

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



INTEROFFICE MEMORANDUM

TO: ZONING COMMISSION
FROM: BOARD OF ZONING ADJUSTMENT
SUBJECT: COMMENTS TO SUBTITLE Y – BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE
DATE: OCTOBER 30, 2013

The Board of Zoning Adjustment appreciates the opportunity to provide comment on Subtitle Y -Board of Zoning Adjustment Rules of Practice and Procedure. Over the past year and a half the Board has been working within the confines of its authority to implement changes to the Board's practices and procedures in order to make them more effective and efficient.

The Board instead of providing theoretical testimony is providing a roll up your sleeve red lined markup of the proposed Subtitle Y. The comments offered by the Board offers practical ways to streamline the BZA process, add additional fairness in its procedures; and modernization to its processes and practices.

In reviewing this document, our mission was to identify outdated practices, practices that fail to protect the public interest and those that caused an unnecessary delay in the processing of zoning relief request. The Board asked the question of-How can we simplify the regulations be more organized and carried out more quickly, at the same time allow for the full and fair participation of citizens.

Each proposed regulation was examined by asking:
Is the regulation needed? Is it citizen friendly? Is it equally fair to proponents and opponents?

After these initial questions were answered, the regulation was examined to determine if it allowed for transparency, predictability and review.

Attached is the redline markup for discussion.

ZONING COMMISSION
District of Columbia
CASE NO.08-06A
EXHIBIT NO.169

SUBTITLE Y BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE

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CHAPTER 1 ADMINISTRATION

100 BOARD OF ZONING ADJUSTMENT JURISDICTION; AUTHORITY; POWERS

- 100.1 This subtitle supplements procedures set out in the Zoning Act of 1938; the Civil Infractions Act, the Foreign Missions Act, the Zoning Regulations of the District of Columbia, Title 11 DCMR; and the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501 to 2-511.
- 100.2 This subtitle shall be effective on _____, and applicable in its entirety to applications or appeals filed after that date with the Board of Zoning Adjustment for the District of Columbia (Board), and to applications or appeals filed as of that date, but for which the Board had not granted a public hearing.
- 100.3 The Board, pursuant to § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(f) and (g)(2)-(3) (2001)), shall have original jurisdiction to grant variances under Y Chapter 8 and special exceptions under Y Chapter 9, and to exercise all other powers authorized by the Zoning Act.
- 100.4 The Board, pursuant to § 8 of the Zoning Act, D.C. Official Code §§ 6-641.07(f) and (g)(1), shall also hear and decide zoning appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11 DCMR.
- 100.5 The Board, pursuant to § 301 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, as amended; D.C. Official Code § 2-1803.01 (2001)) (Civil Infractions Act), shall entertain and decide appeals (civil infraction appeals) timely filed by persons aggrieved by orders issued by hearing examiners pursuant to the Civil Infractions Act, or by the Mayor, involving infractions of chapter 6 of Title 6 of the District of Columbia Official Code, 2001 Ed., pertaining to zoning and the height of buildings, or of the Zoning Regulations.
- 100.6 The Board, pursuant to § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, 286; D.C. Official Code § 6-1306 (2001)), shall have the authority to make determinations regarding the location, replacement, or expansion of chanceries in the District of Columbia, and to hear and decide appeals of administrative decisions relating to a chancery based in whole or in part upon the Zoning Regulations and Zoning Map, subject to the procedures and criteria established in § 206 of the Foreign Missions Act, D.C. Official Code § 6-1306, and in the pertinent provisions of the Zoning Regulations, including Chapter 10 of this title. All proceedings shall be of a rulemaking nature.

101 GENERAL PROVISIONS

- 101.1 In any conflict between this subtitle and any other provisions of this title, the other provisions of this title shall govern.
- 101.2 In any conflict within this subtitle between general and specific provisions, the specific provisions shall govern.

- 101.3 In any conflict between this subtitle and the D.C. Administrative Procedure Act, the Act shall govern.
- 101.4 ~~Legal advice from~~ The Office of the Attorney General shall provide legal services to the Board. ~~may be requested or received at any time.~~
- 101.5 Informal requests for advice ~~or moot questions~~ shall not be considered by the Board.
- 101.6 Except for Y §§ 100 through 105, 602.1 and 604.6, the Board may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
- ~~101.6~~ 101.7 The Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in § 6-641.03.

Comment [LJ1]: This wording is awkward . The Board may not know an issue or question is moot until it is considered.

Comment [LJ2]: Present provision of §6-641.07

102 ORGANIZATION

- 102.1 The Board shall consist of five (5) members and shall have the duties and powers set forth in this subtitle.
- 102.2 The Board, pursuant to D.C. Official Code § 6-641.07, shall consist of three (3) Mayoral appointees, one (1) member of the National Capital Planning Commission (or staff designee), and one (1) member of the Zoning Commission (or staff designee).
- 102.3 Three (3) members of the Board shall constitute a quorum. A quorum is necessary to conduct a hearing or meeting, but a lesser number may publicly announce a postponement or adjournment. If necessary, the Director of the Office of Zoning or his/her designee (Director) may announce a postponement.
- 102.4 The Board shall elect its Chairperson and Vice-Chairperson at its first meeting held in February or as soon as practicable of each calendar year, unless a vacancy occurs at some other point during the calendar year, at which point the Board shall hold elections in a timely manner.
- 102.5 The Chairperson shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chairperson, the Vice-Chairperson shall preside. In the absence of the Vice Chairperson, the most senior member of the Board, by time of appointment, shall preside.
- 102.6 The Chairperson of the Board shall be selected from one (1) of the three (3) Mayoral appointees to the Board.
- 102.7 A Board member may vote or cast an absentee vote at a meeting only if the Board member attended all of the hearings on the application or appeal, or read the transcript(s) and reviewed the complete record. Nothing in this subsection shall be construed to require a Board member to read the transcript in order to vote on a subsequent application to extend or modify the order granting the application.
- 102.8 While a majority of the Board members present at a meeting or hearing may take a procedural action, any final action on an application or appeal requires the concurrence of at least three (3) of the five (5) Board members.

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

103 MEETINGS AND HEARINGS

103.1 On or about the first (1st) day of the calendar year, the Director shall publish in the *D.C. Register* a 12-month calendar or schedule of meeting dates, and continually update the Office of Zoning online calendar to reflect the meeting dates.

103.2 The meetings and hearings of the Board shall be ~~in accord with open to the public; provided that, for the reasons cited in § 405(b) of the D.C. Administrative Procedures Act, as amended by the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350, D.C. Official Code § 2-575(b)), the Board may hold a closed meeting, but only after the Board meets in public session and votes in favor of entering into a closed meeting.~~

Comment [LJ3]: The Acts provide how meetings are to be conducted for public and closed.

103.3 All records of the Board shall be filed with the Office of Zoning and shall be open to public inspection.

103.4 Subject to the direction of the Board ~~or and~~ its Chairperson, the Director shall perform the following duties:

- (a) Conduct all correspondence of the Board, send out all notices required by this title, attend all meetings and hearings of the Board, compile all required records, and maintain the necessary files and indexes;
- (b) Enter in the Board case record the number assigned to each application or appeal, the name of the applicant or appellant, a short description of the premises (by street number or otherwise), the nature of the application or appeal, and the final disposition of the proceeding;
- (c) Enter in the Board case record all continuances, postponements, dates of sending notices, and other steps taken or acts done by the Board or its officers on behalf of the Board; and
- (d) Issue and revise application and appeal forms to ensure presentation of adequate information required for the understanding and processing of applications and appeals.

103.5 The proposed public agenda for each meeting shall be posted on the Office of Zoning website and available to the public at least six (6) days prior to each meeting.

103.6 Copies of the agenda shall be available to the public at the meetings or hearings.

103.7 Nothing in this section shall preclude the Board ~~or the Chairperson~~ from amending the agenda at a meeting or hearing.

103.8 ~~A meeting of the Board shall be held in accordance with a schedule to be established by the Board pursuant to Y § 103.1 and a~~ Additional meetings may be scheduled or cancelled, as needed. Meetings may be called by the presiding officer or by three (3) Board members.

Comment [LJ4]: Redundant and conflicting with other provisions

103.9 The Board shall schedule hearings for the purpose of receiving evidence and testimony on specific applications and appeals advertised in advance.

Comment [LJ5]: Why is this necessary since other provisions cover this?

103.10 Meetings and hearings shall be held at such time and place as the Board ~~or the Office of Zoning~~ may designate.

103.11 When postponing or continuing a contested case, the Board shall make reasonable efforts to schedule the public hearing within thirty (30) days.

103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required.

104 TRANSCRIPTS OF PUBLIC MEETINGS AND HEARINGS

104.1 The transcripts of Board public meetings and hearings are a matter of public record and shall be available through the Office of Zoning.

104.2 The public meetings and hearings shall be reported under the supervision of the presiding officer, by transcription or by other means, by an official reporter who may be designated from time to time by the Director or who may be an employee of the Office of Zoning.

104.3 The transcript prepared by the reporter shall be the sole official transcript of public meetings and hearings.

104.4 Copies of the transcript shall be made available by the Office of Zoning fourteen (14) days after the public meeting or hearing or as soon as practicable.

104.5 A motion to correct a transcript may be made only when the alleged error is substantive.

104.6 A motion to correct a transcript shall be filed with the Board within ten (10) days after the transcript has been made available in the Office of Zoning.

104.7 Copies of the motion to correct a transcript shall be served simultaneously on all parties or their authorized representatives.

104.8 The Board shall rule on a motion to correct a transcript at a public meeting or hearing.

104.9 Objections to the motion to correct a transcript shall be filed with the Board within five (5) days of service upon the parties.

104.10 The Board, on its own motion at a public meeting or hearing, may order changes to a transcript at any time for any reason.

104.11 If a motion to correct a transcript is granted, the corrected transcript shall be made available by the Office of Zoning fourteen (14) days after the Board grants the motion.

New Section Member Qualifications for Electronic Attendance.

A member of the Board may attend a meeting or hearing electronically only if the member is physically prevented from attending the meeting or hearing by:

- (1) personal illness or disability;
- (2) employment or the business reasons; or
- (3) a family or other emergency.

The member must notify the Chairperson and the Office of Zoning in writing at least twenty-four hours prior to the meeting or hearing in which the member desires to attend electronically, unless advance notice is impractical. The notice shall identify the reason the member cannot be physically present at the meeting or hearing. Upon receipt of the notice, the Chairperson or Office of Zoning establishing a quorum of the Board will be physically present at the meeting or hearing at which a member has requested to attend electronically.

Unless (i) there will not be a quorum physically in attendance at the meeting or hearing or (ii) the Board has voted has approved a motion not to allow the members attendance by a two-third vote of the Board, the member will be deemed authorized to attend the meeting or hearing electronically.

A meeting or hearing of the Board at which any member has been authorized to attend electronically must be conducted under the following procedure:

A quorum of the Board must be physically present at the meeting or hearing. The presiding officer shall identify each member attending the meeting or hearing electronically.

Any member attending electronically must identify himself or herself each time the member wishes to speak and must be recognized by the presiding officer prior to addressing matters before the Board.

The speech of a member attending electronically shall be amplified in such a manner that it shall be generally audible to members of the Board and the public who are physically present at the meeting or hearing.

Any video image of a member attending electronically shall be projected in such a manner that the member's video image shall be generally visible and audible to members of the Board and the public who are physically present at the meeting or hearing.

The votes of any member of the Board attending electronically shall be generally audible at the location where such meeting or hearing.

The minutes of each meeting or hearing of the Board shall identify which of

the members of the Board were physically present and, if applicable, which members of the Board attended electronically.

A member attending a meeting or hearing of the Board electronically shall be considered present at the meeting or hearing and entitled to vote on any matter before the Board as if the member were physically present at the meeting or hearing.

Comment [LJ6]: D.C. Code § 2-577 (2013)

§ 2-577. Meeting procedures

(a) A meeting may be held by video conference, telephone conference, or other electronic means; provided, that:

(1) Reasonable arrangements are made to accommodate the public's right to attend the meeting;

(2) The meeting is recorded; and

(3) All votes are taken by roll call.

(b) All provisions of this subchapter shall apply to electronic meetings.

(c) E-mail exchanges between members of a public body shall not constitute an electronic meeting.

(d) When an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.

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104.11 ▲

105 RULES OF ETHICS

105.1 ~~Members of the Board shall at all times maintain a high level of ethical conduct in connection with the performance of their official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the government of the District of Columbia.~~

105.2 ~~Members of the Board shall avoid all actions which might result in, or create the appearance of, the following:~~

- ~~(a) Using public office for private gain;~~
- ~~(b) Giving preferential treatment to any person;~~
- ~~(c) Impeding government efficiency or economy;~~
- ~~(d) Losing complete independence or impartiality;~~
- ~~(e) Making a government decision outside official channels; or~~
- ~~(f) Affecting adversely the confidence of the public in the integrity of government.~~

105.3 ~~Members of the Board shall not ask for or accept, either directly or through someone else, any gift, gratuity, favor, loan, entertainment, or anything of value from a person who has or is seeking a contract with the District of Columbia; is regulated by the District; or has any interest that may be affected by the Board member's performance of official duties.~~

105.4 ~~In any proceedings before the Board, all members of the Board shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding.~~

105.5 ~~The prohibition in Y § 105.4 shall begin to apply upon the referral of any application or appeal pursuant to Y § 400.4 and 500.4, and shall not terminate until the final disposition of the case.~~

105.6 ~~The prohibition in Y § 105.4 shall not extend to communication between the Board and the Office of Zoning concerning matters of record.~~

105.7 ~~A member of the Board shall disqualify himself or herself in a proceeding before the Board in which the Board member's impartiality might reasonably be questioned, including but not limited to instances where:~~

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Comment [LJ7]: To avoid conflict this Section should just refer to or recite the District Ethics Provision.

- (a) ~~The member of the Board has a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;~~
- (b) ~~The member of the Board served as a representative in the matter in controversy, or has been a material witness concerning it;~~
- (c) ~~The member of the Board knows, or reasonably should have known, that he or she, individually or as a fiduciary, or the Board member's spouse, domestic partner, parent or child wherever residing, or any other member of the Board member's family residing in the Board member's household, has an economic interest in the matter in controversy or in a party to the proceeding or has any other more than *de minimus* interest that could be substantially affected by the proceeding;~~
- (d) ~~The member of the Board or their spouse, domestic partner, parent or child wherever residing, or any other member of the Board member's family residing in the Board member's household:~~
 - (1) ~~Is a party to the proceeding, or an officer, director, or trustee of a party;~~
 - (2) ~~Is acting as a lawyer or otherwise representing a party in the proceeding; or~~
 - (3) ~~Is known by the Board member to have a more than *de minimus* interest that could be substantially affected by the proceeding.~~

~~105.8 — A member of the Board disqualified by the terms of Y § 105.7 may disclose on the record the basis of the member's disqualification and may ask the parties and their representatives to consider whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and their representatives all agree that the Board member should not be disqualified, and the Board member is then willing to participate, the Board member may participate in the proceeding.~~

CHAPTER 2 PUBLIC PARTICIPATION

200 APPEARANCE AND REPRESENTATION

~~200.1 In a proceeding before the Board, any person or party may appear on that person or party's own behalf.~~

~~Any owner or any person authorized in writing by the owner may file an application or appear before the board on an application for relief for an addition to a one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223.~~

~~In a proceeding before the Board, other than a proceeding under §223, any person who represents a person or party for compensation must be reasonably knowledgeable and competent in the regulations and rules governing the Board of Zoning Adjustment.~~

~~The person providing the representation shall certify to the Board that he/she is familiar Zoning Regulations and the procedures of the Board.~~

~~200.1 The presiding officer may waive the provisions of this section after being satisfied that an owner or any other representative possess a sufficient understanding of the zoning regulation, processes and procedure.~~

200.2 Any person or party may be represented by any other person duly authorized in writing to do so.

200.3 The authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Board.

200.4 The applicant shall submit a letter of authorization to the Office of Zoning fourteen (14) days prior to the public hearing.

200.5 No member of the Board shall represent any person before the Board or Zoning Commission (Commission) other than himself or herself while a member of the Board.

200.6 No former member of the Board shall represent any person before the Board or Commission other than himself or herself for a period of six (6) months after the date that the member's service on the Board terminates.

200.7 No former member of the Board or former employee of the government of the District of Columbia shall represent any person other than himself or herself in a particular matter for which the Board member or employee had a substantial ~~involvement~~ responsibility while a member of the Board or an employee of the District.

201 APPLICATIONS AND APPEALS

201.1 Any variance or special exception proceeding before the Board shall be initiated by the filing of an application with the Board on the form and in the manner that the Director may prescribe.

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- 201.2 A variance or special exception case shall be considered as a contested case proceeding, as defined by D.C. Official Code § 2-502(8). Public hearings on contested cases shall be processed and conducted according to the provisions of the D.C. Administrative Procedure Act.
- 201.3 Any application for a chancery or foreign mission subject to the Foreign Missions Act shall be initiated by the filing of an application with the Board on the form and in the manner that the Director may prescribe; such case shall be considered as a rulemaking proceeding.
- 201.4 Any appeal case proceeding before the Board shall be initiated by the filing of an appeal with the Board on the form and in the manner that the Director may prescribe.

202 DECORUM AND GOOD ORDER

- 202.1 This section applies to all proceedings before the Board.
- 202.2 No person shall utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct that has the effect of (as determined by the presiding officer) impeding any meeting, hearing, or other proceeding or the orderly conduct of official business of any member, officer, employee, or agent of the Board or the Office of Zoning; or enter or remain in, during the course of any meeting, hearing, or other proceeding of the Board, any area set aside for use by persons other than the general public.

203 EVIDENCE

- 203.1 The provisions of this section apply as follows:
- (a) This section applies in its entirety to zoning appeals and variance and special exception applications;
 - (b) Except for Y § 203.2, the provisions of this section shall not apply to civil infraction appeals; provided, however, that if a party in a civil infraction appeal uses a demonstrative aid during oral argument, the demonstrative aid shall be filed in the record in accordance with the requirements of Y §§ 203.3 through 203.6; and
 - (c) The provisions of Y § 203.3 through 203.6 shall apply in a chancery proceeding.
- 203.2 No Exhibits of a party or person seeking party status may be entered into the record after less than twenty-one days before the hearing unless approved by the Board. offered in evidence at the hearing.
- 203.3 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced to a size not to exceed tabloid size of eleven inches (11 in.) by seventeen inches (17 in.).
- 203.4 If models are used, images of the models not exceeding tabloid size of eleven inches (11 in.) by seventeen inches (17 in.) shall be submitted into the record.

Comment [LJ8]: This conflicts with the 14-day requirements of parties.

- 203.5 If PowerPoint presentations, computer simulations, slides, or similar media are used, a paper copy of the exhibit shall be filed with the Board as required in 203.2.
- 203.6 If a video is used, five (5) copies of the video on DVD shall be filed with the Board.
- 203.7 In special exception and variance applications, and zoning and civil infraction appeals, the Zoning Act of 1938, as amended, the Zoning Regulations, and the official Zoning Map, shall be a part of the record of every proceeding before the Board, and it shall not be necessary for any party or person formally to move their introduction into evidence.
- 203.8 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant or appellant need only provide a complete citation to the source of the document and indicate where the public may view the document.
- 203.9 The applicant, public agency representatives, additional parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.
- 203.10 In an application for a contested case witnesses may be examined or cross-examined by the Board, the applicant, or any party so determined by the Board under this subtitle.
- 203.11 In an appeal case, only the Board may examine witnesses. A public agency representative may pose a question to a witness through the presiding officer.
- 203.11 203.12 Any person, prior to given any testimony must sign and present two witness cards that shall contain an attestation that the testimony given under the penalty of perjury and that the testimony is the true to the best of his/her knowledge or information. Prior to testifying the witness cards must be given to the court reporter or as directed by the Presiding Officer.

204 COMPUTATION OF TIME

- 204.1 In computing any period of time, days shall refer to calendar days, unless otherwise specified.
- 204.2 In computing any period of time specified in this title, the day of the act, event, or default after which the designated period of time begins to run shall not be included.
- 204.3 The last day of the period computed as provided in Y § 204.2 shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.
- 204.4 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended or reduced by the Board with notice to all parties or announcement on the record.

205 SERVICE OF DOCUMENTS; METHODS OF SERVICE; PROOF OF SERVICE

- 205.1 Any document required to be served upon a party shall be served upon that party or upon the representative designated by that party or by law to receive service of documents. When a party has appeared through a representative, service may be made upon the representative of record. [need to include a time period in advance for service]
- 205.2 Where there are numerous parties to a proceeding, the Board may designate representative parties or make other special provisions regarding the service of documents.
- 205.3 Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection, or as otherwise authorized by law:
- (a) By personal delivery to the party's address of record by either handing the document to the person to be served, handing it to a responsible individual of suitable age, or leaving it in a conspicuous place;
 - (b) By express mail, when properly addressed and with charges prepaid;
 - (c) By first-class mail, when deposited in the United States mail, properly stamped and addressed;
 - (d) By facsimile, when transmitted with the proper facsimile number corresponding to the intended recipient;
 - (e) By electronic mail (e-mail), when transmitted with the proper e-mail address; or
 - (f) In any specific manner prescribed by the Board in a proceeding.
- 205.4 A document proving that service was effectuated shall be filed with the Office of Zoning for each document served on a party. The certificate of service shall state the name and address of the person(s) on whom the document was served and the manner and date of service.
- 205.5 A certificate of service may be represented by:
- (a) Written acknowledgement of the party served or that party's representative of record; or
 - (b) The written statement of the person making the service.

206 FILING DOCUMENTS ELECTRONICALLY

- 206.1 This section includes provisions for the public to file documents electronically through the Interactive Zoning Information System (IZIS) and by e-mail with the Office of Zoning. It also permits the Office of Zoning to serve orders and notices by e-mail.

Comment [LJ9]: Is electronic filing mandatory? can documents be filed manually.

- 206.2 The filing of any documents electronically following the procedures set forth in this section constitutes filing for all purposes under these rules.
- 206.3 All documents to be filed electronically through IZIS or by email shall be in portable document format (PDF).
- 206.4 Every document filed electronically through IZIS shall:
- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;
 - (b) Contain the case number assigned by the Office of Zoning, or a statement that a case number has not yet been assigned;
 - (c) Describe the nature of the documents (for example, "Letter in Support," "Letter in Opposition", or "Request for Party Status"); and
 - (d) The file size of any document submitted electronically through IZIS or by e-mail may not exceed the maximum allowable size of eight (8) megabytes (mb),
- 206.5 Every document filed by e-mail shall:
- (a) Include the name, mailing address, telephone number, and e-mail address of the person filing it;
 - (b) Describe the nature of the documents (for example, "Letter in Support," "Letter in Opposition", or "Request for Party Status");
 - (c) Include the signature of the originator;
 - (d) Contain no more than ten (10) pages;
 - (e) Include the Case Number and Case Name in the subject line of the e-mail; and
 - (f) Be sent to bzasubmissions@dc.gov.
- 206.6 All e-mail filings sent between 12:01 a.m. and 3:00 p.m. on any Office of Zoning business day shall be recorded on the date it was received.
- 206.7 The filing date for an e-mail filing received between 3:01 p.m. and 12:00 a.m. will be the next business day.
- 206.8 The date and time recorded in the correct Office of Zoning electronic mailbox at bzasubmissions@dc.gov, shall be conclusive proof of when it was received.

- 206.9 A party shall ~~serve~~^{send} a copy of ~~anything all filed~~^{any} electronic ~~ally~~^{ally} or ~~by~~^{by} e-mail ~~filings~~^{filings} to all other parties. ~~A, and shall file a~~^{A, and shall file a} certificate of service ~~shall be filed~~^{shall be filed} as required by Y § 205.4.
- 206.10 ~~Parties are responsible for monitoring their e-mail accounts and for opening e-mails.~~
- 206.11 The Office of Zoning shall serve orders and notices by e-mail to any party who provides an e-mail address. The party is responsible for ensuring that the Office of Zoning has an accurate, up-to-date e-mail address.
- 206.12 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected Advisory Neighborhood Commissions, the Commissioner representing the affected single member district, and the Office of Advisory Neighborhood Commissions (“notice recipients”) may be provided by electronic or first-class mail; provided, that the notice shall be by first-class mail unless a notice recipient agrees in writing to receive future notifications through electronic mail.
- 206.13 A notice of an application shall constitute the notice required by D.C. Official Code § 1-309.10(b) and starts the time period for the affected Commission to review the application and submit its written report pursuant to D.C. Official Code §1-309.10(d).

CHAPTER 3 APPLICATION REQUIREMENTS

300 APPLICATION REQUIREMENTS: SPECIAL EXCEPTION, VARIANCE AND CHANCERY

- 300.1 Each application shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 300.2 No application shall be ~~processed~~ **accepted for filing** until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 300.3 The application shall be filed on a form as may be designated from time-to-time by the Office of Zoning.
- 300.4 The owner of property for which zoning relief is sought, or an authorized representative, shall file an application with the Office of Zoning.
- ~~300.5 The application of an authorized representative shall include a letter signed by the owner authorizing the representative to act on the owner's behalf with respect to the application. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.~~
- ~~300.6~~ **300.5** An application shall contain either:
- (a) A memorandum from the Zoning Administrator stating that a building permit application has been filed and certifying the required zoning relief; or
 - (b) A certification of required zoning relief by an architect or attorney who also certifies that:
 - (1) The architect or attorney is duly licensed to practice in the District of Columbia;
 - (2) The architect or attorney is currently in good standing and otherwise entitled to practice in the District of Columbia; and
 - (3) The applicant is entitled to apply for the special exception, variance, or chancery for the reasons stated in the application.
- ~~300.7~~ **300.6** Each application shall be made in an appropriate manner provided by the Director. In addition to the memorandum or certification required by Y § 300.6 and the information required by Y § 200 relating to appearance and representation, the applicant shall furnish eleven (11) copies of all information required by the application form at the time of filing the application, including:

Comment [LJ10]: Filing whether complete or not are presently accepted and added to the docket, when the filing is incomplete. Further, the clock for measuring processing time should not start until a filing is complete.

Comment [LJ11]: Repetitive of Section 200

- (a) A plat, drawn to scale and certified by a survey engineer licensed in the District of Columbia or by the D.C. Office of the Surveyor, showing the boundaries and dimensions of the existing and proposed structures and accessory buildings and structures on the specific piece of property, if necessary;
- (b) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and building materials, and where applicable, parking and loading plans;
- (c) A detailed statement of existing and intended use of the structure, or part thereof;
- (d) A detailed statement of how the application meets each element of the review standards for special exceptions specified in Y § 801, for variances specified in Y § 902, or for chancery review specified in Y § 1002;
- (e) Three (3) or more color images, not to exceed letter-size (8½ x 11 inches), showing the pertinent features of the structure, and property involved (front, rear, and sides, if possible and applicable);
- (f) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and two (2) copies of self-stick labels printed with their names and addresses;
- (g) The name and address of each person having a lease with the owner for all or part of any structure located on the property involved in the application;
- (h) A copy of the certificate of occupancy or other documentation showing the current authorized use(s) on the property. In cases where a change in one nonconforming use to another nonconforming use is requested, a copy of the certificates of occupancy or other documentation showing the past authorized uses;
- (i) A copy of the resume of any expert witness who will be testifying in the case;
- (j) A written summary of the testimony of all witnesses;
- (k) A statement of the efforts that have been made to apprise the affected Advisory Neighborhood Commission (ANC) and other individuals and community groups concerning the application, if any; and
- (l) If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant may provide a complete citation to the source of the document and indicate where the public may view the document.

~~300.8~~300.7 Except as provided in Y § 300.7 with respect to traffic and transportation reports, all statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the applicant may wish to offer in evidence at the public hearing shall be filed at the time of filing the application.

Comment [LJ12]: This conflicts with 203.2 and 300.10. Timeliness need to be consistent

~~300.9~~300.8 Nothing in this subsection is intended to affect the discretion of the Director to reject an application for failure to comply with the provisions of this subsection or this title.

~~300.10~~300.9 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Board any traffic or transportation reports to be submitted in support of the application. All such reports shall include the resume of the expert who prepared the report. At or before the time of filing the traffic or transportation report with the Board, the applicant shall serve a copy of the report on the ANC for the area within which the property is located, the Office of Planning, and the District Department of Transportation.

~~300.11~~300.10 No later than twenty-one (21) days before the date of the hearing for the application, the applicant shall file with the Board any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other material that the applicant may wish to offer into evidence at the hearing. Any map, plan, or other document, or matter readily available to the general public need only be fully referenced and the source given by the applicant in place of filing a copy.

~~300.12~~300.11 If the application includes a report by a transportation consultant or expert, the applicant shall provide a copy of the report to the Department of Transportation at least forty-five (45) days prior to the public hearing.

~~300.13~~300.12 Except for rebuttal or impeachment, the applicant may not offer any document not previously identified in the required filings, unless the presiding officer determines that the witness or document was not known or available to the applicant at the time the filings were due.

301 EXPEDITED REVIEW APPLICATION REQUIREMENTS

- 301.1 An applicant may waive its right to a hearing for an eligible application and request an expedited review process subject to the provisions of this section.
- 301.2 An eligible application is an application for:
- (a) An addition to a dwelling or flat or new or enlarged accessory structures pursuant to D § 1701; or
 - (b) A park, playground, swimming pool, or athletic field pursuant to D § 1603.13(a).
- 301.3 Each application shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 301.4 No application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 301.5 The application shall be filed on a form as may be designated from time-to-time by the Office of Zoning.

Comment [LJ13]: Matters that qualify for Expedited review, do not need to be brought before the Board taking up the docket. An application meeting this provision at this point is ministerial . The approval of Expedited Reviews should be performed by the OZ or ZA.

- 301.6 The owner of property for which zoning relief is sought, or an authorized representative, shall file an application with the Office of Zoning.
- 301.7 The application of an authorized representative shall include a letter signed by the owner authorizing the representative to act on the owner's behalf with respect to the application. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.
- 301.8 An application shall be made consistent with Y § 300.6 and 300.11.
- 301.9 Each application shall be accompanied by a waiver of the applicant's right to a public hearing made on the appropriate form provided by the Director.

302 ZONING APPEALS APPLICATION REQUIREMENTS

- 302.1 Any person aggrieved or any officer or department of the government of the District of Columbia or the federal government affected by an order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely zoning appeal with the Board.
- 302.2 A zoning appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.
- 302.3 If the decision complained of involves the erection, construction, reconstruction, conversion, or alteration of a structure or part thereof, the following paragraphs shall establish the latest date on which a zoning appeal may be filed:
- (a) No zoning appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof. For purposes of this subparagraph, the phrase "under roof" means the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place; and
 - (b) The provisions of paragraph (b) of this subsection shall not relieve an appellant of the jurisdictional requirement in paragraph (a) of this subsection of filing a timely zoning appeal.
- 302.4 Notwithstanding Y § 302.2 and 302.3, for purposes of establishing the timeliness of a zoning appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.
- 302.5 A zoning appeal may only be taken from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building permit or certificate of occupancy, may be appealed unless the document materially modifies, or reverses the original decision or reflects a new decision.

- 302.6 The Board may extend the sixty (60) day deadline for the filing of a zoning appeal only if the appellant demonstrates that:
- (a) There are exceptional circumstances that are outside of the appellant's control and that could not have been reasonably anticipated that substantially impaired the appellant's ability to file a zoning appeal to the Board; and
 - (b) The extension of time will not prejudice the parties to the zoning appeal.
- 302.7 Each appeal shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 302.8 No appeal shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 302.9 The appeal shall be filed on a form as may be designated from time-to-time by the Office of Zoning.
- 302.10 An authorized representative may file a zoning appeal on behalf of the appellant. The zoning appeal shall include a letter signed by the appellant authorizing the representative to act on the aggrieved person's behalf with respect to the zoning appeal. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the aggrieved person.
- 302.11 Each zoning appeal shall be made in an appropriate manner provided by the Director. The appellant shall furnish eleven (11) copies of all information required by the form at the time of filing the appeal, including:
- (a) The name of the administrative official or public agency whose decision is the subject of the zoning appeal;
 - (b) A statement identifying the administrative decision appealed, by permit or certificate number, or other identifying information, together with a copy of the decision;
 - (c) The square(s) and lot(s) and/or street address of the property involved, and the zone district within which it is located;
 - (d) The name and address of the owner, lessee, operator, and/or contract purchaser of the property that is the subject of the appeal, if not the appellant;
 - (e) A statement demonstrating that the zoning appeal meets the jurisdictional requirement of timeliness, as specified in Y § 302.2, which shall specifically indicate:
 - (1) The date upon which the appellant first had notice or knowledge of the decision being appealed; and
 - (2) The circumstances under which such notice or knowledge occurred;
 - (f) A statement as to how the appellant has standing to bring the appeal, specifically with regard to the administrative decision being appealed:

- (1) For an appeal brought by an officer or department of the government of the District of Columbia or the federal government the statement shall explain how they are affected by the administrative decision; and
- (2) For all other appeals, the statement shall explain how the appellant is aggrieved;
- (g) A statement of the issues on appeal, identifying the specific manner in which the appellant is aware of the allegations of error in the administrative decision, and the relevant provisions of the Zoning Regulations;
- (h) All statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the appellant may wish to offer in evidence at the public hearing;
- (i) A copy of the resume of any expert witness who will be testifying in the case;
- (j) A written summary of the testimony of all witnesses; and
- (k) If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the appellant need only provide a complete citation to the source of the document and indicate where the public may view the document.

- 302.12 An appeal may not be amended to add issues not identified in the statement of the issues on appeal submitted in response to Y § 302.11 (g) unless the appellee impeded the appellant's ability to identify the new issues identified.
- 302.13 Except for rebuttal or impeachment, the appellant may present no witness nor offer any document not previously identified in the filings required by Y § 302 unless the presiding officer determines that the witness or document was not known or available to the appellant at the time the filings were due.
- 302.14 At or before the time of filing the zoning appeal, the appellant shall serve all persons with party status, the applicant and the ANC a copy of the zoning appeal and all accompanying documents. The appellant shall file a certificate of service with the Office of Zoning.
- 302.15 No later than twenty-one (21) days before the date of the public hearing on the zoning appeal, the appellant shall file with the Board any supplemental documents.
- 302.16 No later than fourteen (14) days before the public hearing, the appellee and all persons with party status, the applicant and the ANC shall file any responsive briefs and supporting information, whether in support of or opposition to the appeal. All filings shall be accompanied by a certificate of service.
- 302.17 No later than seven (7) days before the public hearing, the appellant may file a brief and supporting information in reply to any of the responsive briefs.

- 302.18 Upon motion by appellee, party or intervener and for good cause the Board may elect to waive Y § 302.16 and permit any responsive briefs and supporting information, whether in support of or opposition to the appeal at the public hearing.

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303 CIVIL INFRACTION APPEALS APPLICATION REQUIREMENTS

- 303.1 Any person aggrieved by an order issued by an Administrative Law Judge (ALJ) pertaining to alleged civil infractions of the Height Act and the Zoning Regulations may file a timely civil infraction appeal with the Board.
- 303.2 A civil infraction appeal shall be filed:
- (a) By the appellant in the underlying proceeding within fifteen (15) days after service of the order; or
 - (b) By any other person within thirty (30) days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed.
- 303.3 An authorized representative may file a civil infraction appeal on behalf of the appellant. The civil infraction appeal shall include a letter signed by the appellant authorizing the representative to act on the appellant's behalf with respect to the civil infraction appeal. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the appellant.
- 303.4 Each civil infraction appeal shall be made in an appropriate manner provided by the Director. The appellant shall furnish eleven (11) copies of all information required by the form at the time of filing the appeal, including:
- (a) That an appeal is taken;
 - (b) A copy or identification of the final decision from which the appeal is taken;
 - (c) A concise statement indicating why the appellant believes the final decision is in error;
 - (d) The full name, street address, and telephone number of the appellant and the respondent's counsel, if any;
 - (e) Whether oral argument is requested; and
 - (f) The signature of the appellant or the appellant's counsel.
- 303.5 At the time of filing the civil infraction appeal the fee shall be paid pursuant to Y Chapter 20.

- 303.6 At or before the time of filing the civil infraction appeal, the appellant shall serve all persons with party status, the applicant and the ANC with a copy of the civil infraction appeal and all accompanying documents.
- 303.7 Upon receiving a complete appeal, the Director shall issue a briefing order outlining the documents that are pertinent to the appeal, including the following:
- (a) The appellant shall serve and file a brief that includes:
 - (1) A table of contents, with page references, and a table of cases alphabetically arranged with asterisks placed before the cases chiefly relied upon, and statutes, rules, regulations, and other authorities cited, with references to the pages of the brief where they are cited;
 - (2) A statement of the issues presented for review;
 - (3) A statement of the facts of the case. A statement will first indicate briefly the nature of the case, the course of proceedings, and its disposition by the ALJ. There will follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record;
 - (4) An argument, which may be preceded by a summary. The argument shall contain the contentions and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied upon; and
 - (5) A short conclusion stating the precise relief sought; and
 - (b) The appellee and any intervener may serve and file a brief within forty (40) days of service of the appellant's brief; and the appellant may serve and file a reply brief within twenty-one (21) days of service of the appellee's brief.
- 303.8 Each brief must contain or be accompanied by a certificate of service.

CHAPTER 4 PRE-HEARING AND HEARING PROCEDURES: APPLICATIONS

400 REVIEW AND PROCESSING OF APPLICATIONS

- 400.1 The Director shall review for completeness every application ~~submitted~~ ~~filed~~ with the Board within five (5) days of its receipt.
- 400.2 Upon completing the review of an application, the Director shall alert the applicant of any deficiency, listing the information necessary to make the application complete. If the applicant fails or refuses to correct the deficiencies in the application, the Director shall not accept the application for filing.
- 400.3 As soon as an application is accepted for filing by the Director, the Director shall place a copy of the application in the public record of the Board.
- 400.4 Upon acceptance of a ~~complete~~ application, the Director shall provide a notice of filing to:
- (a) The applicant;
 - (b) The Advisory Neighborhood Commission (ANC) for the area within which the property is located, with a copy of the application form;
 - (c) The affected Single-Member District ANC Commissioner;
 - (d) The Office of Planning;
 - (e) The District Department of Transportation; and
 - (f) The Ward Councilmember for the ward within which the property is located.
- 400.5 A public hearing, ~~even if expedited under Y § 400.6~~, shall be held on each application. Appeals and applications shall be heard in the order in which they are filed with the Board and appear on the calendar, unless the schedule is altered by the Director or the Presiding Officer. The hearing date may be advanced or postponed by order of the Board for good cause shown.
- 400.6 All applications shall be immediately scheduled for hearing consistent with the notice provisions of this subtitle.
- 400.7 The Board shall have the authority to expedite applications; provided:
- (a) The Office of Planning recommends expediting the case and indicates the reason an expedited processing is necessary and desirable; and
 - (b) Expediting the application shall not result in removing another application from the public hearing agenda for that date.

Comment [LJ14]: It is unnecessary to hold hearings on pure ministerial matters. This should be for OZ or ZA to process.

401 EXPEDITED REVIEW

- 401.1 Subject to the removal process described in Y § 401.4 and 401.5, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and if complete, approved by the OZ or ZA [decided without hearing at the Board's next regularly scheduled session] after:
- (a) The completion of the public notice procedures set forth in Y § 402; and
 - (b) The completion of the ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) days.
- 401.2 Notice of expedited review shall be given in the same manner and include the same information as required by Y § 402.2 through 402.5, except that references to "public hearing" or "hearing" shall mean "expedited review" and all other requirements of Y § 402 shall apply with the same proviso.
- 401.3 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:
- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described in Y § 401.6 and 401.7; and
 - (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.
- 401.4 An application tentatively placed on an expedited review calendar will be removed and rescheduled for a hearing:
- (a) At the oral or written request of a Board member made at any time prior to the vote on the application;
 - (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
 - (c) At the written request of the Office of Planning, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled.
- 401.5 An application tentatively placed on an expedited review calendar also will be removed and rescheduled for a hearing if requested by the following entities or persons in accordance with Y § 401.6, unless the request is denied by the presiding officer pursuant to Y § 401.7:
- (a) The affected ANC(s) or affected Single-Member District(s);

Comment [LJ15]: It is unnecessary to hold hearings on pure ministerial matters. This should be for OZ or ZA to process.

- (b) The Councilmember representing the area in which the subject property is located or representing an area located within two hundred feet (200 ft.) of the subject property; or
- (c) The owner or occupant of any property located within two hundred feet (200 ft.) of the subject property.

401.6 A request to remove made pursuant to § 401.5 shall:

- (a) Be filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled;
- (b) Be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing; and
- (c) Include a summary proffer of the testimony to be given at that time.

401.7 The presiding officer shall grant a request to remove an application made pursuant to Y § 401.8 unless the proffered testimony is irrelevant, in which case the request shall be denied.

401.8 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

402 NOTICE OF PUBLIC HEARINGS

402.1 Not less than forty (40) days before the public hearing, the Director shall give notice of public hearing by:

- (a) Publishing the notice in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the applicant;
- (c) Providing a copy of the notice of public hearing to the ANC for the area in which the property is located, or for any other ANC that is within two hundred feet (200 ft.) of the property involved in the application;
- (d) Providing a copy of the notice of public hearing to the owners of all property within two hundred feet (200 ft.) of the subject property; provided, however, that in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, mailed notice may be provided to the board of directors of the association of the condominium or cooperative that represents all of the owners of the dwelling units;
- (e) Providing a copy of the notice of public hearing to each person having a lease with the owner for all or part of any building located on the subject property;
- (f) Providing a copy of the notice of public hearing to the Office of Planning and all other appropriate government agencies;

- (g) Providing a copy of the notice of public hearing to the ward councilmember for the ward within which the property is located; and
- (h) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

402.2 The notice of a public hearing on a variance, special exception or chancery application shall include:

- (a) The case number of the application;
- (b) The name of the applicant;
- (c) The citation to the legal authority pursuant to which the application has been filed;
- (d) The nature of the proposed zoning relief;
- (e) The square(s) and lot(s) and/or street address of the property involved;
- (f) The location, date, and time of the public hearing;
- (g) The ANC for the area within which the property is located; and
- (h) In the case of a special exception or variance application, the requirements for participation as a party.

402.3 The applicant shall give additional notice of the public hearing by posting the property with notice of hearing in a form that is prescribed by the Director at least fifteen (15) days in advance of the public hearing.

402.4 The notice required by Y § 402.3 to be placed upon an applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.

402.5 The notice required by Y § 402.3 shall be supplied by the Director indicating the:

- (a) The case number of the application;
- (b) The name of the applicant;
- (c) The nature of the application;
- (d) The square(s) and Lot(s) and/or street address of the property involved; and
- (e) The location, time, and date of the public hearing.

- 402.6 The Board may give any additional notice of the public hearing that it deems necessary or appropriate.
- 402.7 The applicant shall comply with the requirements of Y § 402.8 through 402.10 regarding filing of a sworn affidavit and maintenance of the posting.
- 402.8 When required to post any notice by Y § 402.3, the applicant shall complete and file with the Director a completed affidavit of posting form, demonstrating compliance with Y § 402.3 and 402.4. This affidavit shall be filed not less than five (5) days prior to the public hearing.
- 402.9 The applicant shall maintain the posting by checking the signs at least once every five (5) days and reposting as necessary. The applicant shall file an affidavit of maintenance of the posting between two (2) and six (6) days prior to the public hearing.
- 402.10 If a failure of notice under Y § 402.3 is alleged and proven, the Board may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis of these considerations, the Board may determine whether the public hearing will be postponed, continued, or held as scheduled.
- 402.11 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Board of jurisdiction over the case. If a defect in the notice is alleged and proven, the Board may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:
- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
 - (b) Attendance or lack thereof at the public hearing; and
 - (c) The nature and extent of the construction and/or use proposed under the application.

403 PARTY STATUS GUIDELINES

- 403.1 In an application for a variance or special exception, the following persons automatically have party status:
- (a) The applicant; and
 - (b) The ANC for the area within which the property that is the subject of the application is located.
- 403.2 In a variance or special exception proceeding before the Board, a party shall be afforded all the procedural rights provided in this subtitle, including the right to receive a copy of any:
- (a) Documents filed by any other party in the case at the same time or before the document is filed with the Board; and

- (b) Written notice of any decision or order entered in the case.

403.3 In all variance or special exception proceedings before the Board, a party may:

- (a) Submit motions and requests to the Board, and respond to any motions or requests submitted to the Board by others;
- (b) Present witnesses in support of the party's position;
- (c) Cross-examine all other parties and persons testifying in the case;
- (d) Submit proposed findings of fact and conclusions of law; and
- (e) Exercise all other procedural rights provided in this subtitle.

~~403.4~~ In a chancery proceeding before the Board, no person shall have the standing of a party.

~~403.4~~ H

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404 REQUESTING PARTY STATUS

404.1 Those persons who do not have automatic party status pursuant to this section, but who wish to participate as a party in a contested case proceeding before the Board, shall file a written request for party status with the Board that meets the following requirements:

- (a) The request shall be filed no later than fourteen (14) days before the date set for hearing;
- (b) At or before the time of filing the request, the person requesting party status shall serve a copy of the request on:
 - (1) All the parties that have automatic party status pursuant to this section; and
 - (2) All parties that have already been granted party status in an earlier proceeding in the case;
- (c) At the time of the filing request, the person requesting party status shall file an affidavit of service to all parties with the Board;
- (d) The person requesting party status and their authorized representatives, if any, shall provide the following information in their initial filing with the Board:
 - (1) An identification of the application by number, the applicant's name, and the address of the property that is the subject of the application;
 - (2) Whether the person will appear to support or oppose the application;

- (3) Name, mailing address, telephone number, facsimile number, and e-mail address;
- (4) If the party, person requesting party status, or authorized representative is not an individual, the name of the individual who will appear in the proceeding and the individual's mailing address, telephone number, facsimile number, and e-mail address, if different from that required under paragraph (d)(3) of this subsection;
- (5) If the person requesting party status is not an individual:
 - (A) Proof that the party or person requesting party status has authorized the party's or person's participation in the proceeding;
 - (B) Proof that the party or person requesting party status has designated a specific officer, employee, or agent to act on its behalf and bind the party or the person in the proceeding; and
 - (C) The proof may consist of a resolution of the party's or person's board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the party or person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board.
- (6) The request shall also contain a written statement setting forth the reasons why the person should be granted party status, including reference to the following:
 - (A) The property owned or occupied by the person requesting party status, or in which the person has an interest, that will be affected by the zoning relief requested of the Board;
 - (B) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
 - (C) The distance between the person's property and the property that is the subject of the application;
 - (D) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the zoning relief requested of the Board is approved or denied; and
 - (E) An explanation of how the person's interests as identified in response to subparagraph (4) would likely be more significantly, distinctively, or uniquely affected by the proposed zoning relief than those of other persons in the general public.

404.2 No later than seven (7) days before the hearing, any party may file a response to a request for party status. All responses shall be served on the person requesting party status and on all other parties at or before the time the response is filed with the Board.

- 404.3 In considering any request for party status, the Board shall grant party status only if:
- (a) The person requesting party status or agent to represent the party or person in such proceedings, is present at the time of decision; and
 - (b) The person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected by the proposed zoning relief than those of other persons in the general public.
- 404.4 In granting party status, the Board may specify whether the person will be permitted to participate as a party for general or limited purposes. The Board may order the consolidation of persons seeking party status, if the interest of the persons are reasonably related.
- 404.5 The Board may deny any request for party status that fails to meet the requirements specified in Y § 404, or make any other orders with respect to the failure that are fair, including but not limited to prohibiting a person who is granted party status from introducing designated matters in evidence.
- 404.6 The person requesting party status or agent to represent the party or person in such proceedings may at any time withdraw their request for party status.
- 404.7 ATTEMPT TO RESOLVE -Prior to a hearing, the applicant and any person or entity seeking party status, shall conference and in good faith seek to resolve or dispose of the issues. The applicant and the seeker of party status shall certify to the Board prior to the hearing, a conference was held, and in good faith they could not resolve the disputed issues.
- 404.6404.8 The Board may remove the case from the hearing docket or deny party status, if the applicant or party status seeker fails to comply with this section.

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405 REFERRALS TO AND REPORTS OF PUBLIC AGENCIES

- 405.1 The Office of Zoning shall refer all applications to the appropriate public agencies for review and comment within ten (10) days of the receipt of the application.
- 405.2 When an application is referred in advance of the public hearing on the application to any public agency for a report and recommendation, the report and recommendation of that agency shall be filed with the Board at least ~~fourteen~~ (14) days before the date set for the public hearing.
- 405.3 The Office of Planning shall report on the application's compliance each element of the special exception standards specified in Y § 801, variance standards specified in Y § 902, or chancery review standards specified in Y§ 1002.
- 405.4 The Board shall give "great weight" to the written report of the Office of Planning pursuant to D.C. Official Code § 6-623.04.

- 405.5 Upon the request of the Board, the Director shall notify the public agency of the required attendance of an agency representative at the public hearing. If the agency representative does not appear at the public hearing, the Board reserves the right not to entertain the contents of the report of that agency.
- 405.6 If an application is referred in advance of the public hearing to any public agency for a report or recommendation, and no report is received in the record and the forty (40) day time period specified in A § 211.1 has elapsed; the Board may proceed to decide the application based on the exclusive record.
- 405.7 If a chancery application is referred in advance of the public hearing to the Mayor, the United States Secretary of State, and the Historic Preservation Review Board for recommendation, any report and recommendation from those agencies shall be filed with the Board at least eight (8) days prior to the date set for the hearing.

406 ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

- 406.1 If an ANC wishes to testify or cross-examine witnesses in a case before the Board, the ANC shall file a written report with the Board at least seven (7) days in advance of the public hearing.
- 406.2 The Board shall give "great weight" to the written report of the ANC, pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, provided that it contains the following:
- (a) The case name and number;
 - (b) The date of the public meeting of the ANC to consider the application occurred;
 - (c) A statement that proper notice of that public meeting was given by the ANC;
 - (d) The number of members of the ANC that constitute a quorum and the number of members present at the public meeting;
 - (e) The issues and concerns of the ANC about the application, as related to the standards against which the application shall be judged;
 - (f) The recommendation, if any, of the ANC as to the disposition of the application;
 - (g) The outcome of the vote on the motion to adopt the report to the Board;
 - (h) The name of the person who is authorized by the ANC to present the report; and
 - (i) The signature of the ANC Chairperson or Vice-Chairperson.

- 406.3 In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the applicant which later are modified by the applicant, the designated ANC representative may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated ANC representative. The Board may leave the record open to permit the ANC to submit a revised report that meets the requirements of Y § 406.2.

407 MOTIONS PROCEDURE

- 407.1 A motion is a request by parties for the Board to take some action.
- 407.2 Unless made during a hearing, all motions shall be in writing. The first page of every motion shall contain: the parties' names, the case number, and the name of the presiding officer, if known. Every motion shall state the legal and factual reasons for the motion and the requested action of the Board.
- 407.3 If a party makes a motion to reopen the record, the supplemental materials shall be accompanied by a request to re-open the record, which will be accepted and presented to the Board for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record.
- 407.4 At the time of filing any motion, a party must serve all other parties.
- 407.5 Unless otherwise provided by these rules or ordered by the presiding officer, all parties opposing a motion shall have seven (7) days from the service of the motion to file and serve a response.

407.6 The ~~Board may authorize the~~ presiding officer ~~may~~ decide any motion without holding a hearing. ~~The Board may upon motion reverse the decision of the presiding officer.~~

407.7 The Director may grant a party's motion to continue a hearing, if:

- i. the request is made in writing and states the reason why the continuance is requested;
- ii. the case has not been heard by the Board;
- iii. request is made before the the request is made in sufficient time to notify all parties of the request and no party objects;
and
- 407.6iv. no more than two continuances has been granted in the case.

408 HEARING PROCEDURES: GENERAL PROVISIONS

- 408.1 The presiding officer at a public hearing shall have the authority to:

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- (a) Call the public hearing to order;
- (b) Consider preliminary matters, including, but not limited to party status requests, motions, and qualifying expert witnesses;
- (c) Conduct the public hearing;
- (d) Rule upon offers of proof and receive relevant evidence;
- ~~(e)~~ Exclude unduly repetitious, immaterial, or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;
- ~~(e)~~~~(f)~~ take whatever action necessary to maintain decorum and order;
- ~~(f)~~~~(g)~~ Adjourn a public hearing and establish the date when the public hearing will be continued;
- ~~(g)~~~~(h)~~ Close the public hearing and record; and
- ~~(h)~~~~(i)~~ Take any other action authorized by or necessary under this subtitle.

- 408.2 Except as provided in Y § 408.4, the applicant and all parties (except an ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an ANC) in opposition shall collectively have an amount of time equal to that of the applicant and parties in support, but in no case, more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition. The presiding officer may alter the time for presenting testimony.
- 408.3 Individuals shall have a maximum of three (3) minutes and organization representatives shall have a maximum of five (5) minutes to present testimony.
- 408.4 The presiding officer~~Board~~ may grant additional or lesser time than that allowed under Y § 408.2 and 408.3 to an applicant, individual, organization representative or party in support, or an individual, organization representative or party in opposition, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.
- 408.5 Nothing herein shall prohibit the Board from placing reasonable restrictions on any testimony, cross-examination, including limitations on the scope of cross-examination, by the applicant or parties in support or opposition.
- 408.6 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b)(2001) (formerly codified at D.C. Code 1-1509(b)(1999 Repl.)).
- 408.7 The presiding officer~~Board~~ may close the record at the end of a public hearing and, in a bench decision, vote at such time either to grant or deny the application. Alternatively, the presiding officer~~Board~~ may schedule the case for a regularly scheduled or special public decision meeting.

409 HEARING PROCEDURES: VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

- 409.1 The order for presenting evidence and arguments at public hearings on variance and special exception applications shall be as follows:
- (a) Preliminary and procedural matters;
 - (b) Applicant's case;
 - (c) Report and recommendations from the Office of Planning;
 - (d) Reports and recommendations from other government agencies;
 - (e) Reports and recommendations from the ANC for the area within which the property is located, and the ANC's witnesses, if any;
 - (f) Parties in support of the application;
 - (g) Individuals and organization representatives in support of the application;
 - (h) The respective cases of parties in opposition to the application;
 - (i) Oral statements from individuals and organization representatives in opposition to the application;
 - (j) Applicant's rebuttal evidence; and
 - (k) Applicant's closing statement.
- 409.2 In a special exception or a variance case, public agency representatives, additional parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.
- 409.3 In a special exception or a variance case, witnesses may be examined or cross-examined by the Board, the applicant, or any party so determined by the Board under this subtitle.

410 HEARING PROCEDURES: CHANCERY APPLICATIONS

- 410.1 All chancery proceedings shall be of a rulemaking nature.
- 410.2 The order of procedure at the hearing shall be as follows:
- (a) Call to order and opening statement by the presiding officer;

- (b) Consideration of pending motions and procedural matters;
- (c) Applicant's case;
- (d) Reports or statements by the Secretary of State and the Mayor;
- (e) Reports or recommendations by other government agencies;
- (f) The ANC for the area within which the property is located;
- (g) Individuals and organization representatives in support of the application; and
- (h) Individuals and organization representatives in opposition to the application.

- 410.3 The applicant shall carry the burden of justifying the proposal. Failure of groups or persons to appear in opposition shall not relieve the applicant of the responsibility of demonstrating the merits of the application.
- 410.4 Any person may appear at a hearing in a chancery application proceeding and present evidence, testimony, or argument that is relevant and not unduly repetitious within such time limits as the Board may determine.
- 410.5 Nothing in this subtitle shall preclude members from questioning witnesses in hearings before the Board.
- 410.6 Notice of a further hearing, plus a designation of the issues, shall be forwarded to any person who appeared and participated in the earlier hearings at least ten (10) days prior to the date set for the further hearing.

CONSENT AGENDA

CONSENT CALENDAR

An application for relief other than an appeal may be placed on the docket for a consent vote, if the Board believes that the record overwhelming shows, the relief requested should be granted, and there is no known objection by OP, an affected ANC, or any affected person. Any relevant terms or conditions agreed upon by the applicant may be included as conditions of the approval.

The presiding officer, or at the request of any Board member, may ask for a case to be placed for consent vote. Any Board member may request a case removed from consideration by consent.

The Board may approve the Consent Calendar on a voice vote.

The motion for approval of on consent shall state: "After thorough review, the Board finds that applications for consent meet the requirements for relief under the zoning regulations and there being no objection to the Application, the Board pursuant to the applicable regulation **ORDERS** the relief requested **GRANTED**."

BZA Comment

CHAPTER 5 PRE-HEARING AND HEARING PROCEDURES: APPEALS

500 REVIEW AND PROCESSING OF APPEALS

- 500.1 The Director shall review for completeness every appeal ~~submitted~~filed with the Board within five (5) days of its receipt.
- 500.2 Upon completing the review of an appeal, the Director shall alert the appellant of any deficiency, listing the information necessary to make the appeal complete. If the appellant fails or refuses to correct the deficiencies in the appeal, the Director shall not accept the appeal for filing.
- 500.3 As soon as an appeal is accepted for filing by the Director, the Director shall place a copy of the appeal in the public record of the Board.
- 500.4 Upon acceptance of a zoning appeal, the Director shall provide a notice of filing to:
- (a) The appellant;
 - (b) The administrative official or public agency whose decision is the subject of the appeal;
 - (c) The owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if not the appellant;
 - (d) The ANC for the area within which the property is located;
 - (e) The affected Single-Member District ANC Commissioner;
 - (f) The Ward Councilmember for the ward within which the property is located; and
 - (g) Office of Planning and all other appropriate public agencies.
- 500.5 A public hearing shall be held on each appeal. Appeals and applications shall be heard in the order in which they are filed with the Board and appear on the calendar. The hearing date may be advanced or postponed by order of the Board for good cause shown.
- 500.6 All appeals shall be immediately scheduled for hearing consistent with the notice provisions of this subtitle.

501 PARTY AND INTERVENOR STATUS GUIDELINES

- 501.1 In a zoning appeal, the following persons automatically have party status:
- (a) The appellant;

(b) The appellant;

(c) The beneficiary of the decision, shall be the appellee and required to represent the interest of the administrative agency or official whose decision is appealed;

(d) At its option, the person whose administrative decision is the subject of the appeal, may join as the co- appellee;

(e) The owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if different from the appellant; and

(f) The ANC for the area within which the property that is the subject of the appeal is located.

501.2 In a civil infraction appeal, the following persons automatically have party status:

(a) The appellant; and

(b) The District of Columbia Department of Consumer and Regulatory Affairs.

501.3 Any person may move to intervene in an appeal and may become an intervenor thereto if the Board finds that the party has a substantial interest that may not be adequately represented by another party; provided, that the intervention would not unduly broaden the issues or delay the proceedings.

501.4 The Board may order the consolidation of persons seeking intervention, if the interests of the persons are reasonably related.

501.4 In an appeal proceeding before the Board, an intervenor shall be afforded all the procedural rights as all other parties as provided in this subtitle, including the right to receive a copy of any:

(a) Documents filed by any other party in the case at the same time or before the document is filed with the Board; and

(b) Written notice of any decision or order entered in the case.

501.5 In all contested case proceedings before the Board, an intervenor may:

(a) Submit motions and requests to the Board, and respond to any motions or requests submitted to the Board by others;

(b) Present witnesses in support of the intervenor's position;

(c) Cross-examine all other parties and persons testifying in the case;

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~~(d) Submit proposed findings of fact and conclusions of law; and~~

~~(e) 501.5 Exercise all other procedural rights provided in this subtitle.~~

502 REQUESTING INTERVENOR STATUS

502.1 Those persons who do not have automatic party status pursuant to this section, but who wish to participate as an intervenor in a contested case proceeding before the Board, shall file a written request for party status with the Board that meets the following requirements:

- (a) The request shall be filed no later than fourteen (14) days before the date set for hearing;
- (b) At or before the time of filing the request, the person requesting intervenor status shall serve a copy of the request on:
 - (1) All the parties that have automatic party status pursuant to this section; and
 - (2) All parties that have already been granted intervenor status in an earlier proceeding in the case;
- (c) At the time of the filing request, the person requesting intervenor status shall file an affidavit of service to all parties with the Board;
- (d) The person requesting intervenor status and their authorized representatives, if any, shall provide the following information in their initial filing with the Board:
 - (1) An identification of the appeal by number, the appellant's name, and the address of the property that is the subject of the application or appeal;
 - (2) Whether the person will appear to support or oppose the appeal;
 - (3) Name, mailing address, telephone number, facsimile number, and e-mail address;
 - (4) If the party, person requesting intervenor status, or authorized representative is not an individual, the name of the individual who will appear in the proceeding and the individual's mailing address, telephone number, facsimile number, and e-mail address, if different from that required under paragraph (d)(3) of this subsection;
 - (5) If the person requesting intervenor status is not an individual:
 - (i.) Proof that the party requesting intervenor status has authorized the party's participation in the proceeding;
 - (ii.) Proof that the party requesting intervenor status has designated a specific officer, employee, or agent to act on its behalf and bind the party in the proceeding; and

- (iii.) The proof that is referred to in subparagraphs (i.) and (ii.) may consist of a resolution of the party's or person's board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the party or person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board.
- (4) The request shall also contain a written statement setting forth the reasons why the person should be granted intervener status, including reference to the following:
 - (i.) The property owned or occupied by the person requesting intervener status, or in which the person has an interest, that will be affected by the zoning relief requested of the Board;
 - (ii.) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
 - (iii.) The distance between the person's property and the property that is the subject of the appeal;
 - (iv.) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the zoning relief requested of the Board is approved or denied; and
 - (v.) An explanation of how the person's interests as identified in response to subparagraph (4) would likely be more significantly, distinctively, or uniquely affected by the proposed zoning relief than those of other persons in the general public.

502.2 No later than seven (7) days before the hearing, any party may file a response to a request for intervener status. All responses shall be served on the person requesting intervener status and on all other parties at or before the time the response is filed with the Board.

502.3 In considering any request for intervener status, the Board shall grant intervener status only if:

- (a) The person requesting intervener status or agent to represent the party or person in such proceedings, is present at the time of decision; and
- (b) The person requesting intervener status has clearly demonstrated that they have a specific right or interest that will be affected by action on the appeal.

502.4 In granting intervener status, the Board may specify whether the person will be permitted to intervene in the appeal for general or limited purposes.

502.5 The Board may deny any request for intervenor status that fails to meet the requirements specified in Y § 502, or make any other orders with respect to the failure that are fair, including but not limited to prohibiting a person who is granted intervenor status from introducing designated matters in evidence.

502.6 The person requesting intervenor status or agent to represent the party or person in such proceedings, may at any time withdraw their request for intervenor status.

503 ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

503.1 If an Advisory Neighborhood Commission (ANC) wishes to testify or cross-examine witnesses in a case before the Board, the ANC shall file a written report with the Board at least seven (7) days in advance of the public hearing.

503.2 The Board shall give "great weight" to the written report of the ANC, pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, provided that it contains the following:

- (a) The case name and number;
- (b) The date the public meeting of the ANC to consider the appeal occurred;
- (c) A statement that proper notice of that public meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the public meeting;
- (e) The issues and concerns of the ANC about the appeal, as related to the standards against which the application or appeal shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the appeal;
- (g) The outcome of the vote on the motion to adopt the report to the Board;
- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the ANC Chairperson or Vice-Chairperson.

503.3 In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the appellant which later are modified by the appellant, the designated ANC representative may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated ANC representative. The Board may leave the record open to permit the ANC to submit a revised report that meets the requirements of Y § 503.2.

504 NOTICE OF PUBLIC HEARING: ZONING APPEALS

504.1 Not less than forty (40) days before the public hearing, the Director shall provide notice of the public hearing by:

- (a) Publishing the notice in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the appellant;
- (c) Providing a copy of the notice of public hearing to the administrative official or government agency whose decision is the subject of the appeal;
- (d) Providing a copy of the notice of public hearing to the owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if not the appellant;
- (e) Providing a copy of the notice of public hearing to the ANC for the area within which the property is located, and the affected Single-Member District ANC Commissioner;
- (f) Providing a copy of the notice of public hearing to the Ward Councilmember for the ward within which the property is located; and
- (g) Providing a copy of the notice of public hearing to the Office of Planning; and all other appropriate public agencies.
- (h) Providing a copy of the notice of public hearing to the parties to the appeal, including the ANC for the area within which the subject property is located; and
- (i) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

504.2 The notice of a public hearing on a zoning appeal shall include:

- (a) The case number of the zoning appeal;
- (b) The name of the appellant;
- (c) The citation to the legal authority pursuant to which the appeal has been filed;
- (d) The administrative action appealed from;
- (e) The square(s) and lot(s) and/or street address of the property that is the subject of the appeal;
- (f) The location, date, and time of the public hearing;

- (g) The number of the affected ANC(s); and
- (h) The requirements for participation as an intervenor.

504.3 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Board of jurisdiction over the case. If a defect in the notice is alleged and proven, the Board may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:

- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
- (b) Attendance, or lack thereof, at the public hearing; and
- (c) The nature and extent of the construction and/or use involved in the appeal.

505 NOTICE OF PUBLIC HEARING: CIVIL INFRACTION APPEALS

505.1 Not less than forty (40) days before the public hearing, the Director shall provide notice of the public hearing by:

- (a) Publishing the notice in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the appellant;
- (c) Providing a copy of the notice of public hearing to the Administrative Law Judge; and
- (d) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

505.2 The notice of a public hearing on a civil infraction appeal shall include:

- (a) The case number of the civil infraction appeal;
- (b) The name of the appellant;
- (c) The citation to the legal authority pursuant to which the appeal has been filed;
- (d) The administrative action appealed from;
- (e) The square(s) and lot(s) and/or street address of the property that is the subject of the appeal; and
- (f) The location, date, and time of the public hearing.

505.3 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Board of jurisdiction over the case. If a defect in the notice is alleged and proven, the Board may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:

- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
- (b) Attendance or lack thereof at the public hearing; and
- (c) The nature and extent of the construction and/or use involved in the appeal.

506 HEARING PROCEDURES: GENERAL PROVISIONS

506.1 The presiding officer at a public hearing shall have the authority to:

- (a) Call the public hearing to order;
- (b) Consider preliminary matters, including, but not limited to intervenor status requests, motions, and qualifying expert witnesses;
- (c) Conduct the public hearing;
- (d) Rule upon offers of proof and receive relevant evidence;
- ~~(e)~~ Exclude unduly repetitious, immaterial, or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;
- ~~(e)~~(f) take whatever action necessary to maintain decorum and order;
- ~~(f)~~(g) Adjourn a public hearing and establish the date when the public hearing will be continued;
- ~~(g)~~(h) Close the public hearing and record; and
- ~~(h)~~(i) Take any other action authorized by or necessary under this subtitle.

506.2 Except as provided in Y § 506.4, the appellant and all parties (except an ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an ANC) and interveners in opposition shall collectively have an amount of time equal to that of the applicant and parties in support, but in no case, more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition. The Presiding officer may alter the time for presented of the case.

506.3 Individuals shall have a maximum of three (3) minutes and organization representatives shall have a maximum of five (5) minutes to present testimony.

- 506.4 The Board may grant additional or lesser time than that allowed under Y § 506.2 and 506.3 to an appellant, individual, or an organization representative or party, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.
- 506.5 Nothing herein shall prohibit the Board from placing reasonable restrictions on cross-examination, including limitations on the scope of cross-examination, by the appellant or parties/intervenors in support or opposition.
- 506.6 The Board may close the record at the end of a public hearing and, in a bench decision, vote at such time either to grant or deny the appeal. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

507 HEARING PROCEDURES: ZONING APPEALS

507.1 The order for presenting evidence and arguments at the public hearing on a zoning appeal shall be as follows:

- (a) Preliminary and procedural matters;
- (b) Appellant's case;
- (c) The respective cases of the parties or intervenors in support of the appeal, in the following order:
 - (1) The owner, lessee, operator, or contract purchaser of the property involved, if not the appellant;
 - (2) The ANC for the area within which the property is located, if not the appellant; and
 - (3) Any other party permitted to intervene in the proceeding in support of the appeal;
- (d) The ~~administrative official's~~ (~~A~~appellee's) case;
- (e) The respective cases of the parties or intervenors in opposition to the appeal, in the following order:
 - (1) The owner, lessee, operator, or contract purchaser of the property involved;
 - (2) The ANC for the area within which the property is located; and
 - (3) Any other party permitted to intervene in the proceeding in opposition to the appeal;
- (f) Rebuttal evidence from the appellant, followed by rebuttal evidence from the parties in support of the appeal, in the order indicated in subparagraph (b) of this paragraph; and

- (g) Closing arguments, in the order established in subparagraphs (a) through (d) of this paragraph. The appellant shall be entitled to present rebuttal argument to conclude the case.

507.2 In a zoning appeal, parties may appear as witnesses and offer evidence at a hearing.

507.3 In an appeal case, witnesses may be examined or cross-examined by the Board, the appellant, or any party or intervener so determined by the Board under this subtitle.

507.4 The Board may close the record at the end of a public hearing and, in a bench decision, vote at such time either to grant or deny the application. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

507.5 The Board may affirm, set aside any order or decision of the administrative agency or official, or remand the case or any part of the case to the agency or official with direction.

507.6 ATTEMPT TO RESOLVE -Prior to a hearing, the parties and any person or entity seeking intervention, shall conference and in good faith seek to resolve or dispose of the issues. The parties and seeker of intervention shall certify to the Board a conference was held, and in good faith they could not resolve the disputed issues.

~~507.4~~507.7 The Board may remove the case from the hearing docket or deny party status, if the applicant or party status seeker fails to comply with this section.

508 HEARING PROCEDURES: CIVIL INFRACTION APPEALS

508.1 The order of procedure for presenting oral argument at a public hearing on a civil infraction appeal shall be as follows:

- (a) Preliminary and procedural matters;
- (b) Opening oral argument by the appellant;
- (c) Oral argument by any intervener in support of the appeal;
- (d) Oral argument by the appellee, the D.C. Department of Consumer and Regulatory Affairs;
- (e) Oral argument by any intervener in opposition to the appeal; and
- (f) Concluding oral argument by the appellant.

508.2 The Board, in its discretion, may permit the parties to appear before it and present oral argument before the Board in accordance with such limitations as to time of argument or other restrictions as the Board may prescribe.

- 508.3 The Board, acting pursuant to this section, may affirm, modify, vacate, set aside, or reverse any order or decision of an Administrative Law Judge (“ALJ”).
- 508.4 The Board may hold unlawful and set aside any order or decision or findings and conclusions of law of an ALJ that it finds to be as follows:
- (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (b) In excess of statutory authority or authority under this subtitle;
 - (c) Without observance of procedures provided by statute or this subtitle; or
 - (d) Unsupported by a preponderance of the evidence in the record of the hearing.

CHAPTER 6 POST-HEARING PROCEDURES

600 DISPOSITION OF CASE BY WITHDRAWAL OR DISMISSAL

- 600.1 The provisions of this section apply in their entirety to applications and appeals.
- 600.2 An applicant or appellant may withdraw, respectively, an application or appeal at any time prior to the issuance of the Board's written final decision and order, subject to the following conditions:
- (a) The applicant or appellant shall file a written statement with the Board withdrawing the application or appeal;
 - (b) Withdrawal shall not authorize the removal of any document from the files of the Board;
 - (c) The application or appeal fee shall not be refunded upon withdrawal;
 - (d) If an application or appeal is withdrawn before the close of the record, a new application or appeal shall not be accepted for filing for at least ninety (90) days after the date the written statement of withdrawal is filed;
 - (e) If an application or appeal is withdrawn after the close of the record, a new application or appeal shall not be accepted for filing for at least one (1) year after the date the written statement of withdrawal is filed; and
 - (f) The Board will grant permission to file a new application or appeal after a shortened time period only upon motion and for good cause shown, provided the shortened time period will not prejudice the rights of any person.
- 600.3 The Board may dismiss an application or appeal for failure of the applicant or appellant to comply with the procedural requirements of this subtitle, as follows:
- (a) Dismissal shall not authorize the removal of any document or paper from the files of the Board;
 - (b) The application or appeal fee shall not be refunded upon dismissal;
 - (c) If an application or appeal is dismissed before the close of the record, a new application or appeal shall not be accepted for at least ninety (90) days after the date of the written order dismissing the application or appeal;
 - (d) If an application or appeal is dismissed after the close of the record, a new application or appeal shall not be accepted for filing for at least one (1) year after the date of the written order dismissing the application or appeal; and
 - (e) The Board will grant permission to file a new application or appeal after a shortened time period only upon motion and for good cause shown, provided the shortened time period will not prejudice the rights of any person.

Comment [LJ17]: To be fair there should be a prorata amount returned or cost assessed and the balance returned. The courts provide a refund after cost are assessed.

- 600.4 No application or appeal shall be dismissed on the grounds that the applicant or appellant failed to comply with the provisions of this subtitle unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected, except that the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.

601 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 601.1 This section applies to all applications and appeals filed with the Board under this subtitle except chancery applications.
- 601.2 When requested by the Board, the applicant or appellant shall submit proposed findings of fact and conclusions of law to the Office of Zoning within such time as the presiding officer may direct, which in any event shall not be less than seven (7) days after the transcript of the hearing is delivered to the Office of Zoning, pursuant to Y § 104.4.
- 601.3 Parties who choose to submit findings of fact and conclusions of law shall do so in accordance with Y § 601.4.
- 601.4 Each party shall serve any proposed findings of fact and conclusions of law on all other parties at the same time as the proposed findings and conclusions are filed with the Board. The parties shall also file a certificate of service.
- 601.5 Unless the Board specifies otherwise in a proceeding, no responses shall be permitted to a party's proposed findings of fact and conclusions of law.

602 CLOSING THE RECORD

- 602.1 The record shall be closed following the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs or for other information, as may be directed by the presiding officer.
- 602.2 Each party shall serve any specific exhibits, information, or legal briefs on all other parties at the same time as specific exhibits, information, or legal briefs are filed with the Board.
- 602.3 The Board ~~may~~shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing. All responses shall be filed within seven (7) days after the date by which the exhibits, information, or briefs were due, unless otherwise directed by the presiding officer. Replies by other parties to the aforementioned responses will not be accepted into the record.
- 602.4 The Board reserves the right to reopen the record at a public meeting or hearing prior to making a final decision.
- 602.5 The Board may close the record at the end of a public hearing and take action on an application or appeal; or take action at a public meeting. The Board may describe such conditions as the Board desires to have included in its final order.

- 602.6 Any ~~supplemental materials~~ received ~~not in compliance with this Subtitle by the Board after the close of the record that bears upon the substance of the application or appeal~~ shall be returned by the Director and ~~if~~ not accepted into the ~~record by files of~~ the Board. However if the materials are accompanied by a separate request to re-open the record, the request shall be accepted and presented to the Board for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record.
- 602.7 Notice of a further hearing, plus a designation of the issues, shall be forwarded to any person who appeared and participated in the earlier hearings at least ten (10) days prior to the date set for the further hearing

603 EXCLUSIVE RECORD

- 603.1 This section applies to all applications and appeals filed with the Board under this subtitle; provided, however, that Y § 603.3 only applies to chancery applications.
- 603.2 No decision or order of the Board on an application or appeal shall be made except upon the exclusive record of the proceedings before the Board.
- 603.3 The record in a chancery proceeding shall consist of:
- (a) Every written statement, document, or tangible thing filed in the case;
 - (b) Oral testimony offered at the public hearing; and
 - (c) The Foreign Missions Act, the Zoning Act, and the Zoning Regulations (including appendices and the official Zoning Maps), which shall be a part of the record of every chancery proceeding before the Board.

604 FINAL DECISION AND EFFECTIVE DATE OF DECISIONS

- 604.1 The provisions of this section apply as follows:
- (a) This section applies in its entirety to all variance and special exception applications and all appeals; and
 - (b) Except for the provisions of Y § 604.3 through 604.8 and 604.13, this section shall not applies to chancery proceedings.
- 604.2 The concurring vote of at least a full majority of the members of the Board is necessary for any decision.
- 604.3 A vote on a chancery application by the Board shall be either to not disapprove or disapprove the application.
- 604.4 A final determination on a chancery application shall be made not later than six (6) months after the filing of the application.

- 604.5 Unless a summary order is authorized by the Board, a final order on an application shall be in writing and accompanied by findings of fact and conclusions of law, which shall be filed in the record. The prevailing party in any application or appeal may file a proposed order or a revision to a previously filed proposed order after a vote to approve or deny is taken. No response to the proposed order may be submitted by any other party.
- 604.6 Formal notice of an order shall be given to any party to the application, by serving the party with a copy of the final order and the accompanying findings of fact and conclusions of law.
- 604.7 A copy of the final order and the accompanying findings of fact and conclusions of law shall be served on the Ward Councilmember representing the ward within which the property is located and any ANC that submitted a written report in accordance with Y § 406.
- 604.8 For purposes of this subtitle, a final order shall become final upon its filing in the record, ~~and service upon the parties.~~
- 604.9 When the Board limits its approval of a special exception to a term of years, the length of that term begins on the date upon which the order became final.
- 604.10 Approval of an application shall include approval of the plans submitted with the 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.
- 604.11 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.
- 604.12 No order of the Board shall take effect until ten (10) days after it becomes final pursuant to Y § 604.9.
- 604.13 For a chancery application, a decision of the Board is final upon publication in the D.C. Register. The decision shall become effective ten (10) days after having become final.
- 604.14 An applicant or appellant whose application has been denied shall not institute a new application or appeal on the same facts within one (1) year after the date of the order upon the previous appeal or application, unless waived by the Board for good cause shown and proof of no prejudice to the parties or interveners.
- 604.15 The Director or the Chairperson of the Board is authorized to sign a final order that has been approved by a majority of the Board.

Comment [LJ18]: This is ambiguous. What if service is not obtained, would the order not be final?

CHAPTER 7 APPROVALS AND ORDERS

700 RECONSIDERATION OF FINAL ORDER; REHEARING AFTER FINAL ORDER

- 700.1 The provisions of this section apply as follows:
- (a) This section applies in its entirety to variance and special exception applications, ~~and zoning appeals.~~
 - ~~(b) The provisions of this section relating to reconsideration apply to~~ civil infraction appeals; and
 - ~~(c)~~ (b) This section does not apply to chancery proceedings.
- 700.2 Any party may make a motion to request that the Board reconsider a final order, based on the existing exclusive record, if the order contains errors of fact or law, except that a party shall not present arguments substantially identical to those already considered and rejected by the Board.
- 700.3 Any party in a zoning appeal or a variance or special exception proceeding may make a motion to request that the Board re-open the record and rehear the application or appeal, in whole or in part, to permit the party to present newly discovered evidence which, by due diligence, could not have been reasonably presented to the Board prior to the issuance of the Board's final order.
- 700.4 The Board shall not accept for filing nor consider any motion for reconsideration or rehearing that is filed prior to the issuance of the final order pursuant to Y § 604.8.
- 700.5 A motion for reconsideration, rehearing, or re-argument shall be filed on a form and in a manner as may be designated from time-to-time by the Office of Zoning.
- 700.6 A motion for reconsideration or rehearing shall be filed within ten (10) days from the date of issuance of a final order, and shall be served on all other parties to the proceeding at or before the time the motion is filed with the Board.
- 700.7 A motion for reconsideration shall state specifically:
- (a) All respects in which the final order is claimed to be erroneous; and
 - (b) The relief sought.
- 700.8 A motion for rehearing shall state specifically:
- (a) The newly discovered evidence;

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- (b) The reason the newly discovered evidence could not have been reasonably presented to the Board prior to the issuance of the Board's final order; and
- (c) The relief sought.

700.9 Within ten (10) days after a motion for reconsideration or rehearing has been filed and served, any other party may file a written response in support of or opposition to the motion. The response shall be served on all other parties to the proceeding at or before the time the response is filed with the Board. Replies by other parties to the aforementioned answers will not be accepted into the record.

700.10 The Board, on its own motion, may decide to reconsider or rehear a case, no later than ten (10) days after the filing of the final order in the case record.

700.11 If a rehearing is granted, the Board shall give notice of the rehearing, together with a designation of the issues to be addressed, in accordance with the procedures specified for providing public notice in the original public hearing.

700.12 Unless the Board orders otherwise pursuant to Y § 701.2, neither the filing nor granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision.

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

701 STAY OF FINAL DECISION AND ORDER

701.1 The provisions of this section apply as follows:

- (a) This section applies in its entirety to zoning appeals and variance and special exception applications;
- (b) Except with respect to a stay pending rehearing, the provisions of this section apply to civil infraction appeals; and
- (c) This section shall not apply to chancery proceedings.

701.2 The Board, on its own motion or the motion of a party, may order the effectiveness of a final decision and order of the Board stayed pending reconsideration or rehearing, *sua sponte* review by the Zoning Commission (Commission), or appeal of the decision and order to a court of competent jurisdiction.

701.3 Except as provided in Y § 701.4, the Board shall grant a stay only upon finding that all four of the following criteria are present:

- (a) The party seeking the stay (or, in the case of a stay to be issued on the Board's own motion, the party in whose favor the stay would be ordered) is likely to prevail on the merits of the motion for reconsideration or rehearing, the ~~nostra~~ *sua sponte* review, or the appeal;

Comment [LJ19]: wSua sponte means- a single judge or I on my own and nostra sponta means used by multi-judge panel or we on our own.

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- (b) Irreparable injury will result if the stay is denied;
- (c) Opposing parties will not be materially harmed by a stay; and
- (d) The public interest favors the granting of the stay.

701.4 Where the criteria in paragraphs (b) through (d) of Y § 701.3 strongly favor the granting of a stay, the Board may grant a stay upon finding that the party requesting the stay (or, in the case of a stay to be issued on the Board's own motion, the party in whose favor the stay would be ordered) has:

- (a) Raised serious questions going to the merits of its claim; and
- (b) Presented fair grounds for more deliberative investigation by the Board, in the case of a motion for reconsideration or rehearing, by the Commission in the case of *sua sponte* review, or by the court, in the case of an appeal.

701.5 In the event of a *nostrasua* *sponte* review by the Commission of the final decision and order of the Board, a motion to stay the effectiveness of the decision and order, whether by a party or the Board, shall ordinarily be determined in the first instance by the Board. The Commission may, on its own motion, order the effectiveness of the decision and order of the Board stayed pending the Commission's *sua sponte* review proceedings. As *nostrasua* *sponte* review is a discretionary internal process, the Commission shall not entertain a motion for stay from a party.

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702 VALIDITY OF APPROVALS AND IMPLEMENTATION

- 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 year (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 structure is approved, a building permit application must be filed for all such structures within this two (2) year period.
- 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.
- 702.3 In the event an appeal is filed in a court of competent jurisdiction from an order of the Board, all time limitations of Y § 702.1 and 702.2 shall commence to run from the decision date of the court's final determination of the appeal. Unless stayed by the Board or a court of competent jurisdiction, an applicant may proceed pursuant to the order of the Board prior to the court's final determination.
- 702.4 The filing of a request to modify plans or any other aspect of a Board order pursuant to Y § 705 shall not toll the time periods in Y § 702.1 and 702.2 and an order granting a modification shall not extend those time periods.

- 702.5 A structure erected pursuant to an area variance shall be deemed a conforming structure but any expansion that does not conform to the use and structure requirements of the Zoning Regulations shall require additional variance relief.
- 702.6 Expansion of a use authorized by a variance shall require the grant of another use variance.
- 702.7 Following approval of an application by the Board, the applicant may file an application for a building permit or certificate of occupancy with the proper authorities of the District of Columbia.
- 702.8 The Zoning Administrator shall not approve a permit application for zoning compliance unless the plans conform to the plans approved by the Board as those plans may have been modified by any guidelines, conditions, or standards that the Board may have applied, subject to the minor deviations permitted by Y §703.
- 702.9 The Zoning Administrator also shall not approve an application for a certificate of occupancy unless the requested use is identical to the use approved by the Board or is for a use permitted as a matter of right.

703 ZONING ADMINISTRATOR FLEXIBILITY

- 703.1 The following deviations are permitted pursuant to § 703.1, but are not in addition to any minor modifications allowed pursuant to § 703.3:
- (a) Deviations not to exceed two percent (2%) of the area requirements governing minimum lot area, lot occupancy, and areas of courtyards and roof structures;
 - (b) Deviations not to exceed the greater of two percent (2%) or twelve inches (12 in.) of the linear requirements governing minimum lot width; and
 - (c) Deviations not to exceed the greater of ten percent (10%) or twelve inches (12 in.) of the linear requirements governing minimum rear setback, side setback, courtyard dimensions, and roof structure setback requirements, provided that all deviations of roof structure setback requirements comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & Supp. 1999))).
- 703.2 The Zoning Administrator, when reviewing applications for building permits, is authorized to permit the minor modifications listed in Y § 703.3 to plans approved in a Board order granting an application, provided that the Zoning Administrator determines that the proposed modification is consistent with the intent of the Board in approving the application.
- 703.3 The following minor modifications to approved plans are permitted:

- (a) Deviations not to exceed two percent (2%) in the height, percentage of lot occupancy, or gross floor area of any building that is the direct result from structural or building code requirements;
- (b) Deviations not to exceed two percent (2%) in the number of residential units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses within the approved square footage;
- (c) Deviations not to exceed two percent (2%) in the number of parking or loading spaces; and
- (d) The relocation of any building within five feet (5 ft.) of its approved location, for reasons of unforeseen subsoil conditions or adverse topography.

703.4 Following approval of any minor modifications under Y § 703.3, the Zoning Administrator shall report to the Board, as applicable, the modification approved under this section.

703.5 No building permit that requires the approval of a minor modification may be issued during a thirty (30) day period that begins on the date of a report made pursuant to Y § 703.4 unless the Board advises the Zoning Administrator that it concurs that the modification is minor.

703.6 If at any time during the thirty (30) day period the Board finds that the modification should not have been granted, the Zoning Administrator may not approve the building permit application, but shall advise the applicant that it must seek a modification pursuant to Y § 705.

703.7 Any requested modifications that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Board.

704 CONSENT CALENDAR – MINOR MODIFICATION AND TECHNICAL CORRECTIONS TO ORDERS

704.1 This section applies to all applications and appeals filed with the Board under this subtitle; provided, however, this section does not apply to chancery applications.

704.2 The procedure shall allow the Board, in the interest of efficiency, to make, without public hearing, minor modifications and technical corrections to previously approved final orders.

704.3 For purposes of this section, minor modifications shall mean modifications that do not change the material facts upon which the Board based its original approval of the application.

704.4 A request for minor modification of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application.

704.5 Any party to a previously filed case in which an order has been issued, may make a motion in writing to have a matter placed on the Consent Calendar.

- 704.6 An application for minor modification approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish eleven (11) copies of all information required by the form at the time of filing the application, including the following:
- (a) A completed application form;
 - (b) The nature of, reason(s), and grounds for the minor modification or technical correction; and
 - (c) A copy of any Board final order proposed to be modified or corrected.
- 704.7 The Board, upon its own motion, may request that a matter be placed on the Consent Calendar.
- 704.8 All written requests shall be served by the moving party on all parties in the original proceeding at the same time that the request is filed at the Office of Zoning.
- 704.9 Within ten (10) days after a request to put a matter on the Consent Calendar has been filed and served, any other party may file a response in opposition to or in support of the request. The responding party shall serve all other parties at the time that the response is filed with the Office of Zoning.
- 704.10 A decision on a request for minor modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- 704.11 Any member of the Board may remove any item from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or that is removed from the Consent Calendar shall be acted upon by the Board according to the applicable procedures contained in other sections of this subtitle.
- 704.12 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.
- 704.13 A request to modify other aspects of a Board order may be made at any time, but shall require a hearing.

705 MODIFICATION OF PLANS AND ORDERS

- 705.1 This section applies to all applications filed with the Board under this subtitle; provided, however, this section does not apply to chancery applications.
- 705.2 A modification to an approved application or issued order may be requested subject to the conditions of this section.
- 705.3 Modifications shall be considered as one of the following:
- (a) A minor modification, as defined in Y § 704.3:

- (b) A modification of little or no consequence, which is a proposed change to an approved element that was not a consideration of or of significance to the Board in deciding the case;
- (c) A modification of consequence, which is a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board; and
- (d) A significant modification, which includes any other proposed modification.

705.4 The Board shall determine the proposed modification as one of the following:

- (a) A technical correction or modification of little or no consequence, which may be acted upon as a consent item with no public hearing;
- (b) A modification of consequence, which the Board may consider at a meeting with no additional public hearing; or
- (c) A significant modification, which requires additional public hearing(s).

705.5 A public hearing on a request for a modification of consequence or significant modification shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification.

706 TIME EXTENSIONS TO RELIEF GRANTED

706.1 The Board may extend the time periods in Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

706.2 A time extension granted pursuant to Y § 706.1 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

706.3 The Board's decision on the request shall be in writing and shall become final and effective upon its filing in the record and service upon the parties.

706.4 A request for a time extension shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

706.5 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order unless and until a decision granting the request becomes final and effective pursuant to Y § 604.8.

707 EXPIRATION

707.1 If a special exception use or use variance is established, the use will only expire if:

- (a) An expiration date is specified in the order;
- (b) The special exception use or use variance is discontinued for any reason for any period of three (3) or more years occurring after October 8, 2010; except where governmental action impedes access to the premises; or
- (c) Either of the following occurs after the effective date of the order granting the variance:
 - (1) A certificate of occupancy for a different use is issued; or
 - (2) A residential use for which no certificate of occupancy is required is established.

707.2 If a special exception use or use variance expires, any subsequent use shall conform to the regulations of the district in which the use is located.

707.3 Notwithstanding Y § 707.1(b), a special exception use or use variance shall not expire if there is objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.

707.4 An area variance shall expire if the structure erected or expanded pursuant to the variance is replaced by a structure that conforms to the structure requirements of the Zoning Regulations.

CHAPTER 8 SPECIAL EXCEPTIONS

800 GENERAL PROVISIONS

- 800.1 Except for those special exceptions heard by the Zoning Commission pursuant to Z § 802.3, special exception cases shall be heard by the Board and follow the procedures this subtitle.
- 800.2 The Board is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board, the requested special exception meets the standards of Y § 801 and any specific conditions specified in this title.
- 800.3 In the case of a use that was originally permitted and lawfully established as a matter of right and for which the Zoning Regulations now require special exception approval from the Board, any extension or enlargement of that use shall require special exception approval from the Board.
- 800.4 In determining whether to approve any extension or enlargement under Y § 800.3, the Board shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.

801 SPECIAL EXCEPTION REVIEW STANDARDS

- 801.1 The Board will evaluate and either approve or deny a special exception application according to the standards of this section.
- 801.2 The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions:
- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
 - (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
 - (c) Subject in specific cases to the special conditions specified in this title.
- 801.3 The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.
- 801.4 The Board may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.

- 801.5 The Board may impose a term limit on a special exception use when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate, but shall consider the reasonable impacts and expectations of the applicant in doing so.

BZA Comment

CHAPTER 9 VARIANCES

900 GENERAL PROVISIONS

- 900.1 With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."
- 900.2 Only the owner of the property for which a variance is sought, or an agent authorized by the property owner, may apply for variance relief.
- 900.3 Except for those variances heard by the Zoning Commission as part of any discretionary review process, variance cases are heard by the Board and follow the procedures of Chapter 9 of this subtitle.

901 VARIANCE TYPES

- 901.1 Variances are classified as area variances or use variances.
- 901.2 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.
- 901.3 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size, location, and placement of buildings and other structures such as height, floor area ratio, lot occupancy, setback width and depth, and minimum courtyard size;
 - (b) Minimum parking or loading requirements to an extent greater than what may be permitted by special exception;
 - (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential use;
 - (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in D § 1610; E § 1104; F §903; and G § 1503;
 - (e) The prohibition against certain enlargements and additions to nonconforming structures as stated at C § 302.2; and

- (f) Preconditions to the establishment of a matter of right use including, but not limited to, the minimum land area requirement of E § 600.3 applicable to the conversion of a building an apartment house as permitted by E § 600.1, provided that the waiver would not cause the proposed use to meet the definition of a more intense use.

901.4 A use variance is a request to permit:

- (a) A use that is not permitted by right or special exception in the zone district where the property is located;
- (b) A use that is expressly prohibited in the zone district where the property is located; or
- (c) An expansion of a nonconforming use prohibited by C § 304.1.

902 VARIANCE REVIEW STANDARDS

902.1 The standard for granting a variance, as stated in § 900.1 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 900.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and
- (b) An applicant for a use variance must prove that as a result of the attributes of a specific piece of property described in § 900.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

902.2 The applicant for a variance shall have burden of proof to justify the granting of the application according to these standards and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.

CHAPTER 10 CHANCERY APPLICATIONS

1000 GENERAL PROVISIONS

1000.1 The Board of Zoning Adjustment shall review chancery applications subject to the provisions of Subtitle X, Chapter 2.

BZA Comment

CHAPTER 11 ZONING APPEALS

1100 INTRODUCTION TO THE ZONING APPEALS PROCESS

- 1100.1 This chapter provides regulations and instructions for the zoning appeals process.
- 1100.2 The Board shall hear and decide zoning appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator or any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations.
- 1100.3 The Board has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map.
- 1100.4 Zoning appeals cases are heard by the Board and follow the procedures of Chapter 11 of this subtitle.
- 1100.5 The zoning appeals governed by this chapter do not involve appeals of orders issued by Administrative Law Judges involving infractions of *the Height Act* or *the Zoning Regulations*, which are governed by chapter 12 of this subtitle.

1101 ZONING APPEAL PROCEDURES

- 1101.1 In exercising its zoning appeal powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.
- 1101.2 The appellant shall have the burden of proof to justify the granting of the appeal. If no evidence is presented in opposition to the case, the appellant shall not be relieved of this responsibility.

CHAPTER 12 CIVIL INFRACTION APPEALS

1200 INTRODUCTION TO THE CIVIL INFRACTION APPEALS PROCESS

- 1200.1 This chapter provides regulations for the civil infraction appeals process.
- 1200.2 The Board shall entertain and decide civil infraction appeals timely filed by persons aggrieved by orders issued by Administrative Law Judges (“ALJ”) pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6–42; D.C. Official Code, §. 6–2701 *et seq.*) (“Civil Infractions Act”) involving infractions of the *Height Act* or of the Zoning Regulations.
- 1200.3 Civil infraction cases are decided by the Board and follow the applicable procedures of Chapter 12 of this subtitle.

1201 CIVIL INFRACTION APPEAL PROCEDURES

- 1201.1 In exercising its civil infraction appeal powers the Board shall, in conformity with the Civil Infractions Act, make a determination of each appeal on the basis of the record established before the ALJ.
- 1201.2 The Board shall set aside any ALJ’s order that is without observance of procedure required by law or regulations, including any applicable procedure required by Titles I and II of the Civil Infractions Act, D.C. Official Code §§ 2-1801.01 to 2-1802.05, or any administrative law judge or attorney examiner order that is unsupported by a preponderance of the evidence on the record.
- 1201.3 The Board shall apply the rule of harmless error, and shall have the power to affirm, reverse, or modify the order of the ALJ.
- 1201.4 The Board may remand a case for further proceedings before the ALJ.
- 1201.5 The Board shall not modify a monetary sanction imposed by an ALJ if that sanction is within the limits established by law or regulation.

CHAPTER 13	RESERVED
CHAPTER 14	RESERVED
CHAPTER 15	RESERVED
CHAPTER 16	RESERVED
CHAPTER 17	RESERVED
CHAPTER 18	RESERVED
CHAPTER 19	RESERVED

CHAPTER 20 FEES

2000 HEARING FEES

(note: all zone categories to be verified prior to final action)

2000.1 Except as provided in Y § 2000.2 and 2000.3, at the time of filing an appeal or application with the Board, the appellant or applicant shall pay a filing fee in accordance with the following schedule:

- (a) For an application for a variance, _____dollars (\$_____) for each provision of the Zoning Regulations from which a variance is requested;
- (b) For an application for a special exception:
 - (1) For a parking lot, parking garage, or accessory parking, _____dollars (\$_____) for each parking space;
 - (2) For a child development center or private school, _____dollars (\$_____) for each full-time or part-time student based on the maximum capacity requested, with a maximum of _____dollars (\$_____);
 - (3) For a residential use in the A-1 or A-6 (R-5-A) Zone Districts under § ___, _____dollars (\$_____) for each dwelling unit;
 - (4) For a community-based institutional facility, _____dollars (\$_____) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of _____dollars (\$_____);
 - (5) For an office use in the M-1, M-2, M-16, M-17, or M-24 (SP) Zone Districts, _____dollars (\$_____) for each one hundred square feet (100 sq. ft.) or part thereof of gross floor area;
 - (6) For roof structures under § ___, _____dollars (\$_____);
 - (7) For a hotel or inn in the M-1, M-2, M-16, M-17, or M-24 (SP) Zone Districts, _____dollars (\$_____) for each sleeping room or suite;
 - (8) For a gasoline service station, _____dollars (\$_____);
 - (9) For a repair garage, _____dollars (\$_____);
 - (10) For a home occupation under § ___, _____dollars (\$_____);

- (11) For an accessory apartment under § ____, _____dollars (\$_____);
- (12) For a theoretical lot under § ____, _____dollars (\$_____) for the first lot and _____dollars (\$_____)for each lot thereafter;
- (13) For an intermediate materials recycling facility under § ____, _____dollars (\$_____);
- (14) For an antenna under § ____, _____dollars (\$_____); and
- (15) For any other special exception not listed in this section, _____dollars (\$_____);
- (c) For an application for permission to locate, replace, or expand a chancery in an A-4, A-10, D-1-A-2, A-5, A-11, D-2-B-1, M-1, M-2, M-16, M-17, or M-24 (R-5-D, R-5-E, SP) Zone Districts-, or to reconstruct an existing chancery that is destroyed in an R-1 – R-20, RF-1 – RF-5, A-1 – A-3, or A-6 – A-9 (R-1, R-2, R-3, R-4, R-5-A, R-5-B, or R-5-C) Zone District, _____dollars (\$_____) for each one hundred square feet (100 s.f.) or part thereof of gross floor area;
- (d) For an application involving one owner-occupied, dwelling or flat, regardless of the number of variances, special exceptions, or alternatives requested, _____dollars (\$_____);
- (e) For an appeal of any decision of the Zoning Administrator or other administrative officer, _____dollars (\$_____), except that the following appellants shall not be required to pay a filing fee:
 - (1) A department, office, or agency of the Government of the District of Columbia, including an Advisory Neighborhood Commission (ANC);
 - (2) The National Capital Planning Commission; and
 - (3) A citizens' association or association created for civic purposes that is not for profit; and
- (f) For a time extension, a minor modification of plans or a modification of conditions of an order of the Board for an owner-occupied dwelling or flat, _____dollars (\$_____); for all other applicants, _____ percent (____%) of the original filing fee.

2000.2 In the case of an application combining two (2) or more actions described in Y § 2000.1(a) and 2000.1(b), or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately.

- 2000.3 A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee for a special exception or variance where the property is owned by the District of Columbia or that agency or is under one or both of their jurisdictions and the property is to be occupied for a government building or use.

SCHEDULE OF MISCELLANEOUS FEES

Case Type	Unit	Fee	Maximum
Variance (Owner-Occupied Dwelling)			
Variance (All other)	Per section		
Parking lot, parking garage, or accessory parking	Per space		
Child development center or private school	Per student		
Residential use under § ____	Per dwelling unit		
Community-based residential facility	Per person		
Office use in the SP Zone District	Per 100 s.f.		
Roof structures under § ____			
Hotel or inn in the SP Zone District	Per room or suite		
Gasoline service station			
Repair garage			
Home occupation under § ____			
Accessory apartment under § ____			
Theoretical lot under § ____			
Additional Theoretical lot under § ____			
Recycling facility under § ____			
Antenna under § ____			
Any other special exception			
Chancery	Per 100 s.f.		
Special Exception (Owner-Occupied Dwelling)			
Appeal			
Time Extension/Minor Modification (owner occupied)			
Time Extension/Minor Modification (all other applicants)	% of original fee		

2001 MISCELLANEOUS FEES

- 2001.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as follows:
- (a) The fee for providing a zoning certification is fifty dollars (\$50);
 - (b) The fee for photocopying is twenty cents (.20¢) per page;
 - (c) The fee for providing certification of an exhibit from a case record shall be fifteen dollars (\$15) for each exhibit certified; and
 - (d) The fee for retrieving Office of Zoning records located off-site is thirty-two dollars (\$32) per each request for retrieval of up to five (5) case files. This fee will be waived when the records are sought for noncommercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by a representative of the news media. The Office of Zoning may not require advance payment of the fee unless the requester has previously failed to pay fees in a timely fashion.

SCHEDULE OF MISCELLANEOUS FEES

Service	Fee
Zoning Certification	\$50.00
Photocopying	\$0.20
Certification of Exhibit	\$15.00
Retrieval of Records (located off-site)	\$32.00

2002 ADMINISTRATION OF FEES

- 2002.1 The Director shall be responsible for administering, interpreting, and applying the terms of the fee schedule in Y § 2000.1 and 2001.1.
- 2002.2 All fees shall be paid by check or money order made payable to the D.C. Treasurer, or by credit card where indicated by the Office of Zoning.
- 2002.3 The Director shall conduct a review of the fee structure triennially and make recommendations for changes to the Zoning Commission.
- 2002.4 Any decision of the Director regarding the application of the fee schedule may be appealed to the Board by the appellant or applicant. The fee appeal shall be in writing and set forth specifically the error allegedly committed by the Director, the grounds for the appeal, and

the relief requested. The Board shall decide the fee appeal at a meeting or hearing as a preliminary matter to considering the fee application or appeal.

- 2002.5 Once a filing fee has been submitted, it will not be refunded except that the Board may authorize the refund of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Administrator.

BZA Comment