

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 09-13A
Z.C. Case No. 09-13
(Text Amendment – 11 DCMR)
BZA Expedited Review Process - Technical Correction to § 3118
July 26, 2010

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07); hereby gives notice of its adoption, on July 26, 2010, of the following text amendments to § 3118 of the Board of Zoning Adjustment Rules of Practice and Procedure, Chapter 31 of DCMR Title 11. The amendments make technical changes to § 3118 so as to better differentiate between those persons and entities whose requests to remove an item from the expedited calendar will result in the automatic removal of the item and those persons and entities whose requests will be granted only if the Presiding Officer finds that their proffered testimony is relevant to the application.

Because this change was technical in nature, the Commission did not hold a public hearing on this amendment, as is allowed under Consent Calendar procedures set forth at 11 DCMR § 303.0. Nor was this amendment referred to the National Capital Planning Commission, both because of the technical nature of the changes and also because the amendments are to procedural rules.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 18, 2010. comments were received in response to the notice.

DCMR Title 11, ZONING, Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3118, EXPEDITED REVIEW, is amended by:

- (1) Striking references in § 3118.6 to those persons and entities whose requests to remove an item will not automatically be honored;
- (2) Re-designating the text of § 3118.7 as § 3118.8 and renumbering the remaining provisions;
- (3) Replacing the text moved from § 3118.7 with text that lists those persons and entities whose requests to remove an item will not be automatically honored;

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- (4) Revising the text in renumbered § 3118.8 to set forth the time for making those requests (as formerly stated in § 3118.6 (c)); and
- (5) Revising the text in renumbered § 3118.9 to clarify that the only basis for the Presiding Officer to grant or deny a non-automatic request is whether the proffered evidence is relevant to the Board's consideration of the application.

As a result of these amendments, § 3118 now reads 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 its 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 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 §§ 3118.6 and 3118.7, 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 (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) 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.
- 3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:
 - (a) The procedure for requesting the removal of the application from the expedited review calendar is as described in §§ 3118.6 and 3118.7; 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 will be removed and rescheduled for a hearing:

- (a) At the oral or written request of a Board member 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 Office of Planning, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled.

3118.7 An application tentatively placed on an expedited review calendar also will be removed and rescheduled for a hearing if requested by the following entities or persons in accordance with § 3118.8, unless the request is denied by the Presiding Officer pursuant to § 3118.9:

- (a) The affected ANC(s) or affected Single Member District(s);
- (b) 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
- (c) The owner or occupant of any property located within two-hundred feet (200 ft.) of the subject property.

3118.8 A request to remove made pursuant to § 3118.7 shall:

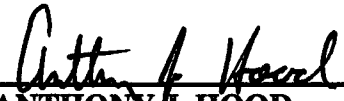
- (a) Be filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled;
- (b) Be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing; and
- (c) Shall include a summary proffer of the testimony to be given at that time.

- 3118.9 The Presiding Officer shall grant a request to remove an application made pursuant to § 3118.7 unless the proffered testimony is irrelevant, in which case the request shall be denied.
- 3118.10 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.

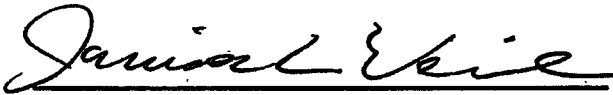
On June 14, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the technical correction at the its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; Third Mayoral Appointee position vacant, not voting).

On July 26, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Greg Selfridge, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on August 6, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-13

As Secretary to the Commission, I hereby certify that on AUG 4 2010 copies of this Z.C. Order No. 09-13A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 5. DDOT (Karina Ricks) |
| 2. All ANC Chairpersons – see attached list | 6. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| 3. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 7. Office of the Attorney General
(Alan Bergstein) |
| 4. All Councilmembers – see attached list | |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning