

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

Z.C. ORDER NO. 09-09

Z.C. Case No. 09-09

(Text Amendment – 11 DCMR)

**(Forest City SEFC, LLC – Text Amendment – Trapeze School Use in Southeast Federal
Center Overlay District, Parcel “O”)**

November 9, 2009

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 3 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 641.07); hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on October 9, 2009, at 56 DCR 8070. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The text amendments allow the establishment of a temporary trapeze school and performing arts facility use within Parcel “O” in the Southeast Federal Center Overlay District, established by Chapter 18 of the Zoning Regulations. Without the amendment, the school, which must relocate from its present site, would have to obtain a special exception from the Board of Zoning Adjustment. Also, because that parcel has yet to be subdivided into lots and squares, the rule exempts the use from § 3202.3, which requires a record lot as a prerequisite for obtaining a building permit. The amendments also exempt the use from minimum parking space requirements, but provide that a continuation of the use after December 31, 2014 must be approved by the Board of Zoning Adjustment, which will then determine whether on-site parking will be required.

Procedures Leading to Adoption of Amendments

A petition requesting the amendments was filed by Forest City SEFC, LLC, on behalf of the United States of America, General Services Administration. The Commission voted to set down a somewhat narrower version of the proposal for hearing at its July 13, 2009 public meeting.

In response to notice given pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10), Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which Parcel O is situated, filed a report with the Commission stating that at a regularly-scheduled, properly-noticed meeting with a quorum present, held on September 15, 2009, ANC 6D had voted unanimously to support the petition, noting that the trapeze school use would not have any negative impacts on constituents or businesses in the area. (Exhibit No. 13.) As indicated by its adoption of these amendments, the Commission found this advice to be persuasive.

**ZONING COMMISSION
District of Columbia**
CASE NO. 09-09
EXHIBIT NO. 21

A public hearing was scheduled for and held on September 21, 2009, after which the Commission authorized the referral of the proposed text to the National Capital Planning Commission ("NCPC") and the publication of a notice of proposed rulemaking in the *DC Register*.

NCPC, through a delegated action dated October 6, 2009, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 19.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on October 9, 2009, 56 DCR 8070, for a 30-day notice and comment period. No comments were received. However, the Office of Planning ("OP") filed a Supplemental Report, dated October 30, 2009, requesting that the last sentence of § 3202.3 be moved to the definition of "structure" as set forth in § 199.1. The last sentence deems "a combination of commercial occupancies" in single ownership (such as a strip mall) as one structure. This re-codification enhances the readability of the Regulations and has no effect on its substance or on the substance of the text amendments adopted.

At a properly-noticed November 9, 2009 public meeting, the Commission took final action to adopt the text amendments, including the re-codification suggested by OP, as follows:

- A. Chapter 1, THE ZONING REGULATIONS, § 199.1, Definitions, is amended by adding a new final sentence to the definition of "Structure", so that the definition will read as follows:

Structure - anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment, but shall include the supports for mechanical equipment. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

- B. Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, § 1804, SEFC/R-5-D and R-5-E Zoning Districts, is amended as follows:

1. By amending § 1804.2 (e) so that the entire subsection will read as follows:

1804.2 Within the SEFC/R-5-D and R-5-E Districts, the following buildings, structures, and uses are permitted only if reviewed and approved by the Zoning Commission, in accordance with the standards specified in § 1808 and procedures specified in § 1809 of this Title:

(a) Arts, cultural, or hotel use, subject to an overall cap of 1.0 FAR;

(b) Hospital;

- (c) Place of worship, which may include parsonage, vicarage, rectory, and Sunday school building, as well as any programs associated with the place of worship in accordance with § 216;
- (d) Private club, lodge, fraternity house, sorority house, or dormitory;
- (e) School, private, public, or trade; except as provided in § 1804.7.
- (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.).
- (g) Temporary parking lot or garage, for a maximum approval period of five (5) years, which may be renewed by the Zoning Commission, as a principal use, located at or above grade;
- (h) Solid, freestanding wall and/or security gate exceeding a height of four (4) feet; and
- (i) University or college, subject also to the regulations of § 210.

2. By adding new §§ 1804.07 and 1804.8 to read as follows:

1804.7 Notwithstanding § 1804.2 (e), a trapeze school and aerial performing arts center may be established and continued as a matter of right in Parcel O until December 31, 2014, during which time no parking shall be required.

1804.8 The continuation of the trapeze school and aerial performing arts center use after December 31, 2014 shall require special exception approval by the Zoning Commission in accordance with the standards specified in § 1808 and procedures specified in § 1809 of this Title, and shall include a determination as to whether and what amount of parking should be required.

C. Chapter 32. ADMINISTRATION AND ENFORCEMENT, § 3202.3, is amended by striking the phrase “; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia” and deleting the last sentence so that the entire subsection will read as follows:

3202.3 Except as provided in the building lot control regulations for Residence Districts in § 2516 and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other

purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Code, 2001 Ed. §9-101.05 (formerly codified at D.C. Code § 7-114 (1995 Repl.))), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record. Notwithstanding the foregoing, a building permit may be issued for:

- (a) Buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia;
- (b) A boathouse, yacht club, or marina to be constructed on a lot that is not a lot of record, provided that such lot fronts on a public body of water, is otherwise surrounded by public park land, and is zoned W-0; or
- (c) The trapeze school and aerial performing arts center to be established pursuant to § 1804.7.

On September 21, 2009, upon motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **3-0-2** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; William W. Keating, III and Peter G. May, not present, not voting).

On November 9, 2009, upon motion of Commissioner Turnbull, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to adopt; William W. Keating, III and Peter G. May, not having 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 November 13, 2009.