

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: November 27, 2017
SUBJECT: ZC Case 17-12 – Final Report for a Proposed Zoning Text and Map Amendments to the Zoning Regulations: Subtitle K, Sections 200 through 240, Regarding Height and Density in the Southeast Federal Center Zones.

I. RECOMMENDATION

The Office of Planning (OP) recommends approval of the following text amendments and associated map amendment to Title 11 DCRA, with the following amendment:

1. The terms of the “development agreement” referred to in Subtitle K §§ 202.1(a) and 202.2(b) should be detailed within the text, including:
 - a) all three bedroom units gained from the additional density shall be available to households earning up to 50% AMI;
 - b) confirmation that the affordable units shall be administered by the Department of Housing and Community Development (DHCD); and
 - c) tenure of the affordable units.

Proposed new text is shown in **underlined**; struck text is shown in **~~strikethrough~~**:

Amend Subtitle K, Chapter 2 of the Zoning Regulation (the SEFC Zones) and related amendments to the Zoning Map for Parcels A, D, E, F, G, H, I, and K of the Southeast Federal Center, as follows:

200 GENERAL PROVISIONS

200.3 The SEFC-1 ~~zone provides~~ **zones provide** for high-density mixed-use development with ground floor retail, ~~and with bonus density and height for development proximate to the Navy Yard Metrorail Station and the proposed 1 1/2 Street, and with~~ review of the relationship of new buildings to the M Street, S.E. corridor and the adjacent Washington Navy Yard. **The SEFC-1 zones consist of the SEFC-1-A zone, which permits high-density commercial or residential use with ground floor retail on Parcels A, F, and G near the Navy Yard Metrorail Station entrance, and the SEFC-1-B zone, which promotes a mix of high-density residential and medium-**

density commercial development with ground floor retail on Parcels D, E, K, H, and I.

201 DEVELOPMENT STANDARDS (SEFC-1)

201.1 The development standards in Subtitle K §§ 202 through 210 control the bulk of structures in the SEFC-1 ~~zone~~zones.

202 DENSITY – FLOOR AREA RATIO (FAR)(SEFC-1)

202.1 The maximum permitted floor area ratio (FAR) for ~~building~~buildings in the SEFC- 1-~~A~~ zone (**i.e. Parcels A, E, and G**) shall be 6.0 ~~with a maximum of 3.0 FAR for non-residential uses~~; except that a ~~building within Parcels A, F, G, H, and I shall be permitted a maximum density of 7.0 FAR, provided that:~~ **shall be permitted, if reviewed and approved by the Zoning Commission pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241.**

(a) **To the extent that the additional 1.0 FAR is devoted to residential uses, a minimum of eight percent (8%) of the additional density gained pursuant to this section shall be devoted to three (3) bedroom units, provided that such units may be located anywhere within the residential building, and provided further that such units shall be included within the units that are set aside as affordable units pursuant to the terms of the development agreement with the District of Columbia that mandates the provision of affordable housing.¹ The reduction or elimination of this requirement may be permitted by the Commission upon a showing by the applicant that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible.**

202.2 **The maximum permitted FAR for buildings in the SEFC-1-B zone shall be 6.0 with a maximum of 3.0 FAR for non-residential uses; except a maximum density of 7.0 FAR shall be permitted on Parcels H or I only, if reviewed and approved by the Zoning Commission, pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241, provided that:**

- (a) The additional 1.0 FAR is devoted solely to residential uses, which for the purposes of this subsection does not include a hotel; and
- (b) A minimum of ~~ten~~eight percent (~~10~~8%) of the additional density gained pursuant to this section shall be devoted to three (3) bedroom units,

¹ OP recommends revising the text as noted at the beginning of this report so that the terms of the Development Agreement are codified.

provided that such units may be located anywhere within the residential building, **and provided further that such units shall be included within the units that are set aside as affordable units pursuant to the terms of the development agreement with the District of Columbia that mandates the provision of affordable housing.**² The reduction or elimination of this requirement may be permitted by the Commission upon a showing by the applicant that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible.

202.3 ~~Combined lot development of two (2) or more lots within the SEFC 1 zone, whether contiguous or non-contiguous, is permitted for the purpose of allocating density for residential and non-residential uses, regardless of any other limitation on floor area by uses as established in this chapter, in accordance with Subtitle K § 240, provided that:~~

- ~~(a) The aggregate residential and non-residential floor area shall not exceed the matter of right maximum height or density of the SEFC 1 zone;~~
- ~~(b) A site that is permitted a height of one hundred thirty feet (130 ft.) is permitted a maximum non-residential density of 6.5 FAR through combined lot development; and~~
- ~~(c) Ground floor area required for ground floor street-oriented preferred uses required in accordance with Subtitle K § 237.5 may not be transferred to any other lot through combined lot development.~~

203 HEIGHT (SEFC-1)

203.1 The maximum permitted building height, not including the penthouse, in the SEFC--1 ~~zone~~ **zones** shall be one hundred and ten feet (110 ft.), except as set forth below ~~that~~:

- ~~(a) A site that has frontage on any portion of New Jersey Avenue, S.E., that is south of and within three hundred twenty two feet (322 ft.) of M Street, S.E., **Parcel A** is permitted a maximum height of one hundred thirty feet (130 ft.); and~~
- ~~(b) For a site within Parcels A, F, G, or **and** H utilizing the bonus density permitted pursuant to §1803.7 (b), the maximum permitted building height shall be that permitted by the Act to Regulate the Height Act. **one hundred thirty feet (130 ft.), if reviewed and approved by the Zoning Commission pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241.**~~

² OP recommends revising the text as noted at the beginning of this report so that the terms of the Development Agreement are codified.

203.2 Sites fronting on M Street, S.E., east of 4th Street, S.E., are restricted to a height of ninety feet (90 ft.). A building height of one hundred ten feet (110 ft.) maximum is permitted if reviewed and approved by the Zoning Commission pursuant to the procedures of Subtitle K § ~~241~~**241**. For the purposes of this review, the Zoning Commission shall consider the relationship of the new building to the Navy Yard to the east and may require graduated height and/or design features because of the building's proximity to the Navy Yard.

203.3 The maximum permitted height of a penthouse 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.

237 USE PERMISSIONS

237.4 Within the SEFC-1 ~~zone~~**zones**, the following buildings, structures, and uses are permitted only if reviewed and approved by the Zoning Commission, in accordance with the standards specified in Subtitle K § 241 and procedures specified in Subtitle K § 242:

(a) All buildings and structures that have frontage along M Street, S.E.; **or utilizes additional density or height pursuant to Subtitle K §§ 202 or 203**; subject also to the applicant proving that the architectural design, site plan, landscaping, and sidewalk treatment of the proposed building:

(1) Are of superior quality;

(2) **For buildings on Parcel A**, accommodate the design of the public entrance to the Navy Yard Metrorail Station on Parcel A. The applicant shall demonstrate proactive engagement with the Washington Metrorail Area Transit Authority (WMATA) in the planning and design of Parcel A as a part of the above design review as set for the below:

(A) If the applicant moves forward with the construction of the third entrance before the applicant is ready to develop Parcel A, the applicant shall demonstrate that it has coordinated with WMATA to integrate the entrance into the design of Parcel A; and

(B) If WMATA moves forward with the construction of the third entrance before the applicant is ready to develop Parcel A, the applicant shall demonstrate that it has coordinated with WMATA to integrate the entrance into

the design of Parcel A;

- (3) Ensure the provision of 1½ Street, S.E. and N Street, S.E. as open and uncovered multimodal circulation routes; and
- (4) Provide three (3) bedroom dwelling units as required pursuant to Subtitle K § 202.1;

~~240 COMBINED LOT DEVELOPMENT PROCEDURES (SEFC 1 AND SEFC 4)~~

~~240.1 Combined lot development is permitted within the SEFC 1 zone in accordance with Subtitle K § 202.3, and in the SEFC 4 zone in accordance with Subtitle K §§ 230.6 and 230.7.~~

~~240.2 No allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator in accordance with this section.~~

~~240.3 The instrument shall bind the present and future owners of the respective SEFC 1 lots so as to permanently devote residential and non-residential gross floor area on site equal to that square footage transferred or received, and shall specify the allocation of residential and non-residential uses among the lots.~~

~~240.4 The instrument shall bind the present and future owners of the SEFC 4 lots that are situated within the open space area, as described in Subtitle K § 200.8(b), to permanently forego the development of such square footage as was transferred to a lot in the development area and shall specify the amount of square footage transferred.~~

~~240.5 The Office of the Attorney General shall certify the instrument for legal sufficiency. The instrument shall also contain a certification by the Office of Planning attesting to:~~

- ~~(a) The lots' eligibility to send and receive allocated residential and nonresidential uses; and~~
- ~~(b) The accuracy of the computations with respect to the amount of residential and non-residential uses or density reallocated or transferred.~~

~~240.6 The District of Columbia need not be made a party to the instrument if the instrument provides that it shall neither be modified nor terminated without the express permission of the Zoning Commission of the District of Columbia.~~

~~240.7 The instrument shall be recorded for all affected lots in the Office of Recorder of Deeds, so that the notice of restrictions and transfer shall run with the title and deed to each affected lot and so that the land records that pertain to each affected lot accurately reflect the amount and type of density associated with the lots.~~

~~240.8 A certified copy of the recorded instrument shall be filed with the Zoning Administrator before approval of any building permit application that is affected by such allocation of uses or density.~~

II. BACKGROUND

At its July 24, 2017 public meeting, the Zoning Commission set down this text amendment request for a public hearing. The amendments would allow increased density and height intended to make gains in commercial office uses to meet projections originally anticipated in the SEFC Master Plan. The proposed amendments would create two sub-zones: SEFC-1-A, applying to Parcels A, F, and G; and SEFC-1-B, applying to Parcels D, E, H, I, and K. Generally, the amendments would delete the provisions regarding Combined Lot Development in the SEFC zones, and would remove the provision requiring 3.0 FAR to be dedicated to nonresidential uses in the SEFC-1-A zone. Design Review by the Zoning Commission would be required for any project utilizing the additional density and/or height permitted by this text amendment. The amendment would allow for potentially up to an additional 500,000 square feet of floor area on these Parcels, should all the density be used.

Affordable Three Bedroom Units

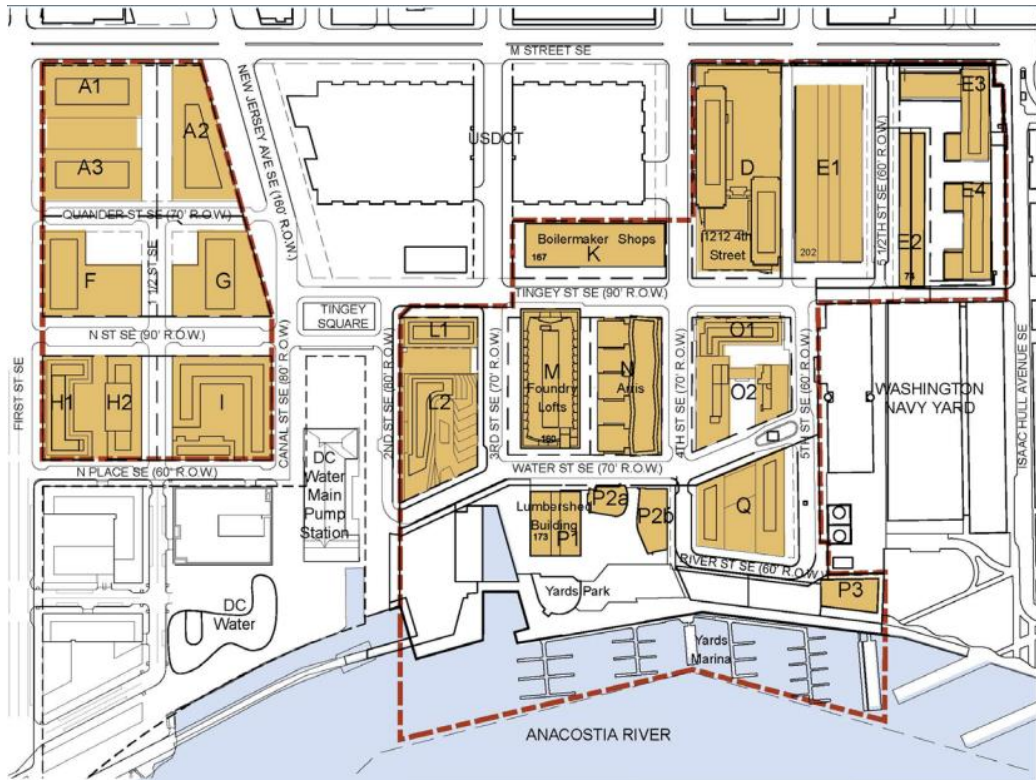
Since the text amendment was set down, the applicant has continued discussions with ANC 6D regarding the unit mix within SEFC. ANC 6D has expressed that SEFC should be attractive to all types of households, including those with families. While the existing provisions in SEFC require that 8% of the utilized residential bonus density in SEFC (as approved by the previous text amendment, ZC 14-05), the Development Agreement, which contains the affordable housing requirements for SEFC, would not guarantee that the three bedroom units would be included in the mix of affordable housing. Therefore, the applicant has revised Subtitle K § 202.2(b) of the regulations to ensure that all three bedroom units are compliant with the affordable housing provision of the Development Agreement. OP does not maintain the Development Agreement, and, in connection with a different Zoning Case, has only received the portion of the Agreement requiring that 20% of all housing be available to households earning up to 50% AMI. Given the uncertainty of the remainder of the terms, OP has recommended a modification to the text that would outline those terms in the text for greater certainty regarding future projects.

In OP's setdown report, additional information regarding the impacts of the proposal on housing and affordable housing, and the need to shift density from Parcel E for a cultural use to Yards West was requested. The Zoning Commission concurred with OP's request.

III. ANALYSIS

The applicant has requested the proposed text amendment to the SEFC-1 zone to allow the developer, Forest City, to better meet the SEFC Master Plan goals for commercial use. The original Master Plan for SEFC anticipated approximately 6 million square feet of development, which has decreased over time to approximately 4.6 million square feet due to: an increase in non-office, nonresidential uses, which count against the overall nonresidential FAR cap; an

inability to create adequate CLD pairs to transfer office density to the proposed office parcels; and evolving site constraints on the eastern part of The Yards. The text amendment would allow for the potential recapture of some density by increasing FAR and height allowances on certain parcels, and eliminating the nonresidential FAR limitation on others. The following map identifies specific parcels in SEFC:



Many of the subject Parcels remain undeveloped or are allocated for temporary uses, such as parking lots, which have been granted special exceptions by the Zoning Commission. The following table summarizes current development on the Parcels that are the subject of the proposed text amendment:

| Parcel | Current Use/Development |
|--------|--|
| A | Temporary Open Space |
| D | Twelve 12 residential development, consisting of 218 units and 125,000 square feet of retail, including a grocery store and fitness center |
| E | Existing historic structures |
| F | Temporary parking lot (expires 2019, per ZC Order 13-16) |
| G | Trapeze School (expires 2019, per ZC Order 13-16) |
| H | Temporary parking lot (expires 2018, per ZC Order 13-03) |
| I | Temporary parking lot (expires 2018, per ZC Order 13-03) |
| K | Boilermaker Shops, consisting of 35,000 square feet of retail use and 11,000 square feet of office use |

The following table summarizes OP’s understanding of the proposed text amendment:

