

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 20-13
(Text Amendment – Subtitle K of Title 11 DCMR)
(To Allow Office Uses in the SEFC-3 Zone)

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 U: Use Permissions - § 238.3.

Setdown

On June 11, 2020, & Storrs (Petitioner) filed a petition to the Commission proposing to add a new paragraph (k) to Subtitle U § 238.3 to add office uses to permitted uses in the SEFC-3 zone in order to implement the revisions adopted to the SEFC Master Plan approved by the National Capital Planning Commission. The revised SEFC Master Plan moved the office uses initially allocated to Parcel H to Parcel Q, the only property in the SEFC-3 zone, with the residential uses initially allocated to Parcel Q moved to Parcel H.

The Office of Planning (OP) filed a July 17, 2020, report that supported the proposed text amendment based on OP's analysis that it is not inconsistent with the Comprehensive Plan, as required by Subtitle X § 1300.2.¹ OP noted that the proposed swap of uses between Parcels H and Q would improve the mix of uses across the SEFC area and potential increase the affordable housing provided, because the new housing in Parcel H would likely be rental, and so subject to IZ, whereas the residential use originally planned for Parcel Q was condos which are not be subject to IZ.

At its July 27, 2020 public meeting, the Commission heard testimony from OP in support of the proposed amendment. At the conclusion of the meeting, the Commission voted to grant the Petitioner'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 an October 13, 2020, hearing report recommending approval of the proposed text amendment.

ANC 6D filed an October 15, 2020, letter in support of the proposed text amendment because the proposed swap of uses between parcels would further the SEFC Master Plan for the Yards and

¹ Although the OP report inadvertently cited the proposed text amendment as revising Subtitle K §§ 241 and 242 in the title and recommendation, its analysis correctly addressed the proposed revision to Subtitle K § 238.3.

deliver more housing, including additional affordable housing, and in ANC 6D’s determination, is not inconsistent with the Comprehensive Plan.

Public Hearing

At its October 22, 2020, public hearing, the Commission heard testimony from the Petitioner in support of the proposed text amendment.

National Capital Planning Commission (NCPC)

The Petitioner submitted a June 4, 2020 letter from NCPC approving the proposed amendment of the SEFC Master Plan that included the proposed use changes.

“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 Y § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

The Commission finds OP’s recommendation that the Commission take proposed action to adopt the proposed text amendment persuasive 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).)

The Commission finds persuasive the ANC Report’s concerns of the importance of providing more housing, including affordable housing, and of furthering the approved SEFC Master Plan for the Yards, and notes that the ANC Report supported the proposed text amendment as addressing these concerns, in which judgement the Commission concurs.

Proposed Action

At the close of its October 22, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** to grant the petition as proposed by the Petitioner and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (October 22, 2020): 5-0-0 (Peter G. May, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

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

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*.

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).

Proposed Amendment to Subtitle K, SPECIAL PURPOSE ZONES

A new paragraph (k) is proposed to be added to § 238.3 of § 238, USE PERMISSIONS (SEFC-2 AND SEFC-3), of Chapter 2, SOUTHEAST FEDERAL CENTER ZONES – SEFC-1 THROUGH SEFC-4, of Subtitle K, SPECIAL PURPOSE ZONES, to read as follows:

238.3 Notwithstanding Subtitle K § 238.1, the following buildings, structures, and uses are permitted only if reviewed and approved by the Zoning Commission, in accordance with the standards specified in Subtitle K § 142 and procedures specified in Subtitle K § 242:

(a) All buildings and structures that abut the SEFC-4 open space area ...²

...

(i) Education, college/university; ~~and~~

(j) Daytime care; **and**

(k) Within the SEFC-3 zone only, office uses, including chanceries.

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