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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: March 4, 2008
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on March 14, 2008:

1. Z.C. Notice of Final Rulemaking & Order No. 04-33B (Case No. 04-33B);
and
2. Z.C. Notice of Final Rulemaking & Order No. 07-20 (Case No. 07-20).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 07-20
EXHIBIT NO. 12

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION

District of Columbia

CASE NO.07-20

EXHIBIT NO.12

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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: 727-0340

TITLE AND DESCRIPTION OF RULES: Z.C. Case No. 07-20: Map and Text Amendment – 11 DCMR: Map amendment to include Kingman Island and Heritage Islands in the W-0 Zone District, and text amendments to accommodate construction of a public nature education center on Kingman Island.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Zoning Map and to Title 11 (Zoning) Sections 901, 925, 930, 938, 2100, and 2200.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 11586 DATE: November 30, 2007

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

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: FEBRUARY 12, 2008 SIGNED: *Alex Bergstein* for PHONE: (202) 442-9777

FINAL CONDITIONAL NAME: PETER J. NICKLES TITLE: INTERIM ATTORNEY GENERAL

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. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

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

DATE OF APPROVAL *1-14-08*
OF VOTE:

APPROVAL
OF ATTEST: *Sharon S. Schellin*

Secretary to the Zoning
Commission

PHONE: (202) 727-0340

Office of Documents THIS NOTICE
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VOL: DCR:

DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-20
Z.C. Case No. 07-20
(Map and Text Amendment – 11 DCMR)
(Map Amendment to include Kingman Island and Heritage Island in the
W-0 Zone District and Text Amendments to Accommodate Construction of a Public
Nature Education Center on Kingman Island)
January 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 § 6-641.01), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of amendments to the Zoning Map and to §§ 901, 925, 930, 938, 2100, and 2200 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”)).

The map amendment zones Kingman and Heritage Islands, islands located in the Anacostia River, to the W-0 Zone District. The text amendments:

- allow a public nature education or interpretive center in the W-0 Zone District to include a boat dock as a matter-of-right;
- create an exemption for certain roof structures on Kingman Island from the roof structure limits of § 930;
- exempt the proposed public nature center on Kingman Island from the waterfront setback requirements of § 938.2; and
- prohibit the construction of parking spaces and service delivery loading spaces on Kingman and Heritage Islands.

A Notice of Proposed Rulemaking was published on the *D.C. Register* (“DCR”) on November 30, 2007 at 54 DCR 11586. The Commission took final action to adopt the amendments at a public meeting on January 14, 2008, making three changes to the text originally proposed, as will be explained later in this Order under “Final Action.” The final rulemaking is effective upon publication in the *D.C. Register*.

Existing Zoning Map and Regulations

Kingman and Heritage Islands are currently unzoned.

Subsection 901.5 of the Zoning Regulations permits a “public nature education or interpretive center” as a matter-of-right use in the W-0 Zone District, but § 925 provides that a “boat launching facility, dock, wharf, or pier” requires special exception approval. Section 930 establishes a 40-foot height limit for buildings and structures in the W-0 Zone District, and while it exempts certain types of roof structures, it does not exempt structures designed to accommodate wastewater treatment systems as proposed for the Kingman Island nature center. Section 938 requires a 100-foot setback from the mean high water level for buildings or structures in the W-0 Zone District. Sections 2100 and 2200 require all buildings and structures to be served with an allotment of parking spaces and loading facilities.

Description of Map and Text Amendments

The map and text amendments are designed to permit construction of a public nature education center on Kingman Island.

The map amendment zones Kingman and Heritage Islands to the W-0 Zone District.

The text amendments amend §§ 901.5(d) and 925.1 of the Zoning Regulations to allow a public nature education or interpretive center in the W-0 Zone District to include a boat dock as a matter-of-right. The amendments add a new § 930.5 that exempts roof structures from the height limits of the W-0 Zone District when the roof structure is: (1) less than ten (10) feet in height; (2) located atop a building that is below the maximum building height; and (3) located on a building on Kingman Island. The amendments exempt the proposed public nature center on Kingman Island from the waterfront setback requirements of § 938.2. Finally, the text amendments prohibit the construction of parking spaces and service delivery loading spaces on Kingman and Heritage Islands by amending §§ 2100.1 and 2200.1.

Relationship to Comprehensive Plan

The 2006 Generalized Policy Map designates the Kingman and Heritage Islands as “Parks, Recreation and Open Space” with the dominant uses being “parks and recreation centers, cemeteries, and the National Capital Open Space System.” The proposed use of a private, non-profit nature education center for Kingman Island is consistent with this designation and does not appear inconsistent with the Policy Map, the Future Land Use Map or the 2006 Comprehensive Plan.

The proposal supports the 2006 Comprehensive Plan policy objectives for the site including Policy E-5.2.4 (Interpretive Centers) to support the development of environmental education and nature centers in the District in particular in recovering habitat areas such as the Anacostia River

shoreline. Policy AW-1.2.8 specifically refers to the retention of Kingman and Heritage Islands as natural sanctuaries where use should be limited to an interpretive nature center, trails, public art, passive open space, and pedestrian access ways.