| PCL | EXISTING | | | PROPOSED | | |
|-----|----------|--|----------------------------------|----------|---|---|
| | Zone | MAX. FAR | HEIGHT | Zone | MAX. FAR | HEIGHT |
| A | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.5 CLD Bonus – 1.0, Res. Use | 130' | SEFC-1-A | Total – 6.0 Res. – 6.0 Non-res – 6.0 Bonus – 1.0, any use | 130' |
| D | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD | 90'; 110' with ZC approval | SEFC-1-B | Total – 6.0 Res. – 6.0 Non-res – 3.0 | 90'; 110' with ZC approval |
| E | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD | 90'; 110' with ZC approval | SEFC-1-B | Total – 6.0 Res. – 6.0 Non-res – 3.0 | 90'; 110' with ZC approval |
| F | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD Bonus – 1.0, Res. Use | 110 – 130' (Ht. Act.) | SEFC-1-A | Total – 6.0 Res. – 6.0 Non-res – 6.0 Bonus – 1.0, any use | 110' 130' with ZC approval (if Ht. Act allows) |
| G | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD Bonus – 1.0, Res. Use | 110 – 130' (Ht. Act.) | SEFC-1-A | Total – 6.0 Res. – 6.0 Non-res – 6.0 Bonus – 1.0, any use | 110' 130' with ZC approval (if Ht. Act allows) |
| H | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD Bonus – 1.0, Res. Use | 110 – 130' (Ht. Act.) | SEFC-1-B | Total – 6.0 Res. – 6.0 Non-res – 3.0 Bonus – 1.0, Res. use | 110' 130' with ZC approval (if Ht. Act allows) |
| I | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD Bonus – 1.0, Res. Use | 110' | SEFC-1-B | Total – 6.0 Res. – 6.0 Non-res – 3.0 Bonus – 1.0, Res. use | 110' |
| K | SEFC-1 | Total – 6.0 Res. – 6.0 Non-res – 3.0 Non-res – 6.0 CLD | 110' | SEFC-1-B | Total – 6.0 Res. – 6.0 Non-res – 3.0 | 110' |

The following table summarizes the gross floor area that would be gained through the text amendment, using the actual existing zoning calculations (including CLD transfers) and new zoning calculations with density bonuses, as provided by the applicant in the application dated June 16, 2017 (Exhibit 2A).

| Parcel | Lot Area (sq. ft.) | Existing FAR (Matter of Right) | Existing Total GFA | Proposed FAR (with Design Review) | Proposed Total GFA | GFA Gain |
|--------|--------------------|--------------------------------|--------------------|-----------------------------------|--------------------|----------------|
| A | 129,962 | 6.0 | 389,886 | 7.0 | 909,734 | 519,848 |
| F | 45,063 | 6.0 | 135,189 | 7.0 | 315,441 | 180,252 |
| G | 39,653 | 6.0 | 118,959 | 7.0 | 277,571 | 158,612 |
| H | 55,041 | 7.0 | 385,287 | 7.0 | 385,287 | 0 |
| I | 55,041 | 6.0 | 467,849 (w/CLD) | 7.0 | 385,287 | 55,041 |
| K | 46,443 | 0.99 | 139,329 (w/CLD) | 0.99 | 46,000 | 0 |
| D | 101,376 | 3.7 | 554,128 (w/CLD) | 3.7 | 375,000 | 0 |
| E1 | 107,321 | 3.0 | 321,963 | 3.0 | 321,963 | 0 |
| E2-E4 | 145,778 | 3.0 | 437,334 | 3.0 | 437,334 | 0 |
| | | | | | Total | 503,693 |

Housing

In OP’s setdown report, it was noted that additional information regarding the impact of the proposed text amendment on housing and affordable housing should be provided. In the Pre-Hearing statement (Exhibits 13 and 21), the applicant states that the proposed amendments would not impact the production of housing and affordable housing. Original forecasts anticipated the production of 2,000 housing units in SEFC, and current forecasts predict approximately 2,100 units upon buildout. The proposed text amendments would not result in an increased number of residential units.

| Parcel | Zone | Number of Housing Units |
|----------------|--------|-------------------------|
| D | SEFC-1 | 218 |
| H and I | SEFC-1 | 650 |
| L, M, N, and O | SEFC-2 | 1,108 |
| Q | SEFC-3 | 130 |
| | | 2,106 |

The proposed SEFC-1-A zone would continue to permit 7.0 FAR, with Design Review, for any permitted use, although the Master Plan anticipates that Parcels A, F, and G, located in this zone, would be devoted to commercial office use.

The SEFC-1-B zone would also permit a maximum 7.0 FAR, with Design Review, but only 3.0 FAR may be devoted to nonresidential uses. This helps to ensure that parcels H and I would provide 4.0 FAR residential. Parcels D and K are already constructed, with a large residential development (Twelve12) on Parcel D.

Affordable Housing

The applicant has confirmed that any residential component will be required to comply with the Development Agreement between the developer and the District of Columbia, which requires that 20% of the residential floor area be reserved to households earning up to 50% of the area median income. The Development Agreement requires the units to be administered by the

DHCD, and for the affordable units to comply with Federal Affordability requirements. Federal Affordability requirements provide that the units shall remain affordable for a period of 15 years in order to receive tax credits, with a 15-year extended compliance period, and the bonds require the affordable housing to be effective while the bonds are outstanding. In any case, the Development Agreement does not require the affordable housing units to remain affordable for the life of the project.

