

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 864

Case No. 98-19

(Text Amendments – Zoning Commission and Board of Zoning Adjustment
Rules of Practice and Procedure)

September 13, 1999

Zoning Commission Case No. 98-19 (Text Amendments – Rules of Practice and Procedure – Zoning Commission and Board of Zoning Adjustment) is an initiative of the Zoning Commission resulting from resolutions, orders and recommendations on regulatory reform by the D. C. Financial Responsibility and Management Assistance Authority (the “Authority”). The proposed text amendments aim to effectuate improvements in Zoning Commission and Board of Zoning Adjustment (BZA) procedures in the interests of effective and timely hearings and decisions. The proposed amendments relate to Chapters 30 and 31 as modified and recommended by the Authority. Also, the advertised text includes a further modification of a text amendment adopted in Zoning Commission Order No. 62 relating to flexibility to be exercised by the Zoning Administrator.

The public hearing was held on October 5, 1998, and the written record was left open until November 13, 1998. Notice of the hearing was published in the *D.C. Register* on September 18, 1998 and in the *Washington Times* on September 25, 1998. The hearing was conducted according to the provisions of Section 3021 of the Zoning Regulations as a rulemaking case.

The legislative background of this case includes several prior studies and recommendations regarding regulatory reform in the District of Columbia, beginning with the two reports of the Business Regulatory Reform Commission dated August 1997 and October 24, 1997 and entitled, *Creating a Competitive Edge: The Time is Now*. In 1997-98 the law firm of Holland & Knight, LLP and affiliated consultants under contract to the Authority analyzed a wide range of D.C. municipal regulations and made far-reaching recommendations for streamlining, updating and clarifying regulations and procedures. Proposed amendments to the Zoning Regulations constituted but one part of the total effort. Based on the Holland & Knight report, the Authority adopted numerous resolutions, orders and recommendations on regulatory reform that encompass legislation to be considered by the Council of the District of Columbia as well as changes in the regulations of numerous agencies and commissions. The law firm of Arnold & Porter

was retained to draft the zoning amendments and did so in close cooperation with the members of the Zoning Commission, the Board of Zoning Adjustment, the Authority and the inter-agency Zoning Task Force of the District of Columbia government. It is noted that the Zoning Commission and the Office of Zoning (OZ) have also, in recent years undertaken procedural reforms, such as direct filing of BZA applications at OZ, the Zoning Administrator's flexibility rule, and others.

The Authority provided for a public comment period in August 1998 and approved a number of modifications and additions to the text based on the public comments. The Authority then transmitted a recommended text to the Zoning Commission for its consideration. The Zoning Commission approved the scheduling of a public hearing on the matter, utilizing the recommended text as the advertised text in the instant case, No. 98-19.

At the public hearing, the Commission heard testimony from Mr. Lindsley Williams, the D.C. Building Industry Association (DCBIA), the law firm of Arnold & Porter and Ms. Harriett Hubbard. No representatives of Advisory Neighborhood Commissions (ANCs) testified at the hearing, although ANC 3C submitted written comments. Both Mr. Williams and DCBIA representatives expressed support for the advertised text and made numerous recommendations for clarifications and modifications of the advertised text. The general theme of these recommendations was for the regulations and the decision processes of the Commission and the BZA to be understandable, predictable and competitive with surrounding jurisdictions, and, in general to foster expeditious decision-making and competitive economic development. ANC 3C objected to any reduction in the required public notice period, i.e., from 40 days to 30 days, noting the difficulties shorter notice would create given the meeting schedules of ANCs. By letter dated October 18, 1998, Ms. Barbara Kahlow objected to the proposed new provisions regarding party status for public hearings, the reduced notice for owners of residential condominiums, and some of the proposals for expediting consideration of cases.

The purposes for adopting these amendments derive from the regulatory reforms adopted and recommended by the Authority, the Zoning Commission's own purposes, and the other regulatory reform efforts cited above. These purposes may be summarized as follows:

- To amend procedural requirements of the Zoning Commission and the Board of Zoning Adjustment so as to reduce or eliminate unnecessary delays in the public hearing and decision processes while retaining necessary safeguards of the public interest.
- To expedite public hearing and decision processes so as to place the District of Columbia on a more equal footing with comparable processes in surrounding, and competing, jurisdictions.

- To clarify, and in some cases simplify, regulations and procedures to make them more understandable and more readily usable by architects, developers, public agencies, community organizations and the general public.

The adopted text incorporates a number of minor modifications and clarifications of provisions based on testimony and written submissions, including a degree of liberalization of Subsection 2522.1, the Zoning Administrator's flexibility rule, and others.

A notice of proposed rulemaking was published in the District of Columbia Register on February 26, 1999. The notice of the Commission's proposed action to amend the Zoning Regulations was referred to the Office of Corporation Counsel (OCC) for legal sufficiency review and comment and to the National Capital Planning Commission (NCPC) pursuant to the Self-Government and Governmental Reorganization Act.

The NCPC, by report dated January 7, 1999, indicated the following;

1. that the proposed text amendments for the Zoning Commission and Board of Zoning Adjustment procedures would not affect the federal establishment or other federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan; and
2. that the flexibility rule for the Zoning Administrator (ZA) would adversely affect the federal interest (the height of buildings in the District of Columbia) and would be inconsistent with the Federal Elements of the Comprehensive Plan unless the proposed text is modified to be clear that the minor deviations permitted by the ZA must comply with the provisions of the "Act to Regulate the Height of Buildings in the District of Columbia" 36 Stat. 452, approved June 1, 1910, as amended. Therefore, the Commission requests that the proposed Section 2522.1 (c) of the Zoning Regulations be modified by placing a comma at the end thereof and adding the following: "provided that all deviations of roof structure setback requirements comply with the provisions of the "Act to Regulate the Height of Buildings in the District of Columbia," 36 State. 452, approved June 1, 1910 as amended."

As a result of the publication of the notice of proposed rulemaking comments were also received from Ms. Barbara F. Kahlow, Mr. Lindsley Williams and Mr. Christopher H. Collins, Vice President of the District of Columbia Building Industry Association.

On September 13, 1999, at its regular monthly meeting, the Commission reviewed the NCPC and all pertinent information in the record of the case. At that same meeting the Commission made minor changes to correct inconsistencies and editorial corrections and to clarify its intent.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations 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 hereby orders **APPROVAL** of amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning regarding the rules of practice and procedure of the Commission and the BZA and regarding minor flexibility in the Zoning Administrator's rulings. The specific amendments to DCMR Title 11, Zoning are as follows:

- A. Title 11 DCMR Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, is amended to add new section 2522 to read as follows:

2522 MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING

2522.1 The Zoning Administrator is authorized to permit, cumulative totals for Plan Review and Construction Field Checks, the following deviations, if the Zoning Administrator determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations:

- (a) Deviations not to exceed two percent (2%) of the area requirements governing minimum lot size, percentage of lot occupancy and areas of courts and roof structures;
- (b) Deviations not to exceed the greater of two percent (2%) or twelve (12) inches of the linear requirements governing minimum lot width; and
- (c) Deviations not to exceed the greater of ten percent (10%) or twelve (12) inches of the linear requirement governing rear yard, side yard, minimum dimensions of the court and court niche and roof structure setback requirements, provided that all deviations of roof structure setback requirements comply with the provisions of the "Act to Regulate the Height of Buildings in the District of Columbia" Stat.452, approved June 1, 1910, as amended.

- B. Title 11 DCMR Chapter 30 ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE and CHAPTER 31 BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE are amended to read as follows:

**CHAPTER 30 ZONING COMMISSION RULES OF PRACTICE AND
PROCEDURE**

<u>Secs.</u>	
3000	General Provisions
3001	Computation of Time
3002	Appearance and Representation
3003	Service of Papers
3004	Minutes and transcripts
3005	Meetings and Hearings
3006	Evidence
3007-3009	[Reserved]
3010	Applications and Petitions
3011	Review and Processing of Applications and Petitions
3012	Agency Reports
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3014	Notice of Hearings: General
3015	Notice of Contested Case Hearings
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3020	Hearing Procedures: General
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3022	Contested Case Hearings
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3030	Consent Calendar
3031-3039	[Reserved]
3040	Filing Fees
3041	Hearing Fees
3042	Waiver of Hearing Fees
3043	Exemption from Fees
3044	[Reserved]
3045	Miscellaneous Fees
3099	Definitions

3000 GENERAL PROVISIONS

- 3000.1 The provisions of this chapter shall supplement procedures set out in the Zoning Enabling Act (D.C. Code §5-413 et seq. (1981)), the Zoning Regulations of the District of Columbia and the D.C. Administrative Procedure Act.
- 3000.2 The provisions of this chapter shall be effective on _____, 1999, and shall be applicable in their entirety to all applications or petitions filed after that date with the Commission, and to applications or petitions already

filed but for which a public hearing has not been granted by the Commission.

