

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 18-04A

Office of Planning

(Text Amendment to Subtitle A to Authorize Construction of Playing Fields and Accessory Structures on Unzoned Land (Parcel 149, Lots 65-66))

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 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice: Subtitle A, Authority and Applicability - § 209.2.

Setdown

On October 19, 2020, the Office of Planning (OP) filed a petition (Petition) to the Commission proposing the text amendment to authorize a second restroom to support the playing fields authorized at land adjacent to the Robert F. Kennedy Stadium by the text amendment in Z.C. Case No. 18-04.

At its October 29, 2020, public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing

OP filed a January 1, 2021 report in support of the Petition.

At its January 11, 2021 public hearing, the Commission heard testimony from OP in support of the Petition.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive OP's recommendation that the Commission take proposed action to adopt the Petition and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy

the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

As no ANC filed a written report in response to the Petition, there is nothing to which the Commission can give “great weight.”

Proposed Action

At its January 11, 2021, public hearing, the Commission heard testimony from OP in favor of the Petition. No other testimony was presented.

At the close of the public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Petition to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (January 11, 2021): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

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, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

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

The complete record in the case can be viewed online at the Office of Zoning’s Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **~~bold and strikethrough~~** text; new text is shown in **bold and underline** text).

Amendments to Subtitle A, AUTHORITY AND APPLICABILITY

Section 209, RESTRICTIONS ON UNZONED LAND, of Chapter 2, ADMINISTRATIVE AND ZONING REGULATIONS, of Subtitle A, AUTHORITY AND APPLICABILITY, is proposed to be amended by amending paragraph (c) of § 209.2, to read as follows:

209.1 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 as may otherwise be authorized by the Zoning Commission as a map or text amendment.

209.2 Nothing in this chapter shall prevent **either any** of the following:

- (a) Minor repairs and alterations to buildings and structures ...¹
- (b) A caretaker from residing on property ...
- (c) Installation and use of playing fields and associated accessory structures to support such fields on the unzoned property comprising and abutting the Robert F. Kennedy Memorial Stadium, more specifically known as Parcel 149, Lots 65 and 66, subject to the following:

(i) (1) ~~Three (3)~~ Four (4) accessory structures shall be permitted: a visitor building, a storage building, and **two (2)** restroom facilities. Each permitted accessory structure shall not exceed a maximum height of twenty feet (20 ft.) and one (1) story, and a maximum gross floor area of one thousand square feet (1,000 sq. ft.);

(ii) (2) Three (3) shade structures ...

(iii) (3) In addition to the **~~three~~ four (4)** accessory structures listed in subparagraph **~~209.2(e)(i1)~~ of this paragraph**, and the shade structures listed in subparagraph **~~209.2(e)(ii2)~~ of this paragraph**, an unenclosed pavilion shall be permitted and used provided the Zoning Commission finds that said structure, as designed, meets the standard of Subtitle X, Chapter 6, other than **Subtitle X § 604.8**. The pavilion shall be either covered or uncovered, and **shall have a footprint** no greater than **~~a~~ six thousand square feet (6,000 sq. ft.) footprint**. If covered, a canopy no greater than thirty feet (30 ft.) in height may be installed.

¹ The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.