

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Monday, October 26, 2009

CASE NO. 09-13

A Proposed Zoning Text Amendment to Explicitly Allow for a BZA Expedited Review Calendar

Testimony of Alma Hardy Gates, Neighbors United Trust

Consideration of a BZA Consent Calendar makes complete sense, NCPC uses one and so does the Historic Preservation Review Board. However, these boards consider matters that do not affect the values of abutting properties in the same way that special exceptions and variances considered by the BZA affect an abutting residential neighbor. In the matter of "zoning," according to the *Washington, DC Zoning Regulations Administrative Processes Study* by White & Smith, "The Zoning Commission's consent calendar procedure is limited to minor modifications and technical correction that are of little or no importance or consequence." So, consent calendars are being used widely by DC regulatory authorities in cases that do not convey an impact.

In the Proposed Zoning Text Amendment document, the Office of Planning notes, The Zucker Report attempted to evaluate all aspects of the development process in DC. With regard to the BZA, the report recommended a target for scheduling applications for hearings within 60 days of when they are filed and recommends the use of a Consent Calendar as a means of accomplishing that goal. But, increased efficiency should not diminish the efficacy or purpose of the zoning process. To ensure no compromise, the Report goes on to note, "The BZA can retain the ability to remove an application from the Consent Calendar...Likewise, the noticing requirements remain in effect so there is no loss of opportunity for the public to be involved."

There is no argument that the BZA calendar is loaded with cases; but, they are there because they need zoning relief. The pertinent question might be: Is it appropriate or responsible to waive off some of these hearings because the BZA's calendar is too full or a property owner wants an expedited hearing process?

The Notice of Public Hearing document and the October 21 Memorandum from the Office of Planning do not make clear the level of detail that would be provided to the ANC for expedited cases nor has the OP screening process been made evident that would recommend some cases for listing on a consent calendar while others would require a full hearing. There is every reason to believe most residents filing under § 223 would ask that their applications be placed on the calendar for expedited review to avoid the costs associated with bringing architects and attorneys to a BZA hearing.

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The White & Smith study, which is also referenced as justification for the recommendation to allow for a BZA Consent Calendar notes, "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 due process violation. (Emphasis added.) However, this process is rarely used with variances, appeals and special exceptions that typically require come fact finding and potential off-site impacts."

The proposed new language under Section 3118.2 (c) (1) references § 223 for, "Additions to one-family dwellings or flats and for new or enlarged accessory structures." If the Office of Planning is making the recommendation that an application should be placed on the Consent Calendar, what objective criteria would be used to ensure "the risk of violating the due process rights of parties who are denied the opportunity to comment" is not realized? Section 223 provides a list of specific criteria that must be met under special exception review. The White & Smith study was very clear in its caution to the Office of Zoning that the rights of parties should not be denied by a Consent Calendar; but, it is the Office of Planning that is making that determination not OZ.

The timing of this proposed Text Amendment is curious in light of the current zoning reengineer review that is underway, because it would be more suitable for consideration when Zoning Commission and BZA procedures are considered.

While I conditionally support a Consent or Expedited Review Calendar to lessen the case load of the BZA, I also support a process that is open, fair, transparent and inclusive. In addition to those areas previously underlined, the screening criteria that would be used to ensure an open fair, transparent and inclusive process continues under this Zoning Text Amendment needs to be disclosed by the Office of Zoning prior to approval by the Zoning Commission.