

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 10-09/10-10
Z.C. Case Nos. 10-09 and 10-10
(Increases to Zoning Commission and Board of Zoning Adjustment Fees)
September 27, 2010**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01), hereby gives notice of its adoption of amendments to §§ 3040, 3041, 3043, and 3045 of the Zoning Commission Rules of Practice and Procedure, Chapter 30 of DCMR Title 11, and § 3130 of the Board of Zoning Adjustment Rules of Practice and Procedure, Chapter 31 of DCMR Title 11.

Description of Amendments

The amendments increase the Commission filing fees by 30% and make the same increase to Commission and Board of Zoning Adjustment (“BZA”) hearing fees. Increases are also made to the Commission’s miscellaneous fees. In addition, a new hearing fee structure is established for modifications to Planned Unit Developments that mirrors the fee structure for modifications to plans approved or conditions imposed by the BZA. Modifications are also made to the fee exemptions for both bodies.

Procedures Leading to Adoption of Amendments

The Office of Zoning (“OZ”), in requests dated April 26, 2010, petitioned the Commission for text amendments to increase the Commission and BZA fees. The Office of Planning (“OP”) provided its setdown report on May 14, 2010.

At its regular public meeting held May 24, 2010, the Commission set down this case for a public hearing.

Notice pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000 (“ANC Act”), effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10), was given to all Advisory Neighborhood Commissions. No written reports were received.

A public hearing was scheduled for and held on July 22, 2010. At the hearing, Jamison L. Weinbaum, the OZ Director, explained the rationale for the fee increases and also responded to correspondence submitted by Steven E. Sher, Director of Zoning/Land Use Services for the law firm of Holland & Knight LLP. Mr. Weinbaum explained that the Commission fees had not been increased since 1994, when they were increased by 100% from a fee structure established in 1980. Mr. Weinbaum further detailed that for Fiscal Year 2010, OZ was on track to collect the lowest revenue received in more than 12 years. He indicated that OZ's budget for Fiscal Year 2011 was a 17% decrease from that of Fiscal Year 2010, and that while OZ's budget is not solely based on OZ's revenue, the revenue received is used to derive agency revenue estimates, which are given strong consideration in devising agency budgets. According to Mr. Weinbaum, OZ revenue estimates for future years are being driven down by the current decrease in revenue. Thus, the fee increase will lead to enhanced revenue estimates, which will allow OZ to maximize its budget, fulfill its technology-related initiatives, and continue to deliver high level services. Mr. Weinbaum also responded to each of Mr. Sher's four points, and affirmed his initial fee increase proposal.

Following the completion of the public hearing, the Commission authorized a notice of proposed rulemaking in the *D.C. Register* ("DCR").

The Notice of Proposed Rulemaking was published in the *D.C. Register* on August 13, 2010, 57 DCR 7450, for a 30-day notice and comment period. No comments were received.

At a properly noticed, September 27, 2010 public meeting, the Commission took final action to adopt the text amendments, without making any change to the proposed text.

In Z.C. Case No. 10-09, the Commission adopted the following amendments to the Zoning Regulations, Title 11 DCMR:

Chapter 30, ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE, is amended as follows: (a) increase the current filing fees by 30%; and (b) use the terms "petition" and "petitioner" rather than "applicant" and "application" when referring to a text amendment, so that the provision will read as follows:

3040 FILING FEES

- 3040.1 At the time of filing an application or petition for an amendment to the Zoning Map, the applicant or petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).

- 3040.2 At the time of filing a petition for an amendment to the text of the Zoning Regulations, the petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).

- 3040.3 At the time of filing an application for approval of a planned unit development, air space development, or any other action where review of a specific site or building plan is required, the applicant shall pay a filing fee of six hundred fifty dollars (\$650).
- 3040.4 At the time of filing an application for a modification to an approved planned unit development, air space development, or any other action where review of a specific site or building plan was required, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).
- 3040.5 At the time of filing a request for approval of an extension of time to the validity of an order for a previously approved planned unit development, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).
- 3040.6 All fees shall be paid by check or money order made payable to the D.C. Treasurer.

Section 3041 is amended to: (a) increase the current hearing fees by 30%; (b) make the fee for a PUD modification a percentage of the current fee for a new PUD; (c) use the terms “petition” and “petitioner” rather than “applicant” and “application” when referring to a text amendment; and (d) require the payment of the hearing fee when filing an application that is not subject to the setdown process, so that the provision will read as follows:

3041 HEARING FEES

- 3041.1 If the Commission schedules a public hearing on an application or petition for an amendment to the Zoning Map, prior to advertisement of the hearing, the applicant or petitioner shall pay a hearing fee in accordance with the following schedule:
- (a) For rezoning to any R-1, R-2, or R-3 District, for each acre or part of an acre, six hundred fifty dollars (\$650);
 - (b) For rezoning to any R-4 or R-5-A District, for each acre or part of an acre, one thousand six hundred and twenty-five dollars (\$1,625);
 - (c) For rezoning to any R-5-B District, for each acre or part of an acre, three thousand two hundred fifty dollars (\$3,250);
 - (d) For rezoning to any R-5-C, R-5-D, or R-5-E District, for each acre or part of an acre, six thousand five hundred dollars (\$6,500);

- (e) For rezoning to any SP, W, or CR District, for each twenty thousand square feet (20,000 ft.²) or part of that area, two thousand six hundred dollars (\$2,600);
- (f) For rezoning to any C-1 or C-2 District, for each ten thousand square feet (10,000 ft.²) or part of that area, one thousand six hundred twenty-five dollars (\$1,625);
- (g) For rezoning to any C-3, C-4, or C-5 District, for each ten thousand square feet (10,000 ft.²) or part of that area, three thousand two hundred fifty dollars (\$3,250);
- (h) For rezoning to any C-M or M District, for each twenty thousand square feet (20,000 ft. ²) or part of that area, two thousand six hundred dollars (\$2,600);
- (i) For any overlay district, the fee shall be computed in accordance with the requirement for the underlying zone;
- (j) The maximum hearing fee for rezoning to any Residence District (R-1, R-2, R-3, R-4, or R-5) shall be sixty-five thousand dollars (\$65,000); and
- (k) For an application or petition that proposes rezoning to more than one (1) zone district or is in the alternative, the fee shall be the total of the amounts for the area devoted to each proposed district or alternative computed separately.

3041.2 An applicant or petitioner shall not be required to pay a hearing fee for any alternative districts added by the Commission at the time it sets the case for hearing.

3041.3 If the Commission schedules a public hearing on a petition for an amendment to the text of the Zoning Regulations, prior to the advertisement of the hearing, the petitioner shall pay a hearing fee of three hundred twenty-five dollars (\$325) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of one thousand three hundred dollars (\$1,300).

3041.4 If the Commission schedules a public hearing on an application for approval of a planned unit development, air space development, or any other action where review of a specific site plan or building plan is required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule; provided that for those applications exempted from the setdown process, the fees shall be paid at the time the application is filed:

- (a) For each one hundred square feet (100 ft.²) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, seven dollars (\$7), with a maximum of sixty-five thousand dollars (\$65,000);
- (b) For each one hundred square feet (100 ft.²) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit, thirteen dollars (\$13);
- (c) In the case of an application that combines dwelling units and other uses, the fee shall be the total of the amounts for each use computed separately; and
- (d) There shall be no charge for the hearing on the second stage of a two-stage planned unit development application.

3041.5 In the case of an application or petition combining two (2) or more actions described in this section, the fee charged shall be the greatest of all the fees computed separately.

3041.6 If the Commission schedules a public hearing on an application for a modification to an approved planned unit development, air space development, or any other action where review of a specific site or building plan was required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee equal to twenty six percent (26%) of the original hearing fee or one thousand three hundred dollars (\$1,300), whichever is greater.

3041.7 All fees shall be paid by check or money order made payable to the D.C. Treasurer.

Sections 3043 is amended to make the government of the District of Columbia and its agencies the only entities exempted from having to pay hearing fees and to only exempt the District of Columbia and those entities identified in new § 3180.1(e) from having to pay rulemaking filing fees, so that the provision will read as follows:

3043 EXEMPTION FROM FEES

3043.1 A department, office, or agency of the government of the District of Columbia is not required to pay a filing or hearing fee for an application, where the property is owned by the District of Columbia or that agency or is under one or both of their jurisdictions and the property is to be used for a government building or use.

- 3043.2 The following person or entities shall not be required to pay a filing or hearing fee for a petition to amend the Zoning Map or the text of the Zoning Regulations:
- (a) A department, office, or agency of the government of the District of Columbia, including an Advisory Neighborhood Commission;
 - (b) The National Capital Planning Commission; or
 - (c) A citizens' association or association created for civic purposes that is not for profit.

Section 3045, MISCELLANEOUS FEES, § 3045.1 (a) is amended by striking the phrase “fifteen dollars (\$15)” and inserting the phrase “fifty dollars (\$50.00)” in its place, so that the entire section will read as follows:

3045 MISCELLANEOUS FEES

- 3045.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as follows:
- (a) The fee for providing a zoning certification is fifty dollars (\$50.00);
 - (b) The fee for photocopying is twenty cents (20¢) per page;
 - (c) The fee for a black and white copy of the Zoning Map is ten dollars (\$10);
 - (d) The fee for a color copy of the Zoning Map is sixty dollars (\$60); and
 - (e) The fee for retrieving Office of Zoning records located off-site is fifteen dollars (\$15) per record. This fee will be waived when the records are sought for noncommercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by a representative of the news media. The Office of Zoning may not require advance payment of the fee unless the requester has previously failed to pay fees in a timely fashion.
- 3045.2 All fees shall be paid by check or money order made payable to the D.C. Treasurer.

In Z.C. Case No. 10-10, the Commission adopted the following amendments to the Zoning Regulations, Title 11 DCMR:

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3180 is amended to increase the current Board of Zoning Adjustment fees by 30%; replace the word “paragraph” with “provision” in § 3180.1(a), revise the description of a chancery application in § 3180.1(c) to be consistent with § 1002.1, clarify that the exemption for the District of Columbia in § 3180.3 is for applications and not appeals, and move the exemption for the payment of the appeal fee from § 3180.4 to § 3180.1(e), so that the entire section will read as follows:

3180 SCHEDULE OF FEES

3180.1 Except as provided in §§ 3180.1(e) and 3180.3, at the time of filing an appeal or application with the Board, the appellant or applicant shall pay a filing fee in accordance with the following schedule:

- (a) For an application for a variance, one thousand forty dollars (\$1,040) for each provision of the Zoning Regulations from which a variance is requested;
- (b) For an application for a special exception:
 - (1) For a parking lot, parking garage, or accessory parking, one hundred four dollars (\$104) for each parking space;
 - (2) For a child development center or private school, thirty-three dollars (\$33) for each full-time or part-time student based on the maximum capacity requested, with a maximum of three thousand two hundred fifty dollars (\$3,250);
 - (3) For a college or university use, six thousand five hundred dollars (\$6,500) for the processing of a new or revised campus plan, and three thousand two hundred fifty dollars (\$3,250) for review of a specific building or use within an approved plan;
 - (4) For a residential use in the R-5-A District under § 353, five hundred twenty dollars (\$520) for each dwelling unit;
 - (5) For a community-based residential facility, one hundred four dollars (\$104) for each person housed based on the maximum capacity requested (not including resident supervisors and their

- families), with a maximum of five thousand two hundred dollars (\$5,200);
- (6) For an office use in the SP District, fifty-two dollars (\$52) for each one hundred square feet (100 ft.²) or part thereof of gross floor area;
 - (7) For roof structures under § 411, two thousand six hundred dollars (\$2,600);
 - (8) For a hotel or inn in the SP District, one hundred four dollars (\$104) for each sleeping room or suite;
 - (9) For a gasoline service station, five thousand two hundred dollars (\$5,200);
 - (10) For a repair garage, one thousand five hundred sixty dollars (\$1,560);
 - (11) For a home occupation under § 203, one thousand five hundred sixty dollars (\$1,560);
 - (12) For an accessory apartment under § 202, three hundred twenty-five dollars (\$325);
 - (13) For a theoretical lot under § 2516, one thousand five hundred sixty dollars (\$1,560) for the first lot and five hundred twenty dollars (\$520) for each lot thereafter;
 - (14) For an intermediate materials recycling facility under § 802, five thousand two hundred dollars (\$5,200);
 - (15) For an antenna under § 211, two thousand six hundred dollars (\$2,600); and
 - (16) For any other special exception not listed in this section, one thousand five hundred sixty dollars (\$1,560);
- (c) For an application for permission to locate, replace, or expand a chancery in an R-5-D, R-5-E, or SP District or in the Diplomatic (D) Overlay District, or to reconstruct an existing chancery that is destroyed in an R-1, R-2, R-3, R-4, R-5-A, R-5-B, or R-5-C District, sixty-five dollars (\$65)

for each one hundred square feet (100 ft.²) or part thereof of gross floor area;

- (d) For an application involving one owner-occupied, one-family dwelling or flat, regardless of the number of variances, special exceptions, or alternatives requested, three hundred twenty-five dollars (\$325);
- (e) For an appeal of any decision of the Zoning Administrator or other administrative officer, one thousand forty dollars (\$1,040), except that the following appellants shall not be required to pay a filing fee:
 - (1) A department, office, or agency of the Government of the District of Columbia, including an Advisory Neighborhood Commission;
 - (2) The National Capital Planning Commission; and
 - (3) A citizens' association or association created for civic purposes that is not for profit; and
- (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 thirty dollars (\$130); for all other applicants, twenty-six percent (26%) of the original filing fee.

3180.2 In the case of an application combining two (2) or more actions described in §§ 3180.1(a) and 3180.1(b), or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately.

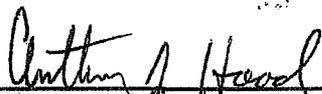
3180.3 A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee for a special exception or variance where the property is owned by the District of Columbia or that agency or is under one or both of their jurisdictions and the property is to be occupied for a government building or use.

On July 22, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, and Michael G. Turnbull to approve; Peter G. May not present, not voting).

On September 27, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1**

(Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, and Michael G. Turnbull to adopt; Peter G. May, 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 October 8, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

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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 NOS.: 10-09 & 10-10

As Secretary to the Commission, I hereby certify that on OCT - 6 2010 copies of this Z.C. Order Nos. 10-09 & 10-10 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All ANCs (see attached list)
3. All Councilmembers (see attached list)
4. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
5. DDOT (Karina Ricks)
6. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
7. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, reading "S.S. Schellin", is written over a horizontal line.

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