

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 19-07
Z.C. Case No. 19-07

Forest City SEFC, LLC on behalf of the United States General Services Administration
(SEFC Design Review at Square 853, Lot 803)
May 23, 2019

Pursuant to notice, the Zoning Commission of the District of Columbia (the “Commission”) held a public hearing on May 23, 2019, to consider the application of Forest City SEFC, LLC (the “Applicant”) regarding property owned by the United States General Services Administration (“GSA”) for approval to construct a new building for a private educational use (a trapeze school), two above-grade accessible parking spaces, and related landscaping improvements (the “Project”) in the SEFC-1B zone on the property commonly known as “Parcel E4” in The Yards (Square 853, Lot 803, “Parcel E4”). The Commission’s approval for the Project’s use is required pursuant Title 11 of the District of Columbia Municipal Regulations (“DCMR”) the District of Columbia Zoning Regulations (“Zoning Regulations”, to which all references are made unless otherwise specified). The Commission considered the application for the Project pursuant to Subtitles X and Z of the Zoning Regulations. For the reasons below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

Notice

1. On December 10, 2018, the Applicant mailed a Notice of Intent to file a design review application to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located. (Exhibit [“Ex.”] 2D.) The Applicant also thereafter presented the Project to ANC 6D. (*Id.*)
2. On March 18, 2019, the Applicant filed an application on behalf of GSA, as the owner of the Property, for review and approval of the Project pursuant to Subtitle K §§ 237.4, 241, and 242 of the Zoning Regulations. (Ex. 1.)
3. The Office of Zoning referred the application to the National Capital Planning Commission (“NCPC”), gave notice of the public hearing by mail to ANC 6D, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the D.C. Council, the Department of Consumer and Regulatory Affairs (“DCRA”), the Office of the Attorney General, the Department of Energy and Environment (“DOEE”), the District of Columbia Housing Authority, and to owners of property within 200 feet of the Property. Notice was also published in the *D.C. Register*. The Applicant provided evidence that notice of the public hearing was posted on the Property on April 10, 2019. (Ex. 3-6, 8, 14.)

Parties

4. Apart from the Applicant and the ANC there were no parties to this proceeding.

The Property

5. Parcel E4 is located entirely within “The Yards,” which was formerly known as the Southeast Federal Center (“SEFC”). (Ex. 2.)
6. Parcel E4 consists of approximately 46,462 square feet in the northeast corner of The Yards. Parcel E4 is owned by the GSA and is controlled by the Applicant pursuant to a development agreement between the GSA and the Applicant. (*Id.*)
7. Parcel E4 is bounded to the east and south by the Washington Navy Yard; to the west by Parcels E1 and E2, which respectively include historic Buildings 202 and 74; M Street, S.E. is to the north of Parcel E4, with Parcel E3 intervening between such street and the subject parcel. Tingey Street, S.E. ends to the southwest of Parcel E4. (*Id.*)
8. Parcel E4 is currently mostly vacant with only temporary gravel surface parking spaces and utility structures. (*Id.*)
9. All vehicular access to Parcel E4 is from Tingey Street, S.E., which is subject to a Navy-controlled gate immediately to the east. There is no vehicular access from M Street, S.E. because of the historic, brick “Sentry Wall” along the south side of M Street, S.E. The Sentry Wall varies somewhat in height but is generally 12-15 feet tall. The portion of Tingey Street, S.E. immediately south of Parcel E4 is a private way that is within the boundaries of the federally-owned Parcel E. (*Id.*)
10. The Property is located in the SEFC-1B zone. The SEFC zones are intended to “provide for the development of a vibrant, urban, mixed-use, waterfront neighborhood, offering a combination of uses that will attract residents, office workers, and visitors from across the District of Columbia and beyond.” (Subtitle K §§ 200.1, 200.2(c).)
11. The use provisions for the SEFC-1B zone also expressly permit educational uses, subject to Commission approval. (Subtitle K § 237.4(i).)

The Application

12. The Applicant seeks to construct a new trapeze school with associated improvements on Parcel E4. The new building will be approximately 40 feet tall and contain approximately 5,644 square feet of educational use floor area. (Ex. 2.)
13. The trapeze school is currently located on Parcel G, which is scheduled to be developed.
14. A trapeze school has been located in The Yards for many years. The school originally opened on Parcel O in The Yards in 2010 before relocating to its current location several years later pursuant to Z.C. Order No. 13-16. (Ex. 2I, p. 5.)
15. The Applicant wishes to retain the use because it believes that the school has been an important element of The Yards and The Yards Park. For nearly a decade, the trapeze

school has attracted visitors to The Yards and added variety to the recreational uses available to District residents and visitors.

16. Parcel E4, which is anticipated to be one of the last parcels in The Yards to be developed, is an appropriate location for that interim use until Parcel E is ultimately developed with one or more permanent structures.
17. On April 12, 2019, the Applicant filed a Technical Memorandum, prepared by Gorove/Slade, regarding the Project's transportation aspects. (Ex. 7, 7A.)
18. On May 3, 2019, the Applicant filed a supplemental statement detailing discussions with ANC 6D, the U.S. Navy, NCPC, the Commission of Fine Arts ("CFA"), the Historic Preservation Office, OP, and DDOT. (Ex. 10-10C.) The Applicant also submitted:
 - a. Responses to questions raised by OP; (Ex. 10, p. 2.)
 - b. A request for proposed design flexibility from the final approved plans in nine areas; (Ex. 10A.)
 - c. The resumes, and outlines of testimony for the Applicant's expert witnesses; and (Ex. 10B.)
 - d. Revised Plans. (Ex. 10C.)
19. On May 23, 2019, the Applicant filed a short letter providing written responses to additional questions from OP and pointing out minor changes to the design of the Project in light of questions from OP. (Ex. 15.) These changes include:
 - a. Revising the plans to show pedestrian access and crosswalks/stripping connecting the Project to the existing sidewalk network;
 - b. Expanding the size of the proposed bioretention area; and
 - c. Providing additional details regarding the Project's proposed materials and colors.
20. On May 23, 2019, the Applicant also filed a presentation with updated plans for the Project. (Ex. 15A.)

Relief Requested

21. The Commission's approval for the Project's use is required pursuant to Subtitle K §§ 237.4, 241, and 242 of the SEFC zone provisions, and the design review criteria of Subtitle X, Chapter 6.

OP Report

22. OP filed a report dated May 13, 2019 (the "OP Report") recommending approval of the Project and testified accordingly at the public hearing. (Ex. 12.) The OP Report found that the Project is not inconsistent with the designation for the Property on the Comprehensive

Plan's Future Land Use Map and Generalized Policy Map. Similarly, the OP Report concluded that the Project furthers policies in the Comprehensive Plan's Land Use; Park, Recreation, and Open Space; Urban Design; and Anacostia Waterfront/Near Southwest Area Elements.

23. The OP Report also examined the Project against the design review criteria of Subtitle X, Chapter 6 as well as the SEFC-1B zone specific criteria, and found that the Project satisfied each relevant condition, concluding that the Project advances the goals and objectives of the SEFC zones as set forth in Subtitle K. (Ex. 12.)
24. While OP generally supported the Application's requests for design flexibility from the final approved plans, the OP report did include requests for additional information on two issues:
 - a. The Project's proposed materials and colors; and
 - b. The need for flexibility for the ground-floor frontage of the Project.
25. OP testified at the May 23, 2019 public hearing that the Applicant's responses provided in Exhibits 15 and 15A satisfactorily addressed OP's request for additional information. (Transcript of May 23, 2019 Zoning Commission Public Hearing, Z.C. Case No. 19-07 ["Tr. 1"] at 81.)

DDOT Report

26. DDOT filed a report dated May 10, 2019 stating that it had no objection to the approval of the Project. (the "DDOT Report") The DDOT Report had no recommended conditions or follow-up items. (Ex. 11.)

ANC Report

27. At its regularly scheduled and duly noticed public meeting on April 8, 2019 with a quorum present, ANC 6D voted to support the application for the Project, and the ANC filed a report with the Commission on May 16, 2019 (the "ANC Report"). (Ex. 13.) The ANC Report noted no issues or concerns with the Application. (*Id.*)
28. The ANC spoke in support of the Project at the public hearing. (Tr. 1 at 82.)

Other Responses

29. On May 2, 2019, NCPC issued a memorandum finding that the Project is not inconsistent with the Comprehensive Plan ("Comp Plan") and would not adversely affect any other federal interest. (Ex. 9.) NCPC noted that "the primary federal interest regarding this [P]roject is the adjacency of the Washington Navy Yard. GSA has consulted with the United States Navy on this [P]roject, [because the Navy] controls the property on two sides of the site, and the Navy's concerns and recommendations regarding proximity of the [Project's] outdoor rig have been incorporated into the design of the [P]roject." (*Id.*)
30. The Navy provided an email expressing no objection to the Project as revised. (Ex. 16.)

Public Hearing of May 23, 2019

31. Expert witnesses appearing on behalf of the Applicant included Will Teass of Teass/Warren, as an expert in architecture, and Erwin Andres of Gorove/Slade Associates, as an expert in transportation planning engineering. Toby Millman and Michael Odum of Brookfield Properties appeared on behalf of the Applicant, and Brett Banks appeared on behalf of GSA. (Ex. 17.)
32. OP testified in support of the Application and noted that the Applicant had responded to the questions regarding the requested design flexibility raised in the OP Report. (Tr. 1 at 81.)
33. The Applicant responded to the Commission's question as to whether the Project would be physically relocated from Parcel G to Parcel E4, noting that a new building would be constructed on Parcel E4 and the existing building recycled. The new building would have some minor differences relative to the existing building. (*Id.* at 77-78.)
34. Mr. Banks responded to the Commission's question as to whether the Project had been presented to the CFA, stating that it had not because it was a temporary structure and outside the scope of the agreement between GSA and CFA but that CFA staff was apprised of the development. (*Id.* at 78.)
35. The Applicant confirmed to the Commission that the Project had been reviewed by the Navy. (Tr. 1 at 75.) The Applicant noted that the Project had received approval from the Navy and referred the Commission to the email response in the record. (Tr. 1 at 74, 76; Ex. 16.)
36. The Commission also asked about the number of times the school had been moved and encouraged the Applicant to identify a permanent location for it in The Yards. (Tr. 1 at 78-80.)
37. Finally, the Commission noted that it agreed with the Applicant's request to limit the duration of the use to five years. (*Id.* at 74, 85-86.)

CONCLUSIONS OF LAW

Standard of Review

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.01 (2018 Repl.)) authorizes the Commission to undertake review and approval of the Project pursuant to Subtitle K § 237.4(i), which permits private education uses in the SEFC-1B zone, subject to the Commission's approval.
2. Section 237.4 requires the Application to comply with the review standards and procedures contained in Subtitle K §§ 241 and 242. Section 241.1 requires that a use within an SEFC

zone must meet the general “standards set forth in Subtitle X” as well as the more specific criteria of §§ 241.1 and 241.2.

Satisfaction of the General Review Criteria

General Design Review Criteria (X § 604)

3. Section 604 requires that in order for the Commission to approve a design review application it must:
 - a. *Subtitle X § 604.5 - find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Subtitle X § 604.6 - find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9;*
 - c. *Subtitle X § 604.7 - review the urban design of the site and the building according to certain enumerated criteria set forth below; and*
 - d. *Subtitle X § 604.8 - find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site.*
4. The Commission concludes that the Application meets the general design review criteria as elaborated below.

Not Inconsistent with the Comprehensive Plan (X § 604.5)

5. The Commission concludes that this application is not inconsistent with the Comp Plan, including the relevant objectives of the 2013 Near Southeast Urban Design Framework Plan (the “NSE Plan”), the Generalized Policy Map, the Future Land Use Map, and the District-wide and Area Elements contained therein:
 - a. Generalized Policy Map. On the Comp Plan’s Generalized Policy Map, Parcel E4 is located within the Central Employment Area (“CEA”) and Land Use Change Areas (Federal). The CEA designation indicates that patrons, workers, and visitors are drawn to the area from across the region. (*See* 10-A DCMR § 223.21.) Such broad demand for uses around The Yards justifies the trapeze school to serve and attract such patrons, workers, and visitors. The Land Use Change Area designation contemplates a change from the Federal control of The Yards at the time the Comp Plan was adopted in 2006 relative to an ultimate commercial use in 2025. (*Id.* § 223.9.) The Project’s temporary nature is not inconsistent with this Land Use Change Area (Federal) designation;
 - b. Future Land Use Map (“FLUM”). The Comp Plan’s FLUM designates Parcel E4 as Mixed-Use High-Density Commercial/High-Density Residential. The Comp Plan also notes that the FLUM has a relatively long horizon and is not intended to

be an “existing land use map.” (*Id.* § 226(b).) Although the Project does not contain any high density uses, the temporary nature of the proposed use and structure does not impede high density uses in the future. Accordingly, the Project is not inconsistent with the FLUM of the Comp Plan;

- c. Land Use Element. The Project is generally not inconsistent with the numerous policy objectives of the Comp Plan’s Land Use Element applicable to the CEA, large-scale infill development, and the creation of robust and sustainable commercial nodes; (*See id.* § 304.8, 307.5, 312.5.)
- d. Other District Elements of the Comp Plan. This application is also not inconsistent with the Comp Plan’s other District Elements because the trapeze school serves the economic development interests of The Yards (*see id.* §§ 703.13, 707.6, 709.7, 718.7), and promotes accessibility to a waterfront park (*see id.* § 813.7) without compromising environmental quality (*see id.* § 602.2 *et seq.*) or historic integrity (*see id.* §§ 1008.5, 1011.8.);
- e. Area Elements of the Comp. Plan. The Comp Plan's Lower Anacostia Waterfront/Near Southwest Area Element encourages commercial development in the Waterfront Area, which development the Project supports. (*Id.* § 1908.4.) The temporary nature of the Project's uses is not inconsistent with any of the policy focus areas of the Area Element for The Yards (referred to as the "Near Southeast" in the Comp Plan); and (*Id.* § 1913.)
- f. NSE Plan. This application is not inconsistent with the NSE Plan, because the NSE Plan contemplates temporary uses.

Satisfaction of the General Special Exception Criteria (X § 604.6)

6. The Commission concludes that the Project satisfies the two prongs of the general special exception criteria of Subtitle X § 901 for the following reasons:

- a. *The Project satisfies Subtitle X § 901.2(a) because it is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps for the SEFC-1B zone.*

The purpose and intent of the Zoning Regulations is summarized at Subtitle A § 101.2(a)-(d). The Project helps achieve the goals and objectives applicable in the SEFC-1B zone and advances the character of such zone. (*See* Subtitle A § 101.2(a).) The private education use contemplated herein is suitable for the zone as such uses are expressly contemplated in the SEFC-1B zone. (*Id.* § 101.2(b), and Subtitle K § 237.4(i).) The Project encourages and advances the stability of the SEFC-1B zone and the land value of the SEFC-1B zone because the Project puts otherwise vacant and unimproved land to temporary productive use while the multi-year build out of The Yards proceeds. (*Id.* § 101.2(c).) Finally, the Project is not inconsistent with the Comp Plan, as set forth above; and (*Id.* § 101.2(d).)

- b. *The Project satisfies Subtitle X § 901.2(b) because it will not tend to affect adversely the use of neighboring property.*

The Project fits into the surrounding context from a use and impact perspective and will not tend to adversely affect the use of any neighboring property. The trapeze school use does not create any adverse effects on neighboring property relative to the existing condition. Because the Project is merely relocating an existing use from elsewhere in The Yards and is not becoming any more intense of a use, the Project does not create any new traffic or any other net new impact. The Project's landscaping improvements represent a significant gain relative to the existing unimproved conditions. The Applicant has separately discussed the Project with the U.S. Navy, which controls the property on two sides of Parcel E4, and the Navy's concerns and recommendations have been incorporated into the design of the Project.

Consistency with the Urban Design Criteria (X § 604.7)

7. Subtitle X § 604.7 enumerates several general urban design criteria by which the Commission must review any SEFC-1B zone application pursuant to Subtitle K, § 237.4. The Commission concludes that the Project is consistent with each of these general criteria:

- a. *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:*
- i. *Multiple pedestrian entrances for large developments;*
 - ii. *Direct driveway or garage access to the street is discouraged;*
 - iii. *Commercial ground floors contain active uses with clear, inviting windows;*
 - iv. *Blank facades are prevented or minimized; and*
 - v. *Wide sidewalks are provided.*

Given the existence of the Sentry Wall, and the existing configuration of Parcel E4 relative to Tingey Street, S.E., these criteria are not as meaningful for the Project as such criteria might be for a lot that is differently situated. Nevertheless, the Project advances certain items of these five criteria. With respect to item *i.*, the Project has multiple pedestrian entrances. With respect to item *ii.*, although the Project has driveway access to Tingey Street, S.E., such access is the only means available to the Parcel E4 and is mitigated because Tingey Street is not open to public travel beyond to the east of the property, effectively creating a "dead end" condition for the Project, which is unlikely to change given the surrounding properties are under the control and in active use by the U.S. Navy. Items *iii.* and *iv.* above are not applicable to the Project given the nature of the use proposed and the location of Parcel E4, as removed from any public street and screened from public view by the exiting historic Sentry Wall. The Project improves Parcel E4 with sidewalks in furtherance of item *v.* above;

- b. *Public gathering spaces and open spaces are encouraged, especially in the following situations:*
 - i. *Where neighborhood open space is lacking;*
 - ii. *Near transit stations or hubs; and*
 - iii. *When they can enhance existing parks and the waterfront.*

Thoughtful public gathering places and improvements to the public realm are part of the comprehensive master plan for The Yards. Given that Parcel E4 is bounded on three sides by a combination of the Sentry Wall and the Navy Yard, opportunities for public gathering spaces are rare. However, the trapeze school use creates a “third space” where nearby residents and members of the public can gather for a highly specialized and unique form of recreation. Moreover, the Project offers both indoor and outdoor recreation and is walkable to transit. Visitors to the school can also take advantage of the nearby location of The Yards Park;

- c. *New development respects the historic character of Washington’s neighborhoods, including:*
 - i. *Developments near the District’s major boulevards and public spaces should reinforce the existing urban form;*
 - ii. *Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and*
 - iii. *Development should respect and protect key landscape vistas and axial views of landmarks and important places.*

Again, these criteria are generally inapplicable to the temporary use in this application. The Project does nothing to adversely affect the District’s major boulevards, public spaces, or urban form. Likewise, the Project does not disturb the urban form of the Sentry Wall along M Street, S.E. and respects the general low-scale, quasi-industrial character of the nearby Building 74 and Building 202. Finally, the Project also respects and avoids any interference with landscape vistas and axial views along M Street, S.E., Tingley Street, S.E., and Isaac Hull Avenue;

- d. *Buildings strive for attractive and inspired façade design, including:*
 - i. *Reinforce the pedestrian realm with elevated detailing and design of first and second stories; and*
 - ii. *Incorporate contextual and quality building materials and fenestration.*

These criteria are also not applicable to this application as the Project contains only a small 5600-square-foot temporary structure that does not represent the final build-out of Parcel E4;

e. Sites are designed with sustainable landscaping.

The Project significantly enhances the existing conditions of Parcel E4 with respect to landscaping. Today Parcel E4 is almost entirely devoid of landscaping and is primarily covered in hardscape or gravel. The Project will bring Parcel E4 into compliance with the District's Green Area Ratio and stormwater management requirements, in part through the installation of sustainable landscaping; and

f. Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:

i. Pedestrian pathways through developments increase mobility and link neighborhoods to transit;

ii. The development incorporates transit and bicycle facilities and amenities;

iii. Streets, easements, and open spaces are designed to be safe and pedestrian friendly;

iv. Large sites are integrated into the surrounding community through street and pedestrian connections; and

v. Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.

The Project is walkable to transit and will include bicycle facilities and amenities. Tingey Street, S.E. in the vicinity of the Project is very narrow and accordingly pedestrian-friendly. Parcel E4 is accessible from the broader Yards development, and the surrounding neighborhood. However, the Sentry Wall to the North and adjacent Navy Yard to the South and East preclude connectivity through Parcel E.

Superior to Matter-of-Right Development

8. Subtitle X § 604.8 requires that an application reviewed pursuant to this section must satisfy the urban design criteria above in a way that is superior to any matter-of-right development. The Commission concludes that this criterion is generally not applicable to this application, which contains only temporary uses, which are difficult to compare to matter-of-right development uses. Future permanent development of Parcel E4 will undergo Commission review, which will allow for a more complete comparison to matter-of-right development at that time.

Satisfaction of the SEFC Review Criteria

9. Subtitle K § 241.1 provides that “[i]n addition to proving that the proposed uses, buildings, or structures meet the standards set forth in Subtitle X, the applicant for Zoning

Commission approval of a use or structure within a SEFC zone shall further demonstrate conformance to” SEFC-zone specific criteria.

