

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between

the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

1. Authorities. The U.S. Department of the Navy (“Navy”) has authority to enter into this Memorandum of Understanding (“MOU”) under Fiscal Year 2019 National Defense Authorization Act (“NDAA”), 115 P.L. 232, § 2845; and 10 U.S.C. § 2679 Installation-support services.

The National Capital Planning Commission (“NCPC”) has authority to enter into this MOU pursuant to 40 U.S.C. § 8711(a).

The Government of the District of Columbia (“District”) has authority to enter into this MOU under Section 423 of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-204.23. The District agency responsible for fulfilling the roles and responsibilities under this MOU is the Office of Planning (“OP”). Although the District of Columbia Zoning Commission is an instrument of the District, it is an independent regulatory body, and is not bound by any provision of this MOU.

The Navy, NCPC, and the District are referred to collectively in this MOU as the “Parties.”

2. Overview. The Navy owns and has responsibility, custody, and control over certain parcels of land under the jurisdiction and control of the Navy at the Washington Navy Yard (“WNY”), which is located on federal land in Washington, DC, collectively known as the Washington Navy Yard Southeast Corner O Parcels (“O Parcels”), shown on Exhibit A. In accordance with the NDAA, the Navy plans to lease the O Parcels to RB O Street LLC (“Redbrick”), an affiliate of Redbrick LMD. Redbrick would own the improvements. The lease may be converted to a fee simple land transfer at a future date.

NCPC is the central planning agency for the Federal government in the National Capital Region as that term is defined in 40 U.S.C. § 8702(3). NCPC has certain planning and zoning authority (the latter known as “in lieu of zoning” authority) in Washington, DC on federal land, in accordance with 40 U.S.C. § 8722(a), (b), and (d). Under 40 U.S.C. § 8722(a), (b), and (d), NCPC approves master development plans and projects on federal land.

The District of Columbia Zoning Commission establishes zoning in Washington, DC pursuant to D.C. Code § 6-641.01, *et seq.* The District’s zoning regulations (“Zoning Regulations”) are set forth in the District of Columbia Municipal Regulations (“DCMR”) at 11 DCMR §100, *et seq.* The Zoning Regulations include and incorporate a zoning map. Under § 492 of the District of Columbia Self-Government and Governmental Reorganization Act (also known as the Home Rule Act), changes to the zoning map must be submitted to NCPC for a period of review after a hearing by the Zoning Commission. D.C. Code § 6-641.05(a) and 40 U.S.C. § 8724. 40 U.S.C. § 8722(d)

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

and D.C. Code § 6-641.15, authorizes NCPC to exercise its “in lieu of zoning” authority under certain circumstances.

NCPC maintains it has “in lieu of zoning” jurisdiction over the O Parcels regardless of the presence of private development. The land is currently federal property and will remain such during the lease term, which means the Federal government has a continuing, reversionary interest in the property. NCPC maintains that this “in lieu of zoning” jurisdiction is conferred by 40 U.S.C. § 8722(d) and reflects the constitutional requirements of the exclusive jurisdiction clause, the property clause, and the federal supremacy clause. However, the District maintains that because the improvements will not be owned or used by the federal government, such improvements are not “federal public buildings” exempt from District zoning under 40 U.S.C. §8722(d) or D.C. Code § 6-641.15 and, therefore, are subject to District zoning.

Redbrick is the private entity to whom the O Parcels will be leased with an option for fee simple transfer. Redbrick will be the owner of the improvements made within the O Parcels. During the term of Federal ownership of the O Parcels, Redbrick will coordinate submissions for permits, certificates of occupancy, and licensing related to the O Parcels.

The Navy submitted a draft Washington Navy Yard Southeast Corner Master Plan (“WNY SE Corner Master Plan”) to NCPC in November 2023 for NCPC review. The draft WNY SE Corner Master Plan provides for mixed-use, private development of the O Parcels consistent with the Programmatic Agreement (“PA”), executed pursuant to Section 106 of the National Historic Preservation Act (“NHPA”), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. § 800, et seq., among the Navy, the Advisory Council on Historic Preservation, the District of Columbia State Historic Preservation Office, the Department of the Interior (“National Park Service”), and NCPC. The WNY SE Corner Master Plan prescribes land use elements including heights, density, massing, and mix of uses, and waterfront setbacks that will form the basis for OP’s zoning proposal for the O Parcels as described below.

3. Purpose. The purpose of this MOU is to establish a process for private development of the O Parcels that complies with the legal authorities of the Parties and that provides adequate input for all three public agencies and the public. In addition, the Parties want to ensure private development of the O Parcels is subject to a clear set of land-use regulations and building code standards. The Navy seeks a predictable, and efficient land-use review process for the development of private uses on the O Parcels. The Parties seek a process that is predictable and straightforward.

4. Process. The process set forth in this MOU is developed solely for the unique circumstances here, where there is federal land and substantial private development for traditionally non-federal uses. It applies only to the land and uses that are privately developed for private purposes on the O Parcels and does not apply to the federal buildings or federal uses within

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

the O Parcels nor other parts of the WNY. It recognizes the Navy's ownership and control over the property and improvements comprising the O Parcels. It recognizes NCPC's role in reviewing and approving master development plans on federal land in Washington, DC, and the District's role in establishing and enforcing zoning in Washington, DC. It also provides a basis to ensure that requirements and building codes are effectively enforced upon the private developer who is subject to the District's permitting process under the District's Construction Codes.

5. Cooperation. NCPC, the District, and the Navy will work together cooperatively on the land-use and neighborhood planning issues for the O Parcels. The cooperation will continue throughout the planning and development process, and, subject to the provisions of this MOU, to any revisions and amendments to the WNY SE Corner Master Plan and private development plans for the O Parcels.

6. NCPC's Requirements for Master Plan Approval. NCPC's statutory obligations include development of a Comprehensive Plan for the National Capital as that term is defined in 40 U.S.C. § 8702(2) ("Comprehensive Plan"). The Comprehensive Plan includes Federal Elements prepared and adopted by NCPC and District Elements prepared by the OP and approved by the Council of the District of Columbia ("DC Council"), following NCPC review (Federal Elements and District Elements, respectively). NCPC's review of master development plans and construction projects includes assurance of master development plans and project consistency with the Federal Elements, including promotion of local economic development, protection of the federal interest, promotion of historic preservation, and facilitation of efficient transportation systems. For the WNY SE Corner Master Plan and any amendments thereto, NCPC did or will apply its Submission Guidelines for Master Plans and related policies including its current NEPA Regulations and Procedures for Intergovernmental Cooperation in Federal Planning. NCPC's Submission Guidelines, NEPA Regulations, and procedures for intergovernmental review are contained on NCPC's website (NCPC.gov).

7. The WNY SE Corner Master Plan Will Be Subject to the NCPC Review and Approval Process. The WNY SE Corner Master Plan and any amendments thereto will undergo the NCPC review and approval process in consultation with the Navy and OP. For all future proposed amendments, the Navy will submit to NCPC for review and approval the materials required by NCPC's Submission Guidelines and other such materials as NCPC staff determines necessary. The Navy will submit to NCPC any changes to the WNY SE Corner Master Plan, which shall be treated under this MOU as a proposed amendment to the WNY SE Corner Master Plan that requires NCPC review and approval in consultation with the Navy and OP. If the change requires an additional zoning action, it will be submitted to the Zoning Commission in accordance with the processes specified in this MOU.

8. Proposals for Zoning Commission Action. OP shall use the WNY SE Corner Master Plan to revise existing proposed zoning currently before the Zoning Commission in Z.C. Case No. 23-

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

27 using the proposed zoning regulations attached hereto as Exhibit B. Within 60 days of NCPC approving the WNY SE Corner Master Plan, the Navy and OP will coordinate to determine whether any revisions must be made to the currently proposed Navy Yard East (“NYE”) zone text to be consistent with the WNY SE Corner Master Plan. Within 120 days of NCPC’s approval of the WNY SE Corner Master Plan, OP shall file its setdown report to the Zoning Commission in accordance with the above, which shall include text that the NYE zone require an eight (8) percent Inclusionary Zoning (“IZ”) set-aside for rental units on the O Parcels and the for-sale units on the O Parcels will be subject to an eight (8) percent set-aside for disabled veterans outside the IZ program. The Navy shall ensure that before Redbrick applies for any building permit for Building 5 on the WNY SE Corner Master Plan Redbrick applies for financial support for an additional seven (7) percent affordable housing set-aside through the Low Income Housing Tax Credit (“LIHTC”) and the Affordable Housing Production Trust Fund (“AHPTF”) and, if approved for sufficient funding, that Redbrick provides such additional affordable units, concentrated in a single rental building on the O Parcels, for which it receives support under either or both programs. If Redbrick’s application is approved for sufficient funding from one program, it shall not be required to apply for the other. If Redbrick’s application is not approved for sufficient funding from either or both programs, it shall have no further obligation related to such additional seven (7) percent affordable housing set-aside. OP will work diligently to fulfill its responsibilities under 11 DCMR Subtitle Z §§ 405.1 – 405.4, and to ensure, within the limits of its authority, that the time between filing of the public hearing report and the publication of a notice of final rulemaking giving effect to the text and mapping of the NYE zoning scheme will not exceed five months.

OP’s proposal for the NYE zone shall remain materially consistent with the WNY SE Corner Master Plan. Any amendments to the WNY SE Corner Master Plan approved by NCPC that cause a technical inconsistency shall require a petition to the Zoning Commission for amendments to the NYE Zone, as needed to bring the NYE zone into conformance with the amended WNY Master Plan. OP and Redbrick shall determine amongst themselves who shall petition the Zoning Commission to initiate Zoning Commission action on the amendments.

If the Zoning Commission materially deviates from Exhibit B in a manner that is inconsistent with the WNY SE Corner Master Plan or the affordable housing set asides set forth in this MOU or the Zoning Commission process takes longer than 18 months from NCPC’s approval of the WNY SE Corner Plan to complete, or if the WNY SE Corner Master Plan is amended in a manner that a Party does not support, the MOU may be terminated by any Party, but not before the other Parties have the opportunity to address such deviation for a period of 60 days and the Parties may make efforts to enter into a new Memorandum of Understanding to amend and replace this MOU.

9. Zoning as Rulemaking. On December 14, 2023, the Zoning Commission setdown Z.C. Case No. 23-27 (Text & Map Amendments to Create NYE Zone) as a rulemaking proceeding. Any revisions to the currently proposed NYE zone text that are submitted under paragraph 8 of this MOU shall also be submitted as a rulemaking.

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

10. Navy Participation in Zoning Case. Within 10 days of OP filing the text amendment in accordance with Exhibit B with the Zoning Commission, the Navy shall submit to the Zoning Commission a letter withdrawing its December 12, 2023 letter filed in Z.C. Case No. 23-27.

11. Opportunity for Public Involvement. NCPC, the District, and the Navy are committed to a public process during review and approval of the WNY SE Corner Master Plan and NYE zone, and any amendments thereto. Each party will assure full opportunity for public participation in the component of the process for which it is responsible. Opportunities for public involvement would be available through NCPC Commission hearings, Zoning Commission hearings, and Navy NEPA and Section 106 process.

12. Building Codes and Certificates of Occupancy. The O Parcels are subject to the building permits required by the District to receive a certificate of occupancy by the District. Once the zoning for the O Parcels becomes effective, applications for building permits and certificates of occupancy for private development for private use on the O Parcels shall be filed with and processed pursuant to applicable District building code and regulations. Under District law and regulations, permits for perimeter fences, razes, horizontal infrastructure, and installation of utilities will not require zoning review.

13. Enforcement. As to development on the O Parcels, failure of Redbrick to comply with the provisions of the District's Construction Codes and Zoning Regulations will subject Redbrick to enforcement under District law, including but not limited to, withholding of building permit and certificate of occupancy approvals, and enforcement, either through the issuance of stop work orders, court injunctions, or notices of civil infraction, or through the revocation of building permits and certificates of occupancy.

14. Notice and Contact Information:

For NCPC:

Diane Sullivan
Director, Urban Design and Plan Review Division
Diane.sullivan@ncpc.gov
(202) 482-7244

For the Department of the Navy:

Eric Crafton
Director of Real Estate, NAVFAC Washington

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

eric.w.crafton3.civ@us.navy.mil
(615) 300-7808

For the Office of Planning:

Jennifer Steingasser
Deputy Director for Development Review and Historic Preservation
Jennifer.Steingasser@dc.gov
(202) 442.8808

15. Time Periods for Performance: The Parties agree that any time periods established for performance included in this MOA are estimates of a reasonable period of time within which a stated task can or should be accomplished. If after a Party's good faith effort to comply with a stated time period, the time period for performance cannot be satisfied, the Parties may mutually agree to an extension of time for completion of the task.

16. Effective Date. This MOU takes effect beginning on the day after the last Party signs.

17. Modifications. This MOU may only be modified by the written agreement of all the Parties, duly signed by their authorized representatives.

18. Termination. The MOU may be terminated at any time upon the mutual written consent of all the Parties. Upon termination, all provisions of this MOU shall be null and void.

19. Anti-Deficiency Act. This MOU does not document the obligation of funds between the Parties. No provision in this MOU will be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Section 1341 of Title 31, United States Code, or the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08.

20. Third Party Beneficiaries. Nothing in this MOU, express or implied, is intended to give to, or will be construed to confer upon, any person or entity not a party any remedy or claim under or by reason of this MOU, and this MOU will be for the sole and exclusive benefit of the Parties.

21. Other Federal Agencies. This MOU does not bind any federal agency, other than the Parties, nor waive required compliance with any law or regulation.

22. Severability. If any term, provision, or condition of this MOU is held to be invalid, void, or unenforceable by a governmental authority and such holding is not or cannot be appealed further, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this MOU and all remaining terms, provisions, and conditions of this MOU shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid,

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

void, or unenforceable term, provision, or condition with valid and enforceable terms, provisions, or conditions which achieve the purpose intended by the Parties to the greatest extent permitted by law.

23. Authority to Sign. Each signatory represents that he/she has the authority to bind the government instrumentality for which he/she signs to the terms of this MOU.

Signatures appear on the following pages

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

National Capital Planning Commission



Marcel Acosta
Executive Director

Date: April 22, 2024

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

The United States Navy

CRAFTON.ERIC.
W.1106519486

Digitally signed by
CRAFTON.ERIC.W.1106519486
Date: 2024.04.16 11:42:39
04'00'

Date: _____

Eric W. Crafton
Director of Real Estate
Real Estate Contracting Officer Level III
NAVFAC Washington Systems Command

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

The United States Navy

DICKS.GRAHAME.AN
THONY.1166007603
Acting

Digitally signed by
DICKS.GRAHAME.ANTHONY.1166007603
Date: 2024.04.16 09:59:47 -04'00'

Date: _____

Nancy Lacob
Rear Admiral, U.S. Navy

Commandant
Naval District Washington

Memorandum of Understanding and Statement of Land Use Review Process for
Development of the Washington Navy Yard O Parcels Site
between
the National Capital Planning Commission,
the United States Department of the Navy, and
the Government of the District of Columbia

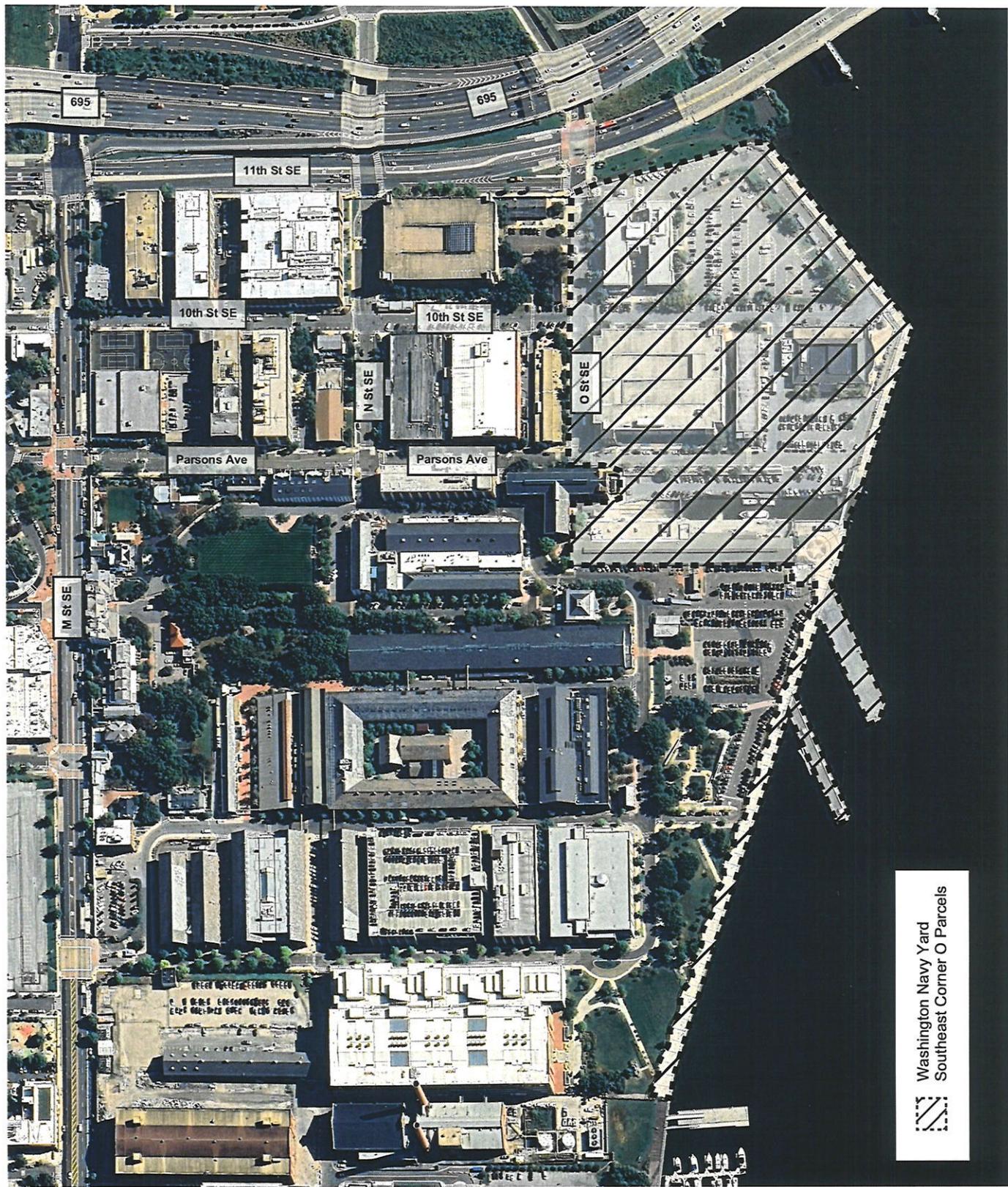
The District of Columbia Office of Planning

Anita Cozart

Anita Cozart
Director

4/19/2024
Date: _____

Exhibit A: Washington Navy Yard Southeast Corner O Parcels Map



Washington Navy Yard
Southeast Corner O Parcels

Exhibit B: Navy Yard East Zoning Regulations

PROPOSED TEXT AMENDMENT - DRAFT NYE ZONING TEXT

The Office of Planning (“OP”) requests the Zoning Commission set down for public hearing text amendments to the following sections of the Zoning Regulations (text to be deleted is marked with strikethrough and new text is shown in **bold and underlined>**, with the exception of the proposed new Subtitle K Chapter 13, which is all new text so is shown without the bold and underline for ease of reading.

a. Amend Subtitle A § 101, Interpretation and Application as follows:

101 INTERPRETATION AND APPLICATION

...

101.10 The following zones districts are considered mixed-use zones, commercial zones, or special purpose zones:

(a) ARTS, Mixed-Use Uptown Arts;

...

(f) NYE, Navy Yard East

(g) NC, Neighborhood Mixed-Use;

...

b. Amend Subtitle B Chapter 18 RULES OF MEASUREMENT FOR REAR YARD as follows

...

318.7 In the case of a corner lot in the MU-1, MU-2, MU-8, MU-9, MU-15, MU-16, MU-20, MU-21, MU-23, MU-30, NC-13, CG-3, ~~and AFRH, and NYE~~ zones, a court complying with the width requirements for a closed court as applicable for each zone may be provided in lieu of a rear yard. For the purposes of this section, the required court shall be provided above a horizontal plan beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of court.

c. Amend Subtitle C Chapter 10 INCLUSIONARY ZONING as follows:

- Chapter 10 § 1002, Modification of Development Standards and Bonuses to Incentivize Inclusionary Zoning as follows:

...

1002.3 Inclusionary Developments except those located in the BF, HE, NHR, **NYE**, R, RF, SEFC, StE, and WR zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (“bonus density”) as reflect in the zone-specific development standards and subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.

- Chapter 10 § 1003, Set-Aside Requirements as follows:

1003.2 Except as provided in Subtitle C § 1003.11 **and Subtitle K § 1302.3**, an Inclusionary Development other than an IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than eighty-five feet (85 ft.), shall set aside for Inclusionary Units the sum of the following:

d. Amend Subtitle K to add a new Chapter 13, NAVY YARD EAST as follows:

CHAPTER 13 – NAVY YARD EAST (NYE) ZONE

1300 GENERAL PROVISIONS

1301 DEVELOPMENT STANDARDS

1302 INCLUSIONARY ZONING

1303 VEHICLE PARKING

1304 BICYCLE PARKING

1305 LOADING

1306 WATERFRONT

1307 SUSTAINABILITY

1308 USE PERMISSIONS

1309 DESIGNATED FRONTAGE

1310 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES

1311 RELIEF FROM DEVELOPMENT STANDARDS, USE PERMISSIONS, AND DESIGN AND DESIGNATED FRONTAGE REQUIREMENTS FOR NAVY YARD EAST (NYE) ZONES

1300 GENERAL PROVISIONS (NYE)

1300.1 The Navy Yard East (NYE) zone is intended to be applied to approximately 14-acres of land that is currently designated for “federal use” in the Comprehensive Plan for the National Capital, and which historically has been part of the Washington Navy Yard but is to be privately used and subject to zoning. The following squares and portions of squares in the southeast quadrant of the District of Columbia are intended to be included in the NYE Zone District: Squares 955, 979, 979S, and 1001S, and the portion of land extending south of Squares 955 and 979 to the Anacostia River pierhead lines, and the southeast portion of Reservation 14 containing Navy Yard Building 70 and the south portion of Reservation 14 containing the public pathway adjacent to the Anacostia River.

1300.2

The purposes of the NYE zone are to:

- (a) Provide for development of the site in a manner that is consistent with the development guidelines for the Washington Navy Yard Southeast Corner Master Plan (“WNY SE Master Plan”), as reviewed by the U.S. Department of the Navy in accordance with the National Defense Authorization Act of Fiscal Year 2019, 115 Public Law 232, 132 Stat. 1636 (Aug. 13, 2018) and approved by the National Capital Planning Commission in consultation with the Office of Planning. The WNY SE Master Plan can be found in Exhibit ## of the record in Zoning Commission Case No. 23-27;
- (b) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, consistent with the objectives of the Comprehensive Plan, the Anacostia Waterfront Initiative, the Near Southeast Urban Design Framework Plan, and the Southeast Boulevard Planning Study;
- (c) Provide for a height and density associated with increased affordable housing and the delivery of new housing;
- (d) Provide for vibrant and active continuous publicly-accessible open space along the waterfront with frequent public access points;
- (e) Ensure the design and development of properties in a manner that is compatible with and appropriate for the historic context of which the NYE zone is a part and immediately adjacent to, including the National Historic Landmark (NHL) and National Register of Historic Places listed Navy Yard Historic District and the Navy Yard Eastern Extension Historic Eligible District;
- (f) Recognize that Buildings 68 and 70, the Marine Railway and Dry Dock (Structure 308), the remaining piers (Structures 301 and 302) and the associated bulkhead are contributing elements of the Navy Yard NHL Historic District;
- (g) Recognize that Building 166 is a contributing element of the National Register Eligible Navy Yard Eastern Extension Historic District;
- (h) Ensure that contributing elements of historic districts are treated consistently with the reviews conducted in accordance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act;
- (i) Encourage a variety of visitor-related uses, such as retail, service, and entertainment;
- (j) Provide for the development along the Anacostia River and 11th Street SE as active, pedestrian-oriented frontages with active ground floor uses that preserve Anacostia River viewsheds;
- (k) Ensure development preserves views to the Anacostia River which align with the streets that pass through the Navy Yard East zoned land;

- (l) Ensure development of the area meets a high level of environmental performance and incorporates sustainability best practices; and
- (m) Ensure the use of climate-adaptive and resilient design for new development and infrastructure projects.

1300.3 Penthouses and rooftop structures shall be subject to the regulations of Subtitle C, Chapter 15 and the height and story limitations specified in this chapter.

1300.4 Development in the NYE zone shall be in accordance with the development standards found in this chapter.

1300.5 Where there are conflicts between this chapter and/or other chapters or subtitles of this title, the provisions of the NYE zone shall govern.

1301 DEVELOPMENT STANDARDS (NYE)

1301.1 The maximum permitted density in the NYE zone is 7.0 FAR. The Zoning Commission may, at its discretion, grant an additional 1.0 FAR, up to a maximum FAR of 8.0, if such additional 1.0 FAR is devoted solely to residential uses, which, for the purposes of this section, does not include hotel uses, subject to the applicant addressing to the satisfaction of the Zoning Commission the objectives and guidelines of this section and the standards of Subtitle K § 1310.3, as applicable.

1301.2 The maximum permitted building height, not including a penthouse or rooftop structure, in the NYE zone shall be the height as permitted under the Height Act, except that no additional height shall be allowed on Buildings 68 70, and 123 and any portion of a building or structure that exceeds one-hundred ten feet (110 ft.) in height shall provide a one-to-one (1:1) step-back from the building lot line along Parsons Avenue, SE.

1301.3 The maximum permitted height of a penthouse or rooftop structure in the NYE zone shall be twenty feet (20 ft.); and the maximum number of stories within the penthouse shall be one (1), plus a mezzanine, except that a second story for penthouse mechanical space shall be permitted.

1301.4 The height and density limits of Subtitle K § 1301 shall serve as the maximum permitted under a planned unit development.

1301.5 The maximum permitted lot occupancy in the NYE zone shall be eighty (80%) for residential uses.

1301.6 No side yard is required for a principal building; however, any side yard provided on any portion of the principal building shall be at least two inches (2 in.) per one foot (1 ft.) of height, and no less than five feet (5 ft.).

1301.7 A minimum rear yard of two and one-half inches (2.5 in.) per one foot (1 ft.) of vertical distance from the mean finished grade at the middle of the rear of a structure to the highest point of the main roof or parapet wall, but not less than twelve feet (12 ft.) shall be provided, subject to the following conditions.

- (a) A horizontal plane may be established at twenty feet (20 ft.) above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards;
- (b) A rear yard is not required to be provided below a horizontal plane as described in Subtitle K §1301.7(a);
- (c) Where a lot abuts an alley, the rear yard may be measured from the center line of the alley to the rear wall of the building or other structure; and
- (d) 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.

1301.8 In the case of a lot fronting on one or more public or private streets, a court complying with the width requirements for a closed court may be provided in lieu of a rear yard. For the purposes of this section, the required court shall be provided above a horizontal plane beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of the court.

1301.9 A court is not required in the NYE zone, but where it is provided, it shall have the following minimum dimensions:

Type of Structure	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
Residential, more than 3 units	4 in./ft. of height of court; 10 ft. minimum	4 in./ft. of height of court; 15 ft. minimum	Twice the square of the required width of court dimension; 350 sq. ft. minimum
Non-Residential and Lodging	2.5 in./ft. of height of court; 6 ft. minimum	2.5 in./ft. of height of court; 12 ft. minimum	Twice the square of the required width of court dimension; 250 sq. ft. minimum

1301.10 The minimum required GAR for the NYE zone shall be 0.3.

1302 INCLUSIONARY ZONING (NYE)

1302.1 Inclusionary zoning development standards for the NYE zone are as specified in Subtitle C, Chapter 10, except as modified in this section.

1302.2 No bonus density, as made available in Subtitle C § 1002, shall be available in the NYE zone.

1302.3 In the NYE zone, the following gross floor area shall be set aside for IZ units:

- (a) Eight percent (8%) of the gross floor area dedicated to residential rental dwelling units, as defined in Subtitle B § 200.2, excluding residential for-sale use and penthouse habitable space; and

(b) The equivalent of eight percent (8%) of the gross floor area dedicated to residential rental dwelling units located in penthouse habitable space.

1303 VEHICLE PARKING (NYE)

1303.1 Vehicle parking in accordance with the requirements Subtitle C, Chapter 7 shall be provided, except:

- (a) At least twenty percent (20%) of the total provided parking spaces, including those parking spaces in the existing parking garage and excluding any parking spaces within the NYE zone dedicated to Federal use (which shall not exceed 800 parking spaces), shall have access to electric vehicle charging infrastructure;
- (b) At least five (5%) of the total provided parking spaces, including those spaces in the existing parking garage and excluding any parking spaces within the NYE zone dedicated to Federal use (which shall not exceed 800 parking spaces), shall have access to electric vehicle charging stations;
- (c) The cumulative total of all parking spaces built within the NYE zone, including below-grade, surface, on-street, and above-grade structured parking, shall not exceed a total of 1,550 parking spaces, inclusive of any spaces dedicated to Federal use within the NYE zone. Each application to the Department of Buildings shall provide an accounting for the total number of parking spaces within the NYE zone;
- (d) There shall be no minimum vehicle parking requirement in the NYE zone;
- (e) No building or structure in the NYE zone may provide more than double the parking requirement of Subtitle C § 701.5, as calculated without the parking reduction found in Subtitle C §702.1, including below-grade, surface, on-street, and above-grade structured parking; and
- (f) Required parking spaces need not be located on the same lot as the building or buildings they are intended to serve but must be located on a lot within the NYE zone.

1304 BICYCLE PARKING (NYE)

1304.1 Bicycle parking in accordance with the requirements of Subtitle C, Chapter 8 shall be provided, except:

- (a) Twenty percent (20%) of the required long term bicycle spaces shall have access to electrical sources for charging electrical bikes; and
- (b) A minimum of five percent (5%) of the required long term bicycle parking spaces shall be designed for larger sized or over-sized cargo/tandem bikes;
- (c) The number of long-term bicycle parking spaces required for residential, multiple dwelling unit, use shall be one (1) for each 2.5 dwelling units; and

(d) The bicycle parking reduction allowed in Subtitle C § 802.2 shall not apply in the NYE zone.

1305 LOADING (NYE)

1305.1 Loading in accordance with the requirements of Subtitle C, Chapter 9 shall be provided, except required loading berths and facilities need not be located on the same lot as the building or buildings they are intended to serve, but must be located on a lot within the NYE zone.

1306 WATERFRONT (NYE)

1306.1 The waterfront requirements shall apply to the NYE zone as specified in Subtitle C, Chapter 11, as modified by this chapter. Where there is a conflict between the provisions of Subtitle C, Chapter 11 and this chapter, the provision of this chapter shall govern.

1306.2 The seventy-five foot (75 ft.) waterfront setback required under Subtitle C § 1102.1(a), shall be open to the sky or have a minimum clearance of forty feet (40 ft.), above which projections and open and unenclosed balconies, may project to a depth of no more than fifteen feet (15 ft.).

1306.3 Notwithstanding Subtitle C § 1102.1, enclosed projections of no more than fifteen (15) feet in depth for no more than 50% of the building façade width facing the waterfront shall be permitted to be constructed.

1306.4 Notwithstanding Subtitle C § 1102.1(e), for portion of the bulkhead linear frontage located west of the Admiral's Barge Slipway, the public pedestrian and bicycle trail required under Subtitle C § 1102.1(e) may be reduced in width to account for existing or required security fencing owned or required by the US Federal Government, provided the remaining width of the pedestrian and bicycle trail is not less than eighteen feet (18 ft.) and provided further that any bridge or other crossing element over the Admiral's Barge Slipway or marine railway shall not be limited by Subtitle C § 1102.1(e).

1307 SUSTAINABILITY (NYE)

1307.1 Each building constructed or substantially improved shall earn a minimum certification at the LEED v4.1 Gold level or a more recent comparable standard and certification level thereof.

1307.2 Each building constructed or substantially improved shall achieve: (i) at least two (2) points under the LEED v4.1 "Renewable Energy" credit in addition to the certification requirement in Subtitle K § 1307.1, or (ii) compliance with the Energy Conservation Code, whichever would require a greater level of renewable energy.

1307.3 Each building constructed or substantially improved shall be designed to withstand future climate change impacts projected for the expected lifespan of the building, including sea level rise, increased precipitation, and increased heat exposure, as per the District's Resilient Design Guidelines.

1307.4 Each building shall, as part of the Design Review process be required pursuant to Section K § 1310, provide a sustainability and green building plan to be forwarded to the Department of Energy and Environment for review and comment which addresses issues such as building energy efficiency and renewable energy production, net-zero certification, stormwater management, climate resilience, and floodplain management.

1308 USE PERMISSIONS (NYE)

1308.1 The use permissions in this section include uses permitted as a matter of right, as a special exception, and uses not permitted.

1308.2 Use permissions for the NYE zone are as specified in Subtitle U, Chapter 5, Use Group F.

1308.3 Buildings, structures and uses with frontage on the Designated Frontages of Subtitle K § 1309.1 shall provide specified ground floor uses in accordance with the requirements and provisions of Subtitle K § 1309.2.

1309 DESIGNATED FRONTAGE (NYE)

1309.1 For the purpose of this chapter, a “Designated Frontage” means the shoreline or bulkhead line along the Anacostia River waterfront.

1309.2 A building, structure, or use with frontage on a Designated Frontage shall devote seventy-five percent (75%) of its ground floor frontage, excluding any residential entrance, lobby, and support areas, along the Designated Frontage, except for space devoted to building entrances or required for fire control, to the following preferred use categories:

- (a) Arts, design, and creation;
- (b) Eating and drinking establishments;
- (c) Entertainment, assembly, and performing arts;
- (d) Medical care;
- (e) Retail;
- (f) Service, general or financial. provided a bank or financial institution shall not be located at the intersection of a street and the waterfront;
- (g) Animal care, sales, and boarding provided there is no overnight boarding of dogs except for convalescence at a veterinary hospital; and
- (h) Marine.

1309.3 Buildings and structures with frontage on a Designated Frontage must comply with the following design requirements:

- (a) The ground floor shall have a minimum clear floor-to-ceiling height of fourteen feet (14 ft.) for a continuous depth of at least thirty-six feet (36 ft.);
- (b) The ground story shall have at least fifty percent (50%) of the surface area facing a Designated Frontage, excluding any residential entrances, devoted to display windows or pedestrian entrances having clear low-emissivity glass, and ensure that the view through the display windows and pedestrian entrances is not blocked for at least ten feet (10 ft.) in from the building face. If located on a corner, wrap around the corner to a minimum depth of twenty-feet (20 ft.) on the side street;
- (c) The ground story shall have at least fifty percent (50%) of the surface area facing a Designated Frontage devoted to display windows or pedestrian entrances having clear low-emissivity glass, and ensure that the view through the display windows and pedestrian entrances is not blocked for at least ten feet (10 ft.) in from the building face. If located on a corner, wrap around the corner to a minimum depth of twenty-feet (20 ft.) on the side street;
- (c) Ground-floor pedestrian entrances, or areas where a future ground-floor entrance could be installed without structural changes, shall be located no more than an average distance of forty feet (40 ft.) apart on the façade facing the Designated Frontage, and shall be level with the sidewalk or street directly in front of the entrance; and
- (d) No direct vehicular garage or loading entrance or exit shall be permitted to a new building or structure along a Designated Frontage.

1310 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES (NYE)

- 1310.1 The provisions of this section apply to properties within the NYE zone.
- 1310.2 With respect to those properties described in Subtitle K § 1310.1, all proposed uses, buildings, and structures, any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, and the waterfront park and any structures on or over the water shall be subject to review and approval by the Zoning Commission in accordance with Subtitle X § 301 and the following provisions.

1310.3 In addition to proving that the proposed use, building, structure, waterfront park, or structures on or over the water meets the standards set forth in Subtitle X § 604 and the relevant provisions of this chapter, an applicant requesting approval under this section shall prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

- (a) Help achieve the objectives of the Navy Yard East defined in Subtitle K § 1300.1;
- (b) Help achieve the desired use mix, with the identified preferred uses specifically being residential, office, entertainment, retail, recreation, or service uses;
- (c) Provide publicly accessible open space and amenities along the waterfront;
- (d) Provide for safe and convenient movement to and through the site, including to the Anacostia River, and minimize conflict between vehicles, bicycles, and pedestrians;
- (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation;
- (f) Minimize detrimental impact on the environment: incorporate sustainability best practices, such as the provision of onsite renewable energy; achieve LEED or net-zero certification; reduce building life cycle impacts, especially embodied carbon; manage stormwater on site; incorporate future climate projection scenarios into building design; and design for the 100- and 500-year floodplains;
- (g) Promote safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses; and
- (h) The application shall include a view analysis that assesses openness of views and vistas, including views along and toward the waterfront and a minimum of two site sections through the building, including a minimum of one section extending from the north property line through the building to the waterfront.

1310.4 Each application for design review under this section will be referred to the Office of Planning, DC State Historic Preservation Office, Department of Transportation, Department of Energy and Environment, and other District agencies for review and comment.

1310.5 The Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

1310.6 At the time of filing an application with the Zoning Commission, the applicant shall pay the filing fee specified in Subtitle Z, plus such fees as apply to any additional zoning relief requested.

1311 RELIEF FROM DEVELOPMENT STANDARDS, USE PERMISSIONS, AND DESIGN AND DESIGNATED FRONTAGE REQUIREMENTS FOR NAVY YARD EAST (NYE) ZONES

1311.1 The Zoning Commission may grant relief from certain development standards of this chapter, Subtitle K §§ 1301.5 through 1301.10, and from the use and design standards of this chapter, Subtitle K §§ 1308 through 1309, subject to the standards of Subtitle X, Chapter 9, the specific standards of this section, and provided that the applicant demonstrates the special exception relief would result in a design that still complies with the purposes of this chapter.

1311.2 Requests for relief that do not comply with the applicable conditions or limitations for a special exception as set forth in Subtitle K § 1311.1 shall be processed as a variance.

1311.3 Relief from the rear yard requirements of Subtitle K § 1301.7 may be permitted if approved by the Zoning Commission as a special exception pursuant to the conditions of Subtitle K § 1311.1, Subtitle X, Chapter 9, and subject to the following conditions:

- (a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;
- (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;
- (c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms be considered in determining distances between windows and appropriate yards; and
- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas.

1311.4 Requests for relief may be advertised, heard, and decided together with the application for Zoning Commission review and approval.

e. Amend Subtitle W SPECIFIC ZONE BOUNDARIES to add a new Chapter 124 NAVY YARD EAST as follows:

124.1 The Navy Yard East (NYE) zone is to be applied to Squares 955, 979, and 979S, and portions of Square 1001S, and the portion of land extending south of

Squares 955 and 979 to the Anacostia River pierhead lines, and the southeast portion of Reservation 14 containing Navy Yard Building 70 and the south portion of Reservation 14 containing the public pathway adjacent closed streets to the Anacostia River.

f. Amend Subtitle X GENERAL PROCEDURES as follows:

...

502 INCLUSIONARY ZONING PLUS

502.2 The requirements of this section shall not apply to a map amendment that:

- (a) Is related to a PUD application;
- (b) Is to a BF, HE, NHR, NYE, SEFC, StE, USN, or WR zone;
- (c) The Zoning Commission determines is not appropriate for IZ Plus due to the mitigating circumstances identified by the Office of Planning in its report recommending that the map amendment not be subject to IZ Plus; or
- (d) Was filed as an application that was accepted by the Office of Zoning prior to November 16, 2020.