

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
Z.C. CASE NO. 20-13¹
(Text Amendment – Subtitle K of Title 11 DCMR)
(To Allow Office Uses in the SEFC-3 Zone)
December 17, 2020

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 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 the end of this notice: Subtitle K: Use Permissions - § 238.3.

Setdown

On June 11, 2020, Goulston & Storrs (Goulston) filed a petition (Petition) to the Commission proposing to add a new paragraph (k) to Subtitle K § 238.3 to add office uses to permitted uses in the SEFC-3 zone in order to implement the revisions to the SEFC Master Plan for the Yards development approved by the National Capital Planning Commission (NCPC). The revised SEFC Master Plan moved the office uses initially allocated to Parcel H to Parcel Q, which is the only property in the SEFC-3 zone, and moved the residential uses initially allocated to Parcel Q to Parcel H. Goulston submitted a June 4, 2020 letter from NCPC approving the proposed amendment of the SEFC Master Plan that included the proposed use changes.

The Office of Planning (OP) filed a July 17, 2020 report that supported setting down the Petition for a public hearing based on OP's analysis that it is not inconsistent with the Comprehensive Plan, as required by Subtitle X § 1300.2.² 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 Inclusionary Zoning (IZ), whereas the residential use originally planned for Parcel Q was condos which are not be subject to IZ.

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-13.

² 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.

At its July 27, 2020 public meeting, the Commission heard testimony from OP in support of setting down the Petition for a public hearing. At the conclusion of the meeting, the Commission voted to grant Goulston's request to set down the Petition 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 Petition.

ANC 6D filed an October 15, 2020 letter (ANC Report) in support of the Petition based on the ANC's determination that the Petition's swap of uses between parcels in the Yards development would address the ANC's concerns to further the SEFC Master Plan for the Yards and provide more housing and more affordable housing. The ANC Report also stated ANC 6D's determination that the Petition is not inconsistent with the Comprehensive Plan.

Public Hearing

At its October 22, 2020 public hearing, the Commission heard testimony from Goulston and OP in support of the Petition.

Proposed Action

At the close of its October 22, 2020 public hearing, the Commission voted to take **PROPOSED ACTION** to grant the Petition 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**)

Notice of Proposed Rulemaking

The Commission published a Notice of Proposed Rulemaking (NPR) in the November 6, 2020, *D.C. Register*. (67 DCR 13157, *et seq.*)

No comments to the NPR 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

The Commission referred the proposed amendment to NCPC on October 26, 2020, for the thirty- (30) day review period required by § 492 of the District Charter.

NCPC filed a December 2, 2020 report stating that it had determined, pursuant to delegated authority, that the proposed amendment was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests.

Final Action

“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 OP’s recommendation that the Commission adopt the Petition 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.

At its December 17, 2020 public meeting, the Commission voted to take **FINAL ACTION** to grant the Petition and to authorize the publication of a Notice of Final Rulemaking:

VOTE (December 17, 2020): 5-0-0 (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Peter G. May 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>.

The following amendments to the text of the Zoning Regulations are hereby adopted.

Amendment to Subtitle K, SPECIAL PURPOSE ZONES

A new paragraph (k) is 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 ...³
...
- (i) Education, college/university;
- (j) Daytime care; and
- (k) Within the SEFC-3 zone only, office uses, including chanceries.


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 January 15, 2021.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



 ANTHONY J. HOOD
 CHAIRMAN
 ZONING COMMISSION



 SARA A. BARDIN
 DIRECTOR
 OFFICE OF ZONING

³ 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.