

2nd NOTICE OF EMERGENCY AND PROPOSED RULEMAKING
Z.C. Case No. 20-07
(Text Amendment – Subtitles Y and Z of Title 11 DCMR)
(Six-Month Extension of Validity Period of Approvals)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its amendment on an emergency basis, as well as its intent to amend on a permanent basis, the following provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations], to which all references are made unless otherwise specified):

- Subtitle Y, Board of Zoning Adjustment Rules of Practice and Procedure
Chapter 7, Approvals and Orders
§§ 702.1 and 702.2 – six (6)-month extension of orders scheduled to expire between April 27 and December 31, 2020

- Subtitle Z, Zoning Commission Rules of Practice and Procedure
Chapter 7, Approvals and Orders
§§ 702.1, 702.2, and 702.3 – six (6)-month extension of orders scheduled to expire between April 27 and December 31, 2020

On January 17, 2020, the Office of Zoning (OZ) filed a petition to the Commission proposing these amendments to extend the validity of any order scheduled to expire between April 27 and December 31, 2020 by six (6) months on account of the ongoing COVID-19 pandemic and resulting modifications of District government operations. OZ requested that the Commission:

- Set the petition down for a public hearing;
- Authorize a thirty (30)-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the forty (40)-day requirement of Subtitle Z § 502.1 for good cause due to the COVID-19 pandemic;
- Consider taking emergency action to adopt the text amendment; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

On April 15, 2020, the Office of Planning (OP) filed its pre-hearing report concluding that the proposed text amendment would not be inconsistent with the Comprehensive Plan and recommending approval.

The Commission concludes that taking emergency action to adopt the proposed text amendment is necessary for the “immediate preservation of the public ... welfare,” as authorized by § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968. (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), in order to avoid potential expiration of orders and approvals of the Commission and Board caused by the administrative disruptions due to the ongoing COVID-19 pandemic, with the attendant risk to the District’s economic condition.

At its April 27, 2020, public meeting, the Commission voted to grant OZ's request to:

- Take emergency action to adopt the text amendment;
- Set the petition down for a public hearing;
- Authorize a thirty (30)-day notice period prior to the public hearing by granting a waiver under Subtitle Z § 101.9 from the forty (40)-day requirement of Subtitle Z § 502.1 for good cause due to the COVID-19 pandemic; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

Emergency & Proposed Action – Initial Petition

VOTE (April 27, 2020): **5-0-0** Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

OZ published a Notice of Emergency and Proposed Rulemaking in the May 15, 2020, *D.C. Register* (67 DCR 5150, *et seq.*).

On May 29, 2020, OZ submitted a memo proposing revisions to the text amendment to clarify that the automatic six (6)-month extension does not restart the date for any subsequent time extension, which would commence from the original expiration date not including the automatic six (6)-month extension. OZ requested that the Commission:

- Adopt the revised text amendment as a new emergency text amendment replacing the initial emergency rulemaking; and
- Authorize the publication of new proposed rulemaking replacing the initial proposed rulemaking.

On June 5, 2020, Goulston & Storrs submitted a letter proposing revisions the text amendment to confirm that the automatic six (6)-month extension applied to campus plans expiring within the April 27 to December 31, 2020 time period.

At its June 8, 2020 public meeting, the Commission voted to grant's OZ's request to:

- Take emergency action to adopt the text amendment, as revised to include both OZ's and Goulston's proposed changes; and
- Authorized an immediate publication of proposed rulemaking for the text amendment, as revised to include both OZ's and Goulston's proposed changes.

Emergency & Proposed Action – Revised Petition

VOTE (June 8, 2020): **5-0-0** Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

Emergency Action

The emergency rule is effective as of the Commission's June 8, 2020, vote and will expire on October 6, 2020, which is the one hundred-twentieth (120th) day after the adoption of this rule, or upon publication of a Notice of Final Rulemaking in the *D.C. Register* that supersedes this emergency rule, whichever occurs first.

Proposed Action

The Commission hereby also gives notice of its intent to adopt on a permanent basis the following text amendment to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. **This proposed rulemaking completely supersedes the prior proposed rulemaking published in the *D.C. Register* on May 15, 2020.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

The complete record in the case, including the OZ and Goulston submissions and the transcript of the Commission's public meetings, can be viewed online at the OZ website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

The following amendments to the Zoning Regulations are adopted on an emergency basis, and are proposed for the Commission's final consideration (additions are shown in **bold** and **underlined** text and deletions are shown in **bold** and ~~strikethrough~~ text):

I. Amendments to Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE

Subsections 702.1 and 702.2 of § 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, of Chapter 7, APPROVALS AND ORDERS, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are proposed to be amended to read as follows:

- 702.1 An order granting a special exception or variance where the establishment of the use is dependent upon the erection or alteration of a structure shall be valid for a period of two (2) years, or one (1) year for an Electronic Equipment Facility, within which time an application shall be filed for a building permit for the erection or alteration approved. If the erection or alteration of more than one (1) structure is approved, a building permit application ~~must~~ **shall** be ~~file~~ **filed** for all such structures within this two (2) year period; **provided that any order scheduled to expire between April 27, 2020, and December 31, 2020, shall remain valid for a period of six (6) months from the date of expiration of the order although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.**
- 702.2 An order granting a special exception or variance where the establishment of the use is not dependent upon the erection or alteration of a structure shall be valid for

a period of six (6) months, within which time an application shall be filed for an certificate of occupancy for the use approved; **provided that any order scheduled to expire between April 27, 2020, and December 31, 2020 (including any private school or other use approved by special exception), shall remain valid for a period of six (6) months from the date of expiration of the order although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.**

II. Amendments to Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE

Subsections 702.1 through 702.3 of § 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, of Chapter 7, APPROVALS AND ORDERS, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, are proposed to be amended to read as follows:

- 702.1 A first-stage approval of a planned unit development (PUD) by the Commission shall be valid for a period of one (1) year, unless a longer period is established by the Commission at that time of approval; **provided that any approval scheduled to expire between April 27, 2020, and December 31, 2020, shall remain valid for a period of six (6) months from the date of expiration of the approval although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.**
- 702.2 A contested case approval by the Commission shall be valid for a period of two (2) years from the effective date of the order granting the application, unless a longer period is established by the Commission at the time of approval, within which time **an** application shall be filed for a building permit; **provided that any approval scheduled to expire between April 27, 2020, and December 31, 2020 (including any campus plan approval, whether approved under the BZA or Zoning Commission rules of procedure), shall remain valid for six (6) months from the date of expiration of the approval although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.**
- 702.3 Construction shall start within three (3) years after the effective date of **the** order granting the application, unless a longer period is established by the Commission at the time of approval; **provided that this three (3) year period shall be extended by six (6) months for any construction deadline scheduled to expire between April 27, 2020, and December 31, 2020, although this six (6) month extension shall run concurrently with any subsequent time extension and shall not be cumulative to that subsequent time extension.**