After consulting with the ANC, an additional amendment has been included that would require all of the three bedroom units, required by Subtitle K § 202.2(b), to be affordable, per the provisions of the Development Agreement. OP supports this amendment with the additional provisions provided at the beginning of this report, as it would ensure affordable family-sized units in a transit-accessible, mixed-use neighborhood. The amendments offered by OP ensure predictability regarding affordable housing, as the terms of the Development Agreement have not otherwise been codified.

Parcel E, Cultural Use

Prior to setdown, the applicant noted that the proposed text amendment was necessary in order to capture floor area that would not be utilized by a future cultural use on Parcel E, allowing the developer to achieve density targets for the SEFC area. While a cultural use continues to be planned, funding is uncertain at this point, so the applicant is unable to certify the timeline for its development.

The applicant has provided information indicating that there are existing historic structures on Parcel E that provide physical, structural, and environmental constraints that would preclude their conversion to a residential use. Additionally, the adjacency of the lots to the Navy Yard creates security, safety, and historic context issues for future development.

While OP would prefer to have certainty regarding a potential cultural use, the applicant has verified that existing conditions will make the reuse of Parcel E for residential purposes difficult, and potentially affect the density allowances currently permitted by the Zoning Regulations and proposed by the subject text amendment. The proposed text amendment would allow an overall FAR of 6.0, but requires a nonresidential FAR of 3.0, which could inherently limit density on the Parcel. Given the constraints noted above, OP is generally supportive of the concept of allowing greater density in Yards West to supplement the anticipated shortfall in FAR anticipated by the Master Plan, particularly since projects utilizing bonus density will be required to complete the Design Review process.

Conclusion

The proposed text and map amendments would allow greater height and density on specific Parcels in SEFC, with Design Review approval. The proposed heights would be compatible with existing developments in the area, and the neighborhood would benefit from additional housing and affordable housing. The ground floor retail uses would be expanded to cover additional street frontages, increasing the porosity of the ground floors. In addition, the text amendment would maintain the integrity of the previous text amendment, which contains provisions ensuring the preservation of valuable connections, and a partnership with WMATA to accommodate an

additional entrance, if determined necessary. These measures ensure that the amendments will be compatible with future development in the SEFC Overlay District and surrounding neighborhood.

IV. COMPREHENSIVE PLAN

The proposed amendments would not be inconsistent with the Comprehensive Plan. As detailed in applicant submissions and the OP setdown report (Exhibits 2 and 10), the proposed changes would generally support policy statements of the Land Use, Housing, Economic Development, Urban Design, Historic Preservation and Lower Anacostia Waterfront-Near Southwest Area Elements (Policies LU-1.1.5, Urban Mixed Use Neighborhoods; LU-1.2.8, Large Sites and the Waterfront; H-1.1.2, Production Incentives; H-1.1.4, Mixed Use Development; H-1.2.7; Density Bonuses for Affordable Housing; ED-2.2.7, Planning for Retail; UD-1.1.4, Height Act of 1910; UD-1.2.4, View Protection; UD-1.3.1, DC as a Waterfront City; UD-1.3.3, Excellence in Waterfront Design; UD-1.3.6, “Activating” Waterfront Spaces; UD-1.3.7, Neighborhood Connectivity; HP-2.4.3, Compatible Development; and AW-2.3.3, Near Southeast Housing Opportunities).

V. COMMUNITY COMMENTS

At its regularly scheduled meeting on October 16, 2017, ANC 6D voted unanimously to recommend approval of the proposed text amendment. It notes that the proposal to decrease the percentage of three bedroom units required by Subtitle K § 202.2(b) from 10% to 8%, consistent with the previous text amendment, is acceptable, as these units will be included in the set aside of affordable units.

VI. AGENCY COMMENTS

OP has received no comments from other District agencies. DDOT has filed a report under separate cover noting that it has no objection to the proposed text and map amendments (Exhibit 22).

Brandice Elliott, Case Manager:

JS/be