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107272	Unconfirmed	Notices, Opinions	Board of Zoning Adjustment Summary Order No. 18015	1/22/2010 Vol 57/4	1/27/2010 22:13:45

Done

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 12-06
Z.C. Case No. 12-06
(Text Amendment – 11 DCMR)
(Amendment to Eliminate the Requirement of an Office of Planning Report for Certain
Types of Antenna Modifications)
December 10, 2012

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; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia (Title 11 DCMR). A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 26, 2012 at 59 DCR 12387. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

These amendments concern a provision in the Zoning Regulations that requires the Zoning Administrator to first receive a report from the District of Columbia Office of Planning (OP) or wait thirty (30) days, whichever occurs first, before taking final action on an application pertaining to the installation of antenna towers, monopoles, or non-exempted antennas. The first amendment amends § 2711.1 to also require reports for applications to modify such installations. The second adds a new § 2711.4 to identify those modification for which no report is needed.

Procedures Leading to Adoption of Amendments

On June 29, 2012, OP submitted a memorandum that served as a petition requesting amendments to the regulations. The Commission voted to set down the proposal for hearing at its July 9, 2012 public meeting. The Commission also expressed concern about the prevalence of consumer dish antennas mounted on the front of residential buildings, and requested that the OP address the issue in its hearing report.

OP submitted a final report dated October 1, 2012. The report recommended approval of the amendments, with two proposed revisions. The first proposed revision would clarify that an OP report was not only required for new installations, but also for modifications of existing installations, subject to specified exemptions. In addition, OP proposed to increase the maximum number of antennas per mount or sector that could be replaced without triggering the requirement of an OP report from four (4) to five (5).

The OP report also responded to the Commission's inquiry regarding the mounting of consumer dish antennas on residential buildings. The report indicated that the Federal Communications Commission had adopted rules that prohibit restrictions by local governments on the installation of dish antennas of less than one (1) meter in diameter, except for restrictions related to public safety or to historic preservation.

Advisory Neighborhood Commission (ANC) 6B submitted a report dated September 14, 2012 indicating that it had no objections to the text amendment.

Verizon Wireless submitted a letter dated October 11, 2012 through counsel. The letter stated that Verizon supported the proposed amendments. The letter also suggested three (3) further refinements to the text. Verizon first suggested increasing the number of antennas permitted per mount or sector without triggering an OP report from four (4) to five (5). In addition, Verizon recommended that no OP report should be required for: (1) a modification that does not increase the total area of the previously approved array; and (2) a re-installation of antenna mounts or sectors that were approved and installed within the last five (5) years, provided the re-installation does not increase the antenna area and there are no more than five antennas.

The Commission also received comments from Edward L. Donahue of the law firm of Donahue and Stearns PLC through a letter dated October 11, 2012¹. Mr. Donahue's letter concerned a recent modification to the federal Telecommunications Act of 1996 that prohibits local jurisdictions from denying building permits for the collocation or replacement of antennas if the modification does not substantially change the physical dimensions of such tower or base station. Mr. Donahue recommended incorporating that prohibition into the Zoning Regulations along with a definition of "substantially change." He also suggested revisions to clarify that the new § 2711.4 applies to providers with antennas already installed on a facility as well as new carriers proposing to collocate. He also recommended that the language of proposed § 2711.4 include specific parameters, such a percentage increases for modifications not requiring an OP report. Finally, the letter also expressed concerns over existing § 2713.7, which provides that "[a]ny antenna tower or monopole with a proposed height in excess of that permitted by the [Height Act] shall not be permitted, unless the height is approved by the Mayor or his or her designee." Mr. Donahue stated his view that the Height Act only applies to "habitable spaces" and therefore the Zoning Regulation should not require Height Act waivers for monopoles.

A public hearing was scheduled for and held on October 11, 2012. The only witness was Tracy Anderson of the law firm of Donahue and Stearns PLC. Ms. Anderson indicated that she was representing Mr. Donahue, who could not be present, and that she was testifying on behalf of T-Mobile and AT&T. Ms. Anderson essentially repeated the points made by Mr. Donahue in his two (2) letters.

In response to Mr. Donahue's concern over Height Act waivers, the Commission pointed out that it did not dictate which structures are governed by the Height Act, but that provisions such as § 2713.7 only reflect the traditional interpretation of the statute as also applying to stand-alone towers, such as monopoles. As to the need for the District to define which facilities and modifications are protected by the amendments to the Telecommunications Act, the Commission concluded that the issue was beyond the scope of the hearing.

¹ Mr. Donahue's letter referred to previous letters dated July 9, and 24, 2012 offering comments on this case. His July 9th letter was not filed into the record because the case had not yet been set down for hearing. There is no evidence of that any letter dated July 24, 2012 was provided to the Office of Zoning.

At the close of the hearing, the Commission authorized the publication of a notice of proposed rulemaking in the *D.C. Register* and a referral to the National Capital Planning Commission (NCPC) for the thirty (30)-day period of review required under § 492 of the District Charter of the proposed amendments as revised in OP's October 1, 2012 report. More than thirty (30) days has elapsed since the NCPC referral and no NCPC report has been received.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 26, 2012 at 59 DCR 12387. No comments were received.

At a properly noticed public meeting held on December 10, 2012, the Commission took final action to adopt the text amendments, making no changes to the text as proposed, except to change the reference to "roof tops" in § 2714.4 (a) to "roofs." Because the change is not substantive, no republication of the notice of proposed rulemaking is required.

Title 11 DCMR, **ZONING**, is amended as follows:

Title 11 DCMR, Chapter 27, **REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES**, § 2711.1, **OFFICE OF PLANNING REPORT**, is amended as follows:

By amending § 2711.1 to insert the phrase "or modify" after the phrase "to permit" and to add a new second sentence so that the entire subsection reads as follows:

2711.1 The Zoning Administrator shall not take final action on an application to permit or modify an antenna tower, a monopole, or an antenna not exempted by § 2707, until a report is received from the Office of Planning or thirty (30) days have passed since the application was submitted to the director of the Office of Planning, whichever occurs first. This requirement does not apply to the modification described in § 2711.4.

By adding a new § 2711.4 to read as follows:

2711.4 A report from the Office of Planning is not required for the:

- (a) Modification of an existing antenna site, that involves a one-to-one replacement of antennas or an increase in the number of antennas for no more than five (5) antennas per mount or sector; provided that there would be no change to the permitted locations on roofs or increase in the height of the antennas; or
- (b) Installation or maintenance of antenna-related equipment cabinets and shelters consistent with the roof structure regulation.

On October 11, 2012, upon the motion of Commissioner May, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** this petition at the conclusion of the public

hearing by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull, not present, not voting).

On December 10, 2012, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Marcie I. Cohen (absentee ballot), Peter G. May, and Michael G. Turnbull to adopt).

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 February 1, 2013.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 12-06
Z.C. Case No. 12-06
(Text Amendment – 11 DCMR)
(Amendment to Eliminate the Requirement of an Office of Planning Report for Certain
Types of Antenna Modifications)
December 10, 2012**

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