3000.3 No application or petition pending on _____, __, 1999 shall be dismissed on the grounds that the applicant or petitioner failed to comply with the provisions of this chapter unless, after due notice of deficiency and expiration of a reasonable time as fixed by the Commission, the deficiency has not been corrected.

3000.4 In any conflict between the provisions of this chapter and the Zoning Regulations, the Zoning Regulations shall govern.

3000.5 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.

3000.6 In any conflict between this chapter and the D.C. Administrative Procedure Act (D.C. Code §1-1501 et seq.(1981)) the D.C. Administrative Procedure Act shall govern.

3000.7 The Director shall, following approval by the Commission, issue and revise application and petition forms and instructions to ensure presentation of adequate information required for the understanding and processing of applications and petitions.

3000.8 The Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law..

3000.9 Legal advice from the Office of the Corporation Counsel may be requested or received at any time.

3001 COMPUTATION OF TIME

3001.1 In computing any period of time specified in this title, calendar days shall be counted.

3001.2 In computing any period of time specified in this title, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

3001.3 The last day of the period computed as provided in §3001.2 shall be included unless it is a Saturday, Sunday, or official District holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor holiday.

3001.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her, and the notice or paper is served upon him or her by mail, three (3) days shall be added to the prescribed period.

3001.5 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 Commission.

3002 APPEARANCE AND REPRESENTATION

3002.1 In a proceeding before the Commission, any person or party may appear on his or her own behalf.

3002.2 Any person or party may be represented by any other person duly authorized in writing to do so.

3002.3 The authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Commission.

3003 SERVICE OF PAPERS

3003.1 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 by law to receive service of papers. When a party has appeared through a representative, service may be made upon the representative of record.

3003.2 Where there are numerous parties to a proceeding, the Commission may designate representative parties or make other special provisions regarding the service of papers.

3003.3 Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection or as otherwise authorized by law:

- (a) By personal delivery, on handing the paper to the person to be served, or leaving it at his or her office with his or her clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office; 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 in that place;

- (b) By telegram 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;
- (d) By telecopy, or FAX, when telecopied with the proper telephone number of the intended recipient's telecopier;
- (e) By e-mail when transmitted electronically, properly addressed to the attention of the intended recipient's telecopier; or
- (f) In any specific manner prescribed by the Commission in a proceeding.

3003.4 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed.

3003.5 Proof of service may be made by any of the following means:

- (a) Written acknowledgement of the party served or his or her attorney of record;
- (b) The certificate of the attorney of record if he or she has made the service; or
- (c) The certificate of the person making the service.

3004 MINUTES AND TRANSCRIPTS

3004.1 The minutes of Commission meetings and hearing are a matter of public record.

3004.2 The minutes of Commission meetings shall be summary in nature and shall include the vote of each member on each application or petition or procedural matter, and any ruling of the presiding officer.

3004.3 The hearing shall be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated from time to time by the Commission or who may be a regular employee of the Commission.

3004.4 The transcript prepared by the reporter shall be the sole official transcript of the hearing.

3004.5 The transcript shall be open for inspection at the Office of Zoning.

- 3004.6 Copies of the transcript shall be available to parties and to the public from the official reporter on payment of the charges fixed for the copies.
- 3004.7 Parties shall be notified when the transcript is filed with the Commission.
- 3004.8 Changes in the official transcript may be made only when they involve errors affecting substance.
- 3004.9 A motion to correct a transcript shall be filed with the Commission within ten (10) days after the transcript has been filed with the Commission.
- 3004.10 Copies of the motion to correct a transcript shall be served simultaneously on all opposing parties or legal representatives.
- 3004.11 Objections to the motion to correct a transcript shall be filed with the Commission within five (5) days and served upon the parties.
- 3004.12 The transcript may be changed by the presiding officer at a public meeting to reflect any corrections.

