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D.C. ZONING COMMISSION
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June 24, 2002

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VIA HAND DELIVERY

D.C. Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-01
Text Amendments regarding the Timeliness of Filing Appeals with the Board of Zoning Adjustment

Dear Members of the Commission:

This letter responds to the notice of proposed rulemaking in the above-referenced matter, wherein the Zoning Commission has proposed to amend the provisions of Chapter 31 of the Zoning Regulations to establish timeframes within which appeals may be filed with the Board of Zoning Adjustment. We offer the following comments, which we also submitted to the Commission prior to the public hearing on the case:

1. Since the filing of an appeal is discretionary with an appellant, we suggest that the language of proposed ¶3112.2(a) reflect the language used in §3112.2 to read "An appeal **may** ~~shall~~ be filed **no later than** ~~within~~ sixty (60) days ..."

2. The thrust of ¶3112.2(b) seems to be a limiting factor to the time otherwise established by ¶(a). This would be particularly true for additions to dwellings which could be constructed and under roof well before sixty days. However, as written, if applied to a multi-story project, which might not be under roof for many months after construction begins, it could be read to allow an appeal to be filed a long time after rights have otherwise vested and notice of construction would be evident. We suggest that ¶(b) be amended to read as follows:

"If the decision complained of involves the erection, construction, reconstruction, conversion or alteration of a structure or part thereof, no appeal

ZONING COMMISSION
District of Columbia
Case 02-01
Exhibit 10

ZONING COMMISSION
District of Columbia
CASE NO.02-01
EXHIBIT NO.10

may ~~shall~~ be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof **or the sixty day period specified in §3112.2(a), whichever comes first** ..."

3. We note that, notwithstanding the proposed amendments, principles such as laches and estoppel may operate to bar the consideration of an appeal by the BZA if an appellant has slept in its rights or is otherwise equitably barred from bringing an appeal, even if that appeal is filed within the time limits proposed. Depending upon the circumstances, an appeal may be untimely in a shorter period than sixty days, particularly if the appellant had actual knowledge of proposed construction or use before a formal ruling was made. We suggest that an additional ¶(d) be added, to read as follows:

"**An appeal which is filed within the time limits established by this section is still subject to dismissal on equitable grounds, such as laches or estoppel.** "

Thank you for your consideration of our views on this matter.

Sincerely,

Whayne S. Quin

Norman M. Glasgow, Jr.

Steven E. Sher
Director of Zoning and Land Use Services