

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: :
: :
OFFICE OF PLANNING TEXT : Case No.
AMENDMENT RE: ANTENNAS : 12-06
: :
----- :

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Thursday,
October 11, 2012

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 12-06 by the District of Columbia Zoning Commission convened at 6:33 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- PETER MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON

KAREN THOMAS

STEVEN COCHRAN

PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on October 11, 2012.

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VOTE TO APPROVE TEXT AMENDMENT 27
Approved four to zero to one

1 P-R-O-C-E-E-D-I-N-G-S

2 6:33 p.m.

3 CHAIRMAN HOOD: Okay. We're ready
4 to get started.

5 Good evening ladies and gentlemen.
6 These are public hearings of the Zoning
7 Commission for the District of Columbia for
8 Thursday, October 11, 2012. My name is
9 Anthony Hood.

10 Joining me is Vice Chair Cohen. We
11 are expected to be joined shortly by
12 Commissioner Miller and Commissioner May. We
13 are also joined by the Office of Zoning staff
14 Ms. Sharon Schellin, Office of Planning, Ms.
15 Steingasser, Ms. Thomas, Mr. Cochran, Mr.
16 Goldstein.

17 These proceedings are being
18 recorded by a Court Reporter and is also
19 webcast live.

20 The subject of this evening's
21 hearings are Zoning Commission Case Nos. 12-
22 06, 12-12 and 12-13. These are requests by

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1 the Office of Planning for text amendments to
2 the zoning regulations in regard to antennas,
3 new TV standards and definitions of clear
4 height and floor to ceiling respectively.

5 We had also scheduled Case No. 04-
6 33F tonight which would have been amended PUD
7 implementation of IZ affordability provisions
8 but that hearing has been postponed to a date
9 uncertain. So, if you've come for that we
10 apologize for the inconvenience.

11 Notices of today's hearing were
12 published in the D.C. Register on August 10th,
13 2012, August 24th, 2012, and August 31st,
14 2012, and copies of those announcements are
15 available to my left on the wall near the
16 door.

17 The hearing will be conducted in
18 accordance with 11 DCMR 3021 as follows.
19 Preliminary Matters, Presentation by the
20 Office of Planning, Reports of Other
21 Government Agencies, Reports of the ANCs, in
22 this case all of them, Organizations and

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1 Persons in Support, Organizations and Persons
2 in Opposition.

3 The following time constraints
4 will be maintained in these hearings.
5 Organizations, five minutes, individuals,
6 three minutes. The Commission intends to
7 adhere to the time limits as strictly as
8 possible to hear the case in a reasonable
9 period of time.

10 Please turn off all beepers and
11 cell phones at this time so as not to disrupt
12 these proceedings.

13 We've also been joined by
14 Commissioner Miller. As I stated earlier he
15 would join us. He has now joined us and also
16 from the Office of Planning Mr. Lawson.

17 At this time, the Commission will
18 consider any preliminary matters. Does the
19 staff have any preliminary matters?

20 SECRETARY SCHELLIN: No, sir.

21 CHAIRMAN HOOD: Okay. Let's go
22 right into our first case tonight. 12-06.

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1 Let's go to the presentation by the Office of
2 Planning and we can begin with 12-06.

3 Ms. Thomas.

4 MS. THOMAS: Yes. Good evening,
5 Mr. Chairman, members of the Commission.
6 Karen Thomas with the Office of Planning.

7 Just briefly I would just
8 highlight that this amendment is just proposed
9 to simply remove DCRA's requirement for a
10 report from OP when it comes to a modification
11 of existing antenna sites that run through the
12 District.

13 The only change that we have, the
14 only minor differences that we have to detect
15 the proposed setdown is on page 3 where we
16 just for clarification we included in
17 consultation with OAG, the Office of the
18 Attorney General, when he said we should
19 permit or modify the antenna, antenna towers
20 and monopoles to we just included that aspect
21 of it.

22 And with the next text we're

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1 proposing instead of four antennas to mount,
2 based on industry standards we're proposing
3 five. And that would be the only difference
4 that has been proposed at setdown.

5 With respect to your other
6 question, the question that you asked
7 regarding antennas, dish antennas in front of
8 buildings. While this is not the case, first
9 of all, the FCC guidelines specifically refer
10 to consumer dish antennas and they're not to
11 be regulated by local government except for
12 safety and within historic districts.

13 And the D.C. Code, construction
14 code, does regulate dish antennas on the side
15 of buildings in historic districts. And
16 Historic Preservation has told me that they do
17 not allow or approve any of that type of
18 installation.

19 With respect to that, that's all I
20 have and I'll be happy to take any questions.

21 Thank you.

22 CHAIRMAN HOOD: Okay. Thank you

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1 very much, Ms. Thomas.

2 Commissioners, any questions? Mr.
3 May?

4 COMMISSIONER MAY: Yes. I just
5 want to comment on the satellite dishes
6 because I think that was my request and it
7 goes back to the hearings from, I don't know,
8 10 years ago, whatever it was when we talked
9 about antennas. And I thought at the
10 conclusion of that that we had actually taken
11 action to clarify that such antennas were
12 regulated by Zoning. But that seems to be
13 clear since that was post-1996 and the FCC
14 guidelines are based on the 1996 law as I
15 recall from having read this. In fact, we
16 didn't have that ability back then. Maybe I
17 misunderstood what we were doing back then,
18 but I had the impression that they were
19 regulated like other antennas because I knew
20 that if you put a TV aerial on your roof
21 you're supposed to get an antenna and you're
22 supposed to get a permit for it depending on

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1 where it is and things like that.

2 There are regulations that effect
3 this and in historic districts you have to
4 have a permit. But I thought that we had gone
5 beyond this as far as historic districts but
6 I guess I was mistaken about that. It's
7 certainly good to have this clarification and
8 to know that it's still subject to certain
9 conditions in historic districts, although I
10 do know that there is an enforcement issue
11 there. But there's always enforcement issues.

12 Anyway, I appreciate getting all
13 of this information, even though it was not
14 really related to the case at hand, but you
15 know any opportunity for me to find out more
16 about that is welcome, so thank you.

17 CHAIRMAN HOOD: Any other
18 questions of Office of Planning? Okay. I
19 don't see any.

20 Let's go to Reports of Other
21 Government Agencies. I don't think we had
22 any.

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1 Let's go to Reports of ANCs.

2 In this case, we did have a letter
3 from ANC 6B who opined and said "At it's
4 regularly scheduled properly noticed meeting
5 on September 11, 2012, the Advisory
6 Neighborhood Commission 6B voted ten to zero
7 that it has no objections to the above-
8 reference requests of the Office of Planning"
9 and cites Zoning Commission Case No. 12-06.
10 And that is from Dr. Critchfield, the Chair of
11 ANC 6B.

12 Do we have anyone who is here for
13 Organizations and Persons in Support? Okay.
14 And let me just ask, do we have anyone
15 Organizations and Persons here in Opposition
16 if you would come up at this time. Okay.

17 Thank you very much. You may
18 begin.

19 MS. ANDERSON: Good evening.
20 Thank you.

21 My name is Tracy Anderson and I'm
22 here on behalf of T-Mobile and AT&T. Edward

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1 Donohue was scheduled to appear but he is
2 sick. So, I'm an associate of Donohue and
3 Sterns.

4 So, we had submitted letters on
5 July 9th and July 24th regarding the proposed
6 text amendment and I'm sure as you know we
7 thought this was a good opportunity to look at
8 the specific zoning regulations that address
9 modification requests like that in 2711.4.

10 Earlier this year the Middle Class
11 relief and Job Creation Act of 2012 had a
12 specific section, 6409, which outlined the
13 modification request procedure for eligible
14 stability requests and directed that they not
15 be submitted, subjected to the same review
16 process as they had been in an effort to
17 expedite modification requests. And by
18 modification requests it specifically entails
19 replacement of antennas with more powerful
20 antennas, equipment cabinets and things like
21 that.

22 That section 6409 did leave gaps

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1 for wireless providers and for local
2 jurisdictions trying to apply the Federal
3 legislation. We in the wireless community
4 have been able to look at other sources. For
5 instance, the National Programmatic Act for
6 the co-location of wireless antennas to fill
7 in some of the gaps, namely, definition for
8 things like co-location, what exactly that
9 means. What constitutes a tower and most
10 notably what constitutes substantial increase
11 when these modifications are coming before the
12 Zoning Review Board.

13 We still even with the
14 supplemental sources have gaps that we need to
15 be addressing and I think that both the
16 wireless community from an enterprise
17 standpoint as well as the staff that are
18 looking at these applications have a common
19 goal of expediting the process.

20 And we think that the gaps can
21 best be filled by adding in definition
22 sections that make it clear that included in

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1 the phrases like existing antennas sites,
2 flagpoles, lightpoles, church steeples, all
3 the structures that you don't necessarily
4 think of when you think of the support
5 structures that they are included.

6 Also notably we think it's a good
7 opportunity to have things like utility poles
8 and water tanks which offer the most ideal
9 co-location opportunities because they are, in
10 fact, also removing the need for an additional
11 tall structure. So, it shouldn't be only
12 existing telecommunication facilities that
13 offer co-location opportunities for these
14 modification requests but also the existing
15 infrastructure that the utilities own.

16 The T C A Act , the
17 telecommunications act of 1996 gives local
18 jurisdictions a certain sense of direction.
19 They established shot clock rule giving Zoning
20 Review Boards a certain amount of time,
21 depending on the type of application. The 5th
22 Circuit recently upheld this to try to

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1 expedite and make the process more efficient.
2 Not only does it give certain deadlines but it
3 also limits what local jurisdictions can do.
4 Along these lines, we'd look for the
5 elimination of what seems to be redundancies
6 in the process which as Ms. Thomas pointed out
7 one such redundancy is OP's review of certain
8 modification requests on an already burdened
9 staff.

10 An example of this is the R
11 certification requirement that the zoning
12 regulations call for. The FCC sets forth the
13 maximum permissible exposure limits and all
14 carriers when they provide a site are required
15 to be within those limits.

16 Also reference tonight was the
17 over the air radio devices which the acronym
18 OTARD which is Section 207 of that same
19 telecommunications act prohibits the
20 restriction on dishes. So, really it gives
21 both direction and it tells local
22 jurisdictions where it's allowed to guide

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1 carriers and where it's not allowed to
2 regulate.

3 Again, this is all in light or in
4 hopes of furthering the shared goal between
5 both staff reviewing the applications and the
6 wireless carriers submitting them. We're
7 looking to avoid historical review when it's
8 not applicable.

9 Specifically, two applications
10 provide a really good example of another
11 conflicting law. The Building Height Act --
12 I'm sorry, I'm out of time.

13 CHAIRMAN HOOD: No, that's all
14 right. You can continue.

15 MS. ANDERSON: Okay.

16 CHAIRMAN HOOD: We have so many
17 people here tonight.

18 MS. ANDERSON: I know. I will try
19 to keep it -- I know everybody wants to get
20 home.

21 The Building Height of 1910 has
22 created a hurdle, similar hurdle to

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1 redundancies in the process and AT&T and
2 Cricket communications both had applications
3 at high schools in the District which has
4 created a difficulty. The first was in 2009.

5 Cricket Communications proposed
6 what we call a self flagpole essentially a
7 thicker flagpole where the antennas would be
8 concealed within the structure at 126-½ to be
9 installed on the campus. And I believe it is
10 Exception 2713, refers wireless installers who
11 are installing what technically is considered
12 a monopole to the Height Act. And it requires
13 us to seek a waiver from the Mayor or
14 designee.

15 The intention of the Height Act
16 was to limit habitable spaces and it was all
17 according to the particular street frontages
18 and street widths on which the structures were
19 built. It wasn't meant to apply to non-
20 habitable structures like monopoles that are
21 clearly not spires in antennas, domes, things
22 of that nature.

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1 So, in the instance of St. John's
2 we did have to apply for the separate height
3 waiver. We received it and could go forward
4 but it seemed like an additional burden on
5 staff and the wireless carrier in delaying the
6 process that might otherwise be avoided.

7 Currently, before the Board of
8 Zoning Adjustment, I think scheduled to go
9 before them on the 23rd of this month, is a
10 similar instance. AT&T is proposing to
11 install a 128-foot lightpole on Roosevelt High
12 School property. We've done one -- I believe
13 T-Mobile did one in June at James Madison and
14 Virginia which is similar. Again looking for
15 tall structures, look at the lightpoles around
16 high school fields and where they can blend
17 with the existing structures.

18 We put a structurally sound
19 monopole in there. We installed the lights at
20 the same height and bumped up the height by
21 between 20 and 40 feet. That's the instance
22 here. The lights will go back on the monopole

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1 at 100 feet. But, again, we're going to have
2 to ask for a height waiver, which isn't an
3 impossible procedure. But, again, it adds a
4 step to the process that otherwise might
5 otherwise not be necessary and was not
6 intended by the original law. So, I think
7 that those two examples really highlight where
8 semantics.

9 In the case of Roosevelt we
10 originally proposed a replacement lightpole
11 which wouldn't be subject to the height
12 waiver, Height Act waiver. But because it is
13 deemed a monopole, which makes sense because
14 it will be a telecommunications facility, it
15 now is subject to 2713.7 which makes it
16 subject to the height waiver. So, it seems
17 like a redundancy that should be either
18 necessary across the board or not necessary at
19 all.

20 But I provided a letter from Ed
21 that summarizes all of this and I'm here
22 mainly to answer any questions give T-Mobile

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1 and AT&T's positions on the record before you.

2 Thank you.

3 CHAIRMAN HOOD: Thank you very
4 much.

5 Commissioners, any questions?

6 Commissioner May?

7 COMMISSIONER MAY: Yes. The
8 Office of Planning has in their report written
9 responses to three of the questions raised in
10 one of your earlier letters. Do you have any
11 response to that or are do you accept those
12 answers or --

13 MS. ANDERSON: Yes. The positions
14 that we stated in earlier letters we
15 understand OP's position and, again, I think
16 we would limit ours to more of the definition
17 section of supplementing that way. We
18 understand OP's position. The carriers still
19 feel strongly about other amendments, but
20 understood.

21 COMMISSIONER MAY: Well, you can
22 always talk to them about trying to make other

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1 changes.

2 MS. ANDERSON: Yes, we can.

3 COMMISSIONER MAY: I'm confused by
4 your reference to the Height Act. I mean, we
5 don't have any control over the Height Act
6 and, you know, I imagine there are a few folks
7 on my staff who would argue the question of
8 the intention of the Height Act and whether it
9 was really intended to control habitable space
10 or whether it was simply intended to control
11 tall structures.

12 But in any case I'm not sure why
13 it's relevant here. You're saying that that's
14 another layer of things that you have to go
15 through. And if you have that, I mean, why is
16 that relevant for our consideration?
17 Certainly, we have no power to say anything
18 about the Height Act restrictions.

19 MS. ANDERSON: I think in looking
20 at the Zoning Text Amendment it's an
21 opportunity to review and cure any of the
22 ambiguities and really it becomes a semantics

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1 issue we thought with the modification
2 requests and what exactly should be defined
3 there.

4 And I agree. I agree. Even if
5 you look at the National Capital Planning
6 Commission they refer to the Height Act as
7 trying to maintain the -- I believe it's the
8 horizontal character of the District. But
9 even, I believe it was the amendment to the
10 Act, Section 5 of the amendment to the Height
11 Act, tried to begin to limit and to provide
12 exceptions to the Height Act. And I think at
13 this point, while the zoning regulations can
14 offer a waiver, I don't think, obviously, the
15 Height Act overrides that.

16 I think we're looking for some
17 clarity in the zoning text that either
18 includes it in one process so that it doesn't
19 become a concurrent review or a step that
20 comes up without these carriers knowing
21 whether they're going to be subject to it or
22 not. And this all seems to go back to precise

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1 definitions of what exactly things are and
2 what they're going to qualify as versus, you
3 know, the lightpole or the monopole example.

4 COMMISSIONER MAY: I mean, what it
5 boils down to is that you'd rather not have to
6 deal with redundant reviews?

7 MS. ANDERSON: Yes.

8 COMMISSIONER MAY: Well, we're
9 looking at two different things. I mean, the
10 Height Act is concerned exclusively about
11 height and the authority to waive that falls
12 to the mayor, I guess.

13 And then zoning regulations have
14 to do with other impacts. We're interested in
15 different issues. And that's like saying you
16 shouldn't have to go to the Commission of Fine
17 Arts if you're already going to NCPC or vice
18 versa when you're dealing with, you know,
19 projects that are under the domain of each of
20 those agencies. I mean, this is a city of
21 multiple redundant reviews.

22 MS. ANDERSON: Right. I think in

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1 this case we've had to go actually before,
2 they are more closely connected than you might
3 otherwise think. I think when it's gone
4 before -- we initiated a process before the
5 BZA we then have had to go to the Director of
6 DCRA or the Zoning Administrator to facilitate
7 the Height Waiver Act or the waiver permit.

8 I think we're looking for more
9 unity in that process so that we would know
10 that that would be submitted concurrently with
11 either the special exception or the variance.

12 COMMISSIONER MAY: Yes, okay. I
13 mean, I think you're into some uncharted
14 territory in terms of trying to develop a
15 scheme for interaction between the ZA and the
16 BZA and so on. So, I'm not sure that there is
17 much fertile ground there. But, anyway, I
18 don't think that really affects what we're
19 voting on today at this moment.

20 I appreciate the interest in
21 defining things because when I was looking at
22 the definitions or the language I was thinking

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1 that, yes, how do you define a sector?

2 Is that defined in the regulations
3 at the moment? I don't think it is. So, it
4 can get very confusing very quickly I'm sure.

5 Anyway, thanks.

6 CHAIRMAN HOOD: Any other
7 questions?

8 Your name again, I'm sorry?

9 MS. ANDERSON: Tracy Anderson.

10 CHAIRMAN HOOD: Anderson.

11 MS. ANDERSON: Yes.

12 CHAIRMAN HOOD: Ms. Anderson, I
13 want to thank you very much for coming down.

14 MS. ANDERSON: Thank you.

15 CHAIRMAN HOOD: Ms. Steingasser,
16 let me take this out of order.

17 Would some of what Ms. Anderson
18 mentioned maybe the ZRR review, are we looking
19 at some of those issues that she, not
20 necessarily going to the Height Act, but are
21 we looking at some of that?

22 MS. STEINGASSER: Yes. ZRR is not

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1 looking at the Height Act. We are looking at
2 some of the definitional issues that were
3 raised.

4 CHAIRMAN HOOD: I just wanted to
5 give Ms. Anderson some assurance that there is
6 an ongoing effort to try to resolve some of
7 her concerns, not necessarily pertaining to
8 the Height Act but those other issues.

9 Okay. So, that's it.

10 Commissioners, any comments?

11 Anybody like to hold off and wait
12 for some additional information or --

13 COMMISSIONER MAY: I don't think
14 we need any further information.

15 CHAIRMAN HOOD: Probably won't get
16 any either. Okay.

17 Recommend a motion.

18 COMMISSIONER MAY: I'll make a
19 motion that we approve Zoning Commission Case
20 No. 12-06, Text Amendment regarding the
21 antennas as proposed by the Office of
22 Planning.

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1 CHAIRMAN HOOD: It's been moved.

2 Can I get a second?

3 COMMISSIONER COHEN: I'll second.

4 CHAIRMAN HOOD: Moved and properly
5 seconded.

6 Any further discussion?

7 Are you ready for the question?

8 All those in favor?

9 (AYES)

10 CHAIRMAN HOOD: Any opposition?

11 So, Staff, would you record the
12 vote.

13 SECRETARY SCHELLIN: Yes. Staff
14 records the vote four to zero to one to
15 approve proposed action on Zoning Commission
16 Case No. 12-06.

17 Commissioner May moving,
18 Commissioner Cohen seconding. Commissioners
19 Hood and Miller in support. Commissioner
20 Turnbull not present, not voting.

21 CHAIRMAN HOOD: Okay. And, again,
22 Ms. Anderson, by no means did we disregard

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your comments.

Okay. Thank you.

(Whereupon, the above matter was
concluded at 6:57 p.m.

A	25:9,9,10,11,12 25:14,17 26:5 27:22	AYES 27:9	Chairman 1:20,22 3:8 4:3 6:21 7:5 8:22 10:17 16:13 16:16 20:3 25:6 25:10,12,15 26:4 26:15 27:1,4,10 27:21	Commissioners 9:2 20:5 26:10 27:18
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In the matter of: Antennas

Before: DCZC

Date: 10-11-12

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