

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-04

Z.C. Case No. 08-04

**(Forest City Washington – Southeast Federal Center Overlay
District Review and related relief – Waterfront Park)**

May 29, 2008

Application of Forest City Washington (the "Applicant") on behalf of the United States of America, General Services Administration, the owner of the property, for review and approval of new structures to be erected within a proposed waterfront park along the Anacostia River, pursuant to the Southeast Federal Center Overlay District provisions set forth in § 1805.11 of the Zoning Regulations, (Title 11, DCMR). In addition, as permitted under § 1809.1 of the Zoning Regulations, the Applicant also requested special exception approval pursuant to § 938.3 for a waterfront setback greater than 20 feet and less than 100 feet.

HEARING DATE: May 29, 2008

DECISION DATE: May 29, 2008 (Bench Decision)

SUMMARY ORDER

The property that is the subject of this application is a portion of the Southeast Federal Center that is identified as "Parcel P" and is bounded by the land south of 2nd Street, S.E. to the west, the Washington Navy Yard to the east, proposed Water Street, S.E. and River Street, S.E. to the north, and the Anacostia River to the south. The property is located in the SEFC/W-0 Overlay Zone District.

Consistent with the goals of the SEFC/W-0 Zone District, the Applicant proposes the construction of a waterfront park along the Anacostia River. The park will include a number of structural improvements that are required for grading purposes to create the proposed overlook, stepped lawn, and other features of the proposed park. Other structures include a promenade, pedestrian bridge, and seasonal kiosks. The project will create a series of open spaces along the waterfront that will include a large open lawn, a pedestrian-oriented promenade along the river's edge, and a series of landscaped gardens.

The Zoning Commission for the District of Columbia (the "Commission") provided proper and timely notice of the public hearing on this application, by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 6D, the Office of Planning ("OP"), and to owners of the property within 200 feet of the site. The site that is the subject of the application is located within the jurisdiction of ANC 6D. ANC 6D provided a letter of support for the project to the Commission. OP submitted a report and testified at the hearing in support

of the application. The National Capital Planning Commission ("NCPC") submitted a report and letter concluding that the project would not be inconsistent with the Comprehensive Plan for the National Capital and would not adversely affect any federal interests.

The Office of the Deputy Mayor for Planning and Economic Development ("DMPED") offered written and oral testimony in support of the application. DMPED noted the Applicant's consultation and cooperation with its office in the design of the park.

As required by 11 DCMR §§ 927 and 1808, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to approve the project under § 1805.11 and satisfy the requirements for special exception approval of the waterfront setback greater than 20 feet and less than 100 feet pursuant to §§ 938.3 and 3104.1.

No persons or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party. Based upon the record before the Commission, having given great weight to the issues and concerns of the ANC, and having considered and given great weight to the report and testimony of OP, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 927, 1808, and 3104.1, including the specific standards that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and that granting the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3000.8, the Commission has determined to waive the requirement of 11 DCMR § 3028.8, that the Order be accompanied by findings of fact and conclusions of law. The waiver will not affect the rights of any party and is not prohibited by law.

It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Peter G. May, to grant; Michael G. Turnbull, not present, not voting.)

BY ORDER OF THE D.C. ZONING COMMISSION

Each concurring member approved the issuance of this Order

ATTESTED BY:


JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: AUG 29 2008

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-04

AUG 27 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 08-04 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Tommy Wells |
| 2. Dave Avitabile, Esq.
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(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 08-04A

Z.C. Case No. 08-04A

Southeast Federal Center Overlay Review

FCW SEFC, LLC on behalf of the United States General Services Administration

March 2, 2009

Pursuant to notice, the Zoning Commission of the District of Columbia (the “Commission”) held a public hearing on March 2, 2009 to consider an application by FCW SEFC, LLC (the “Applicant”) for property owned by the United States General Services Administration (“GSA”), for review and approval of exterior renovations to an existing building and new buildings and structures to be erected within the SEFC/W-0 Zone District, pursuant to § 1805.11 of the Southeast Federal Center Overlay provisions of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. In addition, as permitted under § 1809 of the Zoning Regulations, the Applicant also requested approval under § 1805.6 for uses permitted in the Open Space Area of the SEFC/W-0 Zone District; special exception approval under § 925.1 for multiple retail and service uses within the W-0 Zone District; and special exception approval under § 411.11 for roof structures not meeting the setback requirements of the Zoning Regulations. Finally, as permitted under § 1809.1 of the Zoning Regulations, the Applicant requested variance relief from the parking requirements of § 2101.1, height requirement of § 930.1, and waterfront setback requirement of § 938.1 of the Zoning Regulations.¹

The property that is the subject of this application is a portion of the Southeast Federal Center that is identified as Parcel P and is known as Square 771, Lots 801 and 802 (the “Property”). The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Property consists of approximately 397,320 square feet of land and is located in the SEFC/W-0 Zone District.

