



2009 OCT 23 PM 3: 26

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** Jennifer Steingasser, AICP *JLS*  
Deputy Director for Development Review & Historic Preservation  
**DATE:** October 21, 2009  
**SUBJECT:** Zoning Commission Case Number 09-13  
A Proposed Zoning Text Amendment to explicitly allow for a BZA Expedited Review Calendar

**WAIVER OF RULES FOR LATE SUBMITTAL**

This report is being submitted less than ten days prior to the Zoning Commission's consideration of the item and scheduled public meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept the report into the record pursuant to §3000.8.

**PETITION**

The Office of Planning (OP) recommends that the Zoning Commission approve the proposed text to Section 3118 to explicitly allow for an Calendar for the Board of Zoning Adjustment. OP has had some conversations with the Board of Zoning Adjustment, Office of Zoning and the Office of Attorney General and recommends the following changes to the advertized text. The changes to the advertized text are hatched through and underlined. OP continues to work with the BZA and may provide additional language changes at the hearing.

**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

ZONING COMMISSION  
District of Columbia



- (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~~ an 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~~ an 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.

## I. BACKGROUND

There have been several initiatives in the past two years to improve efficiency in the zoning and development processes. The Zoning Commission has enabled many of these initiatives and improvements, including holding two monthly meetings to increase the movement of cases, adopting text amendments to allow for the expeditious reuse of previous school buildings, and explicitly allowing for the extension of Board of Zoning Adjustment orders. The Board of Zoning Adjustment has also made strong movements to move cases quickly and fairly through the process including taking immediate action after hearings and improving and increasing the use of summary orders.

Both the Office of Planning (OP) and the Office of Zoning (OZ) have sponsored independent reviews of the zoning and development process. In 2008 Zucker Systems released their analysis, titled "Review and Analysis of Planning, Zoning and Development Review Processes" commissioned by the Office of Planning and White & Smith. LLC released "Washington D.C. Zoning Regulations Administrative Processes Study" commissioned by the Office of Zoning.

The Zucker Report attempted to evaluate all aspects of the development process in DC. With regards to the BZA the report recommended as a way to further increase efficiency:

Recommendation 24: Incorporate the use of a Consent Calendar on the BZA agenda, grouping non-controversial and non-contested applications that can be acted on with one motion.

**Rationale: BZA Caseload and Timelines:** The BZA manages a heavy caseload. The table below illustrates this caseload by Fiscal Year.

**Table 3 BZA Caseload by Fiscal Year (5 Year History)**

| <b>Fiscal Year</b> | <b>Number of BZA Applications</b> |
|--------------------|-----------------------------------|
| FY 2003            | 139                               |
| FY 2004            | 176                               |
| FY 2005            | 206                               |
| FY 2006            | 176                               |
| FY 2007            | 160 (estimate)                    |

“...Most importantly, we encourage the incorporation of a Consent Calendar (sometimes also called a Consent Agenda) on the BZA agenda. Applications that are non-controversial and non-contested can be placed on the Consent Calendar as a group and acted on with one motion, eliminating the need for a drawn out formal public hearing on each individual application. The BZA can retain the ability to remove an application from the Consent Calendar should a last minute concern arise or an unanticipated interested party wish to be heard. Likewise, the noticing requirements remain in effect so there is no loss of opportunity for the public to be involved.”

The OZ commissioned White & Smith. LLC study addresses the issue of a consent calendar as follows:

“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 a due process violation. However, this process is rarely used with variances, appeals, and special exceptions that typically require some fact finding and potential off-site impacts.”

## **II. PROPOSAL**

The proposed is based in part on § 3030 which enables the consent calendar for the Zoning Commission and clarifies the authority of the BZA to use an Expedited Review Calendar – similar to the Zoning Commission’s consent calendar.

The proposed text does not solve for the exact procedures of an expedited review calendar process; rather it makes explicit that such an opportunity is available to the Board of Zoning Adjustment. Certain time frames have been proposed as to when notice must be given to the Office of Zoning for a case to be removed from an expedited review calendar and when an expedited review calendar should be determined final.

As proposed, an expedited review calendar is limited to specified special exceptions. The Office of Planning reviewed the BZA cases since 2004 and our data revealed that almost 24% of the BZA cases (other than appeals) have been for special exception relief under § 223. This figure represents cases that are solely § 223 relief and does not include cases that requested § 223 relief in combination with any other variance or special exception. These § 223 cases are rarely controversial and typically have very few participants. In addition, OP reviewed the list of special exceptions listed in chapter 32 of 11 DCMR for types of cases that would appear to have a low probability of controversy. While attempting to estimate “a low probability of controversy” is a delicate and risky activity, OP recommends that the expedited review calendar opportunity be limited to the special exception relief under §223 and under § 209.1 for parks, playgrounds, swimming pools, or athletic fields operated by a local community organization. Of course, as drafted, any consent calendar case that elicits concern or opposition from a BZA member, ANC, Councilmember or member of the public would be removed from the consent calendar and scheduled for a public hearing.

The proposed text is formatted to allow for inclusion of other cases as may be deemed appropriate. To add any other section to the list, the Office of Planning would need to file a petition with the Zoning Commission and a public hearing conducted in accordance with rulemaking regulations.

It is also important to note that there are no changes proposed to the ANC or public notice procedures.

### **III. COMPREHENSIVE PLAN**

The proposal is considered not inconsistent with the 2006 Comprehensive Plan, and would further policy statements in the Implementation Chapter. The Zucker Report was the result of the Implementation item that called for the study of a planning commission (IM-1.5B Planning Commission Feasibility Study). As part of that study, the relationship of planning, zoning and development were analyzed with a recommendation that a BZA consent calendar be provided. The Comprehensive Plan also repeatedly calls for public input and transparency, OP concludes that an expedited review calendar with an established opportunity for opposition would not be inconsistent with these sections. The Smith and White Study along with other work on the zoning regulations is also recognized in the Comprehensive Plan as an implementation piece of the comprehensive zoning review.

The proposed text would also further the Comprehensive Plan goals for updating land use controls:

**Policy IM-1.3.1: Updating Land Use Controls**

Regularly review and update the District's land use controls and building codes to eliminate obsolete regulations and develop new regulations that address emerging issues, land uses, building types, and technologies. (2504.3);

For supporting the development of non-profit recreational facilities:

**Policy PROS-4.1.4: Non-Profit Recreational Facilities**

Support the development of non-profit recreational facilities, such as Boys and Girls Clubs, to meet the recreational needs of District residents and complement the facilities provided by the District. (817.7); and

For minimizing cost and time associated with housing development:

**Policy H-1.5.2: Permitting Procedures**

Minimize the cost and time associated with development processing, while still addressing community and environmental concerns. Explore measures to improve the permitting process, provided that such measures are consistent with other provisions of the Comprehensive Plan. 507.3

The Comprehensive Plan also repeatedly calls for public input and transparency, OP concludes that a consent agenda with an established opportunity for opposition, public notice, and party status would not be inconsistent with public input:

**Policy IM-1.5.4: Transparency in Decision-Making**

Strongly encourage transparent decision-making in all land use and development matters, making information available and accessible to residents and maintaining open lines of communication with the public as plans are developed.(2507.6)

### **IV. CONCLUSION**

The Office of Planning recommends that the Zoning Commission approve the advertized text as amended.