

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin ^{S3}
Secretary to the Zoning Commission
Date: June 2, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on June 5, 2009:

1. Z.C. Notice of Final Rulemaking & Order No. 09-01 (09-01).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 09-01
EXHIBIT NO. 14

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES
☒ FINAL RULES ☐ PROPOSED RULES ☐ COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 202-727-0340

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

TITLE AND DESCRIPTION OF RULES:

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections 3129, 3130 and 3180.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 56 DCR 2736 DATE: April 10, 2009

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799 D.C. Official Code § 6-641.07) (c)).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: _____ SIGNED: _____ PHONE: _____

☐ FINAL	☐ CONDITIONAL	NAME: _____	TITLE: _____
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PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title: _____

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799 D.C. Official Code § 6-641.07) (c)).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL 5-11-09	APPROVAL OF ATTEST: <i>Sharon S. Schellin</i> Secretary to the Zoning Commission
DATE OF VOTE: _____	TITLE: Commission
Office of Documents use only: THIS NOTICE PUBLISHED AT: _____	PHONE: (202) 727-0340 DATE: _____

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 09-01
ZC Case No. 09-01
(Procedural Rule Amendment – 11 DCMR)
(Requests to Extend the Validity of or to Modify Board of Zoning Adjustment Orders)
May 11, 2009

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07) (c) having held a public hearing as required by that provisions, hereby gives notice of adoption of the following amendments to §§ 3129, 3130, and 3180 of the Board of Zoning Adjustment Rules of Practice and Procedure as codified in Title 11 of the District of Columbia Municipal Regulations.

Section 3129 currently authorizes the Board of Zoning Adjustment (“BZA”) to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The amendment to that provision makes the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs. The proposed amendment to § 3130 codifies the Board’s inherent authority to grant a time extension to allow more time to file such plans and establishes the standards to be utilized. The amendment to § 3180 sets the filing fee for time extension requests.

Notice of Proposed Rulemaking was published in the *D.C. Register* on April 10, 2009 at 56 *DCR* 2736, and the text referred to the National Capital Planning Commission for comment. The Commission adopted the amendments at a public meeting held on May 11, 2009; making no changes to the proposed text.

This final rulemaking is effective upon publication in the *D.C. Register*.

Title 11 DCMR, Chapter 31, THE BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~strike through~~ text:

1. By amending § 3129, MODIFICATION OF APPROVED PLANS, to read as follows:

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 3125.8. 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~~ two (2) 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 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.

2. By amending § 3130, TIME LIMITS ON BOARD ACTION, as follows:

(a) By amending § 3130.1 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 Equipment 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.

(b) By adding new §§ 3130.6 through 3130.10 to read as follows:

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.

3. By amending § 3180, SCHEDULE OF FEES, paragraph 3180.1 (f), 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.

On March 30, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries and William W. Keating, III, not present, not voting).

On May 11, 2009, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Gregory N. Jeffries and William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on June 5, 2009.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 09-01
ZC Case No. 09-01
(Procedural Rule Amendment – 11 DCMR)
(Requests to Extend the Validity of or to Modify Board of Zoning Adjustment Orders)
May 11, 2009**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.