

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

Z.C. Case No. 20-15¹

Office of Planning

(Text Amendment to Subtitle C for Green Area Ratio Requirements for Certified Landscape Expert Requirements)

December 17, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment of the following section of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice: Subtitle C: General Rules - § 604.2.

Setdown

On July 17, 2020, the Office of Planning (OP) filed a petition (Petition) to the Commission proposing to amend Subtitle C § 604.2 to recognize D.C.-certified landscape architects as “Certified Landscape Experts” and limit recognition of Maryland- and Virginia-certified landscape architects until September 1, 2021. (Exhibits [Ex] 1-2.)

At its July 27, 2020, public meeting, the Commission voted to grant OP’s request to set down the Petition for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing

OP submitted an October 23, 2020, Hearing Report that reiterated OP’s support of the Petition. (Ex. 6.) At its November 2, 2020, public hearing, the Commission heard testimony from OP in support of the Petition.

Proposed Action

At the close of its November 2, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** to grant OP’s petition to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (November 2, 2020): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

Notice of Proposed Rulemaking

¹ For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-15.

The Commission published a Notice of Proposed Rulemaking (NOPR) in the November 13, 2020, *D.C. Register* (67 DCR 13363, *et seq.*).

No comments to the NOPR were received in the thirty- (30) day period required by Section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968. (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.).)

National Capital Planning Commission (“NCPC”)

The Commission referred the proposed amendment to the National Capital Planning Commission (NCPC) on November 3, 2020, for the thirty- (30) day review period required by § 492 of the District Charter.

NCPC filed a November 24, 2020, report stating that NCPC had determined that the Petition is exempt from NCPC review. (Ex. 10.)

Final Action

“Great Weight” to the Recommendations of OP

The Commission must 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 (2018 Repl.), and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds persuasive OP’s recommendation that the Commission adopt the Petition and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 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 the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) 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) (citation omitted).)

As no ANC has filed a report in response to the Petition, there is nothing to which the Commission can give “great weight.”

At its December 17, 2020, public meeting, the Commission voted to take **FINAL ACTION** to grant the Petition and to authorize the publication of a Notice of Final Rulemaking:

VOTE (December 17, 2020): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

The complete record in the case can be viewed online through the Office of Zoning’s Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

Amendment to Subtitle C, GENERAL RULES

Subsection 604.2 of § 604, SUBMITTAL REQUIREMENTS FOR GREEN AREA RATIO, of Chapter 6, GREEN AREA RATIO, of Subtitle C, GENERAL RULES, is revised and reorganized in alphabetical order to read as follows:

- 604.2 For the purposes of this section, the term “Certified Landscape Expert” means a person who holds one of the following licenses or certifications that is current, valid, and in good standing:
- (a) Landscape Architect licensed by the District of Columbia or, until September 1, 2021, by either the Commonwealth of Virginia or the State of Maryland;
 - (b) International Society of Arboriculture Certified Arborist;
 - (c) Maryland Certified Professional Horticulturist; or
 - (d) Landscape Contractors Association MD-DC-VA Landscape Industry Certified Technician.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on January 29, 2021.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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