

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 603
Case No. 86-3
(Rules Amendment - Prehearing Submissions)
February 13, 1989

On February 10, 1986, at its regular monthly meeting, the Zoning Commission for the District of Columbia initiated action to consider amendments to its rules of practice and procedure, that is, Chapter 30 of the District of Columbia Municipal Regulations (DCMR), Title 11. The intent of the amendments was to provide an opportunity for the Commission to determine party status, to receive the testimony of witnesses in advance of a hearing, and to consider other prehearing submission requirements of a limited nature.

On November 14, 1988, at its regular monthly meeting, the Zoning Commission considered a memorandum dated November 9, 1988 from the Executive Director of the Zoning Secretariat regarding concerns of the Minority Business Opportunity Commission (MBOC) about the Planned Unit Development (PUD) process. MBOC expressed concerns that it had regarding the execution of "Memoranda of Understanding" between it and PUD applicants who proffered amenities affecting minority participation opportunities.

On December 12, 1988, at its regular monthly meeting, the Zoning Commission considered a memorandum dated December 8, 1988 from the Secretary to the Zoning Commission. The memorandum included proposed amendments to 11 DCMR 3013 affecting the prehearing submission requirements for applicants who proffer minority business opportunities, first-source employment opportunities; and other types of amenities or agreements.

A notice of proposed rulemaking was published in the D.C. Register on January 6, 1989 (36 DCR 197). As a result of that publication, written comments were received from the law firms of Linowes and Blocher, and Wilkes, Artis, Hedrick and Lane; the Zoning and Land Use Committee of the D.C. Bar Section on Real Estate, Housing and Land Use; the Director of the Department of Employment Services; and the Director of the Minority Business Opportunity Commission.

DOES and MBOC expressed support for the proposed rules, and MBOC recommended two minor clarifying changes.

The firm of Linowes and Blocher and the Zoning and Land Use Committee each recommended that the Commission adopt rules that would require an opposing party to submit a pre-hearing submission that is comparable in scope to the submission that 11 DCMR 3013.1 (b) requires of an applicant. Linowes and Blocher also submitted that it would be "asking too much to require an applicant to submit executed documents before the Commission will even schedule a hearing."

In a similar vein, the law firm of Wilkes, Artis, Hedrick and Lane suggested that it "is not prudent to pursue the execution of such agreements prior to a public hearing and a decision on an application...." It also counseled that the proposed practice "may well be wasteful of the time of all parties involved..." and that "there is no significant problem in continuing the present practice...."

On February 13, 1989, at its regular monthly meeting, the Zoning Commission considered the written comments, and responds as is set forth in the succeeding paragraphs.

The notice of proposed rulemaking did not include a proposal to require a substantial prehearing submission from opponents to an application. For that reason alone, such a proposal could not be adopted at this time. In addition, the Commission believes that the current rules are appropriately balanced, and equably reflect the relative burdens of applicants and other participants in contested case.

The current procedure is not working in a way that is satisfactory to the Commission or to government agencies that are the prospective beneficiaries of amenities. The Commission believes that it may reasonably require applicants to attend earlier than is now being done to securing the active involvement and preliminary agreement of the prospective beneficiary.

The Commission has made clarifying changes that respond to recommendations by MBOC and the Executive Director.

The proposed action of the Zoning Commission to amend its rules of practice and procedure was referred to the National Capital Planning Commission (NCPC), as a matter of courtesy.

NCPC, by report dated January 9, 1989, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to 11 DCMR 3013 are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the following amendments to its rules of practice and procedure as contained in 11 DCMR 3013:

1. Revise sub-section 3013.1 to read as follows:

3013.1 As soon as practical, but in no case less than fifteen (15) days before the notice of hearing is scheduled to be published in the D.C. Register, the applicant or petitioner shall file twenty (20) copies of the following with the Executive Director of the Zoning Commission office:

- (a) Additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing;
- (b) Additional information, reports, or other materials the applicant or petitioner may wish to introduce (see sub-section 3013.7);
- (c) A list of witnesses who are prepared to testify on the applicant's behalf;
- (d) A written summary of testimony of all witnesses or of the written report and the area of expertise of any expert who will be called to testify at the hearing;
- (e) Additional copies of the original application and supportive material, if unchanged; or, if the Zoning Commission requested the applicant to make any changes in the application, copies of the up-dated application and supportive material;
- (f) Any other information, including written reports, intended to be introduced at the hearing;

- (g) reduced plans, which plans shall be no larger than 11" x 17", show the "north arrow" reading up, and include a bar scale;
- (h) A list of maps, plans, or other documents that are readily available to the general public and which will be offered into evidence; and
- (i) An estimate of the time required for the presentation of the applicant's case.

2. Adopt a new subsection 3013.2, to read as follows:

3013.2 At the same time as filing the material that is required by sub-section 3013.1, the applicant shall file two (2) sets of full-size plans.

3. Redesignate current sub-section 3013.2 as 3013.3.

4. Adopt new sub-sections 3013.4 and 3013.5, to read as follows:

3013.4 If the application is processed as a map amendment, public air space application, or planned unit development, and proffers any amenity or benefit that is set forth in sub-section 3013.5, the applicant shall file a memorandum of understanding that has been executed by the applicant and the agency that would enter into or administer the agreement to provide the amenity or benefit.

3013.5 The provisions of subsection 3013.4 shall apply to the following benefits and amenities:

- (a) Minority participation opportunities through agreement with the Minority Business Opportunity Commission;
- (b) First-source employment opportunities through agreement with the Department of Employment Services;
- (c) Cash contributions to the D.C. Public Schools or other agency;
- (d) Services provided for the elderly, handicapped, children, or others through agreement with one or more agencies;
- (e) Agreement with the Department of Public Works, the National Park Service, or other government agency or private entity to

provide and/or maintain improvements to the public property;

- (f) The production of housing units through agreement with the Department of Housing and Community Development, the affected Advisory Neighborhood Commission, or any other agency or private entity; and
- (f) Any other amenity that would require the agreement of or administration by any government agency or private entity.

- 5. Redesignate the current sub-sections 3013.3 through 3013.6 as 3013.6 through 3013.9.
- 6. Require an applicant that proffers a third-party agreement as an amenity to submit a written agreement executed by the beneficiary, before the record closes, by adopting a new subsection 3024.2, to read as follows:

3024.2 An applicant that has been required by subsection 3013.4 of this title to submit a memorandum of understanding, and who did not submit, during or before the hearing, a fully executed written agreement to implement the memorandum, shall submit such a written agreement, executed by the applicant and all appropriate agencies or entities, before the record closes.

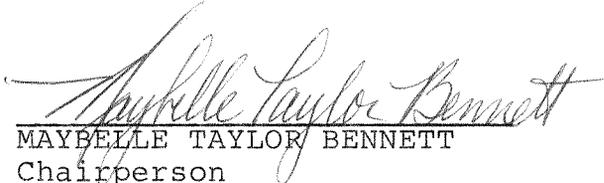
- 7. Redesignate current subsections 3024.2 through 3024.5 consistently.

Vote of the Zoning Commission taken at the regular public meeting on December 12, 1988: 4-0 (Lindsley Williams, Lloyd D. Smith, Maybelle Taylor Bennett and John G. Parsons, to approve - Elliott Carroll, not voting not having participated in the discussion).

This order was revised and adopted by the Zoning Commission at its regular public meeting on February 13, 1989, by a vote of 4-0 (Lindsley Williams, Maybelle Taylor Bennett, Lloyd D. Smith, and John G. Parsons to adopt as amended; Elliott Carroll, not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on NOV 03 1989.

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MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

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