

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

**TIME AND PLACE:**            **Thursday, November 8, 2012, @ 6:30 p.m.**  
   **Jerrily R. Kress Memorial Hearing Room**  
   **441 4th Street, N.W., Suite 220-S**  
   **Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**Case No. 12-11 (Text Amendment: Various Administrative Amendments)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

The Office of Planning (“OP”), in a report dated July 20, 2012, petitioned the Zoning Commission for the District of Columbia (“Zoning Commission” or “Commission”) for text amendments pertaining to the measurement of height, planned unit developments, the procedural rules of the Commission and the Board of Zoning Adjustment, and building permits.

At its regular public meeting held July 30, 2012, the Zoning Commission set down this case for a public hearing. The OP report served as the pre-hearing submittal for the case.

Below is an outline of the proposed administrative text amendments setdown for hearing. The public may wish to refer to the amendment number when offering written comment or public testimony:

**OUTLINE**

1.     Height.
  - A.    Definition.
  - B.    Zone specific rules for measurement.
2.     Planned Unit Developments.
  - A.     Public Benefits Criteria.
    - (i)    Prohibition of monetary contributions.
    - (ii)   Limitation on IZ Units being counted as a public benefit.
  - B.     Codification of “BAFO” process.
  - C.     Time extension for first-stage PUDs.
  - D.     Implicit zoning relief prohibited.
  - E.     Limitations on development of PUD site.
  - F.     Prohibition against escrows in satisfaction of PUD conditions.
  - G.     ZA approval of PUD modifications.
  - H.     Responsibility for compliance with PUD Conditions.
3.     Zoning Commission Rules of Procedure.
  - A.     Closing of the record and re-opening by the Chair.
  - B.     Requests for rehearing.

4. BZA Rules of Procedure.
  - A. Dismissal for failure to appear.
  - B. Ex parte communications.
  - C. Use and Area Variances.
  - D. Party Status Requests.
  - E. Authority of Chair to Re-Open the Record.
  - F. Submission of Post-Decision Draft Orders.
  - G. Premature filing of motions for reconsideration.
  - H. Modifications to Plans and Orders.
5. Building Permits.

The proposed amendments to the Zoning Regulations, title 11 DCMR, are as follows (additions to existing text is shown in **bold** and underlined text, deletions of existing text is shown in ~~strikethrough~~ text):

**1. Height.**

**A. Definition.**

Chapter 1, **THE ZONING REGULATIONS**, § 199, **DEFINITIONS**, § 199.1, definition of “Building, height of” is amended as follows:

**Building, height of – in other than Residence Districts (R)**, the vertical distance measured from the level of the curb, opposite the middle of the front of the building to the highest point of the roof or parapet or a point designated by a specific zone district; **in Residence Districts (R) the vertical distance measured from the existing grade opposite the middle of the front of the building to a point designated in the zone district.**

The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

**Berms or other forms of artificial elevation shall not be included in measuring building height.**

~~In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.~~

~~In those districts in which the height of the building is limited to sixty feet (60 ft.), in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).~~

~~Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.~~

~~If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.~~

~~In those districts in which the height of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3 ft.) in height. (33 DCR 3979 and 50 DCR 9387)~~

**B. Zone specific rules for measurements.**

Chapter 4, **RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 400, HEIGHT OF BUILDINGS OR STRUCTURES (R)**, is amended by adding new §§ 400.15 through 400.22

400.15 The height of buildings in R zones shall be measured in accordance with the rules provided in §§ 400.16 through 400.22. If more than one of these subsections applies to a building, the rule permitting the greater height shall apply.

400.16 The building height measuring point (BHMP) shall be established at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line.

400.17 The height of a building with a flat roof shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

400.18 The height of a building with a roof that is not a flat roof shall be measured as follows:

- (a) From the BHMP to the average level between the highest eave, not including the eave of a dormer and the highest point of the roof; and
- (b) Where there are no *eaves*, the average level shall be measured between the top of the highest wall plate and the highest point of the roof.

- 400.19 In the R-5-C District in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).
- 400.20 Buildings permitted to be ninety feet (90 ft.) shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.
- 400.21 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the BHMP to the highest point of the roof or parapet.
- 400.22 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Chapter 5, **SPECIAL PURPOSE DISTRICTS**, § 530, **HEIGHT OF BUILDINGS OR STRUCTURES (SP)**, is amended by adding new §§ 530.8 through 530.10 to read as follows:

- 530.8 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.
- 530.9 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.
- 530.10 The height of building permitted to be ninety feet (90 ft.), shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 6, **MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS**, § 630, **HEIGHT OF BUILDINGS OR STRUCTURES (CR)**, is amended as follows:

By amending § 630.1 to read as follows:

630.1 Except as provided in this section, the height of buildings and structures shall not exceed ninety feet (90 ft.) **as measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.**

By adding new §§ 630.7 and 630.8 to read as follows:

630.7 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

630.8 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Chapter 7, **COMMERCIAL DISTRICTS**, § 770, **HEIGHT OF BUILDINGS OR STRUCTURES (C)**, is amended by adding new §§ 770.9 through 770.11 to read as follows:

770.9 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

770.10 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

770.11 The height of a building permitted to be ninety feet (90 ft.) or greater shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 8, **INDUSTRIAL DISTRICTS**, § 840, **HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)** is amended by adding new §§ 840.6 through 840.8 to read as follows:

840.6 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

840.7 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

840.8 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 9, **WATERFRONT DISTRICTS**, § 930, **HEIGHT OF BUILDINGS OR STRUCTURES (W)** is amended by adding new §§ 930.5 through 930.7 to read as follows:

930.5 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

930.6 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

930.7 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 5, **SPECIAL PURPOSE DISTRICTS**, § 530, **HEIGHT OF BUILDINGS OR STRUCTURES (SP)**, is amended by adding new §§ 530.8 through 530.10 to read as follows:

530.11 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

530.12 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

530.13 The height of building permitted to be ninety feet (90 ft.), shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 6, **MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS**, § 630, **HEIGHT OF BUILDINGS OR STRUCTURES (CR)**, is amended as follows:

By amending § 630.1 to read as follows:

630.1 Except as provided in this section, the height of buildings and structures shall not exceed ninety feet (90 ft.) **as measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.**

By adding new §§ 630.7 and 630.8 to read as follows:

630.9 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

630.10 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Chapter 7, **COMMERCIAL DISTRICTS**, § 770, **HEIGHT OF BUILDINGS OR STRUCTURES (C)**, is amended by adding new §§ 770.9 through 770.11 to read as follows:

770.12 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

770.13 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

770.14 The height of a building permitted to be ninety feet (90 ft.) or greater shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 8, **INDUSTRIAL DISTRICTS**, § 840, **HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)** is amended by adding new §§ 840.6 through 840.8 to read as follows:

840.9 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

840.10 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

840.11 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Chapter 9, **WATERFRONT DISTRICTS**, § 930, **HEIGHT OF BUILDINGS OR STRUCTURES (W)** is amended by adding new §§ 930.5 through 930.7 to read as follows:

930.8 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

930.9 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

930.10 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

**2. Planned Unit Developments.**

Chapter 24, **PLANNED UNIT DEVELOPMENT PROCEDURES**, is amended by as follows:

**A. Public Benefits Criteria.**

**(i) Prohibition of monetary contributions.**

Subsection 2403.6 is amended to read as follows:

2403.6 Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title. **All public benefits shall meet the following criteria:**

**(a) Benefits shall be tangible and quantifiable items;**

**(b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a Certificate of Occupancy; and**

**(c) Monetary contributions shall not be allowed except to District housing funds**

**(ii) Limitation on IZ Units being counted as a public benefit.**

Subsection 2403.9 is amended to read as follows:

2403.9 Public benefits and project amenities of the proposed PUD may be exhibited and documented in any of the following or additional categories:

...

**(f) Housing and affordable housing; except that affordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds the amount that would have been required through matter of right development under existing zoning.**

**B. Codification of “BAFO” process.**

New §§ 2403.15 through 2403.21 are added to read as follows:

2403.15 Subsections 2403.15 through 2403.20 describe the process in which an applicant for a PUD or PUD modification is given a final opportunity to identify the public benefits of the PUD and to prove to the Commission that each such benefit will result from a grant of the application. The Commission may relieve an applicant of this responsibility in circumstances when it believes the process is unnecessary, such as when it is considering a modification to an approved design or to a limited number of conditions.

2403.16 No later than seven (7) days after the Commission takes proposed action on any PUD application, the applicant shall file with the Office of Zoning (“OZ”) and serve the Office of Planning (“OP”) the Office of the Attorney General (“OAG”), and the affected ANC and any other parties, a final list of the public benefits proffered for the PUD (“Proffer”) and, for each proffered public benefit, provide a draft condition that is both specific and enforceable.

2403.16 The description of each public benefits shall be identical to the description contained in the Applicant’s proposed order unless a revision is required for clarity or to reflect a revision.

2403.17 The information required by § 2403.15 shall be presented in the form of a chart in which with each proffered public benefit is described in one column and a corresponding condition is described in a second. For example:

Proffer	Condition
42. The Applicant has agreed to contribute _____ to _____ for the purpose of _____ prior to applying for a certificate of occupancy for the PUD.	B.4. <b><u>Prior to applying for a certificate of occupancy for the PUD, the</u></b> Applicant shall contribute _____ to _____ for the purpose of _____.

2403.18 No later than fourteen (14) days after the Commission takes proposed action on any PUD application, OAG, OZ and OP shall complete any dialogue they feel is needed with the Applicant with respect to any deficiencies in the Applicant’s proposed conditions.

- 2408.19 No later than twenty-one (21) days after the Commission takes proposed action on any PUD application the applicant shall file with OZ and serve OP, OAG, and the affected ANC and any other parties any revisions to the Proffer and conditions, or a statement that none have been made.
- 2403.20 No later than twenty-eight (28) days after the Commission takes proposed action on any PUD application OAG, OP, and the affected ANC and any other party may file any responses each has to the Applicant's final Proffer and conditions. The responses shall be limited to whether the conditions in the final Proffer are specific and enforceable. The OAG response will be treated as a confidential attorney client communication
- 2403.21 The Commission will consider the PUD to contain only those public benefits described in the final Proffer.

**C. Time extension for first-stage PUDs.**

Subsection 2407.11 is amended to read as follows:

- 2407.11 The rights granted under such an approval are conditional, and shall be exercised within the specified time limit. Unexercised rights shall lapse at the end of the specified time periods, and the zoning shall revert to pre-existing conditions, **unless a request to extend the validity of the approval is granted by the Commission in accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.12.**

**D. Implicit zoning relief prohibited.**

Subsection 2408.6 is amended to read as follows:

- 2408.6 If the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. **No order approving a PUD shall be deemed to include relief from any zoning regulation, including but not limited to the requirements of chapter 26, unless such**

**relief was expressly requested by the applicant and expressly granted in the order**

**E. Limitations on development of PUD site.**

New § 2408.16 is added to read as follows:

2408.16 The grant of a PUD prohibits any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter of right standards, until:

- (a) The validity of the PUD order expires; or
- (b) The Commission issues an order granting the applicant's motion to extinguish the PUD.

**F. Prohibition against escrows in satisfaction of PUD conditions.**

Subsection 2409.2 is amended to read as follows:

2409.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. **Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission's order approving the PUD.**

**G. ZA approval of PUD modifications.**

Subsections 2409.7 and 2409.8 are amended to read as follows:

2409.7 In reviewing and approving any ~~requested~~ **modification requested pursuant to 2409.6.**, the Zoning Administrator shall determine that the proposed modification is consistent with the intent of Commission in approving the PUD.

2409.8 Following approval of any modifications under § 2409.6, the Zoning Administrator shall report to the Commission the modification approved under this section. **No building permit for the modified PUD shall be issued for forty-five days after a report is sent to the Commission. If prior to the expiration of this time period the Commission decides that the modification exceeded the**

**scope of § 2409.6, the Zoning Administrator shall not approve the building permit, but shall instruct the applicant to seek a modification pursuant to § 2409.9.**

**H. Responsibility for compliance with PUD Conditions.**

New § 2409.11 is added to read as follows:

2409.11 Unless specifically stated otherwise, the term "Applicant" in any condition of an order approving a PUD or PUD modification shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the PUD site, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an Owner.

**3. Zoning Commission Rules of Procedure.**

Chapter 30, **ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE**, is amended by as follows:

**A. Closing of the Record and Re-Opening by the Chair**

Subsection 3024.1 is amended to conform with § 3121.9 of the BZA's rules, as that rule is proposed to be amended:

3024.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer. **Any such materials received by the Commission after the close of the record shall be returned by the Director and not received into the files of the Commission. However, if the materials are accompanied by a request to re-open the record the request shall be accepted and presented to the Commission for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the Chair and, if granted, the materials shall be entered into the record.**

**B. Requests for Rehearing.**

Subsection 3029.6 is amended to conform with § 3126.6 of the BZA rules:

3029.6 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought. **No request for rehearing shall be considered by the Commission unless new evidence is submitted that could not reasonably have been presented at the original hearing. If a rehearing is granted, notice shall be given as in the case of an original hearing.**

**4. BZA Rules of Procedure.**

Chapter 31, **BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE**, is amended by as follows:

**A. Ex Parte Communications.**

New § 3100.3 is added to read as follows:

3100.3 The rules prohibiting *ex parte* communication in Zoning Commission contested cases, as set forth in § 3023 of this title, apply to all applications and appeals before the Board and commences upon the filing of such proceedings.

**B. Dismissal for failure to appear.**

Subsection 3100.6 is amended as follows:

3100.6 No appeal or application shall be dismissed on the grounds that the appellant or applicant failed to comply with the provisions of this chapter unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected, **except that the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.**

**C. Use and Area Variances.**

New §§ 3103.2 through 3103.10 are added to read as follows:

3103.2 Variances are classified as area variances or use variances.

3103.2 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.

3103.4 Examples of area variances are requests to deviate from:

- (a) Requirements that affect the size, location and placement of buildings and other structures such as height, floor area ratio, lot occupancy, yard width and depth, and minimum court size;
- (b) Minimum parking or loading requirements to an extent greater than what may be permitted by special exception;
- (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential uses;
- (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in § 2507.3;
- (e) The prohibition against certain enlargements and additions to nonconforming structures stated at 11 DCMR § 2001.3; and
- (f) Preconditions to the establishment of a matter of right use including, but not limited to, the minimum land area requirement of § 401.3 applicable to the conversion of a building an apartment house as permitted by § 330.5(e); provided that the waiver would not cause the proposed use to meet the definition of a more intense use.

3103.5 A use variance is a request to permit:

- (a) A use that is not permitted by right or special exception in the zone district where the property is located;
- (b) A use that is expressly prohibited in the zone district where the property is located; or
- (c) An expansion of a nonconforming use prohibited by § 2002.3.

- 3103.6 The standard for granting a variance, as stated in § 3103.1 differs with respect use and area variances as follows:
- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1 the strict application of a zoning regulations would result in peculiar and exceptional practical difficulties to the owner of property.
  - (b) An applicant for an use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1 the strict application of a zoning regulations would result in exceptional and undue hardship upon the owner of the property.
- 3103.7 For the purposes of § 3103.6 (a) “peculiar and practical difficulty” means that the property is incapable of being reasonably adapted or modified by right within the zone district in which it is located.
- 3103.8 For the purposes of § 3103.6 (b) “exceptional and undue hardship” means the property is incapable of being reasonably adapted for any use permitted by right or by special exception within the zone district in which it is located.

**D. Party Status Requests**

Subsection 3106.3 is repealed.

~~3106.3 In considering any request for party status pursuant to § 3106.2, the Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.~~

Subsection 3112.15 is amended to read as follows:

3112.15 At the time of the hearing on the appeal, the Board, ~~in its discretion and for good cause shown, may permit persons who~~ **shall consider any request to intervene made pursuant to § 3106.2. The Board shall grant intervenor status only if the person requesting intervenor status has clearly demonstrated that they** have a specific right or interest that will be affected by action

on the appeal ~~to intervene in the appeal for such general or limited purpose as the Board may specify.~~

New § 3112.16 is added to read as follows:

3112.16 In granting intervener status, the Board may specify whether the person will be permitted to intervene in the appeal for general or limited purposes.

New §§ 3113.21 and 3113.22 are added to read as follows:

3113.21 At the time of the hearing on the application the Board shall consider any request for party status made pursuant to § 3106.2. The Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

3113.22 In granting party status, the Board may specify whether the person will be permitted to participate as a party for general or limited purposes.

**E. Authority of the Chair to Re-Open the Record.**

Subsection 3121.9 is amended to read as follows:

3121.9 Any material received by the Board after the close of the record except that permitted by 3121.5, that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board. **However if the materials are accompanied by a request to re-open the record the request shall be accepted and presented to the Board for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the Chair and, if granted, the materials shall be entered into the record.**

**F. Submission of Post-Decision Draft Orders.**

Subsection 3125.3 is amended to read as follows:

3125.3 A decision or order on an appeal or application shall be in writing and accompanied by findings of fact and conclusions of law, which shall be filed in the record. **The prevailing party in any application or appeal may file a proposed order or a revision to a previously filed proposed order after a vote to approve or deny is taken. No response to the proposed order may be submitted by any other party.**

**G. Premature filing of motions for reconsideration.**

Subsection 3126.2 is amended to conform with Zoning Commission rule § 3029.5:

3126.2 Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. **The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final order in a contested case proceeding that is filed prior to the order being issued nor waive this prohibition.**

**H. Modifications to Plans and Orders**

Add a new § 3129.9 to clarify that a modification is not a time extension:

3129.9 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

**I. Time Extensions to Validity of Orders.**

Amend the introductory text of § 3130.6 to permit the BZA to grant more than one extension of an order.

3130.6 The Board may ~~grant one extension of~~ extend the time periods in § 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:  
...

Amend § 3130.9 to allow the tolling of the expiration of a Board order upon the filing of a time extension request submitted at any time before expiration occurs:

3130.9 A request for a time extension ~~filed at least thirty (30) days prior to the date upon which an order is due to expire~~ shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

## 5. Building permits

Amend 3202.1 to clarify that Zoning Administrator's review of an application to alter an existing structure is limited to whether the plans for the alteration comply with the Zoning Regulations:

3202.1 Except as provided in §§ 3202.5, 3202.7, or 3202.8, a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless **the plans of and for the structure erection, construction, conversion, or alteration** ~~complies~~ **fully conform to** ~~with~~ the provisions of this title.

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.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of 11 DCMR § 3021. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon S. Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, MARCIE I. COHEN, PETER G. MAY, 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**