Set Down Proceeding

The Office of Planning (“OP”) initiated this rulemaking by filing a report. The Commission set down the case for a public hearing at its July 30, 2007 public meeting.

Public Hearing

OP submitted a supplemental report suggesting revisions to the advertised text on October 4, 2007. The supplemental report suggested adding the amendments to §§ 901.5(d) and 925.1 to allow inclusion of a boat dock to a public nature education or interpretive center as a matter-of-right.

The Commission held a public hearing on October 11, 2007. OP and the Deputy Mayor’s Office for Planning and Economic Development testified in support of the map and text amendments.

Proposed Action

The Commission voted to support OP’s recommendations and adopt the amendments at the conclusion of the public hearing on October 11, 2007.

The proposed rulemaking was referred to the National Capital Planning Commission (“NCPC”) for review of any impacts on the federal interest under the Comprehensive Plan under the terms of § 492 of the District of Columbia Charter.

NCPC, by action dated November 1, 2007, expressed concern that the proposed new § 930.5, which would allow rooftop structures up to ten (10) ft. in height in the W-0 Zone District, could potentially adversely impact federal interests in or near the portions of the District zoned W-0. NCPC recommended that the text amendments apply only to Kingman and Heritage Islands.

The Notice of Proposed Rulemaking was published in the *D.C. Register* at 54 DCR 11586 on November 30, 2007, for a 30-day notice and comment period. No comments were received.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns expressed in the affected ANC’s written recommendation. No recommendation was received by an affected ANC in this case.

Final Action

At its regularly scheduled January 14, 2008 public meeting, the Commission re-opened the record to receive a supplemental report from OP dated October 29, 2007. In the supplemental report, OP acknowledged the NCPC comment regarding the proposed new § 930.5, and recommended limiting its application to Kingman Island.

The Commission took final action to adopt the rulemaking, including the amendments suggested by OP in its October 4 and 29, 2007 supplemental reports, at its regularly scheduled public meeting on January 14, 2008.

Based on the above, the Commission finds that the proposed amendments to the Zoning Map and the Zoning Regulations are in the best interests of the District of Columbia and consistent with the purpose of the Zoning Regulations and the Zoning Act.

The Office of the Attorney General has determined that this rulemaking is legally sufficient.

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

- A. The Zoning Map is amended by including Kingman and Heritage Islands in the W-0 Zone District.
- B. Chapter 9, WATERFRONT DISTRICTS, is amended by (new language is shown in **bold and underlined**):
 1. Amending § 901.5(d) to read as follows:
 - (d) Public nature education or interpretive center **including a boat dock**; and
 2. Amending § 925.1(k) to read as follows:
 - (k) Boat launching facility, dock, wharf, or pier **except as provided by § 901.5 (d)**;
 3. Adding a new § 930.5 to read as follows:

930.5 Roof structures less than ten (10) feet in height above a roof or parapet wall of a structure in the W-0 District on Kingman Island shall not be subject to the requirements of this section when the top of the roof structure is below maximum building height prescribed for the W-0 District.

4. Amending § 938.2 to read as follows:

938.2 Notwithstanding § 938.1, a waterfront setback need not be provided for a water taxi ticketing/information booth, or for structures directly associated with a public-accessible wharf, dock or pier and for a public nature education center on Kingman Island.

C. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended by amending § 2100.1 to read as follows (new language is shown in **bold and underlined**):

2100.1 All buildings or structures erected on or after May 12, 1958, shall be provided with parking spaces to the extent specified in § 2101, except as permitted by §§ 2102 through 2108 and for structures erected on Kingman and Heritage Islands for which the construction of parking spaces shall be prohibited except for handicap spaces.

D. Chapter 22, OFF-STREET LOADING FACILITY REQUIREMENTS, is amended by amending § 2200.1 to read as follows (new language is shown in **bold and underlined**):

2200.1 All buildings or structures erected on or after May 12, 1958, shall be provided with loading berths, loading platforms and service delivery loading spaces to the extent specified in § 2201, except as provided in § 2202 and for structures erected on Kingman and Heritage Islands for which the construction of service delivery loading spaces shall be prohibited.

The Zoning Commission voted to **APPROVE** the proposed rulemaking at the close of the public hearing on October 11, 2007 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons not present, not voting).

The Zoning Commission voted to **ADOPT** this final rulemaking at its public meeting on January 14, 2008 by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May and Curtis L. Etherly, Jr., having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on MAR 14 2008.

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

and

Z.C. ORDER NO. 07-20

Z.C. Case No. 07-20

(Map and Text Amendment – 11 DCMR)

**(Map Amendment to include Kingman Island and Heritage Island in the
W-0 Zone District and Text Amendments to Accommodate Construction of a Public
Nature Education Center on Kingman Island)**

January 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*.