

ZONING COMMISSION
District of Columbia
CASE NO. 14-05
EXHIBIT NO. 32
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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-05
Z.C. Case No. 14-05
(Text Amendments to § 1803)
March 30, 2015**

The Zoning Commission for the District of Columbia (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 (2012 Repl.)), hereby gives notice of adoption of the following text amendment to the Zoning Regulations of the District of Columbia, at Chapter 18 (Southeast Federal Center Overlay District), Title 11 (Zoning), of the District of Columbia Municipal Regulations (DCMR). A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 27, 2015, at 62 DCR 2578. The amendment shall become effective upon the publication of this notice in the *D.C. Register*

Description of the Amendments

The text amendments allow for additional height, density, and flexibility intended to encourage residential development in the western portion of the Southeast Federal Center (SEFC) Overlay District/CR Zone District. The amendments also require that buildings utilizing additional height and density devote a minimum of eight percent (8%) of the additional density gained to three (3)-bedroom units, based on issues raised by Advisory Neighborhood Commission (ANC) 6D. In addition, the amendments require the petitioner, as part of the Commission's review of each proposed building on Parcel A, to demonstrate proactive engagement with the Washington Metrorail Area Transit Authority (WMATA) to accommodate the design of a public entrance to the Navy Yard Metrorail Station on that parcel.

Procedures Leading to Adoption of the Amendments

On March 27, 2014, Forest City Washington (Forest City) submitted a petition requesting amendments to the regulations. Forest City owns the parcels to which the amendments apply, which constitute the western portion of The Yards development in Southeast, D.C. Referred to as the "Yards West," these parcels generally sit south of M Street, north of Tingey Street/N Place, east of First Street, and west of New Jersey Avenue. The petition proposed the following amendments:

- (1) Amend § 1803.3¹ to authorize deviations from the ground floor preferred use requirements for the SEFC/CR Zone District subject to Commission approval;
- (2) Amend § 1803.5 to allow a height permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code § 6-601.1 *et seq.* (Repl. 2012));

¹ Unless otherwise stated, citations refer to provisions of Title 11 of the DCMR

- (3) Amend § 1803.7 to permit an additional 1.0 of Floor Area Ratio (FAR) for residential use in the SEFC/CR Zone District; and
- (4) Amend § 1803.8 to require Commission design review for any property utilizing additional height and density for residential use

In its petition, Forest City stated that the proposed amendments would align the height and density of any residential development in the Yards West with similar residential density to the west of the Capitol Gateway (CG)/CR Overlay and the south in the D.C. Water Sites PUD, while also providing the Commission with design review authority. Forest City also stated that, to achieve the policies and goals of the District of Columbia Comprehensive Plan, it had committed to set aside twenty percent (20%) of any density gained through the amendments as affordable housing.

On May 30, 2014, the Office of Planning (OP) submitted a prehearing report, expressing support for the general intent of the proposed amendments while also noting the need to clarify the amendments and proposing additional conditions to bonus density and height. OP proposed having the amendments specifically permit bonus FAR for Parcels A, F, G, H, and I within the SEFC/CR Overlay, as well as additional height for Parcels F, G, and H. OP noted that Parcel A is already permitted a height of one-hundred thirty (130) feet. Further, OP did not recommend allowing bonus height for Parcel I because of its proximity to the historic Main Sewerage Pumping Station and other lower scale developments.

OP also proposed ensuring that development in the Yards West would preserve circulation connections between Parcels F and G and between Parcels H and I. Additionally, OP requested that the amendments ensure that provisions granting the Commission design review of developments include parameters related to connectivity through sites and consideration for transit accessibility. Specifically, OP wanted to ensure that the connections provided by 1½ Street and N Street be included in any proposed developments. Lastly, OP proposed that the Commission's review provide that any development of Parcel A accommodate a new metrorail entrance due to the congestion along the Navy Yard Metrorail Station that currently exists during rush hour, baseball games at nearby Nationals Park, and other event days.

In its Prehearing Report, OP also provided analysis concluding that the proposed amendments would be consistent with the Comprehensive Plan, including policies in the Land Use, Housing, Economic Development, Urban Design, Historic Preservation, and Lower Anacostia Waterfront Elements.

At its regular public meeting on June 9, 2014, the Commission voted to set down the proposed text amendments for a hearing.

In response to notice given pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309.10), the Commission received a written report from ANC 6D. In the report, dated September 22, 2014,

ANC 6D indicated that, at a properly noticed meeting with a quorum present, it voted 6-0 to support the text amendment. The ANC also stated that it “strongly encourages the Zoning Commission to require units with more than two (2) bedrooms as a condition of this added height and density.”

On September 26, 2014, Forest City filed a supplemental prehearing submission, which included an excerpt from its Payment in Lieu of Taxes Development Agreement with the District Government. The excerpt provides that Forest City commits to set aside twenty percent (20%) of all residential units in rental housing as affordable units for households earning up to 50% of the Area Median Income. In its submission, Forest City also noted that the text amendments would permit a total of up to approximately three-hundred (300) additional dwelling units on Parcels F, G, H, and I, assuming those parcels are developed with residential uses utilizing bonus density. As a result, the amendments would permit up to sixty (60) additional affordable dwelling units.

On October 3, 2014, OP submitted a report and recommendation to the Commission reiterating its support for the amendments, which OP stated would address issues of affordable housing and ground floor retail connectivity, as well as maintaining existing street connections between developments and ensuring accommodation of a possible new entrance to the Navy Yard Metrorail Station.

On October 7, 2014, the District Department of Transportation (DDOT) submitted its report on the proposed amendments. DDOT concluded that the amendments may lead to a slight increase in vehicular, transit, pedestrian, and bicycle trips in the area. DDOT raised no objections to the amendments, with the condition that future projects complete a Comprehensive Transportation Review as part of the Commission’s design review, which would address and mitigate any impacts of development on the surrounding transportation network.

On October 16, 2014, the Commission held a public hearing in which it heard testimony from representatives of Forest City, OP, and ANC 6D.

On November 3, 2014, Forest City submitted post-hearing filings in which it proposed changes to the amendments in order to address concerns raised by the Commission at the October 16, 2014, hearing. Specifically, Forest City proposed changing the language OP had requested be added to § 1803.8 in order to ensure that development on Parcel A would not prevent the possibility of a new entrance to the Navy Yard Metrorail Station. OP had proposed a provision that required an applicant for bonus density to prove that the site plan “[f]acilitate the provision of a public entrance to the Navy Yard Metrorail Station.” The Petitioner proposed to replace the phrase, “facilitate the provision,” with, “accommodate the design.”

Additionally, Forest City responded in its post-hearing filing to concerns raised by ANC 6D and the Commission regarding the need for larger units to accommodate families. Forest City contended that the area impacted by the amendment is not likely to attract families because of its

location in a high-density, entertainment-focused corridor. Further, Forest City stated that the Near Southeast neighborhood has already seen a significant increase in housing opportunities for families, which has kept pace with the overall growth of housing in the District. Notwithstanding its objections to the need for more units to accommodate larger families, Forest City proposed new language in the amendment requiring that five percent (5%) of any additional density be devoted to three (3)-bedroom units. The new language would also allow for the reduction or elimination of this requirement with Commission approval in accordance with the standards and procedures provided in §§ 1808 and 1809, respectively.

On November 17, 2014, ANC 6D filed a report responding to the new language proposed by Forest City. The ANC contended that five percent (5%) was too low a commitment for larger units and also objected to the inclusion of what the ANC referred to as an “escape clause” for the requirement.

On November 18, 2014, OP filed a supplemental report.² In its report, OP noted that the new language Forest City proposed for the amendment with respect to facilitation of the Navy Yard Metrorail Station mirrors the language used for the planned unit development granted to George Washington University for its construction of a new campus building (Z.C. Case No. 06-11B/06-12B). OP also stated that, contrary to Forest City’s claim that the area impacted by the amendment would likely not appeal to families, a population forecast conducted by the State Data Center predicts that the population of children aged under one (1) to eighteen (18) years is anticipated to grow approximately eighty-three percent (83%) from 2010 to 2022 in the Near Southeast and Navy Yard neighborhoods. Thus, OP stated, this study suggests that the SEFC neighborhood is appealing to families, and there will be a need for larger units to accommodate them. Accordingly, OP supported the proposed language requiring that a minimum of five percent (5%) of any additional density gained by the amendments be devoted to three (3)-bedroom units, as well as the language allowing relief from that requirement subject to Commission approval.

On November 24, 2014, the Commission held a public meeting to consider proposed action at which it decided to postpone action pending Forest City’s filing further submissions to address issues raised concerning the metrorail entrance and the provision of larger housing units.

On January 5, 2014, Forest City made such a submission. With respect to the metrorail entrance, Forest City stated that WMATA’s interest in a third entrance to the Navy Yard Metrorail Station was speculative at best. Further, Forest City contended, accommodation of an entrance would entail significant costs, which would only be increased were Forest City to be required to set aside the property for an entrance not yet planned to be built. With respect to larger housing units, Forest City stated that committing more than five percent (5%) of additional density to

² OP’s supplemental report was submitted after the November 17, 2014, deadline established for the report. OP requested that the Commission waive the deadline and accept the report into the record, which the Commission granted at its public meeting on January 12, 2015.

three (3)-bedroom units would not be prudent in light of its concern that the market demand for such units would be low

On January 12, 2015, the Commission held a public meeting at which it again deferred proposed action on the amendments in order to allow the Petitioner to submit additional information concerning the Navy Yard Metrorail Station entrance and the provision of three (3)-bedroom units, as well as to allow time for OP and ANC 6D to file responses to this information

On January 26, 2015, Forest City submitted a second supplemental filing. In its filing, Forest City included a revised proposal which would increase the proposed set-aside for three (3)-bedroom units to eight percent (8%) of the additional density gained through the amendment. Further, with respect to the metrorail entrance, Forest City's revised proposal included an additional requirement that an "applicant shall demonstrate proactive engagement with [WMATA] in planning and design of Parcel A "

On February 9, 2015, the Commission held a public meeting at which it considered proposed action on Forest City's revised text amendments. At the meeting, the Commission accepted the language proposed for § 1803.8(d) allowing reduction or elimination of the larger housing unit requirement provided that such modification "be permitted upon a showing that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible." The Commission also accepted further refinements to § 1803.8(a) agreed to by the Petitioner following discussions with the Office of the Attorney General. With these alterations, the Commission voted to approve proposed action on the case

On February 12, 2015, the Commission referred the proposed amendment to the National Capital Planning Commission (NCPC)

On February 18, 2015, ANC 6D filed a report stating that, at its regularly scheduled and properly noticed public meeting on February 9, 2015, the ANC voted, with a quorum present, 6-0-0 in favor of reiterating its prior resolution regarding the proposed amendments. The ANC restated its request that the amendment not include any exceptions to the requirement regarding three (3)-bedroom units.

On February 27, 2015, the *D C Register* published a notice of proposed rulemaking for the amendments. No additional comments were received in response to the notice of proposed rulemaking.

In a letter dated March 10, 2015, the Executive Director of NCPC informed the Commission that, through a delegated action dated February 27, 2015, he found that the proposed text amendments are not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

On March 30, 2015, the Commission held a public meeting at which it considered final action on the proposed amendment. The Commission addressed the concern ANC 6D had reiterated regarding the exception to the three (3)-bedroom unit requirement. The Commission found that, considering the Petitioner's concerns with respect to the lack of market demand for larger units, some flexibility to permit deviation from this requirement was necessary. The Commission notes that the test for reducing or eliminating the requirement essentially tracks the first two (2) elements for obtaining a variance. The only difference is that the Applicant need not prove that granting the relief will not impair the zone plan or the public good. For these reasons the Commission does not find the ANC's advice on this issue to be persuasive. Accordingly, the Commission voted to adopt the proposed amendments.

Title 11 of the District of Columbia Municipal Regulations, ZONING, is amended as follows:

Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, § 1803, SEFC/CR ZONING DISTRICT, is amended as follows:

Subsection 1803.3 is amended by adding a new paragraph (i) so that the entire subsection reads as follows:

1803.3 Within the SEFC/CR District, "preferred uses" listed in § 1807.2 of this title shall be permitted in accordance with the following:

- (a) Any building or structure with frontage on M Street, S.E. or N Street, S.E. shall provide preferred uses comprising a minimum of seventy-five percent (75%) of the frontage on M Street, S.E. or N Street, S.E. and a minimum of seventy-five percent (75%) of that portion of the gross floor area of the ground floor within a depth of fifty feet (50 ft.) from the exterior façade 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;
- (b) In addition to the locations in which preferred uses are required pursuant to § 1803.3(a), preferred uses may be provided on the ground floor level of buildings in other areas within the SEFC/CR District, but are not required. If provided, such preferred use area shall not be required to conform to the requirements of §§ 1803.3(a), (e), (f), and (g);

- (c) In addition to the preferred uses listed in § 1807 2, the preferred use space requirement of § 1803.3(a) may also be met by any use listed in § 1803.2, other than those listed in § 1803.2(b), (g), or (o), if reviewed and approved by the Zoning Commission in accordance with the standards specified in § 1808 and procedures specified in § 1809 of this title;
- (d) For good cause shown, the Commission may authorize interim occupancy of the preferred use space required under § 1803 3(a) by other uses permitted in the SEFC Overlay District for up to a five (5) year period, provided that the ground-floor space is suitably designed for future occupancy by preferred uses,
- (e) Not less than fifty percent (50%) of the surface area of the street wall, including building entrances, of those building frontages described in § 1803.3(a), shall be devoted to doors or display windows having clear or low emissivity glass;
- (f) Preferred uses shall provide direct, exterior access to the ground level;
- (g) The minimum floor-to-ceiling height for portions of the ground floor level devoted to preferred uses shall be fourteen feet (14 ft.);
- (h) Ground floor area required for preferred uses may not be transferred to any other lot through combined lot development, and
- (i) Changes to the type, amount, and location of preferred uses required under § 1803.3(a) shall be permitted if reviewed and approved by the Commission in accordance with the standards specified in § 1808 and procedures specified in § 1809

Subsection 1803.5 is amended by including within a new paragraph (a) the existing exception to the SEFC/CR District height limit and establishing a second exception within a new paragraph (b), so that the entire subsection reads as follows:

1803 5 The maximum building height in the SEFC/CR District shall not exceed one hundred ten feet (110 ft.), except as set forth below:

- (a) For sites with frontage on any portion of New Jersey Avenue, S.E that is south of and within three hundred twenty-two feet (322 ft.) of M Street, S E., a maximum height of one hundred thirty feet (130 ft.) is permitted, and

- (b) For sites within Parcels A, F, G, or H utilizing the bonus density permitted pursuant to § 1803.7(b), the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910

Subsection 1803.7 is amended to allow a 1.0 FAR bonus for residential uses on certain parcels within the SEFC/CR District and § 1803.8 is amended to require Zoning Commission design review for any property utilizing bonus height and density for residential use, and to specify certain additional standards for such review, so that both subsections will read as follows

1803.7 In the SEFC/CR District, the maximum permitted density shall be 6.0 FAR overall, not more than 3.0 FAR of which may be used for other than residential purposes, except as set forth below

- (a) A site that is permitted a height of one hundred thirty feet (130 ft) pursuant to § 1803.5(a) is permitted a maximum non-residential density of 6.5 FAR through combined lot development, in accordance with the provisions outlined in § 1810; and
- (b) A building within Parcels A, F, G, H, and I shall be permitted a maximum density of 7.0 FAR, provided that the additional 1.0 FAR is devoted solely to residential uses, which for purposes of this subsection does not include a hotel

1803.8 Any proposed building that has frontage along M Street, S.E. or utilizes additional height and density pursuant to §§ 1803.5(b) and 1803.7(b) shall be subject to review and approval by the Commission. An applicant requesting approval under this section must prove that the architectural design, site plan, landscaping, and sidewalk treatment of the proposed building:

- (a) Accommodates the design of a public entrance to the Navy Yard Metrorail Station on Parcel A. The applicant shall demonstrate proactive engagement with the Washington Metrorail Area Transit Authority (WMATA) in the planning and design of Parcel A as a part of the above design review as set forth below:
 - (i) If the applicant moves forward with the design of Parcel A before WMATA is ready to construct the third entrance, the applicant shall demonstrate that it has coordinated with WMATA to determine how to ensure that the design of Parcel A accommodates the planned entrance, and

- (11) If WMATA moves forward with the construction of the third entrance before the applicant is ready to develop Parcel A, the applicant shall demonstrate that it has coordinated with WMATA to integrate the entrance into the design of Parcel A;
- (b) Ensures the provision of 1½ Street, S E and N Street, S E as open and uncovered multimodal circulation routes;
- (c) Are of superior quality, pursuant to the standards set forth in § 1808 and procedures set forth in § 1809, and
- (d) Devotes a minimum of eight percent (8%) of the additional density gained pursuant to § 1803.7(b) to three (3)-bedroom units, provided that such units may be located anywhere within the residential building. The reduction or elimination of this requirement may be permitted by the Commission upon a showing by the applicant that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible.

On February 9, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 30, 2014, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt)

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 24, 2015.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-05
Z.C. Case No. 14-05
(Text Amendments to § 1803)
March 30, 2015**

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