

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

TEXT AMENDMENTS: PUDS AND :

INCLUSIONARY ZONING- :Case No.

TERMINATION OF AFFORDABILITY :04-33F

UPON FORECLOSURE :

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Thursday,

January 24, 2013

The Public Hearing of Case No. 04-33F by the District of Columbia Zoning Commission convened at 6:35 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)
- PETER MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic Preservation

DISTRICT DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT

GILLES STUCKER

The transcript constitutes the
minutes from the Public Hearing held on January
24, 2013.

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

2 (6:35 a.m.)

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is a public hearing
5 of the Zoning Commission for the District of
6 Columbia for Thursday, January 24th, 2013. My
7 name is Anthony Hood.

8 Joining me tonight are
9 commissioners, Vice Chair Cohen, Commissioner
10 Miller, Commissioner May and Commissioner
11 Turnbull. We're also joined by the Office of
12 Zoning staff, Ms. Sharon Schellin, also the
13 Office of Planning, Ms. Steingasser, and DHCD,
14 Mr. Stucker.

15 This proceeding is being recorded by
16 a court reporter and it's also webcast live.
17 Accordingly, we must ask you to refrain from any
18 disruptive noises or actions in the hearing
19 room.

20 The subject of this evening's
21 hearing is Zoning Commission Case No. 04-33F.
22 This is a request by the Office of Planning for

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1 Text Amendments to the PUD and Inclusionary
2 Zoning Regulations for Termination of
3 Affordability Controls upon Foreclosure.

4 Notice of today's hearing was
5 published in the D.C. Register on December 7th,
6 2012, and copies of that announcement are
7 available to my left on the wall near the door.

8 This hearing will be conducted in
9 accordance with provisions of 11 DCMR 3021 as
10 follows: Preliminary matters; presentation by
11 the Office of Planning; reports of all the
12 government agencies, if any; reports of the
13 ANCs, in this case is all; organizations and
14 persons in support; organizations and persons in
15 opposition.

16 The following time constraints will
17 be maintained in this hearing: organizations,
18 five minutes; individuals, three minutes.
19 Please turn off all beepers and cell phones at
20 this time so not to disrupt these proceedings.

21 At this time the Commission will
22 consider any preliminary matters. Does the staff

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1 have any preliminary matters?

2 MS. SCHELLIN: No.

3 CHAIRMAN HOOD: Okay. Let's go
4 right to the Office of Planning. Ms.
5 Steingasser?

6 MS. STEINGASSER: Yes, sir. Good
7 evening. Office of Planning has been working
8 with the Department of Housing and Community
9 Development as well as the Office of Attorney
10 General in their consultation with the U.S.
11 Department of Housing and Urban Development on
12 the foreclosure issue.

13 We've made one recommendation,
14 based on that coordination ,to the advertised
15 text to include the phrase, "to the first
16 mortgagee." The Office of Attorney General has
17 advised that that would require reissuance of a
18 Notice of Proposed Rulemaking.

19 Other than that we are available to
20 stay on the record. Mr. Stucker is here also to
21 give a quick presentation from DHCD and answer
22 any questions.

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1 CHAIRMAN HOOD: Okay. Thank you,
2 Ms. Steingasser. Commissioners, any
3 questions? Any questions?

4 Mr. Stucker, do you have a
5 presentation?

6 MR. STUCKER: Yes, short one. Yes.

7 CHAIRMAN HOOD: Go right ahead.

8 MR. STUCKER: So the proposed
9 language that the Commission has before it
10 addressed the emergency rulemaking that was
11 adopted on November 19th, in one material way
12 that Ms. Steingasser mentioned, to allow for the
13 release of the Affordability Controls by a
14 foreclosure by the first mortgagee.

15 Stated in the Office of Planning's
16 report, the adjustment eliminates the incentive
17 for second trust lenders to finance loans on
18 affordable units and therefore try to get them
19 up to market rate by foreclosing on those units.

20 The continued effort by the Office
21 of Planning and DHCD to pursue adjustments to
22 these zoning regulations has two purposes. To

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1 reopen the lending options for the affordable
2 units, and also to protect the District's
3 investments in affordable housing.

4 DHCD has been in active
5 communication with HUD, and hopes to soon have
6 final determination related to the conformity of
7 these programs with HUD insured mortgage
8 guidelines. Thank you.

9 CHAIRMAN HOOD: Okay, thank you.
10 Does anyone have any questions of OP or DHCD?

11 Vice Chair?

12 VICE CHAIR COHEN: Thank you, Mr.
13 Chairman. The question that I have is there was
14 a financing issue in the disposition of the two
15 units, but there is no market issue. There are
16 households that are willing to purchase the IZ
17 units, is that correct?

18 MR. STUCKER: The issues related to
19 the inclusionary units, on the units at 2910
20 Georgia Avenue, have been many. Each buyer
21 comes to the unit and sees, you know, what they
22 want to, they're looking for something in

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1 particular.

2 They may be looking for parking.
3 They may be looking for additional closet space.
4 They may be looking for something. So in this
5 case there's, the lending is an issue,
6 absolutely.

7 VICE CHAIR COHEN: But not the
8 demand is there for those units, is that correct?

9 MR. STUCKER: We have had a lot of
10 individuals register for the Inclusionary
11 Zoning lottery and want to take advantage of the
12 Affordable Housing elements. We have not had
13 individuals move forward for varying reasons,
14 and one of the reasons may be demand.

15 One of the units is at 50 percent AMI
16 and one is at 80 percent AMI. And as it relates
17 to the market value or the market sale of those
18 other units, the 80 percent AMI unit is closer
19 to market obviously.

20 VICE CHAIR COHEN: Yes. Can you be
21 more explicit on, is it right for the city to
22 purchase IZ units? Is there something that's

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1 going to be worked out with banks? Can you
2 explain that?

3 MR. STUCKER: Sure. So if a
4 foreclosure is in the process that notice of
5 foreclosure, and also before that the notice of
6 default, is filed with the Recorder of Deeds.
7 And there's also the Department of Insurance,
8 Securities and Banking has a foreclosure
9 mediation program now where they mediate sales
10 or foreclosure actions.

11 So the districts would coordinate
12 with the Recorder of Deeds and DISB to receive
13 those notices to ensure that we are, you know,
14 able to provide homeowners who are in the risk
15 of default with counseling.

16 If you remember, the first language
17 we submitted to the Zoning Commission included
18 a requirement that we receive notice before a
19 foreclosure could proceed, and that was not in
20 conformity with HUD guidelines. HUD requires
21 that there be no impediment to a foreclosure
22 actually taking place.

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1 So we're in the position now of
2 having to look at the land records, coordinate
3 internally to make sure we can reach those folks
4 through intensive counseling, and take efforts
5 to either purchase the units.

6 And one of the elements within the
7 proposed changes to the zoning regs allows the
8 District to essentially take away the 25 percent
9 threshold, so that if there's a risk of
10 foreclosure that we can go ahead and just
11 purchase the units regardless of the numbers of
12 units within the property.

13 VICE CHAIR COHEN: And my probably
14 final question is we're tinkering around with
15 some issues that are immediate with IZ but this
16 will not change our experience. In other words,
17 I think the IZ program needs to be reevaluated
18 and maybe it's part of the Housing Task Force
19 making some recommendations.

20 But Ms. Steingasser, will this be
21 part of the rewrite to get IZ right?

22 MS. STEINGASSER: It's not been

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1 addressed as a separate issue for change. We
2 are waiting to see what the Housing Task Force
3 advises and then if there's any additional
4 action we'll look at it at that time as a separate
5 issue.

6 And if it is available to be
7 incorporated into the current regs we'll do
8 that. If it needs to go into the new revisions
9 we'll also incorporate it there.

10 VICE CHAIR COHEN: All right.
11 Well, I don't know what the Housing Task Force
12 says, apparently. I thought I was on it but then
13 I've been told that I'm not official. So I
14 really do think we need to visit this issue of
15 making the Inclusionary Zoning work, but we'll
16 wait for some recommendations from Housing and
17 your office.

18 MR. STUCKER: Okay. And if I could
19 as well is, the current, the first iteration of
20 the IZ administrative regulations that were put
21 in place in December of 2009 are currently being
22 revised, and that's the daily mechanics of IZ.

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1 We published a Notice for Comment to
2 the current regulations, received many comments
3 to the current regs, and they have been
4 undergoing a multiple-agency working group to
5 incorporate those comments and publish proposed
6 regs that would talk about the daily mechanics
7 of the IZ program. So that's already in the
8 works on the administrative side.

9 VICE CHAIR COHEN: And that doesn't
10 need to come to us then?

11 MR. STUCKER: Correct.

12 CHAIRMAN HOOD: Any other questions
13 or comments? Mr. Turnbull?

14 COMMISSIONER TURNBULL: Thank you,
15 Mr. Chair. Mr. Stucker, you mentioned
16 something about you're still waiting or you're
17 still reviewing, or you mentioned something
18 about being in compliance with HUD guidelines.
19 And it sounded like there was still something
20 open for review on that. Could you explain that
21 a little bit more?

22 MR. STUCKER: Sure. The District

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1 provided HUD with the covenants related to both
2 the inclusionary units and the planned unit
3 developments to have their review. Because HUD
4 looks at the covenant not to the underlying
5 regulations so they want to see what recorded
6 document goes on the property.

7 We did that in the fall. HUD
8 provided comments to those covenants stating
9 that things needed to be adjusted in the
10 covenants to be in conformity with the program
11 to ensure them for lending. That was the
12 predicate to these hearings being conducted to
13 make the changes to the program so HUD could, in
14 fact, provide insured mortgages.

15 And what we've done is, based upon
16 the last emergency action we revised the
17 underlying covenants, have submitted them to HUD
18 for final review and sign-off. What occurred in
19 Montgomery County, which is similar to what
20 we'll experience here hopefully, is that in the
21 end the U.S. Department of Housing and Urban
22 Development was able to issue a letter to

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1 Montgomery County saying, your program is in
2 conformity with the guidelines.

3 We're hoping to receive a similar
4 letter that we could use for lenders and for
5 developers to say, if you use this program it
6 will be in conformity and will allow a
7 streamlined process to reopen the lending market
8 for these programs.

9 COMMISSIONER TURNBULL: How long
10 before we receive a letter, do you think?

11 MR. STUCKER: I hope soon. I hope
12 soon.

13 COMMISSIONER TURNBULL: Okay.

14 MR. STUCKER: So we're in constant
15 communication. I was talking with my colleague
16 there yesterday.

17 COMMISSIONER TURNBULL: Okay,
18 thank you.

19 CHAIRMAN HOOD: Any other
20 questions? Ms. Steingasser, you mentioned that
21 we were going to have to readvertise for the
22 language to the first mortgagee?

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1 MS. STEINGASSER: Yes, sir. The
2 Office of Attorney General has confirmed that we
3 need to readvertise. We've also rephrased, I
4 should point out, Section 2603.6 where we've had
5 two bullets. We kind of put those together and
6 made it explicit that the city had the authority
7 to acquire more than 25 percent.

8 CHAIRMAN HOOD: So that this
9 readvertisement would not cause us to have
10 another hearing?

11 MS. SCHELLIN: It's a
12 readvertisement of the proposed rulemaking. If
13 you'll recall, the Commission took, when it set
14 it down it also took emergency action, and when
15 the Commission takes emergency action we then
16 publish a Notice of Emergency and Proposed
17 Rulemaking.

18 And so typically we don't publish a
19 proposed rulemaking until after proposed action
20 is taken, so the conversation that Ms.
21 Steingasser and myself have both had with OAG is
22 that with this revised language we need to

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1 advertise a new proposed rulemaking. So it's
2 just that we need to do a new proposed rulemaking
3 once proposed action is taken again.

4 CHAIRMAN HOOD: So once we do that
5 proposed rulemaking then will we go through the
6 normal process of 30-day comment period?

7 MS. SCHELLIN: Exactly.

8 CHAIRMAN HOOD: Okay, I just wanted
9 to make sure. I was just trying to figure out
10 how we were going to, if we get any feedback how
11 we were going to get the feedback. Okay. Any
12 other questions? Okay. Thank you.

13 Any other questions, Commissioners?
14 Okay, not seeing any, reports of other
15 government agencies. We've heard from DHCD.
16 We've already heard from Stucker. I didn't see
17 any reports of any ANCs.

18 Do we have any organizations or
19 persons who are here who would like to testify
20 in support? You can come forward. Do we have
21 any persons here also, organizations or persons
22 who are here in opposition if you'd like to come

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1 forward at the same time?

2 Okay, Ms. Cort. Good evening.

3 MS. CORT: Good evening. Good
4 evening, Commission, Chairman. My name is
5 Cheryl Cort. I'm the policy director for the
6 Coalition for Smarter Growth. And I prepared
7 some formal comments, but maybe I could just sort
8 of address what -- I, first of all, want to thank
9 you for Inclusionary Zoning, for including the
10 program, and for moving swiftly on this problem
11 that we're having with FHA.

12 It is not unique to Inclusionary
13 Zoning. It is actually all sorts of local
14 programs that had relied more on, I mean it has
15 to do with the shift in the market from, the FHA
16 has now become sort of the major lender for
17 affordable housing.

18 And so there's just been a lot of
19 changes in the market that have affected all
20 sorts of affordable housing programs and
21 Inclusionary Zoning has been caught up in that.
22 And it is just a tremendous barrier and we're

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1 still sort of working it out with FHA even at this
2 late date, even though you acted in July with the
3 first emergency action. And so we appreciate
4 that.

5 In terms of where is Inclusionary
6 Zoning, obviously it's had trouble getting out
7 of the gate. I think these are administrative
8 problems and I think that we can overcome them.
9 I would say that there are three main problems.
10 Well, one would be the FHA problem.

11 Secondly, I would say there's severe
12 understaffing for both Inclusionary Zoning and
13 ADUs. There's just a couple of staff people who
14 are in charge of all the ADUs that have been
15 generated through PUDs and through public land
16 dispositions, and in addition, Inclusionary
17 Zoning. And so it's really hard for just one or
18 two staff people to create a whole new program
19 and to track thousands of existing ADUs.

20 And secondly, the regs, as Mr.
21 Stucker referred to, it's apparent that the
22 regulations are too rigid and aren't sort of,

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1 when they took them out for a test drive it turns
2 out that they were not doing what they needed us
3 to do, and that's been a big problem.

4 So it's hard to say if a FHA problem
5 is the biggest problem or that the regs are the
6 biggest problem, but we're hopeful that DHCD
7 will be able to move through the process of
8 revising these regs very quickly.

9 I will note that we don't seem to
10 have the same kinds of problems with ADUs even
11 though they're similar in income targeting. In
12 fact, I don't know how much income targeting is
13 at the 50 percent AMI level for ADUs.

14 And, you know, ultimately,
15 certainly we'd like to see more of the 50 percent
16 AMI IZ units produced than the 80 percent AMI,
17 but I think that that larger policy discussion
18 is something that we should have in the future.

19 But at this point it's absolutely
20 urgent that we move forward with what you're
21 doing in terms of the FHA change and that we ask
22 the administration. I will be asking the

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1 administration to address the severe
2 understaffing, and also to expedite revising the
3 regulations to make sure those are performing
4 effectively, and removing any barriers that we
5 have related to marketing and basically
6 connecting the right person with the right unit.

7 Thank you.

8 CHAIRMAN HOOD: Thank you.
9 Commissioners, any questions? Vice Chair?

10 VICE CHAIR COHEN: Again, I don't
11 think we have an extremely active pipeline, but
12 as far you're aware are we helping families or
13 are we helping individuals?

14 MS. CORT: Well, I mean the units
15 are tracking the market and, you know, our family
16 size is dropping. So in terms of production
17 we're tending to produce smaller units. So I
18 don't know, but I would expect that we're
19 tracking what the, I mean IZ just tracks what the
20 market does.

21 I mean, you know, in the long run
22 that might be a policy discussion in terms of

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1 should we shift around how we look at, you know,
2 multiple bedroom units as a part of this policy.
3 That would be a future discussion.

4 VICE CHAIR COHEN: Would you say the
5 IZ program is successful?

6 MS. CORT: It's been successful in
7 generating a lot of units. We have about 900 in
8 the pipeline right now. I also would say it's
9 been successful because the Zoning Commission
10 put together the policy for IZ and then it
11 implemented it for all of its PUDs since about
12 2002, and has generated a lot.

13 It's been a little bit hard to sort
14 out the different numbers in terms of where PUDs
15 versus other forms of affordable units, but
16 there's about 900 in the pipeline right now that
17 are actually IZ units.

18 Essentially what IZ is going to do
19 is it's going to cover the Matter of Right
20 development that isn't going through the PUD
21 pipeline. A lot is going through the PUD
22 pipeline, right, and those are now covered. IZ

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1 set up the standards that now PUDs follow.

2 So in that way the policy is being
3 implemented through PUDs, or the 900 units have
4 been approved or planned moving forward through
5 Matter of Right development.

6 VICE CHAIR COHEN: Thank you.

7 CHAIRMAN HOOD: Okay.
8 Commissioner Miller?

9 COMMISSIONER MILLER: Thank you,
10 Mr. Chairman. I was going to ask the question
11 that the Vice Chair asked about the number of IZ
12 units that are in the pipeline, but I think you
13 answered, over 900 units. So I really don't
14 have a question.

15 I just wanted to thank you for all
16 the work that you have done on Inclusionary
17 Zoning. In another life I was happy to work with
18 you at the council level over ten years ago
19 originally. It's been a long journey and we're
20 still only in the infancy of what I think will
21 be a very successful program, and it will be
22 tweaked from time to time just like Montgomery

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1 County has.

2 I think the overall policy, we're
3 going to get more information on this as a
4 Commission in the coming weeks and months and
5 we'll see what the Housing Task Force
6 recommends, but in general, I think the
7 underlying policy is sound to require Matter or
8 Right housing to be inclusive of more affordable
9 units. Thank you for all your work on this.

10 MS. CORT: Thank you.

11 CHAIRMAN HOOD: Okay, any other
12 questions or comments? Okay, thank you very
13 much. We appreciate your testimony.

14 Is there anyone else who would like
15 to testify either in support or opposition?
16 Okay.

17 Commissioners, I'm just trying to
18 think. We can't deal with this tonight because
19 of the outstanding issue.

20 (Off microphone comments)

21 CHAIRMAN HOOD: Okay. Anybody
22 like to make a motion or have a discussion? I

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1 think it's pretty self-explanatory. Anybody
2 like to make a motion?

3 COMMISSIONER MILLER: I will move
4 approval, Mr. Chairman, of Zoning Commission
5 Case No. 04-33F Text Amendments on PUDs and
6 Inclusionary Zoning-Termination of
7 Affordability Controls upon Foreclosure.

8 CHAIRMAN HOOD: Okay, so it's been
9 moved.

10 VICE CHAIR COHEN: And I'll second.

11 CHAIRMAN HOOD: Moved and properly
12 seconded. Any further discussion? All those
13 in favor?

14 (Chorus of ayes)

15 CHAIRMAN HOOD: Any opposition?

16 COMMISSIONER MAY: I just want to be
17 clear that what we are imposing is what was
18 proposed as amended by OP, right? That's what
19 was moved?

20 COMMISSIONER MILLER: Yes, that was
21 what was moved.

22 COMMISSIONER MAY: Okay.

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1 COMMISSIONER MILLER: Thank you for
2 that clarification.

3 CHAIRMAN HOOD: Do we need to do
4 anything else? I guess now it'll follow our
5 regular process for the response time, the 30
6 days and the advertisement. We don't need to do
7 anything else on it?

8 MS. SCHELLIN: Just making sure
9 that that includes publication of the revised,
10 that you're authorizing that we publish a
11 revised proposed rulemaking.

12 CHAIRMAN HOOD: Okay. And I think
13 we've added that make sure it includes the Office
14 of Planning in the OAG's change.

15 MS. SCHELLIN: Yes. Okay.

16 CHAIRMAN HOOD: All right, so we're
17 all on the same page and the motion included all
18 that just as was stated.

19 Okay, anything else? Well, our
20 hearings are real quick all of a sudden.

21 MS. SCHELLIN: Are you ready for me
22 to record it?

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1 CHAIRMAN HOOD: Yes, you can record
2 the vote.

3 MS. SCHELLIN: Yes. Staff records
4 the vote five to zero to zero to approve proposed
5 action to publish a revised proposed rulemaking.
6 Commissioner Miller moving, Commissioner Cohen
7 seconding, Commissioners Hood, Turnbull and May
8 in support.

9 CHAIRMAN HOOD: Okay, do we have
10 anything else, Ms. Schellin?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. I want to
13 thank everyone for their participation tonight,
14 and this hearing is adjourned.

15 (Whereupon, the foregoing matter
16 went off the record at 6:58 p.m.)
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