10. Subtitle K § 241.1(a) requires compliance with “the goals and objectives of the SEFC zone set forth in Subtitle K §§ 200.2, 200.3, and 200.5.” The Project advances each of these goals and objectives:

- a. *Assure development of the area with a mixture of residential and commercial uses and a suitable height, bulk, and design of buildings, as generally identified in the [Comp] Plan, and in recognition of the objectives of the [Anacostia Waterfront Initiative Plan] and the [NSE] Plan. (Subtitle K § 200.2(a).)*

The Project includes only a temporary use that accommodates future development on Parcel E4 consistent with these criteria. As noted above, the Project’s commercial use and form are not inconsistent with the objectives of the Comp Plan and NSE Plan and adds to the mix of uses in The Yards;

- b. *Encourage high-density residential development with a pedestrian-oriented streetscape through flexible zoning parameters. (Id. § 200.2(b).)*

This objective is not applicable given the temporary nature of the Project;

- c. *Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses. (Id. § 200.2(c).)*

The Project is a visitor-related entertainment use in support of this objective. It supports and encourages other visitor-related uses, including, notably, The Yards Park, and retail and entertainment/eating and drinking establishment uses that are emerging in The Yards. Visitors, patrons, and employees of the Project are likely to also visit other nearby cultural, commercial and entertainment establishments;

- d. *Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous publicly-accessible open space along the waterfront. (Id. § 200.2(d).)*

Consistent with this objective, the Project does not interfere with views to the waterfront and does not impede access to open space along the waterfront;

- e. *Require suitable ground-floor level retail and service uses near the Navy Yard Metrorail station, along M Street, S.E., near the SEFC-4 zone, and at other key pedestrian locations. (Id. § 200.2(e).)*

This objective is not applicable to the Project given the nature of Parcel E4;

- f. *Encourage the design and development of properties in a manner that is sensitive to the adjacent Navy Yard and the historically significant buildings within the SEFC zones. (Id. § 200.2(f).)*

Ground-floor retail along M Street, S.E. is not currently feasible on Parcel E4 given the presence of the historic Sentry Wall and is not contemplated along Tingey Street, SE given the private nature of that street in the vicinity of the Project, the temporary nature of the Project's structure, and the current "dead end" condition of Parcel E4 generally. The Project is designed to be sensitive to the adjacent Navy Yard and surrounding historically significant buildings as encouraged by this urban design objective. Namely, the low height and the significant setbacks from each property line of the trapeze school building exemplify such sensitivity;

- g. *Establish zoning incentives and restrictions to provide for the development of a publicly-accessible park along the Anacostia River and encourage uses in that park as permitted in the SEFC-4 zone. (Id. § 200.2(g).)*

The Applicant contributed significantly to the development of The Yards Park, which is publicly-accessible. The Project indirectly helps achieve this objective by attracting visitors from across the District who travel to The Yards to experience and enjoy the Park; and

- h. *Provide for high-density mixed-use development with ground-floor retail. (Id. § 200.3.) Provide for medium-density residential development with limited ground-floor retail. (Id. § 200.5.)*

These two criteria are not applicable to the Project which does not contain any residential or retail uses. The Project's uses do support such uses elsewhere within The Yards.

11. Subtitle K § 241.1(b) requires that any "proposed building or structure shall be designed with a height, bulk, and siting that provide for openness of view and vistas to and from the waterfront and, where feasible, shall maintain views of federal monumental buildings, particularly along the New Jersey Avenue, S.E. corridor". As noted above, the Project does not interfere with open views or vistas to the waterfront or other District monuments because it does not include any vertical elements of any significance.
12. Finally, Subtitle K § 241.1(c) requires that "on or above-grade parking adjacent to, or visible from, the street shall be limited, [and w]here parking cannot be placed underground, other uses such as retail or residential shall separate parking areas from the street, or where this is not possible, green landscaping or architectural treatment of façade shall adequately screen parking from the street and adjacent development." The Project contains two above-grade surface parking spaces that are screened from any view from a public street or adjacent development. Such parking is entirely invisible from the public realm because of the Sentry Wall, the location of the trapeze school building itself, and the proposed landscaping. Because of the temporary nature of the Project, placing such parking

below-grade is not possible. The parking provided by the Project is necessary to satisfy ADA requirements. Below-grade parking is not possible given the size and temporary nature of the Project. The Project's parking is located to the south of the trapeze school to ensure it is not visible from M Street, S.E. It is similarly not visible from the public portion of Tingey Street, S.E. given its location and the orientation and location of the existing Building 74 to the west of the Property.

