

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and

Z.C. ORDER NO. 09-01

ZC Case No. 09-01

(Procedural Rule Amendment – 11 DCMR)

(Requests to Extend the Validity of or to Modify Board of Zoning Adjustment Orders)

May 11, 2009

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07) (c) having held a public hearing as required by that provisions, hereby gives notice of adoption of the following amendments to §§ 3129, 3130, and 3180 of the Board of Zoning Adjustment Rules of Practice and Procedure as codified in Title 11 of the District of Columbia Municipal Regulations.

Section 3129 currently authorizes the Board of Zoning Adjustment (“BZA”) to consider minor modifications to plans if filed within six (6) months of an issued BZA order. The amendment to that provision makes the time to request minor modifications to approved plans the same as the two year period allowed to file plans for a building permit with the Department of Consumer and Regulatory Affairs. The proposed amendment to § 3130 codifies the Board’s inherent authority to grant a time extension to allow more time to file such plans and establishes the standards to be utilized. The amendment to § 3180 sets the filing fee for time extension requests.

Notice of Proposed Rulemaking was published in the *D.C. Register* on April 10, 2009 at 56 DCR 2736, and the text referred to the National Capital Planning Commission for comment. The Commission adopted the amendments at a public meeting held on May 11, 2009; making no changes to the proposed text.

This final rulemaking is effective upon publication in the *D.C. Register*.

Title 11 DCMR, Chapter 31, THE BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows, with addition to existing provisions shown in **bold and underlined** text, and deletions to existing provisions shown in ~~striketrough~~ text:

1. By amending § 3129, MODIFICATION OF APPROVED PLANS, to read as follows:

3129 MODIFICATION OF APPROVED PLANS.

- 3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.
- 3129.2 The Board shall consider requests to approve **minor** modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.
- 3129.3 A request for **minor** modification of plans shall be filed with the Board not later than ~~six months~~ **two (2) years** after the date of the final order approving the application.
- 3129.4 All requests for **minor** modifications of plans shall be served on all other parties to the original application at the same time as the request is filed with the Board. A party shall have ten (10) days within which to submit written comments that such party may have concerning the requested modification.
- 3129.5 A decision on a request for **minor** modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- ~~3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.~~
- ~~3129.7 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application.~~
- 3129.6 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application.**
- 3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.**
- 3129.8 The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.**

2. By amending § 3130, TIME LIMITS ON BOARD ACTION, as follows:

- (a) By amending § 3130.1 to read as follows:

3130.1 No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, **except as permitted in § 3130.6.**

- (b) By adding new §§ 3130.6 through 3130.10 to read as follows:

3130.6 The Board may grant one extension of 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:

- (a) **The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;**
- (b) **There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and**
- (c) **The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:**
- (1) **An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;**
 - (2) **An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or**
 - (3) **The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.**

- 3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.
- 3130.8 The Board's decision on the request shall be in writing and shall become final and effective upon its filing in the record and service upon the parties.
- 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.
- 3130.10 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order unless and until a decision granting the request becomes final and effective pursuant to § 3130.8.

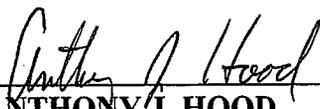
3. By amending § 3180, SCHEDULE OF FEES, paragraph 3180.1 (f), read as follows:

- (f) For a time extension, a minor modification of plans or a modification of conditions of an order of the Board for an owner-occupied one-family dwelling, or flat, one hundred dollars (\$100); for all other applicants, twenty percent (20%) of the original filing fee.

On March 30, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries and William W. Keating, III, not present, not voting).

On May 11, 2009, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Gregory N. Jeffries and William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on June 5, 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



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May 11, 2009

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-01

As Secretary to the Commission, I hereby certify that on JUN 12 2009 copies of this Z.C. Notice of Final Rulemaking & Order No. 09-01 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|----|---|----|--|
| 1. | <i>D.C. Register</i> | 5. | DDOT (Karina Ricks) |
| 2. | ANC Chairpersons – see attached copy of labels | 6. | General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 3. | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 7. | Office of the Attorney General
(Alan Bergstein) |
| 4. | All Councilmembers – see attached copy of labels | | |

ATTESTED BY:

A handwritten signature in black ink, appearing to read "S. S. Schellin", written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning