



401 9th Street, NW
North Lobby, Suite 500
Washington, DC 20004
Tel 202 482-7200
Fax 202 482-7272
www.ncpc.gov

Commission Members

Presidential Appointees

John V. Cogbill, III, Chairman
Herbert F. Ames
John M. Hart

Mayoral Appointees

Arrington Dixon
Stacie S. Turner

Ex Officio Members

Secretary of Defense
The Honorable Robert M. Gates

Secretary of the Interior
The Honorable Ken Salazar

Acting Administrator
General Services Administration
The Honorable Paul F. Prouty

Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
The Honorable Joseph I. Lieberman

Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
The Honorable Edolphus Towns

Mayor
District of Columbia
The Honorable Adrian M. Fenty

Chairman
Council of the District of Columbia
The Honorable Vincent C. Gray

Executive Director
Marcel C. Acosta

IN REPLY REFER TO:
NCPC File No. Z.C. 09-01

MAY 12 2009

Zoning Commission of the
District of Columbia
2nd Floor, Suite 210
441 4th Street, NW
Washington, D.C. 20001

Members of the Commission:

Pursuant to delegations of authority adopted by the Commission on August 6, 1999, I found that the proposed text amendment to the District of Columbia Zoning Regulations to allow time extensions and minor modifications to Board of Zoning Adjustment orders is not inconsistent with the Comprehensive Plan for the National Capital nor would it adversely affect any other identified federal interests. A copy of the Delegated Action of the Executive Director is enclosed.

Sincerely,

Marcel C. Acosta
Executive Director

Enclosure

cc: Harriet Tregoning, Director, D.C. Office of Planning
Anthony Hood, Chairman, Zoning Commission

2009 MAY 15 PM 4:44
D.C. OFFICE OF ZONING

ZONING COMMISSION
District of Columbia

CASE NO. 09-01
EXHIBIT NO. 13

ZONING COMMISSION
District of Columbia
CASE NO. 09-01
EXHIBIT NO. 13



**TEXT AMENDMENT TO ALLOW TIME EXTENSIONS AND MINOR
MODIFICATIONS TO BOARD OF ZONING ADJUSTMENT ORDERS**

Submitted by the Zoning Commission of the District of Columbia

Delegated Action of the Executive Director

APR 30 2009

Pursuant to delegations of authority adopted by the Commission on August 6, 1999, 40 U.S.C. §8724(a), and DC Code §2-1006(a), I find that the proposed text amendment to the District of Columbia Zoning Regulations to allow time extensions and minor modifications to Board of Zoning Adjustment (BZA) orders is not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

* * *

The Zoning Commission of the District of Columbia has taken a proposed action to approve a text amendment to Sections 3129 and 3130 of the District of Columbia Zoning Regulations to allow time extensions and minor modifications to BZA orders.

The District of Columbia Office of Planning (DCOP) has petitioned the Zoning Commission to amend §§ 3129 and 3130 of 11 DCMR and include new provisions §§ 3129.7, 3129.8, 3130.6, 3130.7, 3130.8, 3130.9, and 3130.10. DCOP has recently received feedback from applicants with approved BZA orders concerning delays in project financing and construction due to the current economic climate. These delays are creating situations where BZA orders are expiring before projects are able to proceed to permit. Currently, all orders of the BZA have a valid time period of two years, or one year for an Electronic Equipment Facility, unless within such time period the applicant submits plans for purposes of securing a building permit. The proposed text amendments are intended to provide clarity to the Board's authority to grant an extension of the valid time period of an order for good cause shown and without prejudice to any party. The Board is authorized to grant an extension without holding an additional hearing so long as there is no substantial change to any of the material facts upon which the Board based its original approval.

The proposed text amendment to the Zoning Regulations is as follows with old text marked through and **new text shown in bold and underlined**:

Amend Section 3129, MODIFICATION OF APPROVED PLANS, to read as follows:

- 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 in its approving the application. upon which the Board based its original approval of 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 § 3129.7 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.**

Amend Section 3130, TIME LIMITS ON BOARD ACTION, to read as follows

- 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.**

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.

3130.7 A time extension granted pursuant to §3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

3130.8 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.

3130.9 A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

3130.10 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 § 3130.8

Amend § 3180.1, SCHEDULE OF FEES to read as follows:

- (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 one-family dwelling, or flat, one hundred dollars (\$100); for all other applicants, twenty percent (20%) of the original filing fee.

The proposed text amendment is not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

A handwritten signature in black ink, appearing to read 'M. Acosta', is written over a horizontal line.

Marcel C. Acosta
Executive Director