

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 20-21

Office of Planning

(Text Amendment – To Create a New BF (Barry Farm) 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 Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), to create a new BF zone for the former Barry Farm Wade Road development (known as “Barry Farm”). The proposed new text appears at the end of this notice.

SETDOWN

On September 4, 2020, the Office of Planning (OP) filed a petition (Petition) and a report (OP Set Down Report) to the Commission proposing to create a new BF (Barry Farm) Zone. Barry Farm is one of the identified communities in the Office of the Deputy Mayor for Planning and Economic Development’s (DMPED) New Communities Initiative (NCI) which has as a goal the revitalization and redevelopment of areas developed solely as public housing through the development of mixed income and mixed-use communities into which the existing residents would be integrated.

The OP Set Down Report described the objectives of the amendments as follows: The proposed BF Zone would implement the Barry Farm/Park Chester/Wade Road Redevelopment Plan, which was approved as a small area plan by the Council of the District of Columbia on December 19, 2006, pursuant to the Barry Farm/Park Chester/Wade Road Redevelopment Plan Resolution of 2006 (Res 16-0922). The proposed new zone category, BF, would contain two individual zones, BF-1 and BF-2, each with subzones, which would allow matter-of-right development consistent with the Council-adopted Barry Farm/Park Chester/Wade Road Redevelopment Plan. Each BF zone will have bulk parameters for new construction such as height, FAR, lot occupancy and yards which are intended to achieve the desired density and building type on each part of the site. The BF-1 zone is proposed as a moderate-density, mixed-use zone that will allow residential use in apartments with ground floor neighborhood retail and service uses with maximum building height of sixty-five feet (65 ft.) and FARs of 4.0 in the BF-1A and 6.0 in the BF-1B zones. The BF-2 zone is a moderate density residential zone that will allow row dwellings, semi-detached units and flats at a maximum height of forty feet (40 ft.). Within the BF-2 zone will also be the area designated for a community park, and the historic landmark.

The text amendments would allow for the future redevelopment of Barry Farm, which would include:

- New replacement housing for former Barry Farm residents;
- New mixed income housing in varying unit types;

- Neighborhood retail and service uses;
- Green and open spaces; and
- Preservation and reuse designated historic landmark buildings.

The OP Set Down Report explained that once the BF Zone is set down, a separate map amendment case will be filed by OP to map the new zone.¹

At its September 14, 2020 public meeting, the Commission considered the OP Set Down Report and OP’s oral presentation, voted to grant OP’s request to set down the Petition for a public hearing as a rulemaking case², and requested that OP provide an update on the following issues prior to the public hearing:

- Development potential under the old PUD proposal³ and the proposed text amendment;
- Tenant Relocation;
- Continued Resident Engagement;
- Comprehensive Plan Amendments Status; and
- Notifications regarding the new BF Zone.

PUBLIC HEARING

OP submitted a November 27, 2020 report (OP Hearing Report), providing the updates the Commission requested at set down as follows:

Development potential under the old PUD proposal and the proposed text amendment

The development proposed under the First-Stage PUD and Map Amendment of Z.C. Case No. 14-02 would have generated a total of one thousand fourteen (1,014) units and fifty-five thousand, five hundred square feet (55,500 sq. ft.) of retail/service and community space.

Tenant Relocation

The property is under the authority of the District of Columbia Housing Authority (DCHA). In 2012, in anticipation of the redevelopment of the site, DCHA began relocation of the Barry Farm residents to other DCHA projects or provided various forms of subsidies to other locations throughout the City. DCHA continues to periodically confirm the residents’ locations and will continue to provide them with project updates.

In December 2018, the Preservation of Affordable Housing, Inc. (POAH) was contracted to undertake the relocation of the remaining residents and all residents were relocated off the property by July 2019. The relocation services provided by POAH included:

¹ Z.C. Case No. 20-24, the separate map amendment case, was filed by OP on October 5, 2020.

² Pursuant to 11-Z DCMR § 201.5, the Commission set this case down as a rulemaking because this case only involves amendments to the text of the Zoning Regulations and is therefore legislative in nature, and because it potentially affects large numbers of persons or property or the public in general.

³ In Z.C. case 14-02, the Commission approved a PUD to redevelop the Barry Farm neighborhood. The PUD was appealed to the D.C. Court of Appeals which ultimately vacated and remanded the case back to the Commission for “fuller consideration” of the issues identified in the Court’s decision. On May 30, 2018, pursuant to 11-Z DCMR § 600.3, DCHA and the Developer submitted a request for the Commission’s consent to withdraw the PUD, which the Commission consented to on June 11, 2018.

- Counseling and other advisory services;
- Housing choices, including private apartments or other public housing, that are comparable units for their household; and
- Payment of moving expenses which included: Application fees; Security deposit; Storage costs; Packing materials; Physical moving assistance; Packing/unpacking assistance (seniors and disabled); and Payment of utility, cable, and other transfer fees.

Continued Resident Engagement

A total of three hundred eighty (380) families have been identified with the right to return to the redeveloped site. Engagement with residents is on a continuing basis to address and provide assistance with quality of life issues while off-site. Information on the redevelopment proposals and process and preparation for the transition to the redevelopment to take advantage of the opportunities it will create is being provided. Engagement includes:

- Providing wellness calls and connecting residents to resources;
- Connecting residents to job opportunities and job ready programs;
- Providing monthly newsletters, text blasts, mailings with project updates and other resources;
- Providing weekly office hours;
- Hosting three to four events per year for residents to strengthen the Barry Farm community, such as the Barry Farm Unity Day on August 22, 2020;
- Hosting virtual quarterly meetings; and
- Provision of six hundred (600) meals and over three hundred (300) masks and hand sanitizer for Covid-19 relief.

Comprehensive Plan Amendments Status

The District Council Committee of the Whole held public hearings on November 12 and 13, 2020 at which time they heard public testimony but took no action on any of the proposed Comprehensive Plan amendments. The Committee stated that a vote on the proposed Comprehensive Plan is anticipated in January or February 2021.⁴

Notifications regarding the new BF Zone

DCHA and POAH have been in contact with the community and former residents and they have been kept up to date on the proposed redevelopment of the site. Regarding the proposed text amendment, OP and POAH gave a presentation on the proposed text amendment to ANC 8C on November 4, 2020.

Prior to the December 7, 2020 public hearing, several individuals and members of the community submitted letters in support of the Petition.

ANC 8C submitted a December 3, 2020 letter in support of the Petition, citing no issues and concerns.

⁴ The DC Council adopted amendments to the Comprehensive Plan which became final and effective on August 21, 2021.

At the December 7, 2020 public hearing, OP presented the Petition and answered the Commission's questions. In addition, seven (7) members of the public and/or organizations testified in opposition; five members of the public and/or organizations testified in support; and five members of the public and/or organizations submitted written testimony. The members of the public and organizations that testified in opposition expressed concerns about ensuring former Barry Farm residents' right to return to the replacement units following the redevelopment, and the failures associated with ongoing community outreach and services for displaced former residents.

OP Hearing Report Discussion of Comprehensive Plan Consistency

OP's November 27, 2020 report, explained that the new BF zone would not be inconsistent with the Comprehensive Plan and would implement the Barry Farm Park Chester Wade Road Development Plan, noting:

The Comprehensive Plan provides that the zoning of any given area should be guided by the Future Land Use Map (FLUM) and the Generalized Policy Map (GPM), interpreted in conjunction with the text of the Comprehensive Plan, including the city-wide and area elements, as well as approved Small Area plans (10-A DCMR § 226.1 (d)).

The Future Land Use Map (FLUM) indicates that the proposed BF zone is appropriate for moderate density residential.⁵

***Moderate Density Residential:** This designation is used to define neighborhoods generally, but not exclusively, suited for row houses as well as low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four unit buildings, row houses, and low-rise apartment buildings. In some neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). Density in Moderate Density Residential areas is typically calculated either as the number of dwelling units per minimum lot area, or as a FAR up to 1.8, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The R3, RF, and RA-2 Zone Districts are consistent with the Moderate Density Residential category, and other zones may also apply. (227.6)*

The proposed BF Zone is an appropriate location for new zoning to apply. The proposed row dwellings, semidetached units, flats and multifamily buildings and neighborhood retail and service uses are appropriate for this location and is as recommended by the detail study on which the Barry Farm Small Area Plan was done to accommodate a moderate density development.

⁵ The amendments to the Comprehensive Plan adopted by the DC Council became final and effective on August 21, 2021. The amendments changed the FLUM designation for a portion of the property from Moderate Density Residential to Medium Density Residential/Medium Density Commercial; the change in the FLUM designation eliminated any inconsistency of the proposed BF zone with the Comprehensive Plan maps and will allow the redevelopment of Barry Farm with the significant public benefits of affordable housing, open space, historic preservation, and neighborhood retail uses.

The Generalized Policy Map indicates that the proposed BF zone is designated as a Neighborhood Enhancement Area.⁶

Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant and underutilized land. They include areas that are primarily residential in character, as well as mixed-use and industrial areas. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible infill development, including new single-family homes, townhomes, other density housing types, mixed-use buildings, and, where appropriate, light industrial facilities. Land uses that reflect the historical mixture and diversity of each community and promote inclusivity should be encouraged. (225.6)

The proposed BF zone will not be inconsistent with the recommendations for Neighborhood Enhancement Areas as it will allow for redevelopment of a District owned property to be mainly residential with various housing types reflective of the diversity of housing types in the Anacostia Area. The new zone will allow for lots with private open space as well as designated public, open spaces to serve the wider community. The redevelopment of Barry Farm will include the creation of a new street grid to better connect to adjacent streets and provide better access and security for residents. To complement the residences, the new zone provides for neighborhood retail uses and services to serve residents everyday needs.

Citywide Elements:

The proposed text amendment will allow for a development that will meet or further many of the Citywide elements of the Comprehensive Plan.

Chapter 3 - Land Use Element

LU-2.1.2: Neighborhood Revitalization

Facilitate orderly neighborhood revitalization and stabilization by focusing District grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need. Use social, economic, and physical indicators such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate as key indicators of need. (309.7)

LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods

Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.

⁶ The amendments to the Comprehensive Plan, adopted by the DC Council became final and effective on August 21, 2021, and made no changes to the property’s designation of the GPM.

LU-2.4.6: Scale and Design of New Commercial Uses

Ensure that new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.

The proposed text amendment should facilitate the revitalization of the Barry Farm neighborhood and allow for a mix of housing types, family sizes and incomes. The revitalized neighborhood will include a portion of the site which has been landmarked to preserve resources of the former Barry Farm development. The retail and service uses allowed will complement the residences to provide for the day to day needs of residents.

The proposal will retain many of the existing streets but will introduce new streets and alley to create a new grid pattern typical in the City that will allow better internal circulation as well as provide additional connections to external streets and easier connections.

Chapter 5 - Housing Element

H-1.1.5: Housing Quality

Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood. (503.6)

H-1.2.3: Mixed Income Housing

Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing. (504.8)

H-1.3.1: Housing for Families

Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four bedroom apartments. (505.6)

H-1.4.4: Public Housing Renovation

Continue efforts to transform distressed public and assisted housing projects into viable mixed-income neighborhoods, providing one-for-one replacement within the District of Columbia of any public housing units that are removed. Target such efforts to locations where private sector development interest can be leveraged to assist in revitalization. (506.10)

The text amendment will allow for the development of a mix of income, a mix of unit types (apartments, rowhouses, rowhouses with accessory buildings and flats) and sizes for a range of family sizes and incomes, including very low-income households at thirty percent (30%) AMI or below, and will encourage and accommodate extended family living on the same property. To complement the residences, both private open space and public open space and recreational areas will be provided.

Because the property will be developed by the District of Columbia, under Subtitle C § 1001.6(a) the development will not be subject to the requirements of Subtitle C Chapter 10 (IZ). However, the affordable housing requirements of the BF zone are higher than IZ and will have to be met by the District.

Chapter 7 - Economic Development Element

ED-2.2.3: Neighborhood Shopping

Create additional shopping opportunities in Washington's neighborhood commercial districts to better meet the demand for basic goods and services. . . (708.7)

The proposed text amendment will allow for neighborhood commercial uses in the BF-1 zone and will provide retail and service uses to residents of the community.

Chapter 9– Urban Design

UD-2.3.1: Reintegrating Large Sites

Reintegrate large self-contained sites back into the city pattern. Plans for each site should establish urban design goals and principles which guide their subsequent redevelopment. (911.2)

UD-2.3.2: Large Site Scale and Block Patterns

Establish a development scale on large sites that is in keeping with surrounding areas. "Superblocks" (e.g., oversized tracts of land with no through-streets) should generally be avoided in favor of a finer-grained street grid that is more compatible with the texture of Washington's neighborhoods. This also allows for more appropriately scaled development and avoids large internalized complexes or oversized structures (see Figure 9.16). (911.4)

The proposed text amendment for the new BF Zone is guided by the Barry Farm, Park Chester, Wade Road Redevelopment Plan which outlines goals, vision and principles for the redevelopment of the property. The Plan proposes moderate apartment buildings along Firth Sterling Avenue in the BF-1 zone with lower scaled duplexes, row houses and flats in the BF-2 zone.

Chapter 10 - Historic Preservation Element

HP-2.4.6: Preservations Standards for Zoning Review

Ensure consistency between zoning regulations and design standards for historic properties. Zoning for each historic district shall be consistent with the predominant height and density of contributing buildings in the district. Where needed, specialized standards or regulations should be developed to help preserve the characteristic building patterns of historic districts and minimize design conflicts between preservation and zoning controls. (1011.11)

The proposed text amendments recognize the historic buildings and surrounding areas, and the density and uses allowed in the BF-2D zone will reflect the height and density of the landmarked buildings and their surrounding areas.

Chapter 18 - Far Southeast and Southwest Area Element

FSS-1.1.7: Retail Development

Support additional retail development within the Far Southeast/Southwest, especially in Historic Anacostia, and in the neighborhood centers at Malcolm X/Martin Luther King Jr. Avenue and South Capitol/Atlantic. Projects which combine upper story housing or offices and ground floor retail are particularly encouraged in these three locations.

Ground floor, neighborhood retail and service uses with residential above will be allowed in the BF-1 zone.

FSS-2: Policy Focus Areas 1810

The Comprehensive Plan has identified seven areas in the Far Southeast/Southwest as “policy focus areas,” indicating that they require a level of direction and guidance above that in the prior section of this Area Element and in the citywide elements (see Map 18.1 and Table 18.2). These areas are:

- *Historic Anacostia*
- *St. Elizabeths Campus*
- **Barry Farm/Hillsdale/Fort Stanton** [emphasis added]
- *Congress Heights Metro Station*
- *Congress Heights Commercial District*
- *Bellevue/Washington Highlands*
- *DC Village. 1810.1*

The proposed text amendment provides the additional focus for the redevelopment of Barry Farm.

FSS-2.3.1: Barry Farm New Community *Encourage the revitalization of Barry Farm in a manner which:*

- a. Ensures one-for-one replacement of any public housing that is removed, along with measures to assist residents and avoid dislocation or personal hardship;*
- b. Creates additional opportunities for workforce and market rate housing on the site, consistent with the goals of the city’s New Communities program; and*
- c. Provides new amenities such as community facilities, parks, and improved access to the Anacostia River and Anacostia Metro Station.*

While some increase in density will be required to meet the one-for-one replacement requirement, consideration should be given to including nearby vacant land in the New Community site, so that densities may remain in the moderate to medium range. (1813.3)

The BF zone will provide additional density at a moderate range and allow for the incorporation of retail and service uses to serve the daily need of the residents. The unit types allowed will provide the opportunity for a range of household sizes and incomes. Open space/park areas will accommodate a variety of community activities.

The proposed BF zone would implement the Barry Farm/Park Chester/Wade Road Redevelopment Plan, which was approved as a small area plan by the Council of the District of Columbia to provide “...a level of direction and guidance above that in the prior section of this [FSS] Area

Element and in the citywide elements” as called for in the FSS-2 Policy Focus Areas of the Comprehensive Plan.

The Barry Farm/Park Chester/Wade Road Redevelopment Plan consists of three main elements: the Human Capital Plan; the Physical Plan; and a Development and Finance Strategy. The vision of the plan is to “create a vibrant mixed-income neighborhood where resident have quality housing options, real economic opportunities and access to appropriate human services for children and adults.” A set of key guiding principles was developed in a partnership between the District of Columbia and the Barry Farm Advisory Committee that addressed affordable housing; human capital; economic opportunity; and culture and heritage. The Physical Plan makes detailed recommendations for improving the area’s housing, public facilities, neighborhood design, open space and transportation. Key elements of the Physical Plan for the neighborhood include:

- *Creating a mixed-income community of mid-rise apartments and low-rise family housing on the Neighborhood site which includes 373 replacement units together with new affordable and market rate units for a total of 1110 units.*
- *Partnering with local property owners, the Anacostia Waterfront Corporation, private developers at St. Elizabeth’s East and others to create an additional 281 replacement units in mixed-income neighborhoods.*
- *Creating a vibrant-mixed use main street at Firth Sterling Avenue that capitalizes on transportation improvements and new development at St. Elizabeth’s West and provides new neighborhood retail.*
- *Creating a new grid of residential streets linking Sumner Road and Martin Luther King Jr. Avenue eliminating the isolation of the existing neighborhood and providing addresses for new residential units*
- *Proposing the reconstruction of a new K-5 Elementary School on the existing Birney Elementary School site and the rebuilding the existing Recreation Center*
- *Creating a new linear park and community open space which provides views of the District’s skyline*
- *Utilizing sustainable practices in the urban and architectural design of the new neighborhood to preserve existing natural site features and minimize the development’s impact on the environment*

The proposal will be consistent with the Physical Plan, as the amendment will allow the redevelopment of Barry Farm and Wade Road Apartments with a mix of mid-rise apartments, rowhouses, semi-detached units and flats to accommodate a mix of replacement public housing, affordable and market rate units of which 380 will be affordable replacement units. To complement the residences, neighborhood retail and service uses will be permitted in the BF-1.

PROPOSED ACTION

The Commission received an opposition letter on December 9, 2020, from an organization that had testified at the December 7, 2020 public hearing, reiterating their testimony:

- That the Petition will displace Barry Farm residents and exclude them from the redevelopment process that a PUD would afford;
- That the Petition is contrary to the Office of the Deputy Mayor for Planning and Economic Development’s (DMPED) New Communities Initiative (NCI) mission to build first at true one-to-one replacement;

- That the Petition is inconsistent with the Comprehensive Plan and the Barry Farm/Park Chester/Wade Road Redevelopment Plan; and
- That the land parcels at issue in this Petition are on remand because of Z.C. case 14-02; and therefore, the Commission should have set this case down as a contested case to allow for parties to participate in the public hearing instead of as a rulemaking case.⁷

In response to the December 9, 2020 opposition letter, the POAH submitted an April 30, 2021 letter responding to the concerns raised and reiterating several of the points in OP's Hearing Report. The POAH's response noted its community engagement efforts with Barry Farm residents, including:

- Providing quarterly project updates to residents on project status (which have been virtual throughout COVID); and
- Scheduling regular (monthly or bimonthly) events to keep residents engaged, build community, and share resource information; this has included meetings with other partners such as DC Housing Authority (DCHA), the Office of the Deputy Mayor for Planning and Economic Development (DMPED), Far SE Family Strengthening Collaborative. Our most recent Barry Farm Meeting was March 30th, a Virtual Resource Fair to connect residents with service providers. Some residents have communicated that being offsite and away from their former networks has been challenging, so the activities that our team hosts serve not only to keep POAH connected with residents, but also to keep residents connected with other residents. A great example of community building is our Resident Virtual Holiday Party that took place December 2020.

The POAH's response also included the District of Columbia Housing Authority's (DCHA) Resolution 16-06, Relocation and Re-entry Policies for NCI Developments as an attachment, and explained that the policies address a residents' eligibility for right of return, prohibit the establishment of any minimum work or service requirements as a condition for a residents' return, establish an intention to work with District and development partners to provide relocation support and establish resident return preferences for each NCI community.

The Commission finds the proposed amendments to create the new BF zone to not be inconsistent with the Comprehensive Plan. The Commission also finds that taking action on the proposed amendments would not further displace Barry Farm residents or facilitate excluding them from the process of redeveloping Barry Farm. To the contrary, the Commission concludes that taking action on the proposed amendments as a rulemaking is the appropriate planning and zoning tool to further NCI revitalization and redevelopment goals and implement the Council-adopted Barry Farm/Park Chester/Wade Road Redevelopment Plan. The Commission is committed to ensuring that former Barry Farm residents have a right to return to the replacement units following the

⁷ As previously noted, Z.C. Case No. 14-02 approved a PUD for redevelopment of Barry Farm. Although the case was appealed to the District of Columbia Court of Appeals and vacated and remanded back to the Commission, ultimately Z.C. Case No. 14-02 was withdrawn by DCHA and the Developer on May 30, 2018 and the Commission consented to the withdrawal on June 11, 2018. Therefore, there is no longer an active remand of the Commission's approval of the PUD in Z.C. Case No. 14-02. Furthermore, the proposed text amendment to the Zoning Regulations to create the BF zone, which is the sole subject of this case, was set down by the Commission on September 14, 2020, as a rulemaking case pursuant to 11-Z DCMR § 201.5. However, the opposition letter, which was filed on December 9, 2020, was the first time an issue was raised with this case being set down as a rulemaking.

redevelopment; therefore, the proposed amendments should include language to increase transparency about the required number of replacement units. To this end, OP has proposed a revision to the amendments to add a new Subtitle K § 1105.4(c) requiring the replacement unit report be submitted to both the Zoning Administrator and the Commission in Z.C. Case No. 20-24 each time an application for a Building Permit is requested for a residential use.⁸ The Commission agrees with OP's recommendation.

“Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of the Office of Planning (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, and concurs with, OP's recommendations that the Commission adopt the Petition, particularly:

- The analyses in OP's Hearing Report which addressed most of the opposition comments/testimony and concludes that the proposed BF zone would not be inconsistent with the Comprehensive Plan, including the FLUM, the GPM, city-wide and area elements, and adopted Small Area plans and would implement the Barry Farm/Park Chester/Wade Road Redevelopment Plan; and the recommendation in OP's Second Supplemental Report filed in Z.C. Case No. 20-24 to add a new Subtitle K § 1105.4(c) to the proposed amendments.

“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).)

ANC 8C submitted a letter in support of the Petition, but noted no specific issues and concerns for the Commission to give great weight to.

At its July 26, 2021 public meeting, the Zoning Commission voted to take **PROPOSED ACTION** to:

⁸ OP's Second Supplemental Report in Z.C. Case No.20-24, Exhibit 203 in that case file, was filed on July 19, 2021, and recommended a revision to the text in this case to add a new Subtitle K § 1105.4(c).

- Adopt the Petition including the proposed version of Subtitle K § 1105.4(c) to require the replacement unit report be submitted to the Zoning Commission case record for ZC case # 20-24 each time an application for a Building Permit is filed for a residential use; and
- Authorize the publication of a Notice of Proposed Rulemaking (NOPR).

VOTE (July 26, 2021): **5-0-0** (Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, and Peter G. May to **APPROVE**)

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*.

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 email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

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 AMENDMENTS TO ADD NEW Subtitle K, Chapter 11

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).

I. Proposed Amendment to Subtitle A, AUTHORITY AND APPLICABILITY

Subsection 101.9 of § 101.9, INTERPRETATION AND APPLICATION, of Chapter 1, INTRODUCTION TO TITLE 11, of Subtitle A, AUTHORITY AND APPLICABILITY, is proposed to be amended, to read as follows:

101.9 The following zone districts are considered residential zone districts:

- (a) R, Residential House ...
- ...
- (e) CG-1 Capital Gateway (multi-family); and
- (f) D-1 Downtown (multi-family); and
- (g) BF Barry Farm.**

II. Proposed Amendments to Subtitle K, SPECIAL PURPOSE ZONES

Chapter 1, INTRODUCTION TO SPECIAL PURPOSE ZONES, of Subtitle K, SPECIAL PURPOSE ZONES, is proposed to be amended by adding a new § 100 and renumbering and modifying § 100 as § 101, to read as follows:

100 GENERAL PROVISIONS

100.1 Subtitle E is to be read and applied in addition to the regulations included in:

- (a) **Subtitle A, Authority and Applicability;**
- (b) **Subtitle B, Definitions, Rules of Measurement, and Use Categories;**
- (c) **Subtitle C, General Rules; and**
- (d) **Subtitle U, Use Permissions.**

100.2 For those zones with a geographic identifier, the zone boundaries are described in Subtitle W, Specific Zone Boundaries, and identified on the official Zoning Map.

~~400~~ **101 GENERAL PROVISIONS PURPOSE AND INTENT**

~~400.1~~ **101.1** The purpose of the special purpose zones is to provide for single large sites that require a cohesive, self-contained set of regulations to guide site design, building height and bulk, land uses, or other aspects of development.

A new Chapter 11 is proposed to be added to Subtitle K, SPECIAL PURPOSE ZONES, of Subtitle K, SPECIAL PURPOSE ZONES, to read as follows:

CHAPTER 11 BARRY FARM ZONES – BF-1 THROUGH BF-2

1100 GENERAL PROVISIONS AND PURPOSE AND INTENT (BF)

1100.1 The purposes of the Barry Farm (BF) zones (BF-1 through BF-2) are to:

- (a) **Facilitate implementation of the Barry Farm/Park Chester/Wade Road Redevelopment Plan, which was approved as a small area plan by the Council of the District of Columbia on December 19, 2006, pursuant to the Barry Farm/Park Chester/Wade Road Redevelopment Plan Resolution of 2006 (Res 16-0922);**
- (b) **Establish a vibrant mixed-use, mixed-income neighborhood where residents have quality housing options in a variety of configurations;**

- (c) Ensure the development of approximately one thousand one hundred and ten (1,110) dwelling units, including approximately three hundred and eighty (380) affordable replacement units, within mid-rise apartment buildings, and attached and semi-detached single-family dwellings and flats;
- (d) Encourage the development of neighborhood retail and service uses in the ground floor of mixed-use buildings fronting on Firth Sterling Avenue, S.E.; and
- (e) Create open and green spaces suitable for passive private enjoyment and active community recreation and amenities.

1101 GENERAL DEVELOPMENT STANDARDS (BF)

1101.1 The development standards of this section and Subtitle K § 1102 apply to all BF zones except as modified for a specific zone, in which case the modified zone-specific standard shall apply. When only a portion of a development standard is modified the remaining portions of the development standards shall still apply.

1101.2 A court is not required in a BF zone, but where provided, it shall have the following minimum dimensions:

TABLE K § 1101.2: MINIMUM COURT DIMENSIONS

<u>Type of Structure</u>	<u>Open Court Minimum Width</u>	<u>Closed Court Minimum Width</u>	<u>Closed Court Minimum Area</u>
<u>Detached, Semi-detached, Row Dwellings, and Flats</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Residential, more than 3 units</u>	<u>2.5 inches per foot of height of court; 10 ft. minimum</u>	<u>2.5 inches per foot of height of court; 12 ft. minimum</u>	<u>Twice the square of the required closed court width; 250 square ft. minimum</u>
<u>Non-residential and Lodging</u>	<u>2.5 inches per foot of height of court; 6 ft. minimum</u>	<u>2.5 inches per foot of height of court; 10 ft. minimum</u>	<u>Twice the square of the required closed court width; 250 square ft. minimum</u>

1102 PENTHOUSES AND ROOFTOP STRUCTURES (BF)

1102.1 Unless otherwise modified in this section, penthouses or rooftop structures in BF zones shall be subject to the regulations of Subtitle C, Chapter 15.

1102.2 **An apartment building in a BF zone other than the BF-2C zone shall be permitted to have a penthouse or rooftop structure with a maximum permitted height and stories of twelve feet (12 ft.) and one (1) story, with mechanical space limited to eighteen feet and six inches (18 ft., 6 in.) and two (2) stories.**

1102.3 **A detached, semi-detached, or row building with a single dwelling unit, or a flat in a BF zone other than the BF-2C zone shall be permitted to have a penthouse or rooftop structure that:**

(a) Only contains either:

(i) Screening for mechanical equipment or a guard-rail required by the Construction Codes (Title 12 of the DCMR) for a roof deck; or

(ii) Stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck; and

(b) Is no more than eleven feet (11 ft.) and one (1) story tall.

1102.4 **Any building or structure located in the BF-2C zone shall be permitted a mechanical penthouse or rooftop structure with a maximum height of eighteen feet, six inches (18 ft. 6 in.).**

1103 **VEHICLE AND BICYCLE PARKING (BF)**

1103.1 **Unless otherwise modified by this section, vehicle and bicycle parking requirements for BF zones shall be as specified in Subtitle C, Chapters 7 and 8.**

1103.2 **Required vehicle parking spaces need not be located on the same lot as the building or building(s) that generates the requirement, subject to the following conditions:**

(a) The off-site location shall be located within the same block as the use for which the parking space is required;

(b) Parking spaces provided off-site shall not serve as required parking for any other use; and

(c) Each application to the Department of Consumer and Regulatory Affairs for a development that requires parking shall clearly demonstrate compliance with conditions (a) and (b) of this subsection.

1103.3 **Vehicle parking spaces shall not be required:**

- (a) For uses permitted under Subtitle K §§ 1113.2(a) and (b) and 1113.3, regardless of zone; and
- (b) For a building containing a single principal dwelling unit or flat if the lot does not have access to an open, improved, and public alley with a right of way of ten feet (10 ft.) width minimum.

1103.4 Vehicle parking spaces shall not be subject to the requirements of Subtitle C § 707.

1104 LOADING (BF)

1104.1 Loading shall be provided in accordance with the requirements of Subtitle C, Chapter 9.

1105 AFFORDABLE HOUSING (BF)

1105.1 Affordable housing shall be provided in the BF zones as described in this section. The provisions of Subtitle C, Chapter 10, shall not apply to the BF zones, except that the relevant penthouse habitable space affordable housing provisions pursuant to Subtitle C § 1500.112 shall apply to the BF zones.

1105.2 The purposes of this section are to:

- (a) Ensure the provision of a significant amount of affordable housing, including for very low-income households; and
- (b) Ensure that the affordable housing is distributed throughout the BF zones.

1105.3 The FAR, lot occupancy, and height listed in the Development Standards for each BF zone shall serve as the maximum permitted density and building envelopes for buildings and structures, including for the provision of affordable units.

1105.4 The affordable housing requirement for the entire BF zones shall consist of no less than three hundred and eighty (380) affordable dwelling units that shall be provided as D.C. Housing Authority replacement public housing units (“Affordable Replacement Unit”), subject to the following:

- (a) The Affordable Replacement Units shall be subject to and comply with the requirements of Subtitle C § 1001.6(a);
- (b) Each application for a building permit for a residential use for a property in a BF zone shall include the following information in tabular and map format of how the provisions of this section are being met:

- (i) The number and type of Affordable Replacement Units proposed to be constructed by the building permit application;
 - (ii) The number and type of Affordable Replacement Units for which a building permit has been issued, together with the location and status of completion of each unit; and
 - (iii) The number and type of Affordable Replacement Units that have yet to be provided, together with the planned location and the anticipated date of building permit application and construction of each remaining unit; and
- (c) A copy of the information required by Subtitle K § 1105.4(b) shall be submitted to the Zoning Administrator and the Zoning Commission case record for Z.C. Case No. 20-24.

1105.5 Each application for a building permit for a residential use shall include in tabular and map format a description of which Affordable Replacement Units have been provided to date and where, which Affordable Replacement Units have yet to be provided and where they are anticipated to be provided, and how the provisions of this section are being met.

1105.6 Affordable units arising from penthouse habitable space pursuant to Subtitle C §§ 1500.11 and 1500.12 shall be provided in accordance with the relevant provisions of Subtitle C, Chapter 10 for residential penthouse habitable space or Subtitle C § 1505 for non-residential penthouse space, except that such units may be located anywhere within the BF zones.

1106 BF-1 ZONE

1106.1 The BF-1 zone is intended to:

- (a) Permit moderate-density mixed-use development;
- (b) Provide a range of neighborhood-serving retail, service, and commercial uses and multiple dwelling unit residential development.
- (c) Create a vibrant mixed-use main street along Firth Sterling Avenue, S.E. that capitalizes on transportation improvements and new development at St. Elizabeth's West Campus and provides new neighborhood-serving retail.

1107 DEVELOPMENT STANDARDS (BF-1)

1107.1 The development standards in Subtitle K §§ 1101 and 1102 shall apply to the BF-1 zones except as specifically modified by this section. In the event of a

conflict between the provisions of this section and other regulations of this subtitle, the provisions of this section shall prevail.

1107.2 Except as elsewhere in this section, the development standards for each BF-1A and BF-1B zone shall be as set forth in the following table:

TABLE K § 1107.2: BF-1 DEVELOPMENT STANDARDS

<u>BF-1 Zone</u>	<u>Total FAR</u>	<u>Non-Residential FAR</u>	<u>Height (ft.)</u>	<u>Lot Occupancy (Residential (%))</u>	<u>Rear Yard (ft.)</u>
<u>BF-1A</u>	<u>4.0</u>	<u>1.0</u>	<u>65 ft.</u>	<u>80%</u>	<u>15 ft.</u>
<u>BF-1B</u>	<u>6.0</u>	<u>1.0</u>	<u>65 ft.</u>	<u>80%</u>	<u>15 ft.</u>

1107.3 Unless otherwise limited by regulations governing courts, yards, and setbacks, lot occupancy on the first two (2) stories is permitted up to one hundred percent (100%), regardless of use.

1107.4 A rear yard is required only above a horizontal plane located twenty feet (20 ft.) above the mean finished grade at the middle of the rear façade of the principal building and shall be measured as follows:

(a) Where a lot abuts a public or private street, the rear yard may be measured from the centerline of the street; or

(b) Where a lot abuts a public or private alley:

(i) The rear yard may be measured from the centerline of the alley; or

(ii) In lieu of the rear yard required by this subsection, a lot may provide a court complying with the width requirements for a closed court as specified in Subtitle K § 1101.2 located above the horizontal plane.

1107.5 A rear yard is not required to be provided below a horizontal plane as described in Subtitle K § 1107.6.

1107.6 A semi-detached building with a single dwelling unit shall have one (1) side yard, a minimum of five feet (5 ft.) in width.

1107.7 A building or structure other than a detached or semi-detached building with a single dwelling unit is not required to provide a side yard; however, if a side yard is provided, it shall be at least two inches (2 in.) wide for each one foot (1 ft.) of building height, but no less than five feet (5 ft.).

1108 USE PERMISSIONS (BF-1)

1108.1 Unless otherwise modified in this section, use permissions for the BF-1 zones are those of the MU-Use Group E of Subtitle U, Chapter 5, including uses permitted as a matter of right, as a special exception, or as an accessory use, and uses not permitted.

1108.2 A building in the BF-1 zones that has frontage along Firth Sterling Avenue, S.E., shall devote the equivalent of not less than fifty percent (50%) of its ground floor linear footage along Firth Sterling Avenue, S.E., at a continuous depth of at least twenty feet (20 ft.) in from the property line, regardless of where such uses are located to uses in the following preferred use categories:

- (a) Arts, design, and creation;**
- (b) Daytime Care;**
- (c) Eating and drinking establishments;**
- (d) Retail; or**
- (e) Service, including both general and financial services.**

1109 PROHIBITED USES (BF-1)

1111.1 The following uses are prohibited in the BF-1 zone as either a principal or accessory use:

- (a) Drive-through;**
- (b) Firearms retail sales establishments;**
- (b) Gasoline service station or repair garage;**
- (c) Liquor store;**
- (d) Pawn shop; and**
- (e) Self-storage facility.**

1110 GREEN AREA RATIO (GAR) (BF-1)

1110.1 A minimum GAR of 0.3 shall be required in the BF-1 zone.

1110.2 Exceptions from GAR shall be permitted if approved by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and the conditions of Subtitle C § 605.

1111 BF-2 ZONE

1111.1 The BF-2 zone is intended to:

- (a) Permit predominantly moderate-density row and semi-detached buildings with residential and live-work dwelling units and flats; and**
- (b) Provide open and green space suitable for passive private enjoyment and active community recreation and amenities, as appropriate.**

1112 DEVELOPMENT STANDARDS (BF-2)

1112.1 The development standards in Subtitle K §§ 1101 and 1102 shall apply to the BF-2 zones except as specifically modified by this section. In the event of a conflict between the provisions of this section and other regulations of this subtitle, the provisions of this section shall prevail.

1112.2 The development standards for each lot in the BF-2 zone shall be as set forth in the following table:

TABLE K § 1112.2: BF-2 DEVELOPMENT STANDARDS

<u>BF-2 Zones</u>	<u>Minimum Lot Width (ft.)</u>	<u>Height (ft.)</u>	<u>Maximum Stories</u>	<u>Maximum Lot Occupancy</u>	<u>Minimum Rear Yard</u>
<u>BF-2A BF-2B</u>	<u>Single Dwelling Unit - 16; All others - N/A</u>	<u>40</u>	<u>N/A</u>	<u>80%</u>	<u>4 inches per foot of building height; 15 ft. minimum</u>
<u>BF-2C</u>	<u>N/A</u>	<u>40</u>	<u>N/A</u>	<u>20%</u>	<u>4 in / 1 ft. (15 ft. min)</u>
<u>BF-2D</u>	<u>N/A</u>	<u>40</u>	<u>3</u>	<u>The greater of 40% or the lot occupancy as of the date of adoption of this chapter</u>	<u>The lesser of 4 inches per foot of building height; 15 ft. minimum or the rear yard as of the date of adoption of this chapter</u>

1112.3 In the BF-2 zone, rear yards shall be measured as follows:

- (a) Where a lot abuts an alley, the rear yard may be measured from the centerline of the alley to the rear wall of the building or structure; or**
- (b) Where a lot does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building or other structure.**

1112.4 **A detached building with a single dwelling unit shall have two (2) side yards, each a minimum of five feet (5 ft.) in width.**

1112.5 **A semi-detached building with a single dwelling unit shall have one (1) side yard, a minimum of five feet (5 ft.) in width.**

1112.6 **A building or structure other than a detached or semi-detached building with a single dwelling unit is not required to provide a side yard; however, if a side yard is provided, it shall be no less than four feet (4 ft.).**

1113 **USE PERMISSIONS (BF-2)**

1113.1 **Unless otherwise modified in this section, use permissions for the BF-2 zones are those of the RF zones of Subtitle U, Chapter 3, including uses permitted as a matter of right, as a special exception, or as an accessory use, and uses not permitted.**

1113.2 **In the BF-2A zone, in addition to the uses permitted under Subtitle K § 1113.1, the following uses shall also be permitted as a matter-of-right in buildings or structures with frontage along Sumner Road, S.E.:**

(a) **Arts, Design, and Creation uses, including an artist live-work studio, provided:**

(i) **Such uses shall be limited to the ground floor;**

(ii) **All operations and storage of materials shall occur inside the building; and**

(iii) **Sales of art work produced by the occupants of the studio shall be permitted within the studio; and**

(b) **A home occupation use, subject to the conditions and requirements of Subtitle U § 251.**

1113.3 **In the BF-2C zone, only the following uses shall be permitted as a matter-of-right:**

(a) **Arts, Design, and Creation;**

(b) **Daytime Care;**

(c) **Education, public;**

(d) **Entertainment, Assembly, and Performing Arts;**

(e) **Institutional, General;**

(f) Park and Recreation; and

(g) Recreational Building or Use.

1113.4 In the BF-2D zone, only the uses permitted under Subtitle K § 1113.3 and residential use shall be permitted as a matter-of-right.

1114 PERVIOUS SURFACE (BF-2)

1114.1 Each building in the BF-2 zones shall meet the minimum pervious surface requirements set forth in the following table on its own lot:

TABLE K § 1118.1: MINIMUM PERVIOUS SURFACE REQUIREMENTS

<u>Minimum Lot Size Minimum</u>	<u>Minimum Pervious Surface</u>
<u>Less than 1,800 sq. ft.</u>	<u>0%</u>
<u>1,801 – 2,000 sq. ft.</u>	<u>10%</u>
<u>Larger than 2,000 sq. ft.</u>	<u>20%</u>

1115-1149 [RESERVED]

1150 ALLEY LOT DEVELOPMENT STANDARDS (BF)

1150.1 Notwithstanding Subtitle C § 306.1, new alley record lots in the BF zones shall comply with the following requirements:

(a) Have frontage along a public alley with a minimum alley width or twenty feet (20 ft.) and have access to a street from the alley through an alley or alleys not less than twenty feet (20 ft.) in width; and

(b) Have a minimum of one thousand square feet (1,000 sq. ft.).

1150.2 Notwithstanding Subtitle B § 308.9, building height on alley lots in BF zones shall be measured from the middle of the building façade that faces the alley, which shall also serve as the building front for zoning purposes.

1150.3 An alley lot in the BF zones is subject to the general and zone-specific development standards and use permissions applicable to the alley lot's zone.

1151 THEORETICAL SUBDIVISIONS (BF)

1151.1 In the BF zones, multiple primary buildings on a single record lot shall be permitted as a matter of right, subject to the following conditions:

(a) The number of buildings permitted by this section shall not be limited; provided each building is located on an individual theoretical lot that serves as boundaries for assessment of compliance with the Zoning Regulations;

- (b) Side and rear yards of a theoretical lot shall be consistent with the requirements of the applicable BF zone;**
- (c) The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade selected as the front of the building of zoning purposes; and**
- (d) The height measurement rule of this subsection shall supersede any other height measurement rule except the Height Act.**

1152 SPECIAL EXCEPTION RELIEF (BF)

1152.1 Relief from the requirements of Subtitle K §§ 1101, 1102, 1107, 1112, 1113.2, 1114, 1150, and 1151, or as provided elsewhere in this chapter, may be granted by the Zoning Commission as a special exception pursuant to Subtitle X, Chapter 9, and the Zoning Commission’s determination that the request for relief is consistent with the purposes of the applicable BF zone.