



MEMORANDUM

TO: District of Columbia Zoning Commission

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

DATE: January 20, 2009

SUBJECT: Zoning Commission Case Number 09-13
SUPPLEMENTAL 3

At the conclusion of the public hearing on this case, the Zoning Commission asked that the Office of Planning (OP), Office of Zoning (OZ), Office of Attorney General (OAG), and the Chairman of the Board of Zoning Adjustment (BZA) work together to recommend a final version of the text that recognizes the ANC full review time frame and provides as much assurance to the applicant as possible. The Zoning Commission deferred proposed action on December 14, 2009 to allow all parties to address outstanding concerns.

Attached is the currently proposed text as reviewed and recommended by the OP, OZ, OAG, and BZA. Comments and explanations are listed in the right column.

**ZONING COMMISSION
District of Columbia**

CASE NO. 09-13

EXHIBIT NO. 18

PROPOSED TEXT WITH HIGHLIGHTED CHANGES	OAG/ OP COMMENTS ON CHANGES
Section 3113, PRE-HEARING PROCEDURES FOR APPLICATIONS, subsection 3113.1 is amended by adding the new language shown in bold and underlined below. 3113.1 The rules of procedure in this section apply to all applications filed with the Board (including applications filed pursuant to §§ 3107 and 3108 in effect prior to October 1, 1999, and §§ 3103 and 3104); provided, however, the provisions of this section only apply to chancery applications to the extent specified in § 3134 <u>and to applications processed under the expedited review procedures to the extent specified in § 3118.</u>	
A new section 3118, EXPEDITED REVIEW, is added to read as follows: 3118 EXPEDITED REVIEW 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 eligible application. 3118.2 An eligible application is an application for: (a) An addition to a one-family dwelling or flat or a new or enlarged accessory structures pursuant to § 223; or (b) A park, playground, swimming pool, or athletic field pursuant to § 209.1. 3118.3 Subject to the removal process described in §§ 3118.5 and 3118.6, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after: (a) The completion of the public notice procedures set forth in § 3118.4; and (b) The completion of the ANC review period of thirty days from the date it receives notice of the application, excluding Saturday, Sundays, and holidays, plus an additional fourteen calendar days. 3118.4 Notice of expedited review shall be given in the same manner and include the same information as required by §§ 3113.12 through 3113.16, except that references to "public hearing" or "hearing" shall mean "expedited review" and all other requirements of § 3113 shall apply with the same proviso.	THIS ADDRESSES TIMING ISSUES BY ADDING 14 EXTRA DAYS

- 3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also describe:
- (a) The procedure for requesting the removal of the application from the expedited review calendar as described §§ 3118.5 and 3118.6.; and
 - (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.

3118.6 An application tentatively placed on an expedited review calendar shall be removed and rescheduled for a hearing:

- (a) At the oral or written request of a Boardmember made at any time prior to the vote on the application;
- (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
- (c) At the written request of the following persons or entities, if filed with the Office of Zoning no later than fourteen days prior to the date that the expedited review is scheduled:
 - (i) The Office of Planning;
 - (ii) The affected ANC(s) or affected Single Member District(s);
 - (iii) The Councilmember representing the area in which the subject property is located or representing an area located within two-hundred feet (200 ft.) of the subject property; or
 - (iv) The owner or occupant of any property located within that same proximity;

3118.7 A request to remove made pursuant to § 3118.6 (c) (ii) through (iv) shall be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing and shall also include a summary of the testimony to be given at that time.

ALLOWING REMOVAL UP TO THE VOTE WILL PERMIT ANY BOARD MEMBER TO REMOVE AN APPLICATION AS THE BZA REQUESTED.

CLARIFICATION THAT PARTY SHOULD BE IN OPPOSITION TO PULL AN ITEM FROM CALENDAR

THE APPLICANT WILL NEED TO CHECK THE OZ FILE ON THE 14TH DAY PRIOR TO THE CALENDAR TO SEE IF OP IS REQUESTING REMOVAL OR IF THERE IS A REQUEST FOR PARTY STATUS IN OPPOSITION, SO THE ADDITIONAL REQUIREMENT OF SERVICE FOR THE PUBLIC, COUNCIL AND ANC ADDS NOTHING AND HAS BEEN REMOVED.

THIS LANGUAGE PROVIDES SOME ASSURANCE THAT THE REQUEST TO REMOVE IS NOT JUST AN OBSTRUCTIONIST GESTURE. IT REQUIRES THE REQUESTER ACKNOWLEDGE THAT THEY WILL ATTEND A HEARING AND HAVE WILL

3118.8	The Chair may deny a request to remove an application if the proffered testimony is irrelevant.	PROVIDE RELEVANT INPUT. THE REQUIREMENT THAT THE REQUESTER BE IN THE HEARING ROOM WHEN THE CALENDAR IS CALLED HAS BEEN TAKEN OUT BECAUSE THERE WILL NOT BE A HEARING AND MERE ATTENDANCE WILL NOT CONTRIBUTE TO THE PROCEEDING
3118.9	Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.	