

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
Z.C. CASE NO. 20-01¹
(Text Amendment – 11-C DCMR)
(To Amend General Waterfront Regulations)

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 amendment of the following provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations] to which all references are made unless otherwise specified):

- Subtitle C, General Rules
§ 1102 – to allow, by special exception, certain uses that are currently prohibited

Description of Amendment

The text amendment permits certain uses currently prohibited in the one hundred (100)-year floodplain to be allowed by special exception subject to specific criteria and review and report by the District Department of Energy and Environment (DOEE).

Procedures Leading to Adoption of the Amendment

Office of Planning (“OP”)

OP filed a January 3, 2020, report that served as a petition proposing the text amendment to the Zoning Regulations, and requested that the Commission:

- Set down the petition for a public hearing;
- Shorten the notice period from 40 to 30 days;
- Authorize immediate publication of the public hearing notice; and
- Authorize flexibility to work with the Office of the Attorney General (OAG) on the final text.

OP filed a January 24, 2020, supplementary setdown report that modified the proposed text amendment in coordination with DOEE.

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 12-08C.

At the close of its January 27, 2020 public meeting, the Commission voted to set down the proposed text amendment for a public hearing; to shorten the notice period to 30 days; authorize the publication of a Notice of Proposed Rulemaking; and authorize flexibility for OP to work with OAG.

Proposed Action

VOTE (January 27, 2020): 5-0-0 (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to **APPROVE**)

Notice of Proposed Rulemaking

The Commission published the proposed amendment as a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* (67 DCR 2614, *et seq.*) on March 6, 2020.

No comments were received in the thirty (30)-day period required by § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)).

National Capital Planning Commission (NCPC)

The Commission referred the proposed amendment to the National Capital Planning Commission (NCPC) for the thirty (30)-day review period required by § 492 of the District Charter on May 4, 2020.

NCPC filed a report dated May 6, 2020, stating that NCPC had determined that the proposed amendment was not inconsistent with the federal elements of the Comprehensive Plan nor would they adversely impact any identified federal interests. (Exhibit 15.)

OP filed a March 6, 2020, report recommending approval of the proposed text amendment and presenting its analysis that the proposed text amendment was not inconsistent with the Comprehensive Plan.

“Great Weight” to the Recommendations of OP

The Commission is required to give “great weight” to the recommendation 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 adopt the proposed text amendment and that it is not inconsistent with the Comprehensive Plan, and the Commission therefore 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, there is nothing to which the Commission can give great weight.

At the close of its May 7, 2020, public hearing, the Commission voted to take final action and authorize the publication of a notice of final rulemaking.

Final Action

VOTE (May 7, 2020): **4-0-1** (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter A. Shapiro to **APPROVE**; Peter G. May not present, not voting)

The following amendments to Title 11 DCMR, Zoning Regulations of 2016, are hereby adopted:

Amendments to Subtitle C, GENERAL RULES

Section 1102, GENERAL WATERFRONT REGULATIONS, of Chapter 11, WATERFRONT, of Subtitle C, GENERAL RULES, is amended by revising current § 1102.4, adding a new § 1102.5, and renumbering current §§ 1102.5 and 1102.6 as new §§ 1102.6 and 1102.7, to read as follows:

1102.1 A waterfront setback to any building ...²

...

1102.4 The following uses shall be permitted as a special exception within a one hundred (100)-year floodplain, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 and subject to the conditions in Subtitle C § 1102.5:

- (a) Residential uses with only one (1) or two (2) dwelling units;
- (b) Animal sales, care, and boarding;
- (c) Community-based institutional facilities;
- (d) Daytime care;
- (e) Education;

² The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the text at issue does not signify an intent to repeal those other provisions.

- (f) Emergency shelter;
- (g) Hospital; and
- (h) Lodging.

1102.5 The following conditions shall apply to any application for a special exception use under Subtitle C § 1102.4:


- (a) The application shall include an analysis that provides the following:
 - (1) A site plan showing the one hundred (100)-year floodplain boundaries and base flood elevations for the property that is certified by a registered professional engineer, architect, landscape architect, or other qualified person;
 - (2) A description of how the project has been designed to meet applicable flood resistant design and construction standards that is certified by a registered professional engineer, architect, landscape architect, or other qualified person;
 - (3) An evacuation plan that describes the manner in which the property would be safely evacuated before or during the course of a one hundred (100)-year flood event; and
 - (4) A description of how the proposed use would not result in any adverse impacts to the health or safety for the project's occupants or users due to the proposed use's location in the floodplain; and
- (b) The Office of Zoning shall refer the application to the following agencies for their review and recommendation if filed to the case record within the forty (40)-day period established by Subtitle A § 211:
 - (1) District Department of Energy and Environment (DOEE);
 - (2) District of Columbia Fire and Emergency Medical Service Department (FEMS);
 - (3) Metropolitan Police Department (MPD); and
 - (4) The District of Columbia Homeland Security and Emergency Management Agency (HSEMA).

1102.6 Parking space requirements for the waterfront areas are ...


1102.7 The following structures and projections may encroach ...

The complete record in the case, including the OP reports and transcript of the public hearings, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on June 26, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING