

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF VIRTUAL PUBLIC HEARING**

TIME AND PLACE: **Thursday, July 30, 2020, @ 4:00 p.m.**
**WebEx or Telephone – Instructions will be provided on
the OZ website by Noon of the Hearing Date¹**

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 20-11 (Office of Planning - Text Amendment to Subtitles Y and Z, Rule of Practice and Procedure – Virtual Public Hearing Regulations)

THIS CASE IS OF INTEREST TO ALL ANCS

On May 11, 2020, the Office of Zoning (“OZ”) filed a petition to the Zoning Commission (the “Commission”) proposing the following amendments to Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all references herein refer unless otherwise specified) to clarify the procedural rules for virtual public hearings and meetings due to the suspension of in-person public hearings and meetings caused by the ongoing COVID-19 pandemic and resulting modifications of District government operations:

Subtitle Y, Board of Zoning Adjustment Rules of Practice and Procedure

Chapter 1, Administration

§§ 103.12 and 103.13 – rules for virtual public hearings and meetings

Chapter 2, Public Participation

§§ 206.3 and 206.7 – electronic submission of comments and exhibits required at least 24 hours prior to the start of the public hearing or meeting

Chapter 4, Pre-Hearing and Hearing Procedures: Contested Cases

§§ 401.4 and 401.6 – updated ANC notice and posting requirements for expedited review applications

Subtitle Z, Zoning Commission Rules of Practice and Procedure

Chapter 1, Administration

§§ 103.12 and 103.13 – rules for virtual public hearings and meetings

Chapter 2, Public Participation

§§ 206.3 and 206.7 – electronic submission of comments and exhibits required at least 24 hours prior to the start of the public hearing or meeting

OZ requested that the Commission:

- Set the petition down for a public hearing;
- Consider taking emergency action to adopt the text amendment; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

¹ Anyone who wishes to participate in this case but cannot do so via WebEx or telephone, may submit written comments to the record. (See p. 3, *How to participate as a witness – written statements.*)

At its May 11, 2020, public meeting, the Commission asked for OZ to work with the Office of the Attorney General to revise the proposed text to clarify the rules for virtual submission of oral testimony and exhibits at a public hearing and voted to grant OZ's request, as modified pursuant to the Commission's request, to:

- Take emergency action to adopt the text amendment;
- Set the petition down for a public hearing; and
- Authorize an immediate publication of proposed rulemaking for the text amendment.

The complete record in the case, including the OP report and the transcript of the public meeting, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text).

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

Section 103, MEETINGS AND HEARINGS, of Chapter 1, ADMINISTRATION, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by revising § 103.12 and by adding a new §103.13, to read as follows:

103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the purposes of this section, the form of the public announcement **shall be on the website of the Office of Zoning and** may ~~be~~ **include** a sign placed at the entrance to the Board's hearing room.

103.13 **The Board may hold its meetings and hearings in a partially or completely online virtual mode, through video conference, teleconference, or other electronic means identified by the Board for this purpose, as authorized by, and in compliance with, the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577), subject to the following:**

(a) A party to a case may request the Board not to hold the public hearing as an online virtual hearing but instead postpone the public hearing until the next available in-person public hearing; provided that the request includes specific reasons for the postponement and any potential accommodations that might resolve the concerns underlying the postponement request;

(b) The posting of the agenda for each public hearing or meeting on the website of the Office of Zoning shall be deemed to comply with the

requirement of Subtitle Y § 103.6 to be “available at” the public hearing or meeting;

- (c) Members, whether present physically or remotely, shall be counted for determination of a quorum;
- (d) A party, witness, agency representative, or party status requestor shall be deemed to “appear” or to be “present” if available for questioning and cross-examination during the hearing by the videoconference, teleconference, or other electronic means identified by the Board;
- (e) The Board may question parties and witnesses by videoconference, teleconference, or other electronic means identified by the Board;
- (f) Cross-examination may be performed by videoconference, teleconference, or other electronic means identified by the Board;
- (g) Exhibits may be offered into evidence at an online virtual public hearing; provided that:

 - (1) An exhibit is submitted to the Office of Zoning by the Interactive Zoning Information System (IZIS) or by e-mail to BZASubmissions@dc.gov prior to the start of the hearing in which the exhibit will be used; except as allowed by the Board as relevant and not prejudicial to a party;
 - (2) Exhibits submitted by parties shall be simultaneously served by e-mail on all other parties;
 - (3) If the Office of Zoning is unable to display the exhibits publicly during the online virtual public hearing, the Board may keep the record open for submission of the exhibits or provide other accommodations the Board deems appropriate; and
 - (4) The Board may provide parties additional time to respond to exhibits introduced at an online virtual public hearing or other accommodations the Board deems appropriate;
- (h) Notice of online virtual public hearings shall include instructions for participation by the videoconference, teleconference, or other electronic means identified by the Board, the details of which shall be provided on the Office of Zoning website;
- (i) Any individual or organization representative desiring to participate in an online virtual public hearing shall sign up to testify with the Office of Zoning prior to the conclusion of public testimony at the online

virtual public hearing per the instructions provided on the Office of Zoning website;

(j) All individuals or organization representatives signing up to testify shall perform the required oath or affirmation when signing up;

(k) An individual or organization representative who is unable to testify at a public hearing due to technical issues may file a request for leave to file a written version of the planned testimony to the record; provided that;

(1) The request includes an explanation of the technical issues that prevented the timely testimony;

(2) The request is submitted to the record within the twenty-four (24) hours following the conclusion of public testimony in the hearing; and

(3) Parties are allowed a reasonable time to respond;

(l) A party that is unable to raise a legal objection in a public hearing may file a request for leave to file a written version of the objection, explaining how the party attempted to raise an objection during the public hearing and why that attempt was unsuccessful; provided that the request is filed within twenty-four (24) hours of the conclusion of the hearing session in which the party attempted to raise the objection;

(m) The Board shall not deliberate until at least forty-eight (48) hours after the conclusion of the public hearing; and

(n) All votes shall be taken by roll call.

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, of Chapter 2, PUBLIC PARTICIPATION, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

206.3 Other than written comments to be introduced at a public hearing, comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be submitted into the record electronically ~~after 9:00 a.m. on the day~~ less than twenty-four (24) hours prior to the start of the hearing or meeting.

206.7 Other than exhibits to be introduced at a public hearing, all documents to be filed electronically through IZIS or by e-mail prior to the hearing or meeting shall

be in portable document format (PDF) and shall not be filed ~~after 9:00 a.m. on the day~~ **less than twenty-four (24) hours prior to the start** of the hearing **or meeting**.

Subsections 401.4 and 401.6 of § 401, EXPEDITED REVIEW, of Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, of Subtitle Y, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

401.4 Subject to the removal process described in Subtitle Y §§ 401.7 and 401.8, 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 Subtitle Y § 402; and
- (b) The completion of the affected ANC review period of thirty (30) days, **as may be extended pursuant to the Advisory Neighborhood Commission Act (D.C. Law 1-21; D.C. Official Code § 1-309.10)**, from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) days.

401.6 The public notice of an expedited review and the affected 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 Subtitle Y §§ 401.7 and 401.8; and
- (b) That the only public notice of the hearing date for a removed application will be the posting of that date **in on the website of** the Office of Zoning **and may include posting on at the entrance to that office** beginning on the date that the application was removed and continuing until the date of such hearing.

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

Section 103, MEETINGS AND HEARINGS, of Chapter 1, ADMINISTRATION, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended by revising § 103.12 and by adding a new § 103.13, to read as follows:

103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the

purposes of this section, the form of the public announcement **shall be on the website of the Office of Zoning and** may **be include** a sign placed at the entrance to the Commission's hearing room.

103.13 The Commission may hold its meetings and hearings in a partially or completely online virtual mode, through video conference, teleconference, or other electronic means identified by the Commission for this purpose, as authorized by, and in compliance with, the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-577), subject to the following:

- (a) A party to a case may request the Commission not to hold the public hearing as an online virtual hearing but instead postpone the public hearing until the next available in-person public hearing; provided that the request includes specific reasons for the postponement and any potential accommodations that might resolve the concerns underlying the postponement request;**
- (b) The posting of the agenda for each public hearing or meeting on the website of the Office of Zoning shall be deemed to comply with the requirement of Subtitle Z § 103.6 to be “available at” the public hearing or meeting;**
- (c) Members, whether present physically or remotely, shall be counted for determination of a quorum;**
- (d) A party, witness, agency representative, or party status requestor shall be deemed to “appear” or to be “present” if available for questioning and cross-examination during the hearing by the videoconference, teleconference, or other electronic means identified by the Commission;**
- (e) The Commission may question parties and witnesses by videoconference, teleconference, or other electronic means identified by the Commission;**
- (f) Cross-examination may be performed by videoconference, teleconference, or other electronic means identified by the Commission;**
- (g) Exhibits may be offered into evidence at an online virtual public hearing; provided that:**
 - (1) An exhibit is submitted to the Office of Zoning by the Interactive Zoning Information System (IZIS) or by email to ZCSubmissions@dc.gov prior to the start of the hearing in**

which the exhibit will be used; except as allowed by the Commission as relevant and not prejudicial to a party;

(2) Exhibits submitted by parties shall be simultaneously served by email on all other parties;

(3) If the Office of Zoning is unable to display the exhibits publicly during the online virtual public hearing, the Commission may keep the record open for submission of the exhibits or provide other accommodations the Commission deems appropriate; and

(4) The Commission may provide parties additional time to respond to exhibits introduced at an online virtual public hearing or other accommodations the Commission deems appropriate;

(h) Notice of online virtual public hearings shall include instructions for participation by the videoconference, teleconference, or other electronic means identified by the Commission, the details of which shall be provided on the Office of Zoning website;

(i) Any individual or organization representative desiring to participate in an online virtual public hearing shall sign up to testify with the Office of Zoning prior to the conclusion of public testimony at the online virtual public hearing per the instructions provided on the Office of Zoning website;

(j) All individuals or organization representatives signing up to testify shall perform the required oath or affirmation when signing up;

(k) An individual or organization representative who is unable to testify at a public hearing due to technical issues may file a request for leave to file a written version of the planned testimony to the record; provided that:

(1) The request includes an explanation of the technical issues that prevented the timely testimony;

(2) The request is submitted to the record within the twenty-four (24) hours following the conclusion of public testimony in the hearing; and

(3) Parties are allowed a reasonable time to respond;

(l) A party that is unable to raise a legal objection in a public hearing may file a request for leave to file a written version of the objection,

explaining how the party attempted to raise an objection during the public hearing and why that attempt was unsuccessful; provided that the request is filed within twenty-four (24) hours of the conclusion of the hearing session in which the party attempted to raise the objection;

(m) The Commission shall not deliberate until at least forty-eight (48) hours after the conclusion of the public hearing; and

(n) All votes shall be taken by roll call.

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, of Chapter 2, PUBLIC PARTICIPATION, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, are amended to read as follows:

206.3 **Other than written comments to be introduced at a public hearing,** comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be submitted into the record electronically ~~after 5:00 p.m. on the day~~ **less than twenty-four (24) hours prior to the start** of the hearing **or meeting.**

206.7 **Other than exhibits to be introduced at a public hearing,** all documents to be filed electronically through IZIS or by e-mail **prior to the hearing or meeting** shall be in portable document format (PDF) and shall not be filed ~~after 9:00 a.m. on the day~~ **less than twenty-four (24) hours prior to the start** of the hearing **or meeting.**

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01, *et seq.* (2018 Repl.)).

This virtual public hearing will be conducted in accordance with the rulemaking case provisions Subtitle Z, Chapter 5 of the Zoning Regulations (Title 11, Zoning Regulations of 2016, of the District of Columbia Municipal Regulations), which includes the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

How to participate as a witness – oral presentation

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case are **strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at <https://dcoz.dc.gov/> or by calling Donna Hanousek at (202) 727-0789 in order to ensure the success of the new virtual public hearing procedures.

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most

important points. The Commission must base its decision on the record before them. Therefore, it is **highly recommended that all written comments and/or testimony be submitted to the record at least 24 hours prior to the start of the hearing.** The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|---------------|----------------|
| 1. | Organizations | 5 minutes each |
| 2. | Individuals | 3 minutes each |

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by e-mail to zsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

“Great weight” to written report of ANC

Subtitle Z § 505.1 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 505.2, an ANC that wishes to participate in the hearing must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

ANTHONY J. HOOD, ROBERT E. MILLER, PETER G. MAY, PETER A. SHAPIRO, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Avez-vous besoin d'assistance pour pouvoir participer? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

참여하시는데 도움이 필요하세요? 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

您需要有人帮助参加活动吗？如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系。电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለሙሳተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።