

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF PLANNING



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Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM:  Jennifer Steingasser, Deputy Director

DATE: December 22, 2008

SUBJECT: Zoning Commission Case No. 09-01
**Time Extensions for Board of Zoning Adjustment Orders
Setdown Report and Prehearing Statement**

PETITION

The Office of Planning requests the Zoning Commission amend §§ 3129 and 3130 of Title 11 DCMR and include new provisions, §§ 3129.7, 3129.8, 3130.6 and 3130.7. OP has recently received feedback from applicants with approved Board of Zoning Adjustment (BZA, or "the Board") orders concerning delays in project financing and construction due to the current economic climate, leading to BZA orders expiring before a project is able to proceed to permit. Therefore, the proposal is intended to extend the time period of issued Board orders for good cause, given the current economic circumstances.

This report also serves as a pre-hearing statement.

RECOMMENDATION

The Office of Planning recommends that this case be **set down** for a public hearing.

PROPOSED TEXT AMENDMENTS

The Office of Planning recommends the following amendments to chapter 31 of Title 11 DCMR:

11 3130 TIME LIMITS ON BOARD ACTION

Amend

3130.1 No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Facility, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, **except as permitted in §§ 3130.6.**

ZONING COMMISSION
District of Columbia
CASE NO. 09-01
EXHIBIT NO. 1

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ADD

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 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.**
- (d) No extension granted by the Board shall be valid for a period longer than the original approval.**

OP also recommends the following amendments to Section 3129 to reflect consistency, with two new provisions § 3129.7 and § 3129.8 added for procedural clarity. Section 3129 is proposed to be amended as follows:

11-3129. MODIFICATION OF APPROVED PLANS.

3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.

3129.2 The Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3231.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now

requested.

3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **(2) two years** after the date of the final order approving the application.

3129.4 All requests for **minor** modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.

3129.5 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.

~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~

~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~

3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon its approving the application.

3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.

3129.8 The scope of a hearing conducted pursuant to § 3129.8 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.

OP recommends the petition be setdown for public hearing.

JLS/kt
Karen Thomas, Project Manager