¹ In its initial application, the Applicant sought relief from the parking requirements as a special exception under § 2120.6 of the Zoning Regulations. Prior to the hearing, the design was modified to remove a building connection between the new buildings and historic structure, and the Applicant amended the application to request variance relief from the parking requirements. In its initial application, the applicant also sought relief from the lot requirement of § 3202.3 of the Zoning Regulations, but amended the application to remove the request prior to the public hearing.

2. The Property is located on land that is controlled by the federal government, but was authorized for private development by an Act of Congress in 2000. See Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the “Act”). The Applicant prepared a master plan for the entire Southeast Federal Center and, under the authority of the Act, GSA selected the Applicant as the master developer for the site. The Master Plan was presented by GSA and the Applicant to the Zoning Commission for review and approval, and the Commission approved the SEFC Overlay District (the “SEFC Overlay”) in order to ensure that future development of the Southeast Federal Center would proceed according to the Master Plan.
3. The SEFC Overlay calls for the development of a publicly-accessible park along the Anacostia River with uses as permitted in the W-0 District. (11 DCMR § 1802.8.) Other relevant objectives of the SEFC Overlay include: encourage a variety of support and visitor-related uses, such as retail, service, entertainment, and cultural uses; provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings; provide for continuous publicly-accessible open space along the waterfront; require suitable ground-floor level retail and service uses near the SEFC/W-0 Zone District; and encourage the design and development of properties in a manner that is sensitive to the historically significant buildings within the SEFC. (11 DCMR § 1802.)
4. The purposes of the SEFC/W-0 Zone District are to (a) encourage open space; (b) provide a lively, interactive waterfront environment; (c) discourage parking; (d) provide a Development Area for retail and cultural uses; (e) provide an Open Space Area, intended to be the site of open space recreation use as well as limited uses that are directly waterfront dependent; and (f) allow for a continuous publicly-accessible pedestrian and bicycle trail along and adjacent to the waterfront as part of the Anacostia Waterfront Trail system. (11 DCMR § 1805.1.)
5. In Case No. 08-04, the Applicant presented the overall design and layout of its proposed waterfront park on Parcel P along the Anacostia River and requested approval of certain structural elements within the park, as well as related relief required to construct the improvements (“Phase I”). The Commission approved Phase I of the waterfront park on May 29, 2008 in Order No. 08-04.
6. On July 7, 2008, the Applicant filed an application, on behalf of GSA, for review and approval of exterior renovations to an existing building and the construction of new buildings and structures within its proposed waterfront park, pursuant to § 1805.11 of the Zoning Regulations (“Phase II”). Furthermore, pursuant to §§ 1805.11 and 1809.1 of the Zoning Regulations, the Applicant requested approval of uses in the SEFC/W-0 Open Space Area; special exception approval of retail and service uses in the W-0 Zone District for the renovated and new buildings; special exception approval of roof structures; and

variance relief from the parking, height, and waterfront setback requirements of the Zoning Regulations.

7. After proper notice, the Commission held a hearing on the application on March 2, 2009. Parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located.
8. At its duly noticed meeting on February 9, 2009, ANC 6D voted 6-0-1 to support the application for design review, special exception, and variance relief. In its February 10, 2009 report, ANC 6D noted that the Southwest/Near Southeast community eagerly anticipates taking advantage of the amenities that the park and retail space included in the application will provide. (Exhibit 15.)
9. The Office of Planning filed a report and testified in support of the application at the public hearing. (Exhibit 16.) In addition, a representative of the Deputy Mayor for Planning and Economic Development testified in support of the application at the public hearing.
10. Expert witnesses appearing on behalf of the Applicant included: Rick Parisi, CLARB, RLA, of M. Paul Friedberg and Partners; Jordan Goldstein, AIA, of Gensler; and James Carpenter, of James Carpenter Design Associates.
11. The Commission took action at the March 2, 2009, public hearing to approve the plans submitted into the record and the relief requested.

Description of Surrounding Area

12. The Property is located within the 42-acre site known as the Southeast Federal Center (the “SEFC”). The SEFC is a former annex of the U.S. Navy Yard and is being redeveloped into a mixed-use waterfront neighborhood that will include office space, residential and commercial uses, a waterfront park, and open space.
13. The Property is bounded by the land south of 2nd Street to the west, the Washington Navy Yard to the east, proposed Water Street, S.E. and River Street, S.E. to the north², and the Anacostia River to the south. To the west of the Property is a D.C. Water and Sewer Authority Pumping Station, and further to the west of the Property is the Washington Nationals’ Baseball Stadium. The Navy Yard Metrorail station is located approximately 1/3 mile north of the Property.

² The proposed new streets are the subject of a street dedication application known as S.O. 07-8802, which is currently pending before the D.C Council.

14. A former lumbershed (the “Lumbershed Building”) is located on the Property, and is considered to be a contributing building in the Washington Navy Yard Historic District Expansion.

Project Overview

15. Consistent with the purposes and objectives of the SEFC Overlay and the SEFC/W-0 Zone District, the Applicant designed a pedestrian-oriented park that provides opportunities for passive and active experiences and draws new as well as repeat visitors to the park. Three architectural elements are intended to encourage these experiences and are integral to the park itself. These include (1) a pedestrian bridge; (2) an artistic sculptural element on the water; and (3) restaurants and other retail in three pavilions near Water Street, S.E. Through the bridge, marker, and retail buildings, the park will create eclectic experiences for its guests, promote return visits, and facilitate a sense of community affinity for the park.
16. The Commission approved Phase I of the park, which included the overall design and layout of the park and certain structural elements within the park, on May 29, 2008 in Order No. 08-04.
17. Phase II of the Park consists of the renovation and improvement of the existing two-story Lumbershed Building, construction of two new two-story retail pavilions, and construction of the visual marker along the waterfront (the “Project” or “Phase II”).
18. The Lumbershed Building was originally built as an open-air structure and used for drying lumber. The Lumbershed Building will be enclosed in order to protect its structure and adapt the building for its retail use, but the transparency of the enclosure will preserve the open-air feel of the original building. The Applicant presented multiple design schemes for the exterior façade at the public hearing, and stated that the final design would be selected based on continued conversations with the U.S. Commission of Fine Arts, the State Historic Preservation Officer, the National Park Service, and other stakeholders.
19. The new retail pavilions have been designed to provide a transition from the low-scale waterfront setting to the south to the urban mixed-use development to the north, and take their design cues from the height, massing, and other features of the Lumbershed Building.
20. The retail spaces in the Lumbershed Building and new pavilions will be devoted to the uses listed in Section 925 of the Regulations, which are permitted in the W-0 Zone District as a special exception. In conjunction with the approval of these uses, the Applicant also seeks approval for use of the kiosks located under the “Overlook” with

uses permitted in the Open Space Area of the SEFC/W-0 Zone District under 1805.6 of the Regulations. The kiosks were approved by the Zoning Commission in Phase I.

21. The proposed visual marker is intended to serve as a piece of public art that will draw visitors through the neighborhood and park down to the waterfront. The Applicant has commissioned James Carpenter Design Associates to design this sculptural element based on their extensive experience in creating architectural and sculptural works that combine the artistic potential of light and materials to enhance public spaces and places. During the day, the marker will serve as a subtly shimmering figure within the park that visually connects the upper level of the park to the activity of the promenade. At night, the top portion of the marker will be internally illuminated, recalling some of the historic light house and channel markers of the waterfront. The visual marker has been designed to reflect the location's historic origins as a shipyard and industrial site, and has been sited on a north-south axis with the Lumbershed Building to reinforce the historic relationship of the buildings to the Anacostia River.

Zoning Overview

22. The W-0 Zone District permits a maximum height of 40 feet, density of 0.5 FAR, and lot occupancy of 25%. Only limited recreational uses are permitted as a matter-of-right; other uses are permitted as a special exception.
23. When mapped with the SEFC Overlay, the SEFC/W-0 Zone District has additional requirements detailed in § 1805 of the Zoning Regulations. The SEFC/W-0 Zone District is divided into two subareas: the Open Space Area and the Development Area. The SEFC/W-0 Zone District permits the allocation of density within the SEFC/W-0 Zone District from the Open Space Area to the Development Area, and the gross floor area of the Lumbershed Building is excluded from any FAR computation. The SEFC/W-0 Zone District permits limited uses in the Open Space Area as a matter-of-right, but allows for additional uses in the Open Space Area with approval by the Commission. The SEFC/W-0 Zone District permits the full set of uses allowed in the W-0 Zone District within the Development Area. Finally, the SEFC/W-0 Zone District permits the construction of multiple buildings on a single lot.
24. In total, the Project will feature approximately 59,598 square feet of retail and other approved uses in three buildings. Pursuant to § 1805.9 of the Regulations, the gross floor area of the Lumbershed Building does not count towards the total FAR of the Project, and the Project therefore contains approximately 25,475 square feet of gross floor area attributable to density in the pavilions, for a density of less than 0.1 FAR. The three retail pavilions will have heights less than 40 feet, and will occupy approximately 14.3% of the underlying lot (Lot 801 in Square 771).

25. The proposed visual marker will measure approximately 60 feet in height. As measured from Water Street, the height of the visual marker is approximately 51 feet, due to the slope of the park towards the water. The proposed visual marker is located along the promenade and bulkhead.
26. The Applicant anticipates that most of the arriving visitors and patrons will be on foot, given the proximity of the site to the proposed new development in the Southeast Federal Center and the Navy Yard Metrorail Station. Therefore, the Project provides multiple points for pedestrian ingress and egress, including from the street grid to the north as well as through future connections to the west and east along the Anacostia waterfront. The Project also provides for bicycle circulation to and around the waterfront park. Given the pedestrian- and transit-friendly location and availability of other parking options in the nearby area, the Project does not include any vehicular parking.

Design, Use, and Special Exception Approval

27. The Applicant requested design approval of the exterior renovations of the Lumbershed Building and proposed construction of the new pavilions and visual marker pursuant to § 1805.11 of the Zoning Regulations. The Applicant also requested approval pursuant to § 1805.6 of the Zoning Regulations to permit the uses listed in § 1805.6 in the waterfront kiosks, which are located in the Open Space Area of the SEFC/W-0 Zone District. In addition, pursuant to § 1809.1 of the Zoning Regulations, the Applicant requested special exception approval pursuant to § 925.1 of the Zoning Regulations to permit the retail and service uses listed in § 925.1 in the three retail pavilions in the Development Area of the SEFC/W-0 Zone District, as well as flexibility to locate these uses within the proposed buildings.
28. The proposed Project and uses are consistent with the standards for evaluation set forth in the W-0 Zone District. Pursuant to § 927.1, the renovation of the Lumbershed Building, new retail pavilions, visual marker, and related uses will enhance the visual and public recreational opportunities offered along the waterfront by providing active pedestrian-oriented uses that will attract visitors to the waterfront and supplement the recreational opportunities provided by the park uses. The buildings and uses are located so as to minimize adverse impacts on the river and riverbank areas. Furthermore, the buildings and uses are located so as not likely to become objectionable to surrounding property because of noise, traffic or parking. As designed, the park does not include any parking, which is consistent with the goals and policies of the W-0 Zone as well as the SEFC Overlay.
29. The proposed Project and uses also meet the Zoning Commission review standards set forth in § 1808 of the SEFC Overlay as follows:

