

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 11-20

Z.C. Case No. 11-20

(Text Amendment to 11 DCMR, Chapter 1, § 106, and Chapter 30, § 3045, Zoning Map)
March 26, 2012

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of its adoption of amendments to § 106 of the Zoning Regulations (Title 11 DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* (DCR) on February 24, 2012, 59 DCR 1617, for a thirty (30)-day notice and comment period.

The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

Section 106 of the Zoning Regulations currently provides that the official Zoning Map for the District of Columbia must be drawn on four (4) real estate atlases prepared by R.H. Baist and Company (Baist Atlases). The regulation also provides that the Baist Atlases are to be maintained in the Office of Zoning (OZ) and certified as correct by the Director of OZ. The amendments remove all references to the Baist Atlases and instead provide that the official Zoning Map will be the map that is drawn and maintained on the Geographic Information System located in OZ (hereinafter referred to as the electronic zoning map). In addition, OZ is to prepare a printable electronic summary extract of the official Zoning Map on a quarterly basis beginning July 1, 2012, for guidance purposes only.

Procedures Leading to Adoption of Amendments

OZ, in a request dated August 17, 2011, petitioned the Commission for a text amendment to designate the electronic zoning map as the official zoning map of the District of Columbia. The Office of Planning provided its set down report on September 16, 2011.

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At its regular public meeting held September 26, 2011, the Commission set down this case for a public hearing.

Notice pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (2006 Repl. & 2011 Supp.)) (ANC Act) was given to all Advisory Neighborhood Commissions (ANCs). In its report dated December 20, 2011, ANC 4A indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the text amendment and also designated Commissioner Gale Baron Black as spokesperson for the ANC. No other ANC reports were received.

A public hearing was scheduled for and held on December 22, 2011. Commissioner Black testified at the hearing in opposition to the text amendment, expressing concerns regarding the accuracy of an electronic zoning map. Commissioner Black also requested that the Commission postpone approval of the text amendment until such time as it received input from other ANCs. In response, Mr. Richard Nero, then Acting Director of OZ, testified that OZ had done outreach with all ANCs, including ANC 4C. Specifically, Mr. Nero indicated that at a meeting between OZ representatives and ANC 4C in June 2011, OZ explained how the electronic zoning map would be implemented. Mr. Nyambi Nyambi, the Chief Technology Officer of OZ, also testified and responded to Commission questions regarding technical aspects of the electronic zoning map. Mr. Nyambi emphasized that the electronic zoning map would be more secure than the paper Baist Atlases.

Chairman Anthony Hood suggested that OZ meet with ANC 4C once again to address the ANC's concerns, and a meeting for that purpose was scheduled for January 11, 2012. The Commission stated that it would leave the record open to allow the ANC meeting to take place and allow further comment thereafter. On January 12, 2012, OZ filed a memorandum in the record indicating that a meeting took place between OZ representatives and Commissioner Black, during which OZ explained the proposed text amendment in detail and addressed the issues and concerns raised by Commissioner Black at the hearing. In particular, OZ discussed security concerns with the ANC and explained how OZ would maintain the accuracy and integrity of the electronic version of the Official Zoning Map as it has done with the unofficial version that has been on the OZ website since 2003.

Following the completion of the public hearing, the Commission authorized the publication of a notice of proposed rulemaking in the *D.C. Register* and a referral to the National Capital Planning Commission (NCP) for the thirty (30)-day period of review required under § 492 of the District Charter.

The Executive Director of NCP, through a delegated action dated March 5, 2012, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 24, 2012, 59 DCR 1617, for a thirty (30)-day notice and comment period. The only comments received were from OZ, and are contained in a memorandum dated March, 26, 2012. OZ noted that, upon further review of the text, there is a need for a conforming amendment to 11 DCMR § 3045.1, which lists the prices for paper copies of the Zoning Map in subsections (c) and (d). The proposed amendment to § 106.10 provides that OZ will furnish a printable electronic summary extract of the official Zoning Map, thereby eliminating the need for printed unofficial versions of the Zoning Map. Making these conforming amendments to 11 DCMR § 3045.1 does not substantively alter the original intent of the proposed rulemaking, as it seeks to ensure that the Zoning's regulations are consistent with one another. OZ, therefore, requested the repeal of the provisions above, which established costs for the hard copy of the unofficial Zoning Map that will no longer be provided.

Pursuant to the ANC Act, the Commission is required to give "great weight" to the written report of an affected ANC. Because the Zoning Map concerns the entire District, this case affected all ANCs. However, only ANC 4C submitted a written report, in which it raised concerns regarding the accuracy and security of an electronic zoning map. The Commission is persuaded by the testimony and memorandum from OZ that the electronic zoning map will be safeguarded with sophisticated technologies to prevent any breach of security. In fact, the electronic map has been operating in an unofficial capacity since 2003 without any outside breaches of security. The Commission also notes that the ANC had an opportunity to submit further filings in the record, but did not do so. Although the ANC did not withdraw its opposition, the ANC's silence after the hearing suggests that its issues and concerns were, in all likelihood, addressed to its satisfaction during its meeting with OZ.

At a properly noticed public meeting held on March 26, 2012, the Commission took final action to adopt the text amendments, with the conforming amendments noted by OZ.

Title 11 DCMR, **ZONING**, is amended as follows:

Chapter 1, **THE ZONING REGULATIONS**, § 106, **ZONING MAP**, is amended as follows:

Subsections 106.1 and 106.2 are amended to read as follows:

- 106.1 The official Zoning Map of the District of Columbia shall be the zoning map that is drawn and maintained on the Geographic Information System, also known as "GIS," located in the Office of Zoning effective on April 13, 2012.
- 106.2 The official Zoning Map shall be published for public access on the Office of Zoning's website.

Subsection 106.3 is repealed.

Subsection 106.11 and 106.12 are amended to read as follows:

- 106.11 In addition to the official Zoning Map, a printable electronic summary extract of the official Zoning Map shall be prepared quarterly beginning July 1, 2012, published on the Office of Zoning's website, and made available to the public for printing upon request.
- 106.12 The electronic summary extract of the official Zoning Map shall not supersede the official Zoning Map, but shall be prepared for the purpose of guidance only.

Chapter 30, **ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE**, § 3045, **MISCELLANEOUS FEES**, subsection 3045.1 is amended by repealing paragraphs (c) and (d), so that the entire provision reads as follows:

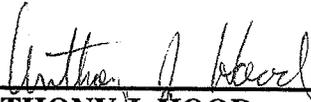
- 3045.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as follows:
- (a) The fee for providing a zoning certification is fifty dollars (\$50.00);
 - (b) The fee for photocopying is twenty cents (20¢) per page;
 - (c) Repealed;
 - (d) Repealed; and
 - (e) The fee for retrieving Office of Zoning records located off-site is fifteen dollars (\$15.00) 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.

On February 13, 2012, upon a motion of Chairman Hood, and seconded by Commissioner Cohen, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not participating).

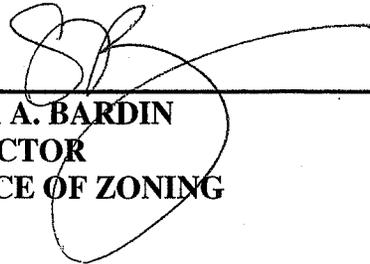
On March 26, 2012, upon motion of Chairman Hood, as seconded by Commissioner Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Marcie I. Cohen, and Peter G. May to adopt; Konrad W. Schlater and Michael G. Turnbull, not participating).

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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 April 13, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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As Secretary to the Commission, I hereby certify that on APR 10 2012 copies of this Z.C. Order No. 11-20 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. D.C. Register
2. All ANCs
3. All Councilmembers
4. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
5. DDOT (Martin Parker)
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, appearing to read "Sharon S. Schellin", is written over a horizontal line.

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