

2008 MAY -7 PM 2:39

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance
From: Sharon S. Schellin
Secretary to the Zoning Commission
Date: April 21, 2008
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on May 16, 2008.

1. Z.C. Notice of Final Rulemaking & Order No. 07-11; and
2. Z.C. Notice of Final Rulemaking & Order No. 07-14A.

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 07-11
EXHIBIT NO. 30

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ZONING COMMISSION
District of Columbia
CASE NO.07-11
EXHIBIT NO.30

2008 MAY -7 PM 2:39

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: EMERGENCY RULES
 FINAL RULES PROPOSED RULES COMBINED

DATE AND TIME RECEIVED
Office of Documents use only

ADDRESS: 441 4th Street, N.W., Suite 210 South TELEPHONE: (202) 727-0340

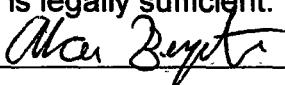
TITLE AND DESCRIPTION OF RULES: Map and text amendments to the Southeast Federal Center Overlay District, Chapter 18 of the Zoning Regulations, 11 DCMR.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections 1803, 1804, and 1805 and the Zoning Map of the District of Columbia

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 55 DCR 2312 DATE: March 7, 2008

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798), D.C. Official Code §§ 6-641.01 and 6-641.03.

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: APRIL 17, 2008 SIGNED:  PHONE: (202) 442-9777

FINAL CONDITIONAL NAME: ALAN BERGSTEIN SECTION CHIEF

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797, 798), D.C. Official Code §§ 6-641.01 and 6-641.03.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF
APPROVAL
OF VOTE:

4-14-08

APPROVAL
OF ATTEST:

TITLE:

Secretary to the Zoning
Commission

PHONE: (202) 727-0340

Office of Documents
use only:

THIS NOTICE
PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 07-11

Z.C. Case No. 07-11

(Map and Text Amendment – 11 DCMR)

(Chapter 18 Southeast Federal Center Overlay District)

April 14, 2008

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.1 (2001)); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03 (2001)); and having referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of the following amendments to §§ 1803 through 1805 Chapter 16 of the Zoning Regulations (Title 11 DCMR). The map amendment adjusts the boundary between the Southeast Federal Center (“SEFC”) Overlay District and the adjacent Navy Yard, as well as some of the zone district boundaries within the Overlay, and responds to recommendations of the Historic Preservation Office to establish historic vistas within the SEFC Overlay District along certain rights-of-way. The text amendments address site development issues, clarify requirements of the SEFC Overlay District, and correct technical errors.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on March 7, 2008 at 55 DCR 2312. No comments were received. The Commission took final action to adopt the amendments at the public meeting on April 14, 2008, without making substantive changes to the proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations and Zoning Map

On January 12, 2004, the Commission took Final Action to establish the SEFC Overlay District on land that is federally-owned, but which the United States General Services Administration (“GSA”) intended to be privately developed and used (Z.C. Case No. 03-06). The SEFC Overlay District is mapped to include an area roughly bounded by M Street to the north, the Anacostia River to the south, the Water and Sewer Authority (“WASA”) Pumping Station and 1st Street to the west, and the Anacostia Navy Yard to the east, and is comprised of underlying zones of CR, R-5-E, R-5-D, and W-0. Major objectives of the Southeast Federal Center Overlay District include:

- Assure development of the area with a mixture of residential and commercial uses and a suitable height, bulk, and design of buildings, as generally identified in the

Comprehensive Plan and in consideration of the objectives of the Anacostia Waterfront Initiative and the Near Southeast Target Area Plan;

- Encourage high-density residential development with a pedestrian-oriented streetscape through flexible zoning parameters;
- Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;
- Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and to provide for continuous publicly-accessible open space along the waterfront;
- Require suitable ground-level retail and service uses along M Street, S.E., near the Navy Yard Metrorail Station, near the waterfront, and at other key pedestrian locations;
- Encourage the design and development of properties in a manner that is sensitive to the adjacent Navy Yard and the historically significant buildings within the SEFC; and
- Establish zoning incentives and restrictions to provide for the development of a publicly accessible park along the Anacostia River and encourage uses in that park as permitted in the underlying W-0 District.