- a. The proposed uses and structures will help achieve the objectives of the SEFC Overlay District, through a mixture of retail and service uses in a suitable height, bulk, and design that is consistent with the Comprehensive Plan, Anacostia Waterfront Initiative, and other District planning documents. The Project has been sensitively designed to incorporate and feature the historically significant Lumbershed Building and provide reduced height and bulk along the riverfront in order to ensure views over and around waterfront buildings. As a result of the proposed design and related relief, the proposed retail pavilions and visual marker will enhance the development of a publicly-accessible park along the Anacostia River and encourage active, vibrant use of the park.
 - b. The proposed improvements have been designed with heights, bulk, and sitings that provide for openness of view and vistas to and from the waterfront.
 - c. No parking is proposed, consistent with the requirement of the SEFC Overlay that limits on or above-grade parking adjacent to or visible from the street and, more particularly, discourages parking in the SEFC/W-0 Zone District.
 - d. The proposed uses and improvements are compatible with existing and proposed buildings in the surrounding area through overall massing, siting, and details.
 - e. The renovated Lumbershed Building and new pavilions are designed with façades that eliminate unarticulated blank walls along the public streets to the north and east as well as along the public park to the south and west.
 - f. The proposed uses include many of the preferred uses contemplated in § 1807 of the SEFC Overlay.
 - g. The pavilion uses, kiosk uses, and visual marker all further the active and passive recreational uses in the waterfront park.
30. The proposed project and uses are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and tend not to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. The proposed structures and uses are suitable for the site and will supplement and enhance the variety of active and passive recreational uses that are required by the Zoning Regulations. Furthermore, they will support and enliven the uses proposed for the rest of the Southeast Federal Center, and positively impact surrounding properties on both sides of the Anacostia River, by providing lively retail and entertainment options at an attractive and inviting location.

Special Exception Relief: Roof Structures

31. The Applicant requested special exception relief, pursuant to 11 DCMR § 411.11, from § 930.3 of the Regulations, to permit roof structures on the new retail pavilions not meeting the setback requirements of the Zoning Regulations.
32. The proposed roof structures are designed so as to relate to the massing and structural characteristics of the Lumberyard Building. Furthermore, the mechanical equipment has been located on top of the stairwells to minimize the amount of total roof structure space. The roof structures will not block views of the water or waterfront park.
33. The proposed design of the roof structures will not cause objectionable conditions or adversely affect neighboring or nearby property. The relief is consistent with the intent of the Zoning Regulations and Zoning Map and does not compromise the character of the SEFC/W-0 Zone District or the proposed waterfront park. To the contrary, the requested relief will improve the functionality of the buildings as well as their aesthetic appeal and its design. In addition, the encroachment into the standard setback will not adversely affect the use of neighboring property. The buildings are located in the heart of the Southeast Federal Center and the only properties affected by this are future developments by the Applicant, all of which will be significantly taller buildings.

Variance Relief

34. Pursuant to §§ 1809.1 and 3103.2, the Applicant requested variance relief from the parking requirements of § 2101.1. The Applicant also requested variance relief from the height (§ 930.1) and waterfront setback (§ 938.1) requirements of the W-0 Zone District for the visual marker. This variance relief is required in order to ensure that the Project is consistent with the clear directives of the W-0 Zone District, the SEFC Overlay, and the master plan for the Southeast Federal Center.
35. Under the three-prong test for an area variance, an applicant must demonstrate (1) that the property is affected by an exceptional or extraordinary situation or condition, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. (*Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972).) In order to prove “practical difficulties”, an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome and second that the practical difficulties are unique to this particular property.

Exceptional Condition

36. The Property is subject to exceptional conditions that arise from the unique nature of the public-private partnership and related agreements that govern its development. While the Property is owned by the federal government, it was authorized for private development by an Act of Congress in 2000. (*See* Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the “Act”).) The Applicant prepared a Development Plan for the entire Southeast Federal Center, which included Urban Design Guidelines and Minimum Design Standards (together, the “Master Plan”) that were developed under the authority of the Act and approved by the GSA in its selection of the Applicant as the master developer for the SEFC. The Zoning Commission’s approval of this Master Plan, through the implementation of the SEFC Overlay, was intended to ensure that future development of the Southeast Federal Center would proceed according to the Development Plan as well as the Urban Design Guidelines and Minimum Design Standards.
37. GSA and the Applicant also entered into Memoranda of Understanding with the National Capital Planning Commission and the U.S. Commission of Fine Arts regarding the development of the Southeast Federal Center. These MOUs reinforced the Development Plan, Urban Design Guidelines, and Minimum Design Standards as the baseline for future development of the property, and set forth a process for continuing review and comment by these federal agencies on the development of the site. Finally, GSA and the Applicant entered into a Programmatic Agreement intended to ensure that the State Historic Preservation Officer, surrounding property owners, and other stakeholders receive an opportunity to review and comment on each proposed development and its impact on the SEFC’s historic resources.
38. These regulatory and contractual obligations, which require an active pedestrian-oriented waterfront park with retail and service uses that will serve as a citywide destination, establish the “exceptional conditions” for the Property. As a result of the Overlay and agreements, development of the Southeast Federal Center must not be inconsistent with the Master Plan, which sets forth a series of specific design guidelines for the waterfront area. Specific guidelines include the promotion of land uses that activate the waterfront, such as waterfront-oriented retail and service uses; the siting of structures that interpret the historically important maritime context of the site; and the establishment of the waterfront park as a local, citywide, and regional destination. The guidelines promote buildings and land uses in the park that “reinforce the active nature of this key public destination.”

Parking Requirement – Practical Difficulty

39. In the W-0 Zone District, the Zoning Regulations require one parking space for each additional 750 square feet of retail or service gross floor area in excess of the first 3,000 square feet. Here, the Zoning Regulations require approximately 30 spaces for the proposed development, based on the proposed 25,475 square feet of new retail space. (No parking is required for the renovated Lumbershed Building, which is a contributing building in a historic district.)
40. Strict application of the parking requirement of the Zoning Regulations is inconsistent with the exceptional condition of the Property. First, it is impractical to require vehicular parking spaces within a pedestrian-oriented park setting. Second, the general requirement for vehicular parking is inconsistent with the more specific provisions of the SEFC/W-0 Zone District that discourage parking, as discussed further below.

Height and Setback Requirements – Practical Difficulty

41. Section 930.1 of the Zoning Regulations establishes a height limit of 40 feet in the W-0 Zone for all buildings and structures. Furthermore, § 938.1 of the Zoning Regulations establishes a minimum setback inland from the bulkhead of not less than 100 feet to any building or structure. The proposed visual marker will measure 60 feet in height, as measured from the base of the structure, and will be located along the bulkhead, within the required setback.
42. Again, strict application of the height and setback requirements is inconsistent with the exceptional conditions that govern the Property. These exceptional conditions (i.e., the Master Plan and related agreements) establish a clear mandate for an active waterfront park that attracts visitors from throughout the city and region through multiple engaging elements. These agreements also require design review of the park by federal and District agencies as well as other stakeholders, who evaluate the proposed design against the guidelines and standards that govern the Master Plan. These entities have all endorsed the proposed visual marker as a feature that will draw people to the park, consistent with the purposes of the Master Plan. The marker's height and location along the waterfront have been chosen for specific design and aesthetic reasons, and are key elements that permit the marker to activate the waterfront park. A different location would frustrate the intended interpretive potential of the visual marker, and a lesser height would seem out of scale with the surrounding buildings, smokestacks, ships' masts, and other structures along the waterfront.

No Detriment to the Public Good

43. A variance from the parking requirement can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The parking variance will have no negative impact. Here, the proposed buildings are located well within walking distance of the Navy Yard Metrorail Station. Further, given

the quantity of existing surface parking available and future parking that will be available on other parcels following the buildout of those sites, there will be sufficient parking to accommodate the proposed uses. Finally, while the Zoning Regulations ostensibly include a general requirement for parking for “retail uses,” this general requirement is superseded by the more specific provisions of the SEFC Overlay that prohibit parking in the SEFC/W-0 Zone District. The SEFC Overlay is clear that when there are conflicts between it and the underlying zoning, the provisions of the SEFC Overlay govern. (11 DCMR § 1800.2.) Surface parking lots are specifically prohibited in the W-0 Zone, and the SEFC/W-0 Zone District denotes one of its purposes is to “discourage parking” in that zone. (11 DCMR §§ 902.1(l); 1805.1(c).) Therefore, variance relief from the parking requirements will not create a substantial detriment to the public good, and will not impair the intent, purpose, or integrity of the zoning plan.

44. Variances from the height and setback requirements can also be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. The requested relief is minor and will allow for the creation of a public art feature that will substantially benefit the public. The height of the marker is appropriate given the height of surrounding and nearby structures, and the location will not adversely impact the waterfront.

Office of Planning Report

45. By report dated February 20, 2009, OP recommended approval of the proposed design, uses, and related relief. OP found that the proposal is generally consistent with the Comprehensive Plan and the Near Southeast target area objectives within the Anacostia Waterfront Initiative Framework Plan. OP found that the proposal is also generally consistent with the W-0 Waterfront District and the SEFC Overlay regulations and guidelines. OP found that the development would encourage viability of the waterfront park by adding retail and service uses, encouraging pedestrian activity, and linking neighborhood uses to the park and river to the south. OP also found that the requested areas of special exception and variance relief satisfied the relevant tests. Based on its determination that the Project would further the development of the Anacostia River as a community and regional destination, OP recommended approval of the application, including the requested zoning relief.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR §§ 1805.11 and 1809, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1809.1, also requested special exception and variance relief for the proposed development.

2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to AND 6D, OP, and to owners of property within 200 feet of the Property.
3. Pursuant to 11 DCMR § 1805.11, the Commission required the Applicant to satisfy the required burden of proof to approve the overall design of the Project, and the uses in the waterfront kiosks, in accordance with the standards specified in § 927 and procedures specified in § 928, and the standards set forth in § 1808 and procedures set forth in § 1809. Pursuant to 11 DCMR §§ 1809.1 and 3104, the Commission also required the Applicant to establish the case for special exception approval to permit the retail and service uses in the three retail pavilions in the Development Area of the SEFC/W-0 Zone District, as well as flexibility to locate these uses within the proposed buildings. Pursuant to 11 DCMR §§ 1809.1 and § 3104, the Commission also required the Applicant to establish the case for special exception relief from the roof structure requirements of §§ 930.3 and 411.11.
4. Lastly, pursuant to 11 DCMR §§ 1809.1 and 3103, the Commission required the Applicant to satisfy the requirements for variance relief from the parking requirements of § 2101.1, height requirement of § 930.1, and waterfront setback requirement of § 938.1. Under the three-prong test for an area variance, an applicant must demonstrate (1) that the property is affected by an exceptional or extraordinary situation or condition, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan.
5. The Commission concludes that the Applicant has satisfied all the necessary elements for all the relief requested.
6. The proposed buildings are within the allowable height, bulk, and density standards of the Zoning Regulations and the height and density will not cause an adverse effect on any nearby properties. The proposed development has been appropriately designed to adaptively reuse the historic Lumbershed Building and provide new retail pavilions that complement the Lumbershed Building as well as existing and proposed buildings adjacent to the Property with respect to height and mass. The renovations to the Lumbershed Building, proposed new retail pavilions, and visual marker will work in concert with the previously-approved elements of the park to further the SEFC/W-0 Zone District's objective of an active publicly-accessible park along the Anacostia River. The proposed retail, service, and other waterfront-related uses are appropriate for the site and will encourage a variety of support and visitor-related uses in the park, including ground-level retail uses. The impact of the project on the surrounding area is negligible and any potential adverse impacts have been ameliorated.

7. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
8. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
9. The Commission is required under D.C. Official Code § 1-309.10(d) to give “great weight” to the issues and concerns of the affected ANC expressed in its written report. As reflected in the Findings of Fact, at its duly noticed meeting held on February 9, 2009, ANC 6D, the ANC within which the Property is located, voted 6-0-1 to support the application for SEFC Overlay District review and related relief.
10. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) As reflected in the Findings of Fact, OP presented a report and testimony at the public hearing in support of the application.
11. Based on the record before the Commission, having given great weight to the views of OP and the ANC, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 927 and 1808, as well as the burdens of proof for the requested special exception and variances.
12. The project that is the subject of this application will promote the development of the SEFC into a viable mixed-use neighborhood which is sensitive to the site’s historic resources, and which is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for SEFC Overlay District review, including **APPROVAL** of all special exception and variance relief requested; provided, that the Project shall be built in accordance with the plans and elevations dated February 10, 2009, and marked as Exhibit 14 of the record, and dated March 2, 2009 and marked as Exhibit 14A of the record, with the flexibility to modify the Lumbershed Building in accordance with the approvals of the U.S. Commission of Fine Arts, National Park Service, and the State Historic Preservation Officer.

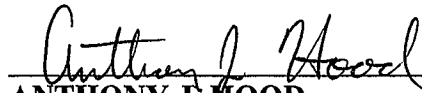
On March 2, 2009, upon the motion made by Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the application at the conclusion of the public hearing by a vote of 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, William K. Keating, Peter G. May, and Michael G. Turnbull to approve).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 26, 2009.

A handwritten signature in cursive script, reading "Anthony J. Hood", written over a horizontal line.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

A handwritten signature in cursive script, reading "Richard S. Nero, Jr.", written over a horizontal line.

RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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As Secretary to the Commission, I hereby certify that on JUN 26 2009 copies of this Z.C. Order No.08-04A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
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| | 10. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning