

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin *SS*
Secretary to the Zoning Commission
Date: February 3, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on February 6, 2009:

1. Z.C. Notice of Public Hearing (Case No. 09-01).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 09-01
EXHIBIT NO. 2

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ZONING COMMISSION
District of Columbia
CASE NO.09-01
EXHIBIT NO.2

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, March 30, 2009 @ 6:30 P.M.**
 Office of Zoning Hearing Room
 441 4th Street, N.W. Suite 220-S
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 09-01 (Text amendments to permit time extensions for Board of Zoning Adjustment Orders and to clarify procedures for modification of approved plans)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning (“OP”), in a report dated December 22, 2008, petitioned the Zoning Commission for a text amendment to 11 DCMR §§ 3129 and 3130. Section 3129 currently authorizes the Board of Zoning Adjustment (“Board” or “BZA”) to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The proposed amendment would make 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 (“DCRA”). The amendment to § 3130 would permit the Board to grant a time extension to allow more time to file such plans. The amendments also establish a procedure through which the Board may consider other modifications to its orders, for example a change to conditions.

At its regular public meeting held January 12, 2009, the Zoning Commission setdown this case for a public hearing. The OP report served as the pre-hearing submittal for the case.

The proposed amendments to the Zoning Regulations are as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~striketrough~~ text:

CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

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 the Board relied upon in 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 § 3129.7 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, **unless its validity is extended pursuant to § 3130.6.**

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

- 3130.6 Subject to § 3130.7, the Board may grant, without a hearing, 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 applicable period; 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.**

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, WILLIAM W. KEATING, III, MICHAEL G. TURNBULL, AND PETER G. MAY, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY RICHARD S. NERO, JR., ACTING DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.