Petition and Set Down Proceeding

On April 4, 2007, Forest City SEFC, LLC, on behalf of the U.S. General Services Administration (the "Petitioner") filed a petition to initiate this rulemaking. The petition requested map and text amendments to the SEFC Overlay District provisions of the Zoning Regulations for the following purposes: to make minor adjustments in the boundaries of the SEFC Overlay and the underlying zones; to clarify or correct inconsistencies found in the original SEFC Overlay District text; to address specific site or building constraints; and to respond to changing circumstances in the vicinity of the SEFC Overlay, including development of the new Ballpark.

At its July 9, 2007 public meeting, the Commission agreed to set down the case for a public hearing.

Description of Map and Text Amendments as First Advertised

The Petitioner recommended amendments to the Zoning Map to:

- Adjust the eastern boundary of the eastern SEFC/CR Zone District to accommodate a request by the U.S. Navy to shift the property line between the Navy Yard and the subject property; and

- Adjust the southern boundary line of the SEFC/R-5-E Zone District, the northern boundary of the SEFC/R-5-D Zone District and the northern boundary of the SEFC/W-0 Zone District to correspond with the realignment of proposed Water Street.

The Petitioner also recommended various technical corrections to the requirements of the SEFC Overlay District and proposed text amendments that would clarify or revise requirements to include:

- Clarify the preferred retail requirements for the SEFC/CR, SEFC/R-5-D and SEFC/R-5-E Zone Districts and modify the locations in which preferred retail is required;
- Reduce ceiling height requirements for retail space from fifteen feet (15 ft.) to fourteen feet (14 ft.);
- Permit 100% lot occupancy for buildings with ground floor preferred uses located within the SEFC/CR, SEFC/R-5-D and SEFC/R-5-E Zone Districts;
- Clarify the requirements associated with combined lot development within the SEFC/CR Zone District;
- Permit the creation of a record lot with respect to the parcel on which Building 167 is located;
- Modify the application of the public space requirements of § 633 within the SEFC/CR Zone District;
- Clarify the Zoning Commission review and approval requirements for buildings and structures that abut the W-0/Open Space Area; and
- Permit two or more principal buildings or structures to be located on a single subdivided lot within the SEFC/W-0 Zone District in accordance with the requirements of § 2517.

Relationship to the Comprehensive Plan

The proposed amendments and modifications of the zone districts would not be inconsistent with the Comprehensive Plan or the Comprehensive Plan Generalized Land Use Map and would further the following major themes as outlined in the Chapter 3, the Land Use Element: increasing the significance of the District's waterfronts and shorelines (LU-1.1), providing an opportunity for joint public and private development of publicly-owned land (LU-1.2), enhancing neighborhood (LU-2.1), and promoting the vitality of the District's commercial areas (LU-2.4).

The proposed amendments and modification of the zone districts would also be consistent with the Anacostia Waterfront Initiative and the near Southeast Target Area Plan, the District planning initiatives for the area, and the Southeast Federal Center Public-Private Partnership Act

of 2000, which authorized the GSA to dispose of the SEFC site and to encourage non-governmental uses, such as residential and retail.

Public Hearing

The Commission held a public hearing on this case on January 10, 2008. Commission members present were Chairperson Anthony J. Hood, Vice Chairperson Gregory N. Jeffries, and Commissioners Curtis L. Etherly, Jr. and Peter G. May.

In his testimony at the public hearing, Ramsey Meiser, Vice President of Development of Forest City Washington, who represented the Petitioner, described the intent of the proposed map and text amendments and noted the thousands of hours of work and discussions which took place with the GSA, NCPC, Commission of Fine Arts, Advisory Council on Historic Preservation, State Historic Preservation Officer, Office of the Deputy Mayor, Office of Planning ("OP"), other federal and local governmental agencies, and Advisory Neighborhood Commissions ("ANC") to prepare a revised and updated master plan for the SEFC site. In particular, the Petitioner noted the invaluable assistance provided by OP with respect to the planning and development of the SEFC site.

The Architect for the Petitioner, Mark Gilliland of Shalom Baranes Associates, supplemented the Petitioner's testimony and reported that due to close collaboration with OP, essentially all of the text and map amendments as advertised addressed the inconsistencies, clarifications, and revisions sought by the Petitioner. However, the Petitioner requested further clarification or revision of several issues that were not resolved at the set down. Accordingly, the Petitioner recommended the following changes to the proposed amendments:

- Eliminate the minimum depth requirement of forty-five feet (45 ft.) for the preferred use space in Building 160 recommended by OP in its testimony at the hearing; and
- Eliminate the preferred use requirement for any building or structure facing onto Tingey Street, S.E. east of 4th Street, S.E. due the necessity of the construction of a flood wall along that corridor and other factors.

The Petitioner further testified that it was committed to providing ground floor retail at all four corners of the intersection of Tingey Street and 4th Street, but that it is not feasible to provide preferred uses beyond a depth of approximately fifty feet (50 ft.) east of that intersection on the south side of Tingey Street because of the flood wall.

OP confirmed that the elimination of the forty-five foot (45 ft.) requirement for the preferred use space in Building 160 was acceptable so long as the total amount of preferred use required was 3,000 square feet of space facing Tingey Street, S.E. and 6,000 square feet of space facing Water Street, S.E., for a total of 9,000 square feet.

With regard to the preferred use space on Tingey Street, S.E., east of 4th Street, OP suggested during the public hearing a requirement of a minimum amount of preferred use space of 2,500 square feet to be located at the southeast corner of Tingey and 4th Street, S.E. at a minimum depth from each street of fifty feet (50 ft.).

No other district government department or agency testified before the Commission. ANC 6D did not submit a report or provide testimony with regard to the proposed amendments.

Proposed Action

At the close of the public hearing on January 10, 2008, the Commission took proposed action to adopt the advertised map and text amendment proposed by the Petitioner subject to the modifications proposed by the Petitioner and OP at the public hearing.

The Notice of Proposed Rulemaking was published in the D.C. Register on March 7, 2008, at 55 DCR 2312, for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was also referred to NCPC under the terms of § 492 of the District of Columbia Charter. NCPC, by a report filed with the Commission on February 15, 2008, found that the proposed text and map amendments would not be inconsistent with the Comprehensive Plan for the National Capital, nor would they have an adverse impact on any federal interests.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed April 14, 2008 public meeting, the Commission took final action to adopt the proposed text and map amendments. No substantive changes were made to the advertised amendments set forth in the notice of proposed rulemaking.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 18 of the Zoning Regulations, Title 11 DCMR:

A. Amend the Zoning Map of the District of Columbia as follows:

1. The boundary lines of the SEFC/CR Zone District located immediately west of the Navy Yard are revised as described and depicted in the metes and bounds description and plan in the application.

2. The boundary lines of the SEFC/R-5-E Zone District are revised as described and depicted in the metes and bounds description and plan in the application.
3. The boundary lines of the SEFC/R-5-D Zone District are revised as described and depicted in the metes and bounds description and plan in the application.
4. The boundary lines of the SEFC/W-0 Zone District and of the Development Area are revised as described and depicted in the metes and bounds description and plan in the application.

B. Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, is amended as follows (new language is shown in **bold** and underlined, and deleted wording is shown in ~~strikethrough~~ lettering):

1. Section 1803 is amended as follows:
 - a. By repealing paragraph 1803.2(a).
 - b. By repealing paragraph 1803.2(d).
 - c. By amending paragraph 1803.3(a) to read as follows:

1803.3(a) Any building or structure with frontage on M Street, S.E. ~~or New Jersey Avenue, S.E. or N Street, S.E.~~ shall provide preferred uses comprising a minimum of seventy-five (75%) of the frontage on M Street, S.E. or N Street, S.E. and a minimum of ~~fifty seventy-five~~ percent (~~5075%~~) of that portion of the gross floor area of the ground floor within a depth of fifty (50) feet from the exterior facade of the front of building, not including parking, parking access, mechanical and fire control rooms and other non-public spaces. This requirement shall not apply to (i) buildings directly south of the historic wall along M Street, S.E. between 4th Street, S.E. and the Washington Navy Yard, for so long as the wall remains or (ii) any addition to a building with frontage on M Street, S.E. or N Street, S.E. if the addition to such building has no frontage on such streets but, as allowed pursuant to § 1803.3(b) below, preferred uses may be provided on the ground floor level of such buildings;
 - d. By amending paragraph 1803.3(b) to read as follows:

1803.3(b) **In addition to the locations in which preferred uses are required pursuant to §1803.3(a), p**Preferred uses may be provided on the ground floor level of buildings ~~without frontage on M Street, S.E. or New Jersey Avenue, S.E. in other areas within the SEFC/CR District~~, but are not required. If provided, the such preferred use area shall not be required to conform to the requirements of §§ 1803.3(a), (e), (f), and (g);

e. By amending paragraph 1803.3(e) to read as follows:

1803.3(e) Not less than fifty percent (50%) of the surface area of the street wall, including building entrances, of those properties building frontages described in §§ 1803.3(a) ~~and (b)~~ shall be devoted to doors or display windows having clear or low emissivity glass;

f. By amending paragraph 1803.3(g) to read as follows:

1803.3(g) The minimum floor-to-ceiling height for portions of the ground floor level devoted to preferred uses shall be ~~fifteen (15)~~ fourteen (14) feet; and

g. By amending subsection 1803.4 to read as follows:

1803.4 In accordance with the procedures outlined in § 1810, two or more lots, whether contiguous or non-contiguous and whether located in the same square or other squares, within the SEFC/CR District may be combined for the purpose of allocating residential and non-residential uses regardless of the normal limitation on floor area by uses on each lot, provided that the aggregate residential and non-residential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone districts, as may have been modified by the Overlay.

h. By amending subsection 1803.13 to read as follows:

1803.13 In the SEFC/CR District, a ~~building occupied by both residential and non-residential uses shall be permitted 100% lot occupancy. building containing residential uses which includes preferred uses in compliance with the requirements of § 1803.3(a), (e), (f), and (g), shall be~~

permitted 100% lot occupancy for only the ground and second floors.

- i. By inserting new subsections 1803.14 and 1803.15 to read as follows:

1803.14 A record lot may be created with respect to the parcel on which Building 167 is located, notwithstanding other requirements of this title. Any enlargements or additions to Building 167 shall comply with all requirements of this title.

1803.15 In the SEFC/CR District, the public space requirements of § 633 shall not be applicable.

2. Section 1804 is amended as follows:

- a. By amending paragraph 1804.2(f) to read as follows:

1804.2(f) All buildings and structures that abut the Open Space Area, as described in § 1805.4, whether or not a street intervenes but excluding buildings and structures that abut the Development Area, including existing Building 160 and any additions thereto and any building or structure to be constructed immediately to the east of Building 160 (i.e., north of Water Street, S.E., west of 4th Street, S.E. east of Third St., S.E., and south of Tingey Street, S.E.).

- b. By amending paragraph 1804.3(a) to read as follows:

1804.3(a) Preferred uses shall be provided in any building or structure facing:

- (i) Tingey Street, S.E., west of 4th Street, S.E., and east of 4th Street, S.E., but in the latter case, and only along the southern side of Tingey Street, S.E., for a length of fifty (50) feet minimum as measured from the west exterior façade of any building or structure constructed on the southeast corner of Tingey St., S.E. and 4th Street, S.E., or
 - (ii) the SEFC/WO District.

Where required, preferred uses shall comprise a minimum of seventy-five (75%) of the frontage facing

Tingey Street, S.E., or the SEFC/W-O District, and a minimum of seventy-five percent (75%) of the applicable portion of the gross floor area of the ground floor within a depth of fifty (50) feet from the exterior façade of the front of the building, not including parking, parking access, mechanical and fire control rooms, and other non-public spaces.

The requirement to provide preferred uses shall not apply to any addition to a building facing onto Tingey Street, S.E. or the SEFC/W-O District if the addition to the building has no frontage facing onto Tingey Street, S.E. or the SEFC/W-O District, but, as allowed pursuant to § 1804.3(b) below, preferred uses may be provided on the ground floor level of such addition.

For Building 160, notwithstanding the requirements noted above, the total amount of preferred use space shall be a minimum of 3,000 square feet of space facing Tingey Street, S.E. and a minimum of 6,000 square feet of space facing Water Street, S.E., for a total of at least 9,000 square feet.

- c. By amending paragraph 1804.3(b) to read as follows:

1804.3(b) In addition to the locations in which preferred uses are required pursuant to §1804.3(a), ~~P~~ preferred uses may be provided on the ground floor level of buildings or structures ~~that do not face 4th Street or the SEFC/W-O District in other areas within the SEFC/R-5-D and SEFC/R-5-E Districts~~, but are not required. If provided, the such preferred use area shall not be required to conform to the requirements of §§ 1804.3(a), (e), (f), and (g). If the bonus density authorized pursuant to § 1804.3(c) is used to provide non-required preferred uses, the preferred use area must be dedicated to preferred uses for the life of the building;
- d. By amending paragraph 1804.3(e) to read as follows:

1804.3(e) Not less than fifty percent (50%) of the surface area of the street wall, including building entrances, of those properties building frontages dedicated to preferred uses described in § 1804.3(a) ~~and (b)~~ shall be devoted to

doors or display windows having clear or low emissivity glass;

e. By amending paragraph 1804.3(g) to read as follows:

1804.3(g) The minimum floor-to-ceiling height for portions of the ground floor level devoted to preferred uses shall be ~~fifteen (15)~~ fourteen (14) feet.

f. By inserting a new subsection 1804.6 to read as follows:

1804.6 In the SEFC/R-5-D and SEFC/R-5-E Districts, a building which includes preferred uses in compliance with the requirements of §1804.3(a) shall be permitted 100% lot occupancy for only the ground and second floors.

3. Section 1805 is amended as follows:

a. By amending subsection 1805.3 to read as follows:

1805.3 The SEFC/W-0 Development Area consists of the northeastern portion of the SEFC/W-0 District, specifically the existing Building 173 174 and that portion of the SEFC/W-0 District located directly to the east of Building 173 174, north of a line extending east from the southern facade elevation of Building 173 174.

b. By amending subsection 1805.9 to read as follows:

1805.9 The gross floor area of existing building Building 173 174 shall not count toward any FAR computation.

c. By amending subsection 1805.10 to read as follows:

1805.10 The minimum floor-to-ceiling height for the ground floor level of buildings in the SEFC/W-0 District shall be fourteen (14) ~~fifteen (15)~~ feet.

d. By inserting a new subsection 1805.12 to read as follows:

1805.12 Notwithstanding the requirements of §2517.1, two or more principal buildings or structures may be erected as a matter of right on a single subdivided lot within the SEFC/W-0 District provided that such principal

Z.C. ORDER NO. 07-11

Z.C. CASE NO. 07-11

PAGE 11

buildings or structures comply with all other requirements of § 2517.

At the public hearing on January 10, 2008, the Zoning Commission **APPROVED** the proposed rulemaking by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Peter G. May to approve; Michael G. Turnbull not present, not voting).

The Zoning Commission took final action to **ADOPT** this rule at its public meeting on April 14, 2008 by a vote of **4-0-1** (Gregory N. Jeffries, Curtis L. Etherly, Jr., Anthony J. Hood, and Peter G. May to approve; Michael G. Turnbull, not having participated, not voting).

In accordance with the provision of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on **MAY 16 2008**.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 07-11

Z.C. Case No. 07-11

(Map and Text Amendment – 11 DCMR)

(Chapter 18 Southeast Federal Center Overlay District)

April 14, 2008

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.