13. Subtitle K § 241.2 sets forth additional criteria that the Commission may consider in evaluating this application for design review, some of which criteria are inapplicable to the application. The applicable criteria include considering:

a. *Compatibility with buildings in the surrounding area through overall massing, siting, details, and landscaping:*

The Project is compatible with neighboring properties with respect to overall massing, siting, and landscaping. Because the Project's only structures are temporary, the Project is not designed with the level of detailing necessary to satisfy these criteria. However, the Project does not contravene the intent of this criterion: the trapeze school's massing is modest and is unlikely to be visible from the public realm except from the very end of Tingey Street, S.E. Its height and scale are consistent with the existing Building 74 and with nearby buildings in the Navy Yard. The trapeze school is set back from M Street, S.E. by approximately 308 feet so as to minimize visibility from the public realm, consistent with the school's temporary nature. With respect to landscaping, the Project's site plan is compatible with the surrounding existing context and will comply with all applicable landscaping and stormwater regulations in the Zoning Regulations and otherwise;

b. *Use of high standards of environmental design that promote the achievement of sustainable development goals:*

Except with respect to landscaping, this item is generally inapplicable given the temporary nature of the trapeze school. The Project's only structure, the trapeze school, is designed to modern energy codes, but is not designed to achieve any notable environmental standards given its temporary nature. Significantly, the Project's landscaping improves upon the current vacant and un-vegetated state of the Property. The Project brings the Property into compliance with GAR and stormwater requirements, two of the most significant sustainable development goals in the District;

c. *Façade articulation that minimizes or eliminates the visibility of unarticulated blank walls from public spaces:*

The Project includes no new walls that are along or public spaces. Tingey Street, S.E. is a private street in the vicinity of Parcel E4 (and becomes entirely inaccessible to the public immediately to the east). The existing historic Sentry Wall obscures any views of the trapeze school from M Street, S.E. Isaac Hull Avenue to

the east of Parcel E4 is entirely within the Navy Yard and not open to public travel;
and

d. Landscaping which complements the building:

The Project's landscaping complements the existing Building 74 and the new trapeze school building and satisfies applicable zoning-related design and other stormwater requirements.

“Great Weight” to the ANC Report

14. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6D. (§ 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2.) To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).)
15. The Commission notes that the ANC Report raised no substantive concerns about the design of the Project and at the public hearing spoke in favor of the Project's unique design as an element that attracts activity to The Yards and that benefits the ANC.

“Great Weight” to the Recommendations of OP

16. The Commission is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8.)
17. The Commission gives OP's recommendation to approve the application great weight, concurs with and incorporates herein OP's findings, and concludes that the Applicant's responses appropriately addressed OP's questions and concerns.
18. Finally, the Commission has considered DDOT's report and has reviewed and considered materials submitted by NCPC and the U.S. Navy. The Commission concludes that the Applicant has appropriately addressed concerns raised by the District and federal agencies.

DECISION

At the conclusion of its public hearing on May 23, 2019, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission for the District of Columbia took **FINAL ACTION** to **APPROVE** the application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull in support).

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application. This approval is subject to the following conditions, standards, and flexibility.

1. **Project Development.** The Project shall be built in accordance with the plans and elevations dated May 23, 2019 and marked as Exhibit 21 of the record (the “Final Plans”), subject to the following areas of design flexibility:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
 - c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Final Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus one or two spaces;
 - e. To vary the final streetscaping and landscaping materials on private property as shown on the Final Plans based on availability and suitability at the time of construction, to incorporate materials consistent with adjacent public space (including both DDOT standard and DDOT-approved “Yards Standard” materials, furnishings, and fixtures), or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
 - f. To vary the amount, location and type of green infrastructure to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the tax lot on which the Project is located achieves a minimum GAR of 0.2;
 - g. To vary the final design and layout of the mechanical equipment to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems;
 - h. To vary the final design and layout of the indoor and outdoor amenity spaces to reflect their final design and programming; and
 - i. To vary the final design of the ground-floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, and

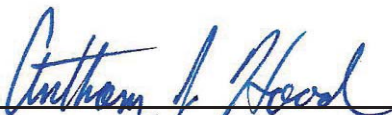
similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Final Plans.

2. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in Subtitle Z § 702.2. Construction must begin within three years after the effective date of this Order. (Subtitle Z § 702.3.)
3. **Duration of Use. The approvals granted in this Order shall be valid for a period of five years** from the effective date of this Order.
4. In accordance with the D.C. Human Rights Act of 1977, as amended, (D.C. Official Code §§ 2-1401.01 et seq. (the “Act”)), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.


In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on August 30, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING