented oral and written testimony and received support as potential recipients of DD contributions.
 - A. The D.C. Housing Equity Partnership primarily would provide grants for equity in low-moderate income housing developments. Grants for equity is in contrast to subordinated loans. The intent, in most cases, would be to leverage projects receiving loans, so that long-term affordability of the units can be achieved for somewhat lower income households.
 - B. Funds received from DDD can be administered according to controlling criteria from the source (DDD). Matching grants is a potential way of leveraging funds contributed.
- o The Washington Area Community Investment Fund (WACIF), is another nonprofit lender with a revolving loan fund assists a variety of self-help, community-based housing organizations. WACIF urges that it be eligible to receive funds from DD Development.
- o Issues relating to private nonprofit trust funds include whether Section 501(c) (3) should be the explicit qualifying criterion; whether there could be a problem of public control and accountability; allocation of funds between public and nonprofit funds; the advantages of different types of subsidies being used, e.g., equity, and of leveraging techniques such as matching grants.

Nonprofit Housing Sponsors:

- o The Notice of Public Hearing provided that the financial contribution may be made directly to a nonprofit housing sponsor, provided that various aspects about the use of the funds are certified by DHCD -- effective use of the funds, advance completion of the housing, specification of the units subsidized, and completion within three years.
- o Issues related to direct contributions to nonprofit housing sponsors include:
 - A. The advertised new definition is for "nonprofit organization," which is already defined elsewhere in the Zoning Regulations. Change is needed to avoid unintended effects on the SP zone in particular.
 - B. A key advantage is potentially expeditious production of the housing units.
 - C. Privately struck deals may remove beneficial competition and public control from the process.
 - D. The advertised review authority by DHCD (1706.22) gives broad authority to one official without much policy guidance.

At the close of the hearing, the Commission invited additional written comments on the proposed amendments in light of the testimony presented during the public hearing. The comment period ended on January 28, 1991.

On February 11, 1991 at its regular monthly meeting, the Zoning Commission considered post-hearing submissions from individuals, many organizations and the OP Summary Abstract dated February 7, 1991. After discussion, the Commission determined that the proposed text needed refinement and requested OP to provide suggested text that incorporates concerns discussed at the public hearing.

On March 11, 1991 at its regular monthly meeting, the Commission considered a March 7, 1991 OP memorandum which contained suggested text to implement the affordable housing provisions and requested additional refinements.

On April 8, 1991, the Commission considered the finalized text presented by OP in a memorandum dated March 28, 1991, OP

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recommended adoption of the proposed provisions as amended in its memorandum.

The Zoning Commission concurs with the recommendations of the Office of Planning and with some of the comments raised by organizations and persons in written and oral testimony and post-hearing submissions.

The Commission believes that after considering all of the issues presented, its proposed affordable housing regulations are an

appropriate means to regulate the provision of off-site affordable housing in Downtown.

The Commission believes that its proposed decision to approve the affordable housing regulations is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

The proposed decision to approve the affordable housing regulations was referred to the National Capital Planning Commission (NCPC) on June 12, 1992, under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By report dated July 16, 1992, NCPC found that the proposed text amendment regulating the provisions of off-site affordable housing in place of on-site housing would not adversely affect the Federal Establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

Notice of proposed rulemaking was published in the D.C. Register on June 12, 1992 (39 DCR 4183). As a result of the publication of that notice, the Zoning Commission received comments from the law firm of Linowes and Blocher dated July 24, 1992, and from the District of Columbia Building Industry Association dated July 24, 1992.

On January 11, 1993 at its regular monthly meeting, the Zoning Commission determined that the issues raised in comments to the notice of proposed rulemaking were adequately addressed and resolved during the hearing process, and during discussions and action on the amendments.

The Zoning Commission has accorded ANC 2C the "great weight" consideration to which it is entitled.

In consideration of the reasons set forth herein, the Zoning Commission of the District of Columbia hereby orders APPROVAL of

amendments to the Zoning Regulations. The specific amendments are as follows:

1. Adopt a new section 1706.21, to read as follows:

1706.21 If the affordable housing referenced in subsections 1706.4, 1706.5 and 1706.6 is provided by direct construction, the following conditions shall apply:

- (a) The owner or developer of the development site in the DD District that generates the affordable housing component may construct the affordable dwelling units or may joint venture with either a nonprofit housing sponsor or a for-profit builder-developer;
- (b) Construction of the affordable dwelling units may be either construction of a new building or buildings or rehabilitation of an existing building or buildings;
- (c) The total project cost, including acquisition, rehabilitation and long-term subsidy, shall be not less than the amount that the project would be obligated to contribute if the financial contribution option specified in subsections 1706.23 through 1706.25 had been pursued;
- (d) If construction or rehabilitation of the required square footage of affordable housing does not reach the required financial threshold specified in paragraph (c), the remaining housing requirement may be met by financial contribution to a housing trust fund or by construction or rehabilitation of additional units of housing;
- (e) If the affordable dwelling units are provided by rehabilitation, the building(s) shall have been previously in nonresidential use, or if previously in residential use, shall either have been vacant for not less than three years prior to rehabilitation or, if occupied, shall be a tenant-sponsored purchase of the building;
- (f) The Director, Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall certify to the Zoning Administrator that suitable legal and financial arrangements have been made to assure that the housing qualifies and will be continued as

affordable dwelling units for not less than twenty (20) years; that the expenditure of funds per dwelling unit and the use of the funds in combination with other financial leverage, is an effective means of assisting in the production of affordable housing; and that all conditions of subsections 1706.21 through 1706.26 of this section 1706 have been complied with; and

(g) No certificate of occupancy shall be issued for the nonresidential development within the DD District until a certificate of occupancy has been issued for the affordable dwelling units.

1706.22 If the affordable dwelling units are supplied by a contribution to a trust fund, the conditions specified in Paragraphs 1706.23 through 1706.25 shall apply.

1706.23 The amount of the financial contribution shall be determined by the formula: $C = GFA (AV/LA)/FAR \times 90\%$, in which:

(a) C = The contribution;

(b) GFA = The amount of additional commercial space that is built on-site, measured in square feet;

(c) AV = The assessed value of the land and improvements on the July 1st preceding the date on which the application for a building permit is filed;

(d) LA = The number of square feet of land included in the property;

(e) FAR = The commercial FAR used by the tax assessor to determine the assessed value; and

(f) 90% = The proportion of assessed commercial value that has been determined to be appropriate for this contribution.

1706.24 The contribution shall be made to the D.C. Housing Production Trust Fund or to both the D.C. Housing Production Trust Fund and a nonprofit housing trust fund as defined in this title; Provided, that not more than fifty percent (50%) of any contribution shall go to a nonprofit housing trust fund.

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1706.25 The payment of the housing contribution shall occur before the issuance of a building permit for the development in the DD District that generates the housing contribution.

1706.26 Beginning July 1, 1992, and on or before that date on each even numbered year thereafter, the Director, Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall report to the Zoning Commission regarding affordable dwelling units subsidized or constructed pursuant to these provisions, and, if appropriate, shall recommend any modifications needed to the affordable housing mechanisms of this chapter.

2. Amend subsection 1799.1, by adding the following definitions:

Affordable dwelling unit - a dwelling unit that is sold or rented to a household of low or moderate income.

Low income household - a household of one or more individuals with a total income equal to less than fifty percent (50%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development.

Moderate income household - household of one or more individuals with a total income equal to between fifty percent (50%) and eighty percent (80%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development.

Additional commercial space - the extra gross floor area permitted for commercial or office use on a lot in the Downtown Development District in exchange for providing or financially subsidizing affordable housing in other neighborhoods of the District.

Assessed value - the fair market value of property, as determined by the property tax assessment records of the District of Columbia Department of Finance and Revenue, as of the July 1st preceding the date on which the building permit application is filed.

Housing Production Trust Fund - the trust fund established within the Department of Housing and Community Development by the Housing Production Trust Fund Act of 1988, the purpose of which is to stimulate production of housing for low and moderate income families and individuals.

Nonprofit housing sponsor - an organization that qualifies as a nonprofit organization under section 501(c) (3) of the Internal

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Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. 501(c) (3)) and that specializes in assisting or building affordable dwelling units.

Nonprofit housing trust fund - an organization that qualifies as a nonprofit organization under section 501(c) (3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S./C. 501(c) (3), and that also:

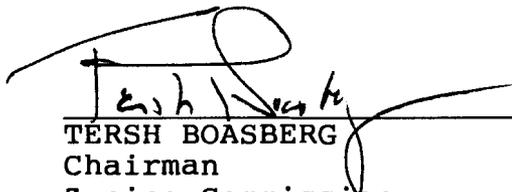
- (a) exists primarily for the purpose of assisting in the production of affordable dwelling units; (b) operates a trust fund that disburses money for affordable housing development; (c) receives applications for funds directly from developers of affordable housing; (d) has adopted criteria for selection of projects and allocation of funds among various types of affordable housing developments; and (e) has been certified by the Director of Housing and Community Development, as a qualifying nonprofit organization that also complies with Paragraphs (a) through (d) above.

Vote of the Zoning Commission on proposed action taken at its regular monthly meeting of April 8, 1991: 4-0 (Maybelle Taylor Bennett, Tersh Boasberg, William Ensign and Lloyd D. Smith to adopt the amendments, as amended; John G. Parsons - not voting, not having participated in the case).

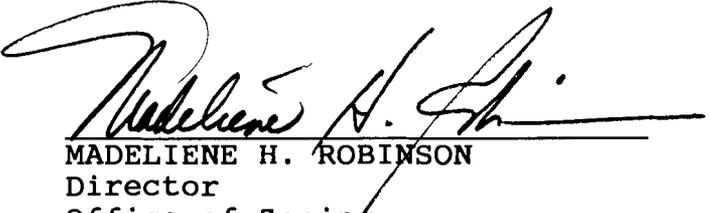
This order was adopted by the Zoning Commission at its monthly meeting on January 11, 1993 by a vote of 4-0: (Maybelle Taylor Bennett, Tersh Boasberg, William Ensign and Lloyd D. Smith to adopt; John G. Parsons - not voting, not having participated in the case).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register, that is on

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TERSH BOASBERG
Chairman
Zoning Commission



MADELIENE H. ROBINSON
Director
Office of Zoning

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