

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 24-08
FC Lumber Shed, LLC
(Text Amendment to Subtitle K § 230.4)

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 Subtitle K § 230.4 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the proposed text at the end of this notice.

SETDOWN

On May 31, 2024, FC Lumber Shed, LLC (Petitioner) filed a Petition to the Commission proposing a text amendment to Subtitle K § 230.4 of the Zoning Regulations to eliminate the twenty (20)-year term on office use on the second floor of Building 173, also known as the Lumber Shed Building. (Exhibit [Ex.] 2, 2B) The Lumber Shed Building (Property) is a two (2)-floor building on Parcel P1 of The Yards in the Southeast Federal Center (SEFC) zone, SEFC-4. Specifically, the Lumber Shed Building is located at 301 Water Street, S.E. (Square 771, Lot 809) and is a contributing structure to the Washington Navy Yard Historic District. In Z.C. Order No. 11-05, effective September 30, 2011, the Commission approved a text amendment to allow office use for a period of twenty (20) years on the second (2nd) floor of the Lumber Shed Building because of lack of demand for retail tenants and because leasing to an office tenant would help finance redevelopment. As a result, there is approximately seventeen thousand square feet (17,000 s.f.) of office space on the second floor, complimentary to twenty thousand square feet (20,000 s.f.) of retail space on the first (1st) floor. The Petition's proposed amendment would eliminate the time limit on the second-floor office use allowing it to continue after expiration of the twenty (20)-year limit, and the proposal retains the language that any improvements to the second (2nd) floor for office use do not preclude the second (2nd) floor from being used for retail uses in the future. The Petition states that the second (2nd)-floor office space provides steady daytime activity to this corner of The Yards and would secure this beneficial office use. (Ex. 2C)

The Petition states that the proposed amendment would not be inconsistent with the Comprehensive Plan, including when viewed through a racial equity lens¹, and with other adopted public policies and active programs related to the proposed text, in accordance with the requirements of Subtitle X § 1300. The Petition states that the proposal would not be inconsistent with the Property's designations on the Comprehensive Plan maps; would further Citywide

¹ Pursuant to 10-A DCMR §§ 2501.4-2501.6, 2501.8, the Commission is tasked with evaluating the Petition's consistency with the Comprehensive Plan through a racial equity lens. Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens; the Commission released a revised Tool on February 3, 2023. The revised Tool requires submissions from petitioners and the Office of Planning analyzing the zoning action's consistency with the Citywide and Area Elements of the Comprehensive Plan, and Small Area Plans, if applicable; a submission from petitioners including information about their community outreach and engagement efforts regarding the zoning action; and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action.

Element and Lower Anacostia Waterfront and Near Southwest Area Element policy goals; would further Comprehensive Plan racial equity goals; and would further the objectives of the Anacostia Waterfront Initiative Framework Plan (AWI Plan) and the Southeast Federal Center Master Plan, which both pertain to the Property.

Racial Equity (Community Outreach and Engagement) – The Petitioner’s racial equity analyses states that community outreach regarding the proposal began in 2024 with ANC 8F, and the Petitioner is not aware of any or concerns associated with the office use at the Lumber Shed Building. (Ex. 2D)

OP SETDOWN REPORT

On July 15, 2024, the Office of Planning (OP) submitted a report (OP Setdown Report) concurring with the Petitioner’s analysis, stating that the proposed amendment would not be inconsistent the Property’s Comprehensive Plan map designations; would further Citywide Element and Lower Anacostia Waterfront and Near Southwest Area Element policy goals; would further Comprehensive Plan racial equity goals; and would further the objectives of the Anacostia Waterfront Initiative Framework Plan (AWI Plan) and the Southeast Federal Center Master Plan. The OP Setdown Report recommended the Commission set down the Petition for public hearing.

Racial Equity – OP’s racial equity analyses concluded that the continued office use is unlikely to result in change to the physical environment or direct or indirect displacement of any tenants or residents. Rather it would continue to facilitate access to employment opportunities in proximity to residential uses and transit options. (Ex. 9)

At its July 25, 2024 public meeting, OP presented its Setdown Report on the Petition. The Commission questioned OP about the exclusion of disaggregated race and ethnicity data for the Lower Anacostia Waterfront and Near Southwest Planning Area from its racial equity analyses and OP agreed to provide the analyses in its Hearing Report. The Commission then voted to approve set down of the Petition for public hearing.

NOTICE

Pursuant to Subtitle Z § 502, the Office of Zoning (OZ) sent notice of the October 21, 2024 public hearing on August 19, 2024, and published notice of the public hearing in the August 30, 2024 *District of Columbia Register* as well as on the calendar on OZ’s website. (Ex. 13-15)

COMMENTS

No comments were filed to the record in response to the public hearing notice.

OP HEARING REPORT

On October 9, 2024, OP submitted a report (OP Hearing Report) that reiterated the analyses and conclusions in the OP Setdown Report, but included disaggregated race and ethnicity data for the Lower Anacostia Waterfront and Near Southwest Planning Area to supplement its racial equity analyses.

Racial Equity (Disaggregated Race and Ethnicity Data) – OP’s analyses stated that data for the Lower Anacostia Waterfront and Near Southwest Planning Area (LAW/NSW) shows a total

population of 25,994 residents for the period of 2018-2022. Of which, 58.6% are White, 29.2% are Black, 7.4% are Hispanic, and 4.3% are Asian. For the same 2018-2022 period, the median household income for the LAW/NSW area was \$123,667 compared to the District average of \$101,722; cost burdened households sit lower than the District at 33.6% for the LAW/NSW area compared to 36.1% for the District. Also, the planning area had a lower unemployment rate at 11.23 compared to the District rate of 15.1 for the same period. OP concluded that because the text amendment proposal would only impact a small area of existing office space, it would have a limited impact on the data trends for the planning area. (Ex. 16.)

PUBLIC HEARING

At the October 21, 2024 public hearing, the Petitioner presented the Petition and answered clarification questions from the Commission. OP stood on the case record and did not provide a presentation.

No other persons or organizations testified at the public hearing.

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 § 504.6; *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 analyses in its reports and its recommendation that the Commission take proposed action to adopt the proposed amendment to eliminate the twenty-year term on office use on the second floor of the Lumber Shed Building.

Great Weight to the Written Report of the ANC's

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 § 505.1). 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 8F did not file a report in response to the Petition; therefore, there is nothing to which the Commission can give great weight.

PROPOSED ACTION

At the conclusion of the October 21, 2024 public hearing, the Commission voted to take Proposed Action to:

- Adopt the Petition; and
- Authorize the publication of a Notice of Proposed Rulemaking (NPR).

VOTE (October 21, 2024): 5-0-0 (Joseph S. Imamura, Anthony J. Hood, Robert E. Miller, Tammy Stidham, and Gwen Wright 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 *District of Columbia 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 *District of Columbia 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 AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text):

I. Amendments to Subtitle K, SPECIAL PURPOSE ZONES

Subsection 230.4 of § 230, DENSITY – FLOOR AREA RATIO (FAR) (SEFC-4), of Chapter 2, SOUTHEAST FEDERAL CENTER ZONES – SEFC-1 THROUGH SEFC-4, of Subtitle K, SPECIAL PURPOSE ZONES, is amended as follows:

230.4 The gross floor area of existing Building 173 shall not count toward any FAR computation. The second story of Building 173 may be used for general office purposes ~~on an interim basis of not more than twenty (20) years from the date of the initial certificate of occupancy for this use~~; provided that any such office space is suitably designed for future occupancy by retail uses and to not adversely impact ground floor retail uses.