

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



**NOTICE OF FINAL RULEMAKING**  
**Z.C. Case No. 20-07<sup>1</sup>**  
**(Text Amendment – Subtitles Y and Z of Title 11 DCMR)**  
**(Six-Month Extension of Validity Period of Approvals)**  
**July 27, 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(c) 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 provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations]), to which all references are made unless otherwise specified):

Subtitle Y, Board of Zoning Adjustment Rules of Practice and Procedure

Chapter 7, Approvals and Orders

§§ 702.1 and 702.2 – six-month extension of orders scheduled to expire between April 27 and December 31, 2020

Subtitle Z, Zoning Commission Rules of Practice and Procedure

Chapter 7, Approvals and Orders

§§ 702.1, 702.2, and 702.3 – six-month extension of orders scheduled to expire between April 27 and December 31, 2020

**Setdown**

On January 17, 2020, the Office of Zoning (“OZ”) filed a petition to the Commission proposing these amendments to extend the validity of any order scheduled to expire between April 27 and December 31, 2020 by six months on account of the ongoing COVID-19 pandemic and resulting modifications of District government operations. OZ requested that the Commission:

- Set the petition down for a public hearing;
- Authorize a 30-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the 40-day requirement of Subtitle Z § 502.1 for good cause due to the COVID-19 pandemic;
- Consider taking emergency action to adopt the text amendment; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

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<sup>1</sup> For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-07.

On April 15, 2020, the Office of Planning (OP) filed its pre-hearing report concluding that the proposed text amendment would not be inconsistent with the Comprehensive Plan and recommending approval.

Holland & Knight filed a response in support of the proposed text amendment but proposed that the automatic extension apply not only to Commission and Board orders expiring between April 27 and December 31, 2020 but be extended to apply to all orders expiring through August 31, 2021.

Cozen and O'Connor, on behalf of the University of the District of Columbia, filed a response in support of the proposed text amendment.

### **Emergency & Proposed Action – Initial Petition**

At its April 27, 2020 public meeting, the Commission concluded that taking emergency action to adopt the proposed text amendment is necessary for the “immediate preservation of the public ... welfare,” as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968. (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), in order to avoid potential expiration of orders and approvals of the Commission and Board caused by the administrative disruptions due to the ongoing COVID-19 pandemic, with the attendant risk to the District’s economic condition. The Commission therefore voted to grant’s OZ’s request (without Holland & Knight’s proposed further extension to August 31, 2021) to:

- Take emergency action to adopt the text amendment;
- Set the petition down for a public hearing;
- Authorize a 30-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the 40-day requirement of Subtitle Z § 502.1 for good cause due to the COVID-19 pandemic; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

**VOTE** (April 27, 2020): **5-0-0** Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Emergency and Proposed Rulemaking (NOEPR) in the May 15, 2020, *D.C. Register* (67 DCR 5150, *et seq.*).

On May 29, 2020, OZ submitted a memo proposing revisions to the text amendment to clarify that the automatic 6-month extension does not restart the date for any subsequent time extension, which would commence from the original expiration date not including the automatic 6-month extension. OZ requested that the Commission:

- Adopt the revised text amendment as a new emergency text amendment replacing the initial emergency rulemaking; and
- Authorize the publication of new proposed rulemaking replacing the initial proposed rulemaking.

On June 5, 2020, Goulston & Storrs filed a response to the NOEPR in support but proposing revisions the text amendment to confirm that the automatic 6-month extension applied to campus plans expiring within the April 27-December 31, 2020 time period.

### **Emergency & Proposed Action – Revised Petition**

At its June 8, 2020, public meeting, the Commission concluded that taking emergency action to adopt the proposed text amendment is necessary for the “immediate preservation of the public ... welfare,” as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968. (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), in order to avoid potential expiration of orders and approvals of the Commission and Board caused by the administrative disruptions due to the ongoing COVID-19 pandemic, with the attendant risk to the District’s economic condition. The Commission voted to grant’s OZ’s request to:

- Take emergency action to adopt the text amendment, as revised to include both OZ’s and Goulston’s proposed changes, and
- Authorize an immediate publication of proposed rulemaking for the text amendment, as revised to include both OZ’s and Goulston’s proposed changes.

**VOTE** (June 8, 2020): **5-0-0** Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

The Commission published the proposed amendment, as revised to include both OZ’s and Goulston’s proposed changes, as a 2<sup>nd</sup> Notice of Emergency and Proposed Rulemaking (2<sup>nd</sup> NOEPR) in the *D.C. Register* (67 DCR 7792, *et seq.*) on June 19, 2020.

No comments on the 2<sup>nd</sup> NOEPR were received in the thirty (30)-day period required by § 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.)).

### **Public Hearing**

OP filed a June 9, 2020, report that reiterated its support for the proposed text amendment, as revised by the 2<sup>nd</sup> NOEPR.

The Commission held a public hearing on the proposed text amendment on June 18, 2020. OZ presented the text amendment. No witnesses appeared to testify.

### **“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 OP’s recommendation that the Commission take final action to adopt the text amendment, as revised persuasive 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).

Since no ANC filed a response to either the original and 2<sup>nd</sup> Notice of Emergency and Proposed Rulemaking, the Commission has nothing to which it may give great weight.

### **Final Action**

At the close of its July 27, 2020, public meeting, the Commission voted to take **FINAL ACTION** and to authorize the publication of a Notice of Final Rulemaking:

**VOTE** (July 27, 2020): **5-0-0** Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

The complete record in the case, including the OZ petition, comments, and the transcripts of the Commission’s public hearing and meetings, can be viewed online at the OZ website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

The following amendments to the text of the Zoning Regulations are hereby adopted:

### **I. Amendments to Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE**

**Subsections 702.1 and 702.2 of § 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, of Chapter 7, APPROVALS AND ORDERS, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:**

702.1 An order granting a special exception or variance where the establishment of the use is dependent upon the erection or alteration of a structure shall be valid for a period of two (2) years, or one (1) year for an Electronic Equipment Facility, within which time an application shall be filed for a building permit for the erection or alteration approved. If the erection or alteration of more than one (1) structure is approved, a building permit application shall be filed for all such structures within this two (2) year period; provided that any order scheduled to expire between April 27, 2020, and December 31, 2020, shall remain valid for a period of six (6) months from the date of expiration of the order although this six (6) month extension shall

run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.

- 702.2 An order granting a special exception or variance where the establishment of the use is not dependent upon the erection or alteration of a structure shall be valid for a period of six (6) months, within which time an application shall be filed for a certificate of occupancy for the use approved; provided that any order scheduled to expire between April 27, 2020, and December 31, 2020 (including any private school or other use approved by special exception), shall remain valid for a period of six (6) months from the date of expiration of the order although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.

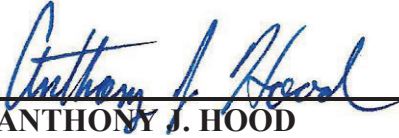
## **II. Amendments to Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE**

**Subsections 702.1 through 702.3 of § 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, of Chapter 7, APPROVALS AND ORDERS, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:**

- 702.1 A first-stage approval of a planned unit development (PUD) by the Commission shall be valid for a period of one (1) year, unless a longer period is established by the Commission at that time of approval; provided that any approval scheduled to expire between April 27, 2020, and December 31, 2020, shall remain valid for a period of six (6) months from the date of expiration of the approval although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.
- 702.2 A contested case approval by the Commission shall be valid for a period of two (2) years from the effective date of the order granting the application, unless a longer period is established by the Commission at the time of approval, within which time an application shall be filed for a building permit; provided that any approval scheduled to expire between April 27, 2020, and December 31, 2020 (including any campus plan approval, whether approved under the BZA or Zoning Commission rules of procedure), shall remain valid for six (6) months from the date of expiration of the approval although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.
- 702.3 Construction shall start within three (3) years after the effective date of the order granting the application, unless a longer period is established by the Commission at the time of approval; provided that this three (3) year period shall be extended by six (6) months for any construction deadline scheduled to expire between April 27, 2020, and December 31, 2020, although this six (6) month extension shall run

concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.

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 August 7, 2020.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**