

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 379
CASE NO. 82-1
AUGUST 9, 1982

Pursuant to notice, the District of Columbia Zoning Commission held public hearings on April 12, and April 19, 1982. At those hearing sessions the Zoning Commission considered proposed revised Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment (BZA) to replace the existing Supplemental Rules. The hearings were conducted in accordance with the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

The existing Supplemental BZA Rules have been in effect since July 6, 1972 and have been amended only once since that time. The BZA determined that comprehensive changes were necessary. On January 6, 1982, subsequent to review and discussion, the BZA adopted and forwarded the proposed revised Supplemental BZA Rules to the Zoning Commission for consideration and approval, pursuant to D.C. Code Section 5-424(c).

As originally proposed by the BZA, the revised Supplemental Rules included the following major revisions to the existing Supplemental Rules:

1. Limitation on appearance and representation for present and former Board and Commission members, and former D.C. employees;
2. Distinction between meetings and hearings;
3. Voting;
4. Rights and responsibilities of Advisory Neighborhood Commissions (ANCs);
5. Prehearing filing deadline;
6. Effect of dismissal of appeals and applications;
7. Notice;

- a. 40 day minimum notice;
- b. 15 day posting of properties;
- c. Elimination of newspaper advertising;
8. Presiding officer to set reasonable time limits;
9. Material received after hearings;
10. Approval including specific plans; and
11. Modification of approved plans.

At the public hearing, representatives of ANCs and various organizations, and individuals gave testimony about the following major issues and concerns, and how they related to the proposed Supplemental Rules:

1. Inconsistencies between proposed ANC restrictions and the D.C. Law 1-58;
2. Filing requirements for ANCs, Government agencies and others;
3. Early notice of filing to ANCs;
4. Legal authority to and the diminishing of ANC rights, including elimination of party status and cross-examination;
5. Consistency in the representation of applicants in parking lot cases;
6. Filing requirements for parking lot cases;
7. Appeals of administrative decisions, and the processing thereof;
8. Campus plan reviews;
9. Methods for the service of papers;
10. Order of procedure for the testimony of Government agencies;
11. Provisions for considering motions, and reconsideration and rehearing;
12. Appearance and representation and conflict of interest;
13. Hearing notice requirements for tenants and

owners within 200 feet of the subject property, and prehearing deadlines;

14. Duties of the presiding officer;
15. BZA requirement to seek legal counsel;
16. Proxy voting; and
17. Definitions.

Advisory Neighborhood Commissions 1D, 1E, 2A, 2C, 3A, 3B, 3C, 3E, 3G, 4B, 4C, 5A, 6A, 6B, 7D and 7E submitted written statements relative to the following issues and concerns:

1. ANCs should be automatic parties.
2. The proposed waiver authority of the BZA is too broad.
3. The limitation on appearance and representation for former Board and Commission members should be one year, in lieu of six months.
4. The rules should define "other matters" relative to the closing to the public of certain BZA meetings.
5. ANCs should get at least five days notice of BZA meeting agendas.
6. The staff should not represent the Zoning Commission on the BZA.
7. The entire proposed Section 108 dealing with ANCs should be deleted.
8. ANCs should be permitted to cross-examine witnesses.
9. The recommended fourteen-day prehearing filing requirement for hearings and appeals to the BZA should be changed to seven days.
10. The affected ANC number should be included on the notice of public hearing.
11. An ANC should not be required to submit its report to the BZA at least seven days before hearings.
12. There should be no pre-conditions to giving "great weight" to the written report of the ANC.

13. ANC's should be included in the "order of procedure" for hearings.
14. The record of cases should be left open for ANC's, if requested, longer than for other persons or parties.
15. Delete the proposal to serve BZA Orders only to those ANC's that submitted written reports.

For general guidance the Zoning Commission considered the constraints of other applicable statutes and regulations including the Administrative Procedures Act, D.C. Laws 1-121 and 1-58 regarding ANC's, the Ethics in Government Act, the Zoning Act, and the Zoning Regulations. In reaching a decision in its consideration of the proposed BZA Rules, the Zoning Commission also focused on its own Rules of Practice and Procedure for the purpose of consistency where possible.

In addressing the issues and concerns raised by the ANC's, the Commission agrees that ANC's should be automatic parties and should have the right to cross-examine witnesses and be cross-examined by witnesses. While the Commission deleted specific preconditions for ANC's to be given "great weight" by the BZA, ANC's must still meet the requirements of applicable laws. The Commission retained the requirement for a seven-day pre-hearing filing of ANC reports. The Commission believes it is important for the BZA to receive those reports in advance of a hearing, in order to give them the attention and consideration they deserve. To attempt to reduce the burden on ANC's, the Commission added a requirement of giving notice to affected ANC's of new cases filed at the time referrals are made to the Office of Planning and Development. The Commission notes that the law governing ANC actions requires that an ANC submit written reports within thirty days of notice to it. The Commission believes that ANC's will be afforded sufficient additional time with the aforementioned advanced notice of a new filing.

In response to the other issues and concerns raised by ANC's, the Commission believes that the waiver authority is entirely consistent with general administrative practice, and is an authority inherent in the ability of a body to make and apply its own rules. The appearance and representation limitations for former Board and Commission members is left at six months. A period of one year is unnecessarily burdensome for former members, especially in light of the permanent ban on involvement in any particular matter which a member deals with while on the Board. Given the frequency and scheduling of meetings and hearings, it is not practical to mail notice five days in advance of BZA meetings, although the rules were modified to require that agendas be available in the Zoning Secretariat seven days in

advance. The Board indicates at public hearings when a case will be considered. The Zoning Act, (D.C. Code, Section 5-424(a)) sets the composition of the Board to include a member of the Zoning Commission or its staff. The ANC number will be included on the notice, and ANCs have been cited in the order of procedure. The closing of the record will be left to the discretion of the Board in each case.

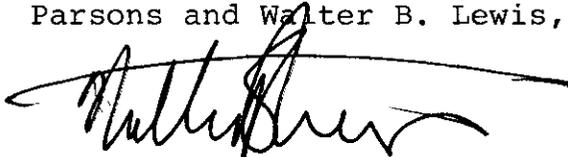
In addition, the Commission believes that a fair and equitable balance had to be reached between the variety of concerns and needs of potential applicants, citizens, business persons, and others in order to have a full and open process without overburdening and complicating the process.

The Zoning Commission published notices of proposed rulemaking in the D.C. Register on February 26, 1982 and July 9, 1982 and solicited written comments from interested individuals before taking final action on this case.

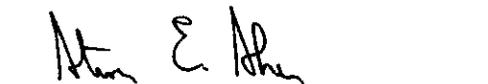
The Commission notes that, by Order No. 375 dated July 12, 1982. the Commission adopted certain amendments to the Zoning Regulations to make the Rules and the Regulations consistent. Those amendments substituted "Executive Director" for the "Secretary of the Board," substituted the requirement to publish notice of hearings in the D.C. Register instead of in a newspaper of general circulation, and set the notice requirement as a minimum of forty days instead of a minimum of ten days and a maximum of thirty days.

It is therefore ordered that the revised Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment of the District of Columbia, a copy of which is attached hereto and made a part hereof, are hereby adopted. It is further ordered that the previous Rules of Practice and Procedure, which were published in the D.C. Register on July 6, 1972 are hereby repealed, except that such Rules shall continue to apply to all applications or petitions for which a public hearing was advertised before the attached Rules became effective.

Vote of the Commission taken at the public meeting on June 14, 1982: 4-0 (Lindsley Williams, George M. White, John G. Parsons and Walter B. Lewis, to approve, as amended).



WALTER B. LEWIS
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat

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This order was adopted by the Zoning Commission at its public meeting held on August 9, 1982, by a vote of 4-0 (Lindsley Williams, John G. Parsons, Walter B. Lewis and George M. White to adopt, Maybelle Taylor Bennett not voting, not having participated in the case).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order and the revised Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment are effective on AUG 27 1982.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Title

Zoning

Sub-Title

Supplemental Rules of Practice and Procedure before the
Board of Zoning Adjustment of the District of Columbia

- Chapter 1 Introduction and General Rules
- Chapter 2 Pre-Hearing Procedures for Appeals to the Board of Zoning Adjustment
- Chapter 3 Pre-Hearing Procedures for Applications to the Board of Zoning Adjustment
- Chapter 4 Hearing Procedures for Appeals and Applications to the Board of Zoning Adjustment
- Chapter 5 Post-Hearing Procedures for Appeals and Applications to the Board of Zoning Adjustment

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Chapter 1 Introduction and General Rules

100 Definitions

- 100.1 "ANC" means an Advisory Neighborhood Commission established in accordance with Section 738 of the District of Columbia Self Government and Governmental Reorganization Act and Title 1, Chapter II, Sub-Chapter V of the D.C. Code, 1981 Ed.
- 100.2 "Board" means the Board of Zoning Adjustment of the District of Columbia.
- 100.3 "Executive Director" means the Executive Director of the Zoning Secretariat of the Office of Planning and Development, or such successor official as shall be designated to be the supervisor of the full-time administrative staff of the Board.
- 100.4 "Member" means a member of the Board of Zoning Adjustment of the District of Columbia, including the member of the Zoning Commission or its staff serving on the Board.
- 100.5 "Presiding Officer" means the Chairman of the Board or the Chairman pro tem of the Board.
- 100.6 "Person" means an individual, partnership, association, corporation, public agency, governmental unit or department, or other legal entity.
- 100.7 "Party" means:
- (a) On appeals to the Board pursuant to Sections 8102 and 8206 of the Zoning Regulations:
1. The appellant,
 2. The person whose administrative decision is the subject of the appeal,
 3. The owner, lessee, operator or contract purchaser of the property involved in the administrative decision, if he or she is not the appellant,
 4. The ANC within which the property is located.
 5. Any other person who is permitted by the Board to intervene, in accordance with Section 203 of these Rules.

(b) On applications to the Board pursuant to Sub-section 2301.4, Sections 4603 and 4604, Sub-sections 7501.4 and 7501.5 of the Zoning Regulations in effect prior to February 6, 1979, and Section 8207 of the Zoning Regulations:

1. The applicant,
2. The ANC within which the property is located.
3. Persons in support of or in opposition to the application, who appear and participate at the public hearing held by the Board and who are determined by the Board to have a specific right or interest which will be affected by action on the application.

101 Applicability

101.1 These rules of practice and procedure are intended to supplement procedures set out in the Zoning Enabling Act, (D.C. Code, Sections 5-413 et seq.), the Zoning Regulations of the District of Columbia, and the District of Columbia Administrative Procedure Act (D.C. Code, Sec. 1-1501 et seq). These rules shall be effective on August 27, 1982, and shall apply to all applications or appeals thereafter filed with the Board, or then pending but for which notice of the public hearing has not yet been given. The previous Supplemental Rules of Practice and Procedure, published in the D. C. Register on July 6, 1972, as amended and known as Title 22 of the District of Columbia Rules and Regulations, shall continue to apply to all applications for which notice of the public hearing had been given prior to the effective date of these revised Supplemental Rules of Practice and Procedure.

101.2 No application or appeal shall be dismissed on the grounds that the applicant failed to comply with these rules, unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected.

102 Waiver of Rules

102.1 The Board, may, for good cause shown, waive any of the provisions of these rules, if in the judgement of the Board, such waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

103 Resolution of Conflict

103.1 In any conflict between these rules and any provision of the Zoning Regulations, the Zoning Regulations shall govern. In any conflict within these rules between general and specific rules, the specific rules shall govern.

104 Appearance and Representation

104.1 In a proceeding before the Board any person or party may appear on his or her own behalf. Any person or party, may be represented by any other person duly authorized in writing to do so. Such authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Board.

104.2 No member of the Board or of the Zoning Commission shall represent any person before the Board other than himself or herself while he or she is a member of the Board or the Commission.

104.3 No member of the Board or of the Zoning Commission shall represent any person before the Board other than himself or herself for a period of six months after the date that the member's service on the Board or Commission terminates.

104.4 No former member of the Board or former employee of the Government of the District of Columbia shall represent any person other than himself or herself in a particular matter for which the member or employee had a substantial responsibility while he or she was a member of the Board or an employee of the District of Columbia.

105 Time

105.1 In computing any period of time specified in these rules, calendar days shall be counted.

105.2 In computing any period of time specified in these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday or official District of Columbia holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor official holiday.

105.3 Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper, and the paper or notice is served upon the party by mail, three days shall be added to the prescribed period.

105.4 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended or reduced by the Board with notice to all parties.

106 Service of Papers, Methods, Proof

106.1 Any paper required to be served upon a party shall be served upon him or her, or upon the representative designated by him or her or by law to receive service of papers. When a party has appeared through a representative, service may be made upon the representative of record.

106.2 Service may be made by personal delivery, by first class mail, by telegram, mailgram or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Board may designate representative parties or make other special provisions regarding the service of papers.

106.3 Service upon a party is complete

- (a) By personal delivery, on handing the paper to the person or leaving it at the person's office with his or her clerk or other person in charge, or if there is no one in charge, by leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, by leaving it at his or her usual place of residence with some person of suitable age and discretion then residing therein;
- (b) By telegraph or mailgram when deposited with a telegram or mailgram company, properly addressed and with charges prepaid;
- (c) By first class mail, on deposit in the United States mail, properly stamped and addressed; or,
- (d) By conformity with an order of the Board made in any proceeding.

106.4 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown, and may be made by either

- (a) Written acknowledgement of the party served or his or her representative; or,
- (b) The written statement of the person making the service.

107 Meetings and Hearings

107.1 The meetings and hearings of the Board shall be open to the public, except that a meeting to consider personnel matters, litigation or other matters which are privileged or sensitive and are not required to be open by applicable law, may be closed at the discretion of the Board. The proposed public agenda for each meeting or the schedule for each hearing shall be posted in the office of the Board and available to the public at least seven days prior to a meeting or hearing. Copies of the agenda shall be available to the public at the meeting or hearing. Nothing herein shall preclude the Board from amending the agenda at the meeting or hearing.

107.2 Meetings of the Board will be held once each month in accordance with a schedule to be established by the Board. Additional meetings may be called as needed by the presiding officer or three members. Hearings will be scheduled as needed, for the purpose of receiving evidence and testimony on specific appeals and applications advertised in advance. Meetings and hearings shall be held at such time and place as the Board or the presiding officer may designate.

107.3 Meetings and hearings may be adjourned from time to time. If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.

107.4 A majority of the Board shall constitute a quorum. A member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the appeal or application. A member attending the decision meeting and having read the transcript and reviewed the complete record may participate and may vote even though that member may not have attended any or all of the prior meetings or hearings on the appeal or application.

108 Advisory Neighborhood Commissions

108.1 The written report of the ANC shall be submitted to the Board at least seven days in advance of the hearing and shall contain the following:

- (a) An identification of the appeal or application;
- (b) When the public meeting of the ANC to consider the appeal or application was held;
- (c) Whether proper notice of that meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the meeting;
- (e) The issues and concerns of the ANC about the appeal or application, as related to the standards of the Zoning Regulations against which the appeal or application must be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the appeal or application;
- (g) The vote on the motion to adopt the report to the Board;
- (h) The name of the person who is authorized by the ANC to present the report;
- (i) The signature of the chairman or vice-chairman of the ANC.

108.2 The Board shall give "great weight" to the written report of the ANC, as required by Section 1-261, D.C. Code, 1981 Ed. In the event the ANC submits its report on the basis of understandings, agreements or meetings with the appellant or applicant which later are modified by the appellant or applicant, the designated representative of the ANC may comment orally concerning the specific inconsistencies. No other new matters may be presented orally by the designated representative of the ANC.

109 Application Forms

109.1 The Executive Director shall, following

approval of the Board, issue and revise application forms and instructions to ensure presentation of adequate information for the understanding and processing of applications and appeals.

110 Legal Advice

110.1 Legal advice from the Office of the Corporation Counsel may be requested and/or received at any time.

111 Decorum and Good Order

111.1 No person shall utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct which has the effect of, as determined by the presiding officer, impeding, disrupting or disturbing the orderly conduct of any meeting, hearing, or other proceeding of the Board or the orderly conduct of official business of any member, officer, employee or agency of the Board or enter or remain in, during the course of any meeting, hearing or other proceeding of the Board, any area set aside for use by persons other than the general public.

Chapter 2 Pre-Hearing Procedures for Appeals to the Board
of Zoning Adjustment

200 Scope of Rules

200.1 The rules of procedure in this chapter apply to all appeals filed with the Board pursuant to Sections 8102 and 8206 of the Zoning Regulations, or their successor sections upon amendment of the Zoning Regulations.

201 Appeals

201.1 Any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations, may file a timely appeal with the Board as may be provided by the Board. An authorized agent may file an appeal on behalf of the aggrieved person. If an agent files an appeal, the appeal shall include a letter signed by the aggrieved person authorizing the agent to act on his or her behalf in the appeal. The Board may at any time require additional evidence demonstrating the authority of the agent to act for the appellant. At the time of filing the appeal, any fee established by the Mayor of the District of Columbia shall be paid to the District of Columbia Treasurer.

201.2 Each appeal, along with any application filed pursuant to Chapter 3 of these rules, shall be numbered serially, docketed, and may be placed upon the calendar of the Board by geographic areas by the Executive Director. When the appeal is accepted, a copy of the appeal form shall be sent to the ANC within which the property is located.

201.3 No later than fourteen days before the date of the hearing, the appellant shall file with the Board any additional statements, information, briefs, reports, including reports or statements of expert and other witnesses, plans or other materials that the appellant may wish to offer in evidence at the hearing. Any map, plan or other document or matter readily available to the general public need only be fully referenced and the source given by the appellant in lieu of filing a copy.

201.4 An appeal may be withdrawn at any time. Withdrawal does not authorize the removal of any document from the files of the Board. The appeal fee shall not be refunded upon withdrawal. A new appeal shall not be accepted again for filing for at least ninety days after withdrawal of the appeal without special leave of the Board.

201.5 An appeal dismissed by the Board for failure to comply with the procedural requirements of the Zoning Regulations or these Supplemental Rules of Practice and Procedure shall not be accepted again for filing for at least ninety days after the date of the order dismissing the appeal, without special leave of the Board.

202 Notice

202.1 Notice of a public hearing on an appeal shall include the number of the appeal, the administrative action appealed from, the name of the appellant, the property involved, the ANC within which the property is located, and the location, time and date of the public hearing.

202.2 Notice of the public hearing shall be given by the Executive Director not less than forty days before the date of the hearing as follows:

- (a) By publishing the notice in the District of Columbia Register;
- (b) By mailing the notice to the parties to the appeal;
- (c) By mailing the notice to the ANC within which the subject property is located;
- (d) By posting the calendar of cases to be heard by the Board in the office of the Zoning Secretariat.

203 Intervention

203.1 At the time of the hearing on the appeal, the Board, may in its discretion and for good cause shown, permit persons who 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.

Chapter 3 Pre-Hearing Procedures for Applications to
the Board of Zoning Adjustment

300 Scope of Rules

300.1 The rules of procedure in this Chapter apply to all applications filed with the Board, including applications filed pursuant to Sub-section 2301.4, Sections 4603 and 4604, Sub-sections 7501.4 and 7501.5 of the Zoning Regulations in effect prior to February 16, 1979, and Section 8207 of the Zoning Regulations, or their successor sections upon amendment of the Zoning Regulations.

301 Applications

301.1 The owner of property for which application is made may file an application with the Board as may be provided by the Board. An authorized agent may file an appeal on behalf of the owner. The application shall include a letter signed by the owner authorizing the agent to act on his behalf in the application. The Board may at any time require additional evidence demonstrating the authority of the agent to act for the owner. At the time of filing the application, any fee established by the Mayor of the District of Columbia shall be paid to the District of Columbia Treasurer.

301.2 Each application, along with any appeal filed pursuant to Chapter 2 of these rules, shall be numbered serially, docketed and may be placed upon the calendar of the Board by geographic areas by the Executive Director. When the application is accepted, a copy of the application form shall be sent to the ANC within which the property is located.

301.3 No later than fourteen days before the date of the hearing, the applicant shall file with the Board any additional statements, information, briefs, reports, including reports or statements of expert and other witnesses, plans or other material that the applicant may wish to offer in evidence at the hearing. Any map, plan or other document or matter readily available to the general public need only be fully referenced and the location of the available source given by the applicant in lieu of filing a copy.

301.4 An application may be withdrawn at any time.

Withdrawal does not authorize the removal of any document from the files of the Board. The application fee shall not be refunded upon withdrawal. A new application shall not be accepted for filing again for at least ninety days after withdrawal of the application without special leave of the Board.

301.5 An application dismissed by the Board for failure to comply with the procedural requirements of the Zoning Regulations or these Supplemental Rules of Practice and Procedure shall not be accepted for filing again for at least ninety days after the date of the order dismissing the application, without special leave of the Board.

302 Notice

302.1 Notice of a public hearing on an application shall include the number of the application, the nature of the application, the name of the applicant, the property involved, the ANC within which the property is located, and the location, time and date of the public hearing.

302.2 Notice of the public hearing shall be given by the Executive Director not less than forty days before the date of the hearing, as follows:

- (a) By publishing the notice in the District of Columbia Register.
- (b) By mailing the notice to the applicant and to the owners of all property within 200 feet of the property involved in the application.
- (c) By mailing the notice to each person having a lease with the owner for all or part of any building located on the property involved in the application.
- (d) By mailing the notice to the ANC within which the subject property is located.
- (e) By posting the calendar of cases to be heard by the Board in the Office of the Zoning Secretariat.

302.3 Additional notice of the public hearing shall be given by the applicant by posting the property with notice of the hearing at least fifteen days in advance of the hearing.

- (a) Notice shall be posted at each street frontage on the property involved, and on the front of each building located on the subject property. All such notices shall be in plain view of the public.
- (b) Notices will be supplied by the Executive Director showing the number of the application, the nature of the application, the name of the applicant, the property involved, the ANC within which the property is located, and the location, time, and date of the public hearing.
- (c) The applicant shall file with the Board not less than five days prior to the public hearing, a sworn affidavit demonstrating compliance with this rule. A form of affidavit supplied by the Board may be used but is not required. The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage and location of each sign.
- (d) The applicant must make a reasonable effort to maintain the posted notice by checking the signs at least every five days, and by posting new notices as necessary.
- (e) In the case of an application for approval of a college or university campus plan, the notice shall be posted on all frontages of property included in the plan which face property not owned by the college or university.

303 Reports of Government Agencies

- 303.1 When an application is referred in advance of the public hearing to any public agency or governmental unit or department for a report or recommendation, that report and recommendation shall be filed with the Board at least seven days prior to the date set for the hearing.
- 303.2 Upon agreement by the parties to a proceeding, a report and recommendation may become a part of the exclusive record at any time without benefit of cross-examination. In the absence of agreement, the report and recommendation shall not become a part of the exclusive record unless an officer, member or employee of the public agency or governmental unit or department appears at the

hearing to present the report and recommendation and to be cross-examined by the parties, unless the Board finds the document to be full and complete on its face, having given due regard to the importance of the evidence, availability of witnesses and the need of cross-examination for a full and true disclosure of the facts.

303.3 After consultation with the presiding officer, the Executive Director shall notify those agency representatives who should be present at the hearing.

303.4 In an application where a referral is made to a governmental department or office as required by the Zoning Regulations, if no report is received in the record and if the time period specified in Section 7608 of the Regulations has elapsed, then the Board may proceed to decide the application based on the record not including the report of the governmental department or office.

304 Appearance in Parking Lot Applications

304.1 At the public hearing on an application to establish or continue a parking lot, the owner of the real property, the lessee, if any, and a person who has personal knowledge of and can testify to the day-to-day operation of the parking lot shall appear before the Board. If the owner is not an individual, then the owner may be represented by an authorized agent who can advise the Board of the owner's future plans for the property.

- (i) Close a hearing;
- (j) Rule upon the qualifications of witnesses offered as experts;
- (k) Establish reasonable time limits for witnesses and fairly allocate time among the parties and others;
- (l) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;
- (m) Take any other action authorized by these rules or necessary under these rules.

401.2 Nothing herein shall preclude members from questioning witnesses in hearings before the Board.

402 Official Transcript

402.1 The hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by a reporter who may be designated from time to time by the Board or by a regular employee of the District of Columbia. The prepared transcript shall be the sole official transcript of the hearing. The transcript will be open for inspection at the office of the Zoning Secretariat. Copies of the transcript will be available to parties and to the public from the Zoning Secretariat upon payment of the charges fixed therefore.

403 Order of Procedure

403.1 The order of procedure for presenting evidence at the hearing shall be as follows:

- (a) On appeals filed pursuant to Chapter 2 of these rules:
 - 1. Appellant's case
 - 2. Administrative officer's case
 - 3. Case for owner, lessee, or operator of property involved, if not the appellant.
 - 4. The ANC within which the property is located.
 - 5. Intervenor's case, if intervention is permitted by the Board.
 - 6. Rebuttal and/or closing statement by appellant.

(b) On applications filed pursuant to Chapter 3 of these rules:

1. Applicant's case
2. Report and recommendation from the Office of Planning and Development
3. Reports and recommendations by other public agencies or governmental units or departments.
4. The ANC within which the property is located.
5. Parties and persons in support of the application.
6. Parties and persons in opposition to the application.
7. Rebuttal and/or closing statement by applicant.

404 Burden of Proof

404.1 In all cases before the Board the burden of proof shall rest with the appellant or applicant. If no evidence is presented in opposition to the case, the appellant or applicant shall not be relieved of this responsibility.

405 Evidence

405.1 Every party may appear at a hearing to offer evidence and cross-examine witnesses.

405.2 Evidence shall be taken in conformity with Section 1-1509(b) of D. C. Code, 1981 Ed. as amended.¹

405.3 Exhibits may be offered in evidence at the hearing. Such exhibits may be in the form of

¹"In contested cases, except as may otherwise be provided by law, other than this Sub-chapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but ... every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of ... any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary." (D.C. Code Sec. 1-1509(b), 1981 Ed.)

photographs, models, graphs, or other materials. Any exhibit which exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size of 8½ by 14 inches. No material shall be submitted for the record which exceeds legal size or cannot be folded to legal size. If models are used, photographs of the models not exceeding legal size, must be supplied at the public hearing.

405.4 The Zoning Enabling Act, the Zoning Regulations including appendices, and the official zoning maps, and these Supplemental Rules of Practice and Procedure shall be a part of the record of every proceeding before the Board, and it shall not be necessary for any party to move formally their introduction into evidence.

406 Proposed Findings and Conclusions; Closing the Record

406.1 Parties to the proceeding may submit proposed findings of fact and conclusions of law for the consideration of the Board within such time as the presiding officer may direct. The parties shall serve such proposed findings of fact and conclusions of law on all other parties at the same time as the proposed findings and conclusions are filed with the Board.

406.2 The record shall be closed following 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 may be directed by the presiding officer.

406.3 The Board shall allow all parties to a case an opportunity to file written responses to any exhibits, information or briefs submitted after the close of the hearing. Such responses shall be filed within seven days following the date by which such exhibits, information or briefs were due, unless otherwise directed by the presiding officer.

406.4 In the event parties participating in a hearing are so numerous as to make service of proposed findings of fact and conclusions of law, responses to material filed after the close of the hearing and service of the final decision or order burdensome to the Board and all the parties, the Board may designate at the close of hearing representative parties to the proceeding who will be served and who may respond.

406.5 Any material received by the Board after the close of the record which bears upon the substance of the application or appeal shall be returned by the Executive Director and not received into the files of the Board.

Chapter 5 Post-Hearing Procedures for Appeals and Applications to the Board of Zoning Adjustment

500 Scope of Rules

500.1 The rules of procedure in this Chapter apply to post-hearing procedures on all appeals and applications filed with the Board under Chapters 2 and 3 of these rules.

501 Further Hearing

501.1 Prior to the filing of a final decision, the Board may on its own motion, reopen the record and require further hearing on designated issues before the Board. Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or representative parties pursuant to designations made under Sub-section 406.4, at least ten days prior to the date set for further hearing.

502 Final Decision and Effective Date

502.1 The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.

502.2 A decision or order on an appeal or application shall be in writing and shall be accompanied by findings of fact and conclusions of law, which shall be filed in the record.

502.3 Formal notice of a decision or order shall be given to any party to the appeal or application, by serving the party with a copy of the decision or order of the Board and the accompanying findings of fact and conclusions of law, by registered or certified mail, return receipt requested.

502.4 A copy of the decision or order of the Board and the accompanying findings of fact and conclusions of law shall be served on any ANC which submitted a written report in accordance with Section 108 of these rules.

502.5 For the purpose of these rules, a decision or order of the Board is final upon filing in the record and service upon the parties.

502.6 Approval of an application shall include

approval of the plans included with the application for the construction of a building or structure or addition thereto or the renovation or alteration of an existing building or structure, unless the Board orders otherwise. An applicant shall be required to carry out the construction, renovation or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.

503 Reconsideration or Rehearing

- 503.1 A motion for reconsideration or rehearing of a final decision may be filed by a party within ten days of the filing and service of the written order of the Board. Such motion shall be served upon all other parties, or representative parties pursuant to designations made under Sub-section 406.4.
- 503.2 A motion for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought.
- 503.3 Within seven days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.
- 503.4 No request for rehearing shall be considered by the Board unless new evidence is submitted which 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.
- 503.5 The Board, on its own motion, not later than ten days following the filing of the final decision in the record, may decide to reconsider or rehear an application or appeal.
- 503.6 No member shall vote on any post-hearing motion unless the member participated in and voted on the original decision, or the member read the transcript of the hearings and reviewed the record.
- 503.7 Neither the filing of nor the granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision made unless the Board orders otherwise.
- 503.8 A motion for reconsideration or rehearing shall not be a prerequisite to judicial review.

504 Exclusive Record

504.1 No decision or order of the Board on an appeal or application shall be made except upon the exclusive record of the proceedings before the Board.

505 New Application or Appeal

505.1 An applicant or appellant whose appeal or application has been denied shall not institute a new appeal or application on the same facts within one year from the date of the order upon the previous appeal or application.

506 Modification of Approved Plans

506.1 The Board will consider requests to approve modifications to plans approved by the Board, as set forth in Sub-section 502.6. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore, and shall include a copy of the plans for which approval is now requested.

506.2 A request for modification of plans shall be filed with the Board not later than six months after the final date of the written order approving the application.

506.3 All requests for 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 days to submit in writing any comments that the party may have concerning the requested modification.

506.4 A decision on a request for 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.

506.5 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision.

506.6 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.