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180728	Submitted to ODAI	Proposed Rulemaking	Zoning Commission Notice of Proposed Rulemaking: Case No. 09-10 (Text Amendment re: Water Tower on the Saint Elizabeths East Campus)	3/5/2010 Vol 57/10	3/1/2010 10:39:40

ZONING COMMISSION
District of Columbia

CASE NO. 09-10

EXHIBIT NO. 13

ZONING COMMISSION
District of Columbia
CASE NO.09-10
EXHIBIT NO.13

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 09-10
(Text Amendment – 11 DCMR)
(Water Tower on the Saint Elizabeths East Campus)

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1, 3, and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, and 799; D.C. Official Code §§ 6-641.01, 6-641.03, and 6-641.07), hereby gives notice of its intent to add a new § 2523 to the Zoning Regulations (Title 11 DCMR) to authorize the establishment of a water tower or elevated water tank (“Water Tower”) owned and operated by the District of Columbia Water and Sewer Authority on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital.

The Commission also proposes to amend § 106.7 to exempt the Water Tower from the prohibition against the issuance of building permits and certificates of occupancy for structures on unzoned land. In addition, the Commission proposes to amend § 3043.1(a), which exempts District agencies from the payment of fees to address a scenario where the property is not owned by the District or one of its agencies, but is under one or both of their jurisdiction. Lastly, conforming amendments are proposed to be made to §§ 3011, 3014, 3015, 3022, and 3027 of the Zoning Commission Procedures Rules of Practice and Procedure, also in Title 11.

Final rulemaking action shall be taken in not less than 30 days from the date of publication of this notice in the *D.C. Register*.

DCMR Title 11, ZONING, is proposed to be amended as follows:

- A. Chapter 1, THE ZONING REGULATIONS, § 106, ZONING MAP, § 106.7, is amended by inserting the phrase “except for the water tower and related water utility facilities authorized by § 2523”, so that the provision will read as follows:

106.7 No building permit or certificate of occupancy shall be issued nor proceeding instituted before the Board of Zoning Adjustment, nor shall any property in private ownership be used for any purpose until after the Zoning Commission has designated zoning for the property, except for the water tower and related water utility facilities authorized by § 2523.

- B. Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, is amended by adding a new § 2523, to read as follows:

2523 WATER TOWER ON THE EAST CAMPUS OF SAINT ELIZABETHS:

2523.1 Notwithstanding any other provision of this Title, a water tower or elevated water tank (“Water Tower”) owned and operated by the District of Columbia Water and Sewer Authority may be established on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital.

- 2523.2 No building permit to construct a Water Tower in excess of ninety (90) feet in height may be issued unless the Zoning Commission finds that said tower, as designed, meets the standards of § 3104 and is not inconsistent with the Comprehensive Plan, small area plan(s), and other adopted planning studies that pertain to the site.
- 2523.3 An application pursuant to § 2523.2 shall include such plans and illustrations necessary to adequately represent the final proposed appearance of the tower, including its materials, final elevation, and location on the East Campus. The application shall also identify how the proposed design meets the standard for approval set forth in § 2523.2.
- 2523.4 An application shall be included as a “Final Action” item for a Zoning Commission meeting scheduled after the completion of the thirty (30) day review period allowed the affected ANC(s). The notice to the affected ANC(s) shall include the date of the final action and a tentative public hearing date.
- 2523.5 The only motion that can be made at that time is for approval of the application in accordance with § 3028 and without the need for a public hearing.
- 2523.6 If no motion is made, or if the motion fails, the matter shall be moved to the “Hearing Actions” portion of the agenda, at which point the Commission may take any of the actions authorized by §§ 3011.3 through 3011.6.
- 2523.7 The Office of Planning may submit a report as to whether the Commission should approve the application. Any such report should be filed no later than ten (10) days prior to the date of the public meeting at which the final action item will be considered.
- 2523.8 A request to modify an approved designed shall be subject to the same review criteria and approval process as set forth in this section for the original application.

C. Chapter 30, ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. Section 3011, REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS, § 3011.1, is amended by inserting the phrase “Except as provided in § 2523.4,” at its beginning, so that the provision will read as follows:
 - 3011.1 Except as provided in § 2523.4, as soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter

should be processed further, except that the applications for Zoning Commission review and approval filed pursuant to Chapters 16, 18, and 28 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. The exception from the requirements of this subsection shall not apply to an application for Zoning Commission approval pursuant to § 1606 unless accompanied by a written report of the Office of Planning certifying that the application is compliant with the standards of that section.

2. Section 3014, NOTICE OF HEARINGS: GENERAL, § 3014.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,”, so that the provision will read as follows:

3014.1 Notice of a hearing pursuant to the rulemaking provisions of § 3021 or the contested case provisions of § 3022, other than a hearing for a § 2523 application, shall be given by:

- (a) Publishing notice of the hearing in the D.C. Register at least forty (40) days in advance of the hearing;
- (b) Posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and
- (c) Providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.

3. Section 3015, NOTICE OF CONTESTED CASE HEARINGS, § 3015.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,” in its place, so that the provision will read as follows:

3015.1 Notice of a contested case hearing pursuant to § 3022, other than a hearing for a § 2523 application, shall be given in accordance with § 3014 and the additional requirements of this section.

4. Section 3022, CONTESTED CASE HEARINGS, § 3022.1, is amended by striking the phrase “as well as § 1709.21” and inserting the phrase “as well as §§ 1709.21 and 2523.2.” so that the provision will read as follows.

3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space

developments, and similar plan review activities of the Commission, including those required by Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, except as otherwise provided in § 3010.7.

5. Section 3027, PROPOSED ACTION, § 3027.4, is amended to read as follows:

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting and, in the case of an application pursuant to § 2523, at the initial public meeting regarding the application.

6. Section 3043, EXEMPTION FROM FEES, § 3043.1 is amended by striking the phrase “is owned by that agency” from paragraph (b) and inserting the phrase “is owned by the District or that agency or is under one or both of their jurisdictions” in its place, so that the provision will read as follows:

3043.1 The following persons or groups shall not be required to pay either a filing fee or hearing fee:

- (a) A department, office, or agency of the government of the District of Columbia, where the property is owned by the District or that agency or is under one or both of their jurisdictions and the property is to be used for a government building or use; and
- (b) The National Capital Planning Commission.

3043.2 There shall be no fee required for the filing of a petition before the Commission.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.