

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-04B
Z.C. Case No. 08-04B

Forest City SEFC, LLC on behalf of the United States General Services Administration
(Modification of Southeast Federal Center Overlay District Review @ 355 Water Street,
S.E., Square 771, Lot 807 (Parcel P2B))¹
February 18, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on February 18, 2016 to consider an application by Forest City, SEFC, LLC (“Applicant”) for property owned by the United States General Services Administration (“GSA”), for review and approval to modify the previously-approved design review application for a Retail Pavilion pursuant to the Commission’s review standards of 11 DCMR § 1808 and approval of area variance relief from the floor area ratio (“FAR”) (§ 931), lot occupancy (§ 932.2), side yards (§ 934), and floor-to-ceiling height (§ 1805.10).

The property that is the subject of this application consists of a portion of the Southeast Federal Center (“SEFC”) located at 385 Water Street, S.E. and, as noted in footnote 1, at the time the application was approved by the Commission the property was identified as “Parcel P2B” (Square 771, Lot 807) (“Property”). The Property is located within the SEFC/W-0 Zone District.² This Commission has jurisdiction to grant this request pursuant to 11 DCMR §§ 1805 and 1808 (Commission Review Standards), § 1809 (Commission Review Procedures), and § 3103 (Variance Relief) 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

Previous Zoning Approvals

1. Z.C. Case 08-04 (2008): In Z.C. Case No. 08-04, the Applicant presented the overall design and layout of its proposed waterfront park (“Waterfront Park”) on Parcel P along the Anacostia River and requested approval of certain structural elements within the park,

¹ The case title reflects the property description of the subject property at the time of the Commission’s vote to grant the application. The subject property was subsequently subdivided by the U.S. Government and, as a result of the subdivision (recorded on March 28, 2016 by the D.C. Surveyor’s Office in Book 211, Page 11), the property is now known as Lot 2 in Square 827.

² At the public hearing the Applicant revised the Application by withdrawing 355 Water Street, S.E. (Parcel P2A) (Square 771, Lot 808) from the Commission’s consideration.

as well as related relief required to construct the improvements (“Phase I”). The Commission approved Phase I of the waterfront park in Z.C. Order No. 08-04.

2. Z.C. Case 08-04A (2009): The Applicant filed an application, on behalf of GSA, for review and approval of exterior renovations to an existing building (“Lumber Shed Building”), the construction of the Retail Pavilions (on Parcels P2A and P2B), and the visual marker within its proposed Waterfront Park, pursuant to §1805.11 of the Zoning Regulations (“Phase II”). The property subject to this case was Parcel P in Square 771 and, at the time of this case, was known as Lots 801 and 802. 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 with respect to §§ 411.11 and 930.3; and variance relief from the parking, height, and waterfront setback requirements of the Zoning Regulations. The Commission approved the application in Z.C. Order No. 08-04A.
3. Subsequent to the publication of Z.C. Order Nos. 08-04 and 08-04A, the restoration and renovation of the historic Lumber Shed Building was completed and the visual marker was installed. However, the two Retail Pavilions, although approved, have not yet been built. Through this application, the Applicant requested the Commission to review and approve an updated design and additional zoning relief for the Retail Pavilion located on Parcel P2B (the “Project”).

Application, Parties, and Hearing

4. The Property consists of approximately 12,100 square feet of land and is located in the SEFC/W-0 Zone District.
5. The Property is located on land that is owned 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) (“Act”).)
6. On February 14, 2003, GSA filed a petition requesting that the Commission establish zoning for approximately 42 acres of the SEFC. This petition also resulted from numerous area planning initiatives affecting the SEFC. The Commission took final action to adopt the map and text amendments on March 8, 2004, and the amendments became effective upon their publication in the *D.C. Register* on July 9, 2004.
7. Following the Commission’s approval of Z.C. Case No. 08-04A in 2009, the lots in Parcel P were divided into several assessment and taxation lots by GSA to facilitate the transfer of the park land to the District of Columbia. Prior to this subdivision, the two Retail Pavilions were located on Lot 801, which was 248,660 square feet. As a result of the subdivision, the Retail Pavilions each are on separate smaller lots: Lot 808 (Retail Pavilion P2A) is 6,879 square feet and Lot 807 (Retail Pavilion P2B) is 12,100 square feet.

