

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 30, 2009

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

ADDENDUM

This addendum is in response to comments submitted to the record by Pillsbury Winthrop that was inadvertently not addressed in OP's final report dated March 20, 2009. The comments also included an exhibit of BZA cases expiring on or before July 2009.

Specifically, comments included requests that additional language be inserted to 11 DCMR §§ 3129 and 3130 to:

- Consider a toll on the expiration date of an order when a time extension request is filed.
- Adopt the proposed amendments as an emergency rulemaking, with the proposed amendments applying to all BZA Orders in effect as of setdown on January 12, 2009.

In the alternative, an abbreviated comment period was requested in consideration of projects which would expire before July 2009.

The Office of the Attorney General advised OP that the proposed rules need to expressly state that the filing for a time extension request tolls the expiration of the order. In addition, OP should also consider :

- Whether the request be filed within a certain time before expiration of the order;
- The status of the order between the date the order expired and the date the BZA decision becomes final. That is,
 - whether the order would be still considered active, so that a building permit could be issued, or
 - whether it is considered dormant and no building permit could be issued under its authority.

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CASE NO. 09-01
EXHIBIT NO. 7

To address the concerns, OP recommends the following be included with the previously proposed amendments:

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

PROPOSAL

The amended sections which are recommended for adoption should now be read as follows:

(Text that has been added since the initial setdown is shown in **bold, underlined text**. Deletions to existing text are shown as ~~strikethrough text~~.)

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.**

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. 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.