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West End Citizens Association
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To:	David Clark, DCRA Administrator & Karen Edwards, DCRA/GC	**Date:**	July 26, 2001
Fax #:	442-9445 (office: 442-8936) & 442-9447 (office: 442-8404)	**Pages:**	4, including this cover sheet.
From:	Barbara F. Kahlow for the West End Citizens Association		
Subject:	Legal Requirement for Immediate Stop Work Order for 1957 E Street, N.W. (pursuant to BZA's 7/12/01 Order, BZA Appeal No. 16701)		

COMMENTS:

On 7/12/01, the Board of Zoning Adjustment (BZA) issued an order - which became effective on 7/23/01 - vacating the building permits for 1957 E Street, which had been improperly issued by DCRA Zoning Administrator (ZA) Michael Johnson. Attached is a copy of 11 DCMR §3126 which provides that neither the filing nor granting of a motion for reconsideration or rehearing stays the effect of a final decision. Therefore, a BZA order is effective unless the BZA issues a stay (or a court issues a temporary restraining order (TRO)). The property owner for 1957 E Street has not filed a motion for a stay or for a TRO. As a consequence, DCRA is obliged to immediately issue a stop work order.

I understand that ZA Michael Johnson has improperly opined that a motion for reconsideration stays an order. Please correct this improper opinion and issue the legally-required stop work order immediately.

Please call, fax or e-mail me when the stop work order will be issued. If DCRA decides not to act immediately, I would appreciate a legal opinion specifying the exact legal basis for this noncompliance with law. Thank you.

cc Jerrily Kress, Office of Zoning (f: 727-6072)

BZA
Case No. 16701
Exhibit No. 60

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.60

DISTRICT OF COLUMBIA REGISTER OCT 1 - 1999

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
Case No. 98-19
(Text Amendments – Zoning Commission and Board of Zoning Adjustment
Rules of Practice and Procedure)
September 13, 1999

Zoning Commission Case No. 98-19 (Text Amendments – Rules of Practice and Procedure – Zoning Commission and Board of Zoning Adjustment) is an initiative of the Zoning Commission resulting from resolutions, orders and recommendations on regulatory reform by the D. C. Financial Responsibility and Management Assistance Authority (the "Authority"). The proposed text amendments aim to effectuate improvements in Zoning Commission and Board of Zoning Adjustment (BZA) procedures in the interests of effective and timely hearings and decisions. The proposed amendments relate to Chapters 30 and 31 as modified and recommended by the Authority. Also, the advertised text includes a further modification of a text amendment adopted in Zoning Commission Order No. 62 relating to flexibility to be exercised by the Zoning Administrator.

The public hearing was held on October 5, 1998, and the written record was left open until November 13, 1998. Notice of the hearing was published in the *D.C. Register* on September 18, 1998 and in the *Washington Times* on September 25, 1998. The hearing was conducted according to the provisions of Section 3021 of the Zoning Regulations as a rulemaking case.

At its public meeting on December 14, 1998, the Zoning Commission took proposed action to amend the text of the Zoning Regulations. Following the Commission's action, a Notice of Proposed Rulemaking was published in the D.C. Register at 46 DCR 2184 (February 26, 1999) for a thirty (30) day public notice and comment period. The comment period expired on (March 30, 1999). As a result of the publication of the notice of proposed rulemaking, comments were received from the National Capital Planning Commission (NCPC), Ms. Barbara F. Kahlow, Mr. Lindsley Williams and Mr. Christopher H. Collins, Vice-President of the D.C. Building Industry Association. Minor changes were made to correct the inconsistencies and editorial corrections and to clarify the Commission's intent. The specific amendments that were adopted by the Zoning Commission as final action at its public meeting of September 13, 1999 are as follows:

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3125 FINAL DECISION AND EFFECTIVE DATE OF DECISIONS

3125.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.

3125.2 The concurring vote of at least a full majority of the members of the Board shall be necessary for any decision.

3125.3 A decision or order on an appeal or application shall be in writing and shall be accompanied by findings of fact and conclusions of law, which shall be filed in the record.

3125.4 Formal notice of an order shall be given to any party to the appeal or application, by serving the party with a copy of the decision or order of the Board and the accompanying findings of fact and conclusions of law, by registered or certified mail, return receipt requested.

3125.5 A copy of the decision or order of the Board and the accompanying findings of fact and conclusions of law shall be served on any ANC which submitted a written report in accordance with §3115 of this Chapter.

3125.6 For purposes of this Chapter, a decision or order of the Board shall be and become final upon its filing in the record and service upon the parties.

3125.7 Approval of an application shall include approval of the plans submitted with such application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Board orders otherwise.

3125.8 An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.

3125.9 No order of the Board shall take effect until ten (10) days after it becomes final pursuant to §3125.6.

3125.10 The Director of the Office of Zoning or Chairperson of the Board is authorized to sign a final decision or order that has been approved by a majority of the Board.

3126 RECONSIDERATION OR REHEARING

3126.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.

3126.2 Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that such motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board.

3126.3 Any motion for reconsideration shall be served upon all other parties, or any representative parties pursuant to designations made pursuant to §3112.15.

3126.4 A motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought.

3126.5 Within seven (7) days after a motion for reconsideration has been filed and served, any other party may file an answer in opposition to or in support of such motion.

3126.6 No request for rehearing shall be considered by the Board unless new evidence is submitted which could not reasonably have been presented at the original hearing. If a rehearing is granted, notice shall be given as in the case of an original hearing.

3126.7 The Board, on its own motion made not later than ten (10) days following the filing of the final decision in the record, may decide to reconsider or rehear an application or appeal.

3126.8 No member shall vote on any post-hearing motion unless the member participated in and voted on the original decision, or the member read the transcript of the hearings and reviewed the record.

3126.9 Unless the Board orders otherwise, neither the filing nor granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision.

3126.10 A motion for reconsideration or rehearing shall not be a prerequisite to judicial review.

3126.11 An applicant or appellant whose appeal or application has been denied shall not institute a new appeal or application on the same facts within one (1) year from the date of the order upon the previous appeal or application.

3127 EXCLUSIVE RECORD