

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: *JL for* Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
Stephen Cochran, Case Manager

DATE: April 15, 2020

SUBJECT: Zoning Commission Case 20-07 – Emergency Action and Setdown Report for a Text Amendment to Extend the Expiration Date of Certain Orders by the Zoning Commission or the Board of Zoning Adjustment

I. RECOMMENDATION

The Office of Planning (OP) recommends the Zoning Commission take the following actions at its April 27, 2020 public meeting with respect to text amendments¹ to Subtitle Y, Sections 702.1 and 702.2, and Subtitle Z, Sections 701.2-702.3, as submitted by the District of Columbia Office of Zoning (OZ):

- **Approve, on an emergency basis**, the requested text amendments;
- **Authorize** immediate publication of a Notice of Proposed Rulemaking;
- **Approve** a notice period of 30 days, rather than 40 days, for the Notice of Public Hearing.
- **Set down** the case for a public hearing.

The proposed text amendments would extend discretionary entitlements and requirements for a broad range of projects that would be set to expire within this calendar year. Without these proposed amendments, many property owners would be required to return to the Board or the Commission for extensions of Orders – a process that may be difficult during the public health crisis. The extension of current Orders promotes continuity in the development process throughout the District, in acknowledgement of the practical difficulties of a homeowner or developer being able to reasonably proceed with development plans during these circumstances.

II. BACKGROUND AND PROPOSAL

Board and Commission orders typically have expiration dates or require parties to take certain actions within specified times. However, the Covid-19 pandemic has temporarily altered the context within which business is being conducted in the District of Columbia. This has affected the timing of construction schedules, permit and financing approvals, the execution of commitments, and the ability of the Board of Zoning Adjustment (BZA or the Board) and Zoning Commission (the Commission) to hold or schedule public meetings.

¹ See Attachment to this report.

Accordingly, the proposed text amendments as filed by the Office of Zoning at Exhibit 1 would:

1. Extend by six months from the date of expiration the period of validity for BZA and Commission orders and approvals set to expire between April 27, 2020 and December 31, 2020. The extensions would apply to special exceptions, variances, Planned Unit Developments (PUDs), and any other contested case decisions, including First Stage, Second Stage, and Consolidated PUDs, and conditions with deadlines falling within this period, and
2. Extend by six months from the date of expiration any construction deadline scheduled to expire between April 27, 2020 and December 31, 2020.

The proposed text amendments would not count toward the number of extension requests available to an applicant under Subtitle Z § 705 or Subtitle Y § 705. If this text amendment is approved an applicant may still request an extension consistent with sections Z-705 or Y-705 which would last beyond the end of the calendar year 2020 or proceed forward with an extension request already filed.

IV. COMPREHENSIVE PLAN

The proposed text amendments would be not inconsistent with many of the Comprehensive Plan's goals and policies:

Framework Element: Overview - Planning for Resilience and Equity

Guiding Principal 213.2

Resilience in the District is defined as the capacity to thrive amidst challenging conditions by preparing and planning to absorb, recover, and more successfully adapt to adverse events. Resilience planning recognizes the volatility of the forces driving change. Ideally, we want to capitalize on positive impacts, and diminish negative impacts of the forces driving change. 213.2

Framework Element: Overview - Creating Successful Neighborhoods

Guiding Principal 220.1

The District prioritizes equitable participation that enfranchises everyone and builds people's long-term capacity to organize to improve their lives and neighborhoods. Residents and communities should have meaningful opportunities to participate in all stages of planning, policy, public investment, and development decision-making. The District has a special responsibility to identify, engage, and build capacity for greater participation among traditionally underrepresented communities, and will make additional, targeted efforts to improve services for these communities and promote their ability to participate on an equal basis with other communities. 220.1

Citywide Elements: Housing

Goal H-1.1 Expanding Housing Supply

Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with improved transportation and shopping, better

neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs. 503.1

Citywide Elements: Economic Development

Policy ED-1.1.4: Competitive Edge

Maintain and enhance the District's competitive edge relative to the Metropolitan Washington region and United States markets in such industry sectors as government, professional services, education, health care and tourism. This will require continued government support and incentives for economic development programs, government participation in local economic development projects and initiatives, and strengthened capacity among local economic development organizations, community development corporations, and workforce development groups.

ATTACHMENT: Amendments Proposed by the Office of Zoning

Additions are shown in **bold** and underlined text; Deletions are shown in **bold** and ~~strikethrough~~ text. are as follows:

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 be file 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.**

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 shall remain valid for a period of six (6) months from the date of expiration of the order.**

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.**

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 application shall be filed for a building permit; **provided that any approval scheduled to expire between April 27, 2020 and December 31, 2020 shall remain valid for six (6) months from the date of expiration of the approval.**

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.**