

Government of the District of Columbia

ZONING COMMISSION



Zoning Commission Order No. 210

Case No. 76-18

March 9, 1978

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on December 2 and 9, 1976 and February 10, 1977, to consider an amendment to the text of the D. C. Zoning Regulations. The Amendment proposed to repeal those portions of the Zoning Regulations which authorize the Zoning Commission, sua sponte, to stay orders of the Board of Zoning Adjustment and to rule upon the matters disposed of in such orders.

At the public hearings, there was testimony both for and against the proposal. There was considerable testimony that the Commission should function as an appellate body for the Board and that parties to cases before the Board should have the right to appeal the decisions of the Board to the Zoning Commission, rather than or in addition to the Court of Appeals. Even though the Board of Zoning Adjustment is an adjunct to the Zoning Commission and the membership of the two bodies overlap, the Commission nevertheless finds that the Board is an independent body created by Act of Congress charged with the carrying out of independent duties in the role that has been established for it. The Zoning Commission was never intended to be an appellate body nor is it constituted such that it is able to be.

The Commission notes that the present right of appeal is available as a matter of right in the District of Columbia Court of Appeals. It is also well known that the American system of jurisprudence provides only one appeal as a matter of right in all courts of law, with a second appeal available only at the discretion of the court. It is therefore entirely appropriate that the right of appeal from a final administrative decision of the Board of Zoning Adjustment continue to be available in the D. C. Court of Appeals. If the Zoning Commission were to be an appellate body, it would in effect make available a second appeal as a matter of right. The Commission notes that the Rules of the Board of Zoning

Adjustment already provide for parties before the Board to ask the Board to rehear or reconsider a case, and although these are not appellate procedures as such, they are nevertheless a way in which additional consideration can be obtained.

The Commission does find that the concept of sua sponte review, which was instituted to allow the Zoning Commission to interject itself into the procedural process in the event that certain specific instances should warrant such action, is an appropriate concept to be reserved for use by the Zoning Commission itself. The Commission therefore finds that the present Regulations need to be clarified to continue the concept of sua sponte review but limit and define the scope of that review.

The Commission finds that the proposed amendment was referred to the National Capital Planning Commission under the terms of the District of Columbia Self-Government and Governmental Reorganization Act and that the NCPC reported that the proposed amendment would not have a negative impact on the interests or functions of the Federal Establishment within the National Capital.

The Commission finds that the proposed amendment is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act. The Commission therefore hereby orders adoption of the following amendments to the Zoning Regulations:

1. Delete existing Sub-section 8204.3 and replace it with the following:

8204.3 No decision or order of the Board shall take effect until ten days after having become final pursuant to the Supplemental Rules of Practice and Procedure Before the Board of Zoning Adjustment of the District of Columbia. Within that time the Zoning Commission may, sua sponte, determine to review any order or decision of the Board. Such determination shall be transmitted forthwith to the Secretary of the Board who shall forward to the Zoning Commission the record in the case with notice to all parties before the Board.

2. Delete existing Sub-section 8204.4 and replace it with the following:

8204.4 Upon receipt of the record, the Zoning

Commission shall review the case and take such action as it deems appropriate; provided, however, that the Zoning Commission will not reverse or modify the order or decision of the Board without affording the parties before the Board an opportunity to present memoranda to the Commission in support of or in opposition to the action of the Board. The Zoning Commission action may include, without limitation, affirmance, modification or reversal of the Board's action; hearing argument on the Board record in the case; remanding the case to the Board for reconsideration, rehearing or other action pursuant to instructions of the Zoning Commission.

3. Delete existing Sub-section 8204.5 and replace it with the following:

8204.5 This sua sponte process does not grant any rights of appeal to the Zoning Commission. There being no right of appeal to the Zoning Commission from any action of the Board, communications to the Zoning Commission, no matter the form, requesting that sua sponte review be undertaken need not be answered. Sua sponte review is a discretionary internal process.

4. Add a new Sub-section 8204.6 as follows:

8204.6 The Zoning Commission will look to the following guidelines when determining whether to invoke its sua sponte review authority. The Commission may exercise its discretion for sua sponte review:

- a. in a particular instance where it appears to the Commission that the Board of Zoning Adjustment has exceeded its prerogatives and has thus in effect changed the zoning,
- b. where it appears that a basic policy of the Zoning Commission, as expressed in the Zoning Regulations, has been violated as a result of a Board of Zoning Adjustment action, or
- c. in an unusual instance, as determined by the Zoning Commission.

Z. C. Order No. 210
Case No. 76-18
Page 4

Vote of the Commission taken at the public meeting held on February 9, 1978: 4-0 (George M. White, John G. Parsons, Walter B. Lewis and Theodore F. Mariani to adopt, Ruby B. McZier not present, not voting).



WALTER B. LEWIS
Chairman



STEVEN E. SHER
Executive Director

This order was adopted by the Zoning Commission at its public meeting held on March 9, 1978 by a vote of 4-0 (George M. White, John G. Parsons, Walter B. Lewis and Ruby B. McZier to adopt, Theodore F. Mariani not present, not voting).

In accordance with Section 3.62 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is effective on 24 MAR 1978.