

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF PLANNING



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MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, Deputy Director *JS*

DATE: March 20, 2009

SUBJECT: Zoning Commission Case No. 09-01 - **Final Report**
Time Extensions and Minor Modification for Issued Board of Zoning Adjustment Orders

I. RECOMMENDATION

The Office of Planning requests that the Zoning Commission approve the following text amendments to the Zoning Regulations:

- Amendment to Chapter 31(BZA Rules of Practice and Procedure) § 3129, to consider extending the time period from 6 months to 2 years, for requests of minor modifications of approved plans. The two year period is consistent with the time allowed to file plans for a building permit.
- Amendment to Chapter 31, § 3130, to permit the Board to grant a time extension to file such plans.
- Amendments to clarify that the Board may consider any other requests for modifications such as a change of conditions, but require the Board to hold a hearing in these instances.
- Amendment to § 3180, Schedule of Fees, to include fees for such filings.

II. BACKGROUND

At its regular public meeting held January 12, 2009, the Zoning Commission set down for public hearing the Office of Planning's petition requesting amendments to §§ 3129 and 3130 of Title 11 DCMR with new provisions, §§ 3129.7, 3129.8, 3130.6 and 3130.7.

The petition was filed in response to concerns about potential expiration of approved Board of Zoning Adjustment (BZA, or "the Board") orders due to the current economic climate. Therefore, the proposed amendments are intended to extend the time period of issued Board orders for good cause, given the current economic circumstances.

Section 3129 currently permits minor modifications to plans if filed within 6 months of an issued BZA order. The proposed amendment would extend the time to request a minor modification of an approved plan to two years, similar to the time allowed to apply for a building permit at the Department of Consumer and Regulatory Affairs.

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Section 3130 provides for the time limits on Board actions. The proposed amendment, including new text would:

- Grant a one-time extension of the order; and
- Outline the requirements and conditions under which such extensions may be granted without a hearing.

III. MODIFICATIONS FROM SETDOWN

Subsequent to the notice of public hearing, the Office of Zoning requested OP include an amendment to Section 3180, SCHEDULE OF FEES, to apply a fee for such requests. The Office of the Attorney General reviewed and supported the request.

IV. PROPOSAL

The Office of Planning recommends that the Zoning Commission adopt the following amendments to Chapter 31 of 11 DCMR with all new text shown in **bold**. Text that has been added since the initial setdown is shown in **bold, underlined text**. Deletions to existing text are shown as ~~striketrough text~~.

OP recommends a slight rewording of § 3129.6 from what was advertised so the section is consistent with similar provisions, §§ 2408.10 and 3130

The following amendments to Section 3129 are intended to reflect consistency and new provisions § 3129.6, § 3129.7 and § 3129.8 added for procedural clarity.

1. Amending 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.

2. Amending § 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.**

3. Amending § 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.

V. COMPREHENSIVE PLAN

The text amendment is not inconsistent with the Implementation chapter of the Comprehensive Plan (Chapter 25) because it recognizes the connection of zoning to implement the Plan and the role of the BZA. Specifically, Policy IM-1.3.1: Updating Land Use Controls state:

"Regularly review and update the District's land use controls and building codes to eliminate obsolete regulations and develop new regulations that address emerging issues, land uses, building types and technologies." 2504.3

VI. CONCLUSION

The Office of Planning recommends that the proposed amendments to 11 DCMR (ZONING) be approved.

JLS/kt
Karen Thomas, Case Manager