

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND ZONING COMMISSION ORDER NO. 09-10
Z.C. Case No. 09-10
(Text Amendment – 11 DCMR)
(Water Tower on the Saint Elizabeths East Campus)
April 12, 2010**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1, 3, and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, and 799; D.C. Official Code §§ 6-641.01, 6-641.03, and 6-641.07),); hereby gives notice of the adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on March 5, 2010, at 57 DCR 1919. The amendments will become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The text amendments include the adoption of a new § 2523 that authorizes the establishment of a water tower or elevated water tank (“Water Tower”) owned and operated by the District of Columbia Water and Sewer Authority (“WASA”) on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital. The new section also provides for Commission review of the design of a Water Tower in excess of 90 feet in height. The Commission may approve, but not deny, a design review application without a public hearing. No action to approve can be taken until the affected Advisory Neighborhood Commission (“ANC”) receives notice of the application and the statutorily mandated review period has elapsed. The affected ANC will also be given notice of a tentative public hearing to be held if a motion to approve the application fails. No other notice of the hearing will be given.

Subsection 106.7 is also amended to exempt the Water Tower from the prohibition against the issuance of building permits and certificates of occupancy for structures on unzoned land. In addition, § 3043.1 (a), which exempts District agencies from the payment of filing fees, is amended to address the scenario that exists here; where the District government, but not the agency that will use the structure, owns the property. In addition, the provision was amended to apply the exemption to government projects located on land under the jurisdiction of the District or one of its agencies. Lastly, conforming amendments are made to §§ 3011, 3014, 3015, 3022, and 3027 of the Zoning Commission Procedures Rules of Practice and Procedure, also in Title 11.

Procedures Leading to Adoption of Amendments

The Office of Planning (“OP”), in a report dated July 17, 2009, petitioned the Commission for a text amendment to permit the water tower as a matter-of-right. The Commission voted to set down the proposal for hearing at its July 27, 2009 public meeting,

A public hearing was scheduled for and held on September 24, 2009. The petition was considered as a proposed action item at the Commission’s October 30th public meeting. The Commission decided to defer taking action and instead requested that OP formulate text that would require the Commission’s approval of a proposed design. Consideration of the item on December 14th was postponed at the request of OP, which sought more time to consult with WASA on the design review process.

Through a second Supplementary Report dated February 4, 2010, OP provided revised language to the Commission, which included a design review approval process if the design of the tower called for a height greater than 90 feet.

WASA expressed its written concurrence with the proposed text revision and also advised the Commission that the Water Tower’s proposed location is subject to an approved planned unit development (“PUD”). The letter informed the Commission that a PUD modification request would be forthcoming to remove the affected portion from the PUD site.

At a properly noticed February 22, 2010 public meeting, the Commission authorized the referral of the proposed text to the National Capital Planning Commission (“NCPC”) and the publication of a notice of proposed rulemaking in the *D.C. Register*.

NCPC, through a delegated action dated February 25, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 14.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on March 5, 2010, 57 *DCR* 1919, for a 30-day notice and comment period. No comments were received.

At a properly noticed April 12, 2010 public meeting, the Commission took final action to adopt the text amendments as follows:

The amendments to the Zoning Regulations (Title 11, DCMR) are as follows:

- A. Chapter 1, THE ZONING REGULATIONS, § 106, ZONING MAP, § 106.7, is amended by inserting the phrase “except for the water tower and related water utility facilities authorized by § 2523”, so that the provision will read as follows:

106.7 No building permit or certificate of occupancy shall be issued nor proceeding instituted before the Board of Zoning Adjustment, nor shall any property in private ownership be used for any purpose until after the Zoning Commission has designated zoning for the property, except for the water tower and related water utility facilities authorized by § 2523.

B. Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, is amended by adding a new § 2523, to read as follows:

2523 WATER TOWER ON THE EAST CAMPUS OF SAINT ELIZABETHS:

2523.1 Notwithstanding any other provision of this Title, a water tower or elevated water tank (“Water Tower”) owned and operated by the District of Columbia Water and Sewer Authority may be established on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital.

2523.2 No building permit to construct a Water Tower in excess of ninety (90) feet in height may be issued unless the Zoning Commission finds that said tower, as designed, meets the standards of § 3104 and is not inconsistent with the Comprehensive Plan, small area plan(s), and other adopted planning studies that pertain to the site.

2523.3 An application pursuant to § 2523.2 shall include such plans and illustrations necessary to adequately represent the final proposed appearance of the tower, including its materials, final elevation, and location on the East Campus. The application shall also identify how the proposed design meets the standard for approval set forth in § 2523.2.

2523.4 An application shall be included as a “Final Action” item for a Zoning Commission meeting scheduled after the completion of the thirty (30) day review period allowed the affected ANC(s). The notice to the affected ANC(s) shall include the date of the final action and a tentative public hearing date.

2523.5 The only motion that can be made at that time is for approval of the application in accordance with § 3028 and without the need for a public hearing.

2523.6 If no motion is made, or if the motion fails, the matter shall be moved to the “Hearing Actions” portion of the agenda, at which point the Commission may take any of the actions authorized by §§ 3011.3 through 3011.6.

2523.7 The Office of Planning may submit a report as to whether the Commission should approve the application. Any such report should be filed no later than

ten (10) days prior to the date of the public meeting at which the final action item will be considered.

2523.8 A request to modify an approved design shall be subject to the same review criteria and approval process as set forth in this section for the original application.

C. Chapter 30, ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE, is amended as follows:

1. Section 3011, REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS, § 3011.1, is amended by inserting the phrase “Except as provided in § 2523.4,” at its beginning, so that the provision will read as follows:

3011.1 Except as provided in § 2523.4, as soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that the applications for Zoning Commission review and approval filed pursuant to Chapters 16, 18, and 28 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. The exception from the requirements of this subsection shall not apply to an application for Zoning Commission approval pursuant to § 1606 unless accompanied by a written report of the Office of Planning certifying that the application is compliant with the standards of that section.

2. Section 3014, NOTICE OF HEARINGS: GENERAL, § 3014.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,”, so that the provision will read as follows:

3014.1 Notice of a hearing pursuant to the rulemaking provisions of § 3021 or the contested case provisions of § 3022, other than a hearing for a § 2523 application, shall be given by:

- (a) Publishing notice of the hearing in the D.C. Register at least forty (40) days in advance of the hearing;
- (b) Posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and

- (c) Providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.
3. Section 3015, NOTICE OF CONTESTED CASE HEARINGS, § 3015.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,” so that the provision will read as follows:
 - 3015.1 Notice of a contested case hearing pursuant to § 3022, other than a hearing for a § 2523 application, shall be given in accordance with § 3014 and the additional requirements of this section.
4. Section 3022, CONTESTED CASE HEARINGS, § 3022.1, is amended by striking the phrase “as well as § 1709.21” and inserting the phrase “as well as §§ 1709.21 and 2523.2” in its place, so that the provision will read as follows.
 - 3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, except as otherwise provided in § 3010.7.
5. Section 3027, PROPOSED ACTION, § 3027.4, is amended to read as follows:
 - 3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting and, in the case of an application pursuant to § 2523, at the initial public meeting regarding the application.
6. Section 3043, EXEMPTION FROM FEES, § 3043.1 is amended by striking the phrase “is owned by that agency” from paragraph (b) and inserting the phrase “is owned by the District or that agency or is under one or both of their jurisdictions” in its place, so that the provision will read as follows:

3043.1 The following persons or groups shall not be required to pay either a filing fee or hearing fee:

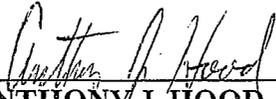
- (a) A department, office, or agency of the government of the District of Columbia, where the property is owned by the District or that agency or is under one or both of their jurisdictions and the property is to be used for a government building or use; and
- (b) The National Capital Planning Commission.

3043.2 There shall be no fee required for the filing of a petition before the Commission.

On February 22, 2010, upon the motion of Commissioner Schlater, as seconded by Vice Chairman Keating, the Zoning Commission **APPROVED** this proposed rulemaking at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On April 12, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this rulemaking by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot; William W. Keating, III, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 23, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.