8. On November 24, 2015, the Applicant filed this application, on behalf of GSA, requesting approval of a modification to the previously-approved design review for the Project as well as area variance relief from the FAR (§ 931), lot occupancy (§ 932.2), side yards (§ 934), and floor-to-ceiling height (§ 1805.10). (Exhibits [“Ex.”] 1-6K.)
9. After proper notice, the Commission held a hearing on the application on February 18, 2016. Parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located.
10. At a duly noticed meeting on January 11, 2016, ANC 6D voted 7-0-0 to support the application and in its letter, dated January 21, 2016, ANC 6D recommended approval of the application and attached the executed Development Agreement, dated January 11, 2016, between the Applicant and the ANC. (Ex. 13.)
11. The Office of Planning (“OP”) filed a report, dated February 9, 2016, noting the proposal to modify the approved design for Parcel P2B, as well as the requested relief, is not inconsistent with the Comprehensive Plan and the Near Southeast target area objectives within the Anacostia Waterfront Initiative Framework Plan. OP found the proposal is also generally consistent with the W-0 Waterfront Zone District and the SEFC Overlay regulations and guidelines. OP stated that the development would encourage viability of the waterfront park by adding a winery, a unique retail use, to the waterfront, which will encourage pedestrian activity. The proposed winery would also activate Water Street. OP determined that the Project would further the development of the Anacostia River as a community and regional destination. As such, OP recommended approval of the proposed development on Parcel P2B, including the requested zoning relief. (Ex. 17.)
12. The District Department of Transportation (“DDOT”) filed a report, dated February 8, 2016, and concluded that DDOT had no objection to the application with the following conditions: i) provide a modified Transportation Development Plan (“TDM”) with the following elements: a) provide a TransitScreen or similar device displaying real-time transportation schedules; and b) provide two additional short-term bicycle racks in close proximity to this corner; and ii) provide two long-term bicycle parking spaces within the building, or commit to access to an adjacent building’s long-term bicycle parking for restaurant staff. (Ex. 16.) The Applicant agreed to DDOT’s conditions.
13. The Applicant withdrew from the Commission’s review Parcel P2A (Square 771, Lot 808) at the February 18, 2006 public hearing.
14. The Commission accepted the following witnesses for the Applicant as experts in their respective fields: Erwin Andres, P.E., of Gorove/Slade (Transportation) and Tim Bakos, AIA, of Gensler (Architecture). Bill Young, of Hapstak Demetriou, also testified on behalf of the Applicant.
15. The Commission took final action at the February 18, 2016 public hearing to approve the case.

Description of the Surrounding Area

16. The Property is zoned SEFC/W-0 and is located within The Yards development. The Property is generally bounded by Water Street to the north, 3rd Street to the west, 4th Street to the east (4th Street, south of Water Street, is a private street), and the Anacostia River to the south.
17. The approved Retail Pavilion located on Parcel P2B will be used by DC Winery, LLC, trading as District Winery, as a boutique urban winery/restaurant/event space, the first of its kind in Washington, D.C.

Project Overview

18. The Retail Pavilion located on Parcel P2B will be used by DC Winery, LLC trading as District Winery (“Winery”) as a boutique urban winery/restaurant/event space.
19. The Winery will produce premium small batch wines served on the premises and occasionally sold in bottles for patrons to consume elsewhere. Guests will be able to tour the Winery, taste wines at the wine bar, have dinner at the restaurant, and reserve the second floor venue for a private event, such as a wedding reception, corporate event, or private function.

Zoning Review under Chapter 18

20. The proposed Project meets the Commission’s review standards set forth in 11 DCMR § 1808 of the SEFC Overlay as follows:
 - a. The use of Parcel P2B as a winery/restaurant/event space will complement the water-oriented activity;
 - b. Parcel P2B will consist of a two-story building (with mezzanine) with a height of less than 37 feet, which will allow for adequate views. The location of Parcel P2B allows for continuous public access along the waterfront;
 - c. The previously approved park plan includes important river walk connections to the historic Washington Navy Yard to the east. The Winery has been designed to complement the existing structures;
 - d. All of the existing and proposed structures within the park have been designed to draw visitors from the adjacent areas to the site as well as to facilitate views of the waterfront from a variety of vantage points. The Winery will be two stories in height and has been sited to allow views of the park features and the river;
 - e. This site is part of a larger redevelopment project that will bring new buildings, uses, and residents to this area. The planned development of this area, per the SEFC Overlay, will be high-density mixed-use office and residential along M Street S.E., and high-density residential uses with ground-floor retail at the center

of the SEFC site. The Winery has been designed and sited to serve as a transition from the high-density uses to the north to the waterfront park to the south. The Winery will be much lower in height than those on adjacent properties so as to not obstruct views of the river;

- f. The Winery will not include off-street parking facilities, encouraging the use of alternative forms of transportation to access the park. While green area ratio (“GAR”) standards do not apply in the W-0 zone, the building may end up having a green roof as discussions with the DC Department of Energy and Environment (“DOEE”) are still on-going;
 - g. The façades of the Winery are viewable either from the streets or from the park itself. As a result, it has been designed to eliminate unarticulated blank walls. In addition, the service core functions have been thoughtfully sited to mitigate their exterior appearance and impact;
 - h. The landscaping elements, most of which were reviewed and approved in Phase 1, were designed to complement park structures and uses. Landscaping has been used to define walkways and paths to park features as well as provide definition for seating areas near the proposed Winery; and
 - i. The Winery includes a terrace and trellis structure with a retractable canopy on the roof of the first floor and outdoor dining (and signage) in the easement area adjacent to the ground floor of the Property. (Ex. 15F, Ex. 21A4-21A5.) These will provide views of the waterfront park and Anacostia River to the south.
21. The Zoning Administrator confirmed that the proposed Project was exempt from the GAR standards of Chapter 34 because it is in a W0 Zone District. (Ex. 6H.)

Variance Relief

22. Pursuant to § 1809.1 and § 3103.2, the Applicant requested variance relief from FAR (§ 931), lot occupancy (§ 932.2), side yards (§ 934), and floor-to-ceiling height (§ 1805.10) requirements in the Zoning Regulations.
23. Under the three-prong test for an area variance, an applicant must demonstrate (a) that the property is affected by an exceptional or extraordinary situation or condition, (b) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (c) 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. The proposed Project meets the variance test set forth in 11 DCMR §3103 as discussed below.

Exceptional Condition

24. The land was historically under federal control and released for private development in 2000 by an act of Congress. At that time, a master plan was created for the build-out of the site, which included a mix of uses (retail, cultural, institutional) within a park setting. The remaining undeveloped parcels in SEFC continue to be owned by the federal government until they are developed, at which point ownership is transferred to the developer, Forest City.

Practical Difficulty – FAR, Lot Occupancy, and Side Yards

25. Following the Commission's approval of Z.C. Case No. 08-04A in 2009, Parcel P was divided into several assessment and taxation lots by GSA to facilitate the transfer of the park land to the District of Columbia. As a result of this subdivision, the current lot area of the P2B Retail Pavilion no longer complies with development regulations (FAR, lot occupancy, and side yard) and the Retail Pavilion cannot be constructed as approved in Z.C. Order No. 08-04A. Therefore, the subdivision of Parcel P creates a practical difficulty.

Practical Difficulty – Floor-to-Ceiling Height

26. A floor-to-ceiling height of 14 feet is required for the ground-floor level of buildings in the SEFC/W-0 Zone District. The proposed development for Parcel P2B includes a mezzanine, which reduces a portion of the height of the ground floor to nine feet. The program needs of the Winery require additional floor area that can only be achieved through the addition of a mezzanine. The proposed height of the development is consistent with the goals of the SEFC/W-0 Zone District, which aim to preserve views of the Anacostia River; therefore, increasing the height of the structure to gain area for programmatic needs would be undesirable. The mezzanine covers an area of 2,204 square feet, which is 20.8% of the total gross floor area of the 10,600 square foot ground floor level, and is located central to the building. As a result, the proposed development meets the intent of the Zoning Regulations, which is to provide greater ceiling heights along the street frontage.

No Detriment to the Public Good

27. The requested relief should not cause substantial detriment to the public good. The proposed development would not be modified significantly from its original approval in Z.C. Case No. 08-04A, which provides for a Retail Pavilion offering retail services to the surrounding neighborhood.
28. The requested relief should not cause substantial harm to the Zoning Regulations. The proposed development generally complies with the previous approval of a Retail Pavilion. The development furthers the goals of the SEFC/W-0 Zone District by preserving important view sheds and views of the Anacostia River, as well as providing retail uses intended to serve the neighborhood. The Winery would be the first of its kind

in the District, and would activate the waterfront, as anticipated by the Zoning Regulations.

Flexibility Requested

29. The Applicant seeks flexibility from these requirements in the following areas:
- a. To vary the location and height of the enclosure around the mechanical equipment on the roof. The Commission granted relief from the one-to-one setback requirement for roof structures in the prior order (Z.C. Order No. 08-04A) under § 411.11 and the proposed design of the single enclosure fence will comply with Commission's penthouse regulations in Z.C. Case No. 14-13;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - c. To vary the final selection of the exterior materials within the color ranges and material types proposed, based on availability at the time of construction without reducing the quality of materials;
 - d. To vary the final selection of any landscaping materials utilized, based on availability and suitability at the time of construction; and
 - e. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

CONCLUSIONS OF LAW

1. As required by 11 DCMR § 1809, the Commission required the Applicant to satisfy the burden of demonstrating conformance to the standards that are necessary to approve the requested modification under § 1808.
2. Based upon the record before the Commission, having considered the reports OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR § 1808, which includes the standards set forth in § 3103 for variance relief and the specific standards relating to achieving the objectives of the SEFC Overlay Zone District as set forth in § 1802.
3. 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 ANC 6D, OP, and to owners of property within 200 feet of the Property.

4. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
5. The Commission is required under §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)) 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 January 11, 2016, ANC 6D voted 7-0-0 to support the application and in its letter, dated January 21, 2016, ANC 6D recommended approval of the application.
6. The Commission is also required to give great weight to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04). As reflected in the Findings of Fact, OP submitted a report finding the Applicant demonstrated compliance for the variance approval.
7. The Commission finds these expressions of support to be persuasive and agrees with the recommendations that the application should be granted. In doing so, the Commission has afforded the ANC and OP the great weight required by statute.
8. 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 §1805.11 as well as the burdens of proof for variance relief.
9. The project that is the subject of this application will promote the development of the SEFC into a viable mixed-use neighborhood 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.
10. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (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.

DECISION

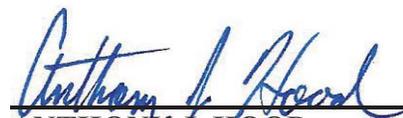
In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a modification of an SEFC Overlay District review such that the Project shall now be built in accordance with the plans and elevations marked as Exhibit 15F and Exhibits 21A4 and 21A5 of the record, with the

flexibility requested in Finding of Fact 29 and **APPROVAL** of all variance relief requested; both approvals being subject to the following conditions:

1. The Applicant shall provide a modified Transportation Development Plan (“TDM”) with the following elements: a) provide a TransitScreen or similar device displaying real-time transportation schedules, and b) provide two additional short-term bicycle racks in close proximity to this corner; and
2. The Applicant shall provide two long-term bicycle parking spaces within the building, or commit to access to an adjacent building’s long-term bicycle parking for restaurant staff.

On February 18, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on April 15, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING