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2009 DEC -4 AM 8:57

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December 4, 2009

Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-S
441 Fourth Street, NW
Washington, DC 20001

Re: Comments on Proposed Amendment to Allow Waiver of Public Hearing in
Certain Cases (ZC Case 09-13)

Honorable Members of the Commission:

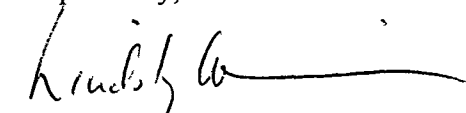
This letter supports making changes to potentially expedite consideration of requests for zoning relief and decisions for a limited range of requests that can be considered by the Board of Zoning Adjustment. Changes were suggested by the Office of Planning and Board of Zoning Adjustment. Overall, the idea is worthwhile, but with some additional adjustments and steps to ensure that the overall integrity of the process is maintained and followed, the result could be considerably improved.

On the following double page, I set out the changes you are considering and offer comments keyed to those provisions.

On the final page I offer additional comments that I expect you will want to address as you proceed with this worthwhile effort relating to filing deadlines and posting of properties where relief is sought that is such that the owner may and has requested the case proceed without a public hearing.

As a practical matter, particularly if you adopt my suggestion for filing case materials well in advance, I expect the Board will find the process being developed will lead to many situations where the applicant finds it appropriate to modify the development plan and/or degree of relief requested after being in touch with the ANC, others given Notice, and/or the Office of Planning. Such amendments should be anticipated and encouraged to spare the need for hearings when there is evidence of agreement between applicant and those concerned.

Respectfully,


Lindsley Williams

ZONING COMMISSION
District of Columbia
CASE NO. 09-13
EXHIBIT NO. 17

ZONING COMMISSION
District of Columbia
CASE NO. 09-13
EXHIBIT NO. 17

3118—~~CONSENT~~ EXPEDITED REVIEW CALENDAR - WAIVER OF HEARING

3118.1 The purpose of this section is to create an expedited review process to be followed after an applicant waives their right to a hearing ~~for an addition to one family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or for a park, playground, swimming pool, or athletic field pursuant to § 209.1.~~ the following:

- (a)** An addition to one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or
- (b)** For a park, playground, swimming pool, or athletic field pursuant to § 209.1.

3118.2 When an application indicates a waiver of hearing, it shall be placed on the ~~consent~~ expedited review calendar for the same date as the scheduled hearing and shall remain there unless, at least than ten (10) days prior to the hearing date:

- (a)** Written opposition to the ~~consent~~ expedited review calendar placement is submitted by an affected ANC, the Councilmember representing the area in which the subject property is located, a person or entity requesting party status, or the owner or occupant of any property located within two hundred feet (200 ft.) of the subject property; or
- (b)** A Board member, including the member designated by the Zoning Commission, requests the Director to remove the item from the ~~consent~~ expedited review calendar.

3118.3 At least fourteen (14) days prior to each hearing date, the Office of Zoning shall provide each Board Member with the ~~consent~~ expedited review calendar for that date.

3118.3 Notices of public hearing shall indicate whenever an application has been placed on the ~~consent~~ expedited review calendar and describe the means by which it may be removed.

3118.4 At least seven (7) days prior to a hearing date, a list of all ~~consent~~ expedited review calendar items shall be posted on the Office of Zoning website.

3118.5 The ~~consent~~ expedited review calendar shall be called prior to any hearing.

3118.6 Applications on a ~~consent~~ expedited review calendar may be called and voted on together, and no discussion to approve the applications is required.

3118.7 Orders granting an application approved as a ~~consent~~ expedited review calendar item need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

Comments Regarding §3118.1

I recommend that the scope of cases to which the expedited case consideration could apply be limited, initially, to one-family dwellings and, if flats are also to be included, then only with clarification that **flats, but only in zone districts where flats are a permitted use** (R-4; this to avoid "hearing-less" expansion/modification of non-conforming flats that may exist in R-3 and more restrictive zone districts).

I also recommend that other types of cases be added only after the Board and Commission develop enough experience with the initial class of residential use(s) just identified. However, should the Commission wish to also add "parks, playgrounds and swimming pools pursuant to §209.1," then this should be done with the clarification that this relates to " parks, playgrounds and swimming pools **accessory to an existing community center established** pursuant to §209.1".

Comments Regarding §3118.2

While this section notes that ANC and Council members can request that the public hearing not be waived, along with members of the Board and designated Zoning Commission member, I note the absence of the opportunity for objection by the Office of Planning. If that is not intended, should not OP be added to §3118.2(a)? This would be preferable to OP's requesting a waiver of the rules should they seek such consideration in unforeseen circumstances.

Moreover, just as an applicant has a right to withdraw an application at any time, so too must the applicant also have the right to withdraw the request for waiver of the hearing, if not up to the date of the hearing, then at least up to the ten-day deadline that applies to all others under proposed § 3118.2. While applicant's might well have their own reasons for such a withdrawal, they could also agree to file such a request and spare those with known objections to the need to do so individually, a step that would likely be seen as courteous even if opposition remains and appears at the hearing or communicates in writing to the Board. Such a request, if filed by an applicant, should not itself be allowed to be reversed by the applicant as this would be seen as deceptive.

Comments Regarding §§3118.3 through 3118.7

I reiterate my testimony's suggestion that the provisions of § 3118.7 *[future § 3118.8? See below]* provide that Orders approving relief set out both "**that requested and** that granted" to document changes made at the applicant's request or Board's direction. This should also apply to applicant-requested/modified conditions or conditions added or modified by the Board.

Moreover, please note that the proposed provisions include two different subsections with the same subsection number, 3118.3. Accordingly, the second such subsection should be renumbered 3118.4 and all following subsections should be incremented correspondingly.

Recommendations for Additional Measures Regarding Overall Process if Waiver is Allowable and Requested

- Provide for Earlier Filing of Case Materials if Applicant Requests Waiver of Hearing

To ensure that the overall process is open and transparent, it will be essential for the public record to be sufficient for the public and reviewing agencies to understand the scope of the proposed development and relief requested. This can best be accomplished by requiring that the applicant not only request a waiver of hearing but also submit at the time of the waiver request a full set of the materials that would otherwise be required 14 days prior to the public hearing under §3113.78, with sufficient copies to be distributed to the ANC, Council Member, along with a narrative description to be included in the Public Hearing Notice ("PHN"). The PHN should advise where interested persons may secure individual copies of the entire document from the applicant or from the same document electronically on file with the Office of Zoning (as a "pdf"). This step would inform those with potential interests in the requested relief an understanding of what is proposed that would seem essential to inform a decision of support, opposition, or to seek additional information prior to the time those with such interests would have to file any objection to the requested waiver of public hearing.

- Provide for Earlier and More Extended Posting of Properties if Applicant Requests Waiver of Hearing

Moreover, to ensure that the general public has ample Notice, the existing provisions relating to the posting of a property must be amended to start the posting in time to advise that a hearing waiver has been requested and where and by when to file any objection to the requested waiver (see §3113.14 through 3113.20). As a practical matter, it would seem that posting should commence within two business days of the date the PHN's are mailed out from the Office of Zoning and remain posted at least until 10 days prior to the date the public hearing would be held unless the case is removed from the Expedited Review Calendar, in which case the Notices should remain posted through the date of the hearing. In effect, the property should be posted at about the same time the surrounding property owners receive the PHN and remain posted in some fashion for all but the last ten days, and sometimes all of the days up to the date of the hearing if the requested hearing waiver is not granted.

- Closing of Record for Those Decisions to Be on Expedited Review Calendar

If a case remains on the Expedited Review Calendar, the case should be decided solely on the basis of the written record as it existed ten days prior to the date the public hearing would otherwise have taken place. This is to avoid last-minute "objections" from entering the record with no opportunity for the applicant (or others) to respond.