

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
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September 15, 2009

Mr. Anthony Hood
Chair, DC Zoning Commission
441 4th Street, NW. Suite 220-S
Washington DC 20001

Re: Case No. 09-13 (Text Amendment to Explicitly Allow for a BZA Consent Calendar)

Dear Chairman Hood:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Wednesday, September 2, 2009 at Sibley Memorial Hospital's Ernst Auditorium. A quorum (5) was present at all times and proper notice of this meeting was given in the Northwest Current, on the Palisades Listserv and the ANC 3D website.

On the agenda for consideration by ANC 3D was the Office of Planning's (OP) report dated July 17, 2009, for a text amendment that would explicitly allow for a consent calendar for use by the Board of Zoning Adjustment (BZA); and, it is the ANC's understanding that the consent calendar would be limited to certain cases that are routinely before the BZA and "have a high probability of no opposition." ANC 3D finds the proposed use of a consent calendar problematic for several reasons. Generally, ANC3D opposes the consent calendar proposal because it would take away authority of the ANC's and give the OP unchecked discretion of which types of matters get a hearing and which do not. The ANC's are charged with certain duties in this city, and they should be allowed to carry out those duties in the interests of their constituents. The standard of "high probability of no opposition" is too vague for city-wide application. What may be routine in one ANC district is often a major issue in other districts.

More specifically, the standard is problematic as to applications filed under § 223 (Additions to One-family Dwelling or Flats (R-1) and for New or Enlarged Accessory Structures) because those proposals may have significant impact on low-to-moderate residential areas and deserve the full consideration of abutting or adjacent property owners. Zoning, with its many nuances and references, is not a concept easily grasped by the general public, so the potential for individual property owners to miss an opportunity or deadline to comment on an application is significant. The current language in this section of the Zoning Code specifically notes "the addition or enlarged structure shall be permitted even though the addition or accessory structure does not comply with all of the applicable area requirements..." but, is conditioned on a special exception hearing before the BZA. In addition, there are specific criteria that must be taken into consideration, i.e., light and air; enjoyment of neighboring properties; the effect on the streetscape, alley or other public ways; lot occupancy; and finally, the "Board may require special treatment

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in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.”

ANC 3D understands that § 223 cases coming before the BZA have constituted 24 percent of all cases heard over the past five years and that expedited review and streamlining of the hearing process is advisable; however, ANC 3D rarely finds these cases “typical” or “noncontroversial” when there is impact to abutting properties.

Human nature would tell us that applicants will indicate the desire for a waiver of hearing as noted under proposed § 3118.2. It is at this point that the burden shifts to the ANC, the Councilmember representing the area, the person or entity requesting party status, the owner or occupant of any property located within two hundred feet of the subject property, or even a Board member, to request the Director of the Office of Zoning to remove the item from the consent calendar; and, a timeline is suggested for that request. Given the fact ANC's traditionally meet once a month, the timeline suggested is far insufficient for the ANC's to react without scheduling additional “special” meetings and constantly playing catch-up. The weight would be lifted from the BZA hearing process and shifted to the community which then would lack sufficient time for ANC's to weigh in with their decisions.

Proposed § 3118.7 would allow applications on a consent calendar to be considered as a group without any discussion of their individual merits. It appears that it would be upon OP's recommendation that zoning decisions would be based rather than the affected public or the Board appointed for this purpose.

Proposed § 3118.8 notes that “Orders granting an application approved as a consent calendar item...shall reflect the nature of the relief granted and any condition imposed.” Without a public hearing, OP would be crafting conditions and on what would their conditions be based without public input? Conditions normally indicate there is an impact that needs to be averted which appears contrary to the purpose of the proposed text amendment.

After much discussion, ANC 3D Commissioners voted 7-0-0 to OPPOSE Case No. 09-13 to allow for a Board of Zoning Adjustment consent calendar for the reasons previously outlined. Therefore, we ask that the Zoning Commission give our decision the “great weight” to which it is entitled under DC law.

Very truly yours,


Elizabeth B. Sandza

Chair, ANC3D