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MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, AICP *JS*
Deputy Director for Development Review & Historic Preservation

DATE: July 17, 2009

SUBJECT: Zoning Commission Case Number 09- *13*
A Proposed Zoning Text Amendment to explicitly allow for a BZA Consent Calendar

I. PETITION

The Office of Planning (OP) recommends that the Zoning Commission set down the proposed text amendment. The amendments would add new text to Section 3118 to explicitly allow for Consent Calendar for the Board of Zoning Adjustment:

3118 CONSENT CALENDAR

3118.1 The purpose of this section is to create an expedited review process known as the "Consent Calendar." The procedure shall allow the Board, in the interest of efficiency, to make, without public hearing but subject to public notice, decisions on cases as defined below subject to conditions of this section.

3118.2 Only the following cases shall be eligible for placement on a Consent Calendar:

- (a) Minor modifications to approved orders;**
- (b) Technical corrections to approved orders; and**
- (c) Applications for special exception relief solely under the follow sections:**
 - (1) Additions to one-family dwellings or flats and for new or enlarged accessory structures, § 223; and**
 - (2) Park, playground, swimming pool, or athletic field operated by a local community organization, § 209.1**

3118.3 For minor modifications and technical corrections, the Board shall use the provisions of § 3030.4 to 3030.6.

3118.4 For purposes of this section, "minor modifications" shall mean modifications of little or no importance or consequence

3118.5 Requests for placement on the Consent Calendar shall be made to the Office of Zoning on an official Consent Calendar application.

3118.6 The Director shall, in consultation with the Board, establish an appropriate process for serving public notice taking into account the nature of the request, any issues relating to efficiency and fairness, and the mandated time frames of applicable legislation.

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3118.7 Any request from the ANC, officially notified property owners, other members of the public, or District government agency requesting a matter be removed from the Consent Calendar, in writing to the Office of Zoning no less than ten (10) days before a hearing on the matter.

3118.8 Any request for party status shall be made pursuant to §3106.2.

3118.9 No less than seven (7) days before a hearing, the Director shall finalize the Consent Calendar. For a case to remain on the Consent Calendar there shall be no written opposition to the case, request for the case to be removed, nor pending request for party status.

3118.10 Any member of the Board may remove any case from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or that is removed from the Consent Calendar shall be acted upon by the Board according to the applicable procedures contained in other sections of this chapter.

3118.11 The Board may approve all cases on the Consent Calendar at a public hearing by one motion and vote.

II. BACKGROUND

There have been several initiatives in the past two years to improve efficiency in the zoning and development processes. The Zoning Commission has enabled many of these initiatives and improvements, including holding two monthly meetings to increase the movement of cases, adopting text amendments to allow for the expeditious reuse of previous school buildings, and explicitly allowing for the extension of Board of Zoning Adjustment orders. The Board of Zoning Adjustment has also made strong movements to move cases quickly and fairly through the process including taking immediate action after hearings and improving and increasing the use of summary orders.

Both the Office of Planning (OP) and the Office of Zoning (OZ) have sponsored independent reviews of the zoning and development process. In 2008 Zucker Systems released their analysis, titled "Review and Analysis of Planning, Zoning and Development Review Processes" commissioned by the Office of Planning and White & Smith. LLC released "Washington D.C. Zoning Regulations Administrative Processes Study" commissioned by the Office of Zoning.

The Zucker Report attempted to evaluate all aspects of the development process in DC. With regards to the BZA the report recommended as a way to further increase efficiency:

Recommendation 24: Incorporate the use of a Consent Calendar on the BZA agenda, grouping non-controversial and non-contested applications that can be acted on with one motion.

Rationale: BZA Caseload and Timelines: The BZA manages a heavy caseload. The table below illustrates this caseload by Fiscal Year.

Table 3 BZA Caseload by Fiscal Year (5 Year History)

Fiscal Year	Number of BZA Applications
FY 2003	139
FY 2004	176
FY 2005	206
FY 2006	176
FY 2007	160 (estimate)

“...Most importantly, we encourage the incorporation of a Consent Calendar (sometimes also called a Consent Agenda) on the BZA agenda. Applications that are non-controversial and non-contested can be placed on the Consent Calendar as a group and acted on with one motion, eliminating the need for a drawn out formal public hearing on each individual application. The BZA can retain the ability to remove an application from the Consent Calendar should a last minute concern arise or an unanticipated interested party wish to be heard. Likewise, the noticing requirements remain in effect so there is no loss of opportunity for the public to be involved.”

The OZ commissioned White & Smith. LLC study addresses the issue of a consent calendar as follows:

“The BZA could also include a consent calendar procedure. Because most of their cases are contested cases, a consent calendar procedure runs the risk of violating the due process rights of parties who are denied the opportunity to comment where the case is resolved without a full hearing. So long as parties have adequate notice and the opportunity to request that the BZA pull the case and hear it, there is little risk of a due process violation. However, this process is rarely used with variances, appeals, and special exceptions that typically require some fact finding and potential off-site impacts.”

III. PROPOSAL

The proposed is based in part on § 3030 which enables the consent calendar for the Zoning Commission. The proposed text does not solve for the exact procedures of a consent calendar process; rather it makes explicit that such an opportunity is available to the Board of Zoning Adjustment. Certain time frames have been proposed as to when notice must be given to the Office of Zoning for a case to be removed from the consent calendar and when the consent calendar should be determined final. The Office of Planning welcomes comments on whether these are appropriate and will work with the Office of Zoning prior to the public hearing on such details.

In the proposed text, the consent calendar is limited to minor modifications, technical corrections, and specified special exceptions. The Office of Planning reviewed the BZA cases since 2004 and our data revealed that almost 24% of the BZA cases (other than appeals) have been for special exception relief under § 223. This figure represents cases that are solely § 223 relief and does not include cases that requested § 223 relief in combination with any other variance or special exception. These § 223 cases are rarely controversial and typically have very few participants. In addition, OP reviewed the list of special exceptions listed in chapter 32 of 11 DCMR for types of cases that would appear to have a low probability of controversy. While attempting to estimate “a low probability of controversy” is a delicate and risky activity, OP recommends that the consent calendar opportunity be limited to the special exception relief under §223 and under § 209.1 for parks, playgrounds, swimming pools, or athletic fields operated by a local community organization. Of course, as drafted, any consent calendar case that elicits concern or opposition from a BZA member, ANC, member of the public, or District agency would be removed from the consent calendar and scheduled for a public hearing.

The proposed text is designed to allow for future additions if other cases arise as appropriate.

IV. COMPREHENSIVE PLAN

The proposal is considered not inconsistent with the 2006 Comprehensive Plan, and would further policy statements in the Implementation Chapter. The Zucker Report was the result of the Implementation item that called for the study of a planning commission (IM-1.5B Planning Commission Feasibility Study). The Smith and White Study along with other work on the zoning regulations is also an implementation item. As part of that study, the relationship of planning, zoning and development were analyzed with a recommendation that a BZA consent calendar be provided. The Comprehensive Plan also repeatedly calls for public input and

transparency, OP concludes that a consent agenda with an established opportunity for opposition would not be inconsistent with these sections.

The proposal is considered not inconsistent with the 2006 Comprehensive Plan, and would further policy statements in the Implementation Chapter. The Zucker Report was the result of the Implementation item that called for the study of a planning commission (IM-1.5B Planning Commission Feasibility Study). The Smith and White Study along with other work on the zoning regulations is also recognized in the Comprehensive Plan as an implementation piece of the comprehensive zoning review.

The proposed text would also further the Comprehensive Plan goals for updating land use controls:

Policy IM-1.3.1: Updating Land Use Controls

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);

For supporting the development of non-profit recreational facilities:

Policy PROS-4.1.4: Non-Profit Recreational Facilities

Support the development of non-profit recreational facilities, such as Boys and Girls Clubs, to meet the recreational needs of District residents and complement the facilities provided by the District. (817.7); and

For minimizing cost and time associated with housing development:

Policy H-1.5.2: Permitting Procedures

Minimize the cost and time associated with development processing, while still addressing community and environmental concerns. Explore measures to improve the permitting process, provided that such measures are consistent with other provisions of the Comprehensive Plan. 507.3

The Comprehensive Plan also repeatedly calls for public input and transparency, OP concludes that a consent agenda with an established opportunity for opposition, public notice, and party status would not be inconsistent with public input:

Policy IM-1.5.4: Transparency in Decision-Making

Strongly encourage transparent decision-making in all land use and development matters, making information available and accessible to residents and maintaining open lines of communication with the public as plans are developed.(2507.6)

V. CONCLUSION

The Office of Planning recommends that the Zoning Commission set down the proposed text amendment for public hearing. OP finds the text amendments are not inconsistent with the 2006 Comprehensive Plan.