3005 MEETINGS AND HEARINGS

- 3005.1 On or about the first (1st) day of each three (3) month period during the year, the Director shall cause to be published in the *D.C. Register*, and shall post in the Office of Zoning, a 12-month calendar or schedule of dates setting forth the dates of meetings and hearings that will occur during such period, as well as the dates by which an application or petition must be filed with the Commission to allow its consideration on a specific hearing date. Such calendar or schedule also shall set forth any additional hearing dates as may be required by the Commission to permit consideration of applications or petitions which have been timely and appropriately filed for a specific hearing date and which, but for reasons of excessive number of cases, continuances or otherwise, are not able to be heard or considered on such date.
- 3005.2 The meetings and hearings of the commission shall be open to the public, except that a meeting to consider personnel matters, litigation, or other matters that are privileged or sensitive and are not required to be open by applicable law may be closed at the discretion of the Commission.
- 3005.3 The proposed agenda for each meeting or the schedule for each hearing shall be posted in the office of the Commission and available to the public at least four (4) days prior to a meeting or hearing.

- 3005.4 Copies of the agenda shall be available to the public at the meeting or hearing.
- 3005.5 Nothing in this section shall preclude the Commission from amending the agenda at a meeting or hearing.
- 3005.6 A meeting of the Commission shall be held once each month in accordance with a schedule to be established by the Commission, and additional meetings may be called as needed by the presiding officer or by three (3) members.
- 3005.7 The Commission shall schedule any hearings as needed, in addition to those placed on the quarterly calendar pursuant to §3005.1, for the purpose of receiving evidence and testimony on specific applications and petitions advertised in advance. Such hearings shall be held at the time and place the Commission or the presiding officer designates.
- 3005.8 Unless all parties to a hearing agree otherwise, or unless the Commission orders otherwise, the Commission shall not postpone or continue a public hearing on a contested case for a period in excess of thirty (30) days from the date of the granting of such postponement or continuance.
- 3005.9 If the time and place of resumption is publicly announced when a postponement, continuance or adjournment is ordered, no further notice shall be required.
- 3005.10 A majority of the Commission shall constitute a quorum.
- 3005.11 A member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the application or petition.
- 3005.12 A member attending a decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on the application or petition.
- 3005.13 A majority of the Commission members present at a meeting or hearing may take a procedural action, but shall not take a proposed or final action on a petition or application unless the members also constitute a majority of the Commission.

3006 EVIDENCE

- 3006.1 Exhibits may be offered in evidence at the hearing.

- 3006.2 Exhibits may be in the form of photographs, models, graphs, or other appropriate visual displays.
- 3006.3 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size of eight and one-half by fourteen inches (8 ½ in. x 14 in.).
- 3006.4 No material that exceeds legal size shall be submitted for the record.
- 3006.5 If models are used, photographs of the models not exceeding legal size shall be supplied at the public hearing.
- 3006.6 The Zoning Enabling Act, the Zoning Regulations (including appendices and the official Zoning Map), and this chapter shall be a part of the record of every proceeding before the Commission, and it shall not be necessary for any party or person formally to move their introduction into evidence.
- 3006.7 The applicant, a government agency representative, a party, or a person may appear as a witness and offer evidence at a hearing.
- 3006.8 In a contested case conducted under §3022, witnesses may be examined or cross-examined by the Commission, the applicant, or any party so determined by the Commission under this chapter.
- 3006.9 In a rulemaking case conducted under §3021, witnesses may be examined only by the Commission.
- 3006.10 In any case, any authorized representative of any public agency or governmental unit or department may pose a question to a witness through the presiding officer.

3007 [RESERVED]

3008 [RESERVED]

3009 [RESERVED]

3010 APPLICATIONS AND PETITIONS

- 3010.1 Any proceeding before the Commission shall be initiated by the filing of an application or petition with the Commission on the form and in the number that the Commission may prescribe, except that the Commission may initiate a case on its own motions.

3010.2 Contested cases (i) are adjudicatory in nature, (ii) present issues for resolution at a public hearing that potentially will affect a relatively small number of persons or properties and (iii) involve primarily questions of fact applicable to a small number of persons or properties, and broader issues of public policy are secondary concerns. Contested cases shall include, without limitation, the following:

- (a) Planned unit developments filed according to the provisions of Chapter 24 of this Title;
- (b) Requests for zoning map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley; and
- (c) Applications for air space development.

3010.3 Contested cases shall be initiated by the filing of an application. Public hearings on a contested case shall be processed and conducted according to the provisions of D.C. Code 1-1509 and §3022 of this Chapter, unless the Commission determines otherwise pursuant to §3010.7.

3010.4 Rulemaking cases are (i) legislative in nature, (ii) cases in which the issues to be resolved at the public hearing may affect large numbers of persons or property or the public in general, including such matters as the following:

- (a) A zoning text or map amendment that is proposed in furtherance of the Comprehensive Plan for the National Capital or other public law or policy;
- (b) Cases in which the primary issues involve land-use, urban planning and zoning policies, such as the development pattern of the city or a particular geographic area, population density, distribution of employment centers, traffic and transportation patterns and related matters; and
- (c) Cases in which the facts, information and opinions sought for the public hearing are to come from a wide cross-section of the public.

3010.5 Rulemaking cases include the following:

- (a) Proposals to amend the text of the Zoning Regulations;
- (b) Proposals initiated by public agencies to amend the zoning map for a neighborhood, commercial district or other geographic area encompassing multiple properties unless determined otherwise by the Commission pursuant to § 3010.7;

- (c) Proposals initiated by private persons, organizations or other entities to amend the zoning map in cases where:
 - (1) The petitioner or petitioners do not own all of the property proposed to be rezoned; or
 - (2) The petitioner or petitioners own all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties.

3010.6 Rulemaking cases are initiated by the filing of a petition. Public hearings shall be processed and conducted according to the provisions of §3021 of this Chapter, unless the Commission determines otherwise pursuant to §3010.7.

3010.7 Notwithstanding the classifications of cases found in §§3010.2 and 3010.5, the Commission may, on its own motion or at the request of any public agency, person or other entity, review and determine the designation of such case as a rulemaking case or a contested case based on the standards contained in §§3010.2 and 3010.4.

3011 REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS

3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and shall refer a copy to the Office of Planning for review and recommendation on whether the matter should be processed further.

3011.2 The report of the Office of Planning on whether the matter should be set for public hearing shall be in writing and filed with the Director of the Office of Zoning at least ten (10) days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the public records of the Commission.

3011.3 After considering the application or petition and the recommendations of the Office of Planning, and after reasonable opportunity for the applicant or petitioner to present his or her views, the Commission may dismiss the application or petition or set it down for public hearing or other proceeding.

- 3011.4 The vote of a majority of the full Commission shall be required to deny or dismiss an application or petition without a hearing. The vote of a majority of the members present may set the matter down for a public hearing or other proceeding.
- 3011.5 If the matter is denied or dismissed without a public hearing, the Commission shall issue a dismissal order, copies of which shall be published in the *D.C. Register*, served on the applicant, and provided to the public library system and to the appropriate locations. The order shall include a statement of reasons for the dismissal.
- 3011.6 If the Commission denies or dismisses an application or petition without prejudice, the order shall also state the type of modification the Commission considers appropriate.
- 3011.7 If the matter is set down for a public hearing, the Commission shall at the same meeting:
- (a) Confirm whether the matter will be heard as a contested or a rulemaking case according to the standards set forth in Section 3010 and provide that the notice of hearing will state such classification;
 - (b) Schedule the date or dates for the public hearing, providing for an adequate number of public hearing sessions within a short time span, taking into account the nature and complexity of the case as presented in the report of the Office of Planning and any additional comments by the Office of Planning or the Director of the Office of Zoning;
 - (c) Make every effort to expedite cases regarding which the Office of Planning report and comments at the meeting suggest that:
 - (1) The application or petition has substantial merit in the public interest;
 - (2) The issues in the case are relatively straightforward, and few if any modifications to the proposal are likely to be necessary; and
 - (3) Little or no opposition has yet appeared, and the concerns at this preliminary stage appear to be capable of resolution in an expedited processing.

3011.8 In expediting certain cases as provided in 3011.7, the Commission shall ensure that large or more complex cases of great import to the public interest are not delayed or are only delayed to a minor degree.

3011.9 An applicant or petitioner granted a public hearing and other processing shall be so notified and shall be informed of any other requirements of the Commission.

3012 AGENCY REPORTS

3012.1 As soon as an application or petition is set down for a public hearing, the matter shall be referred to the Office of Planning and any other public agencies that may be requested to provide information and assistance, depending on the nature of the application or petition.

3012.2 The Director of the Office of Planning shall coordinate review of the application and prepare an impact assessment of the project. The assessment shall include reports in writing from all relevant District departments and agencies including the Department of Public Works, the Department of Housing and Community Development, and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

3012.3 The written reports and recommendations requested by the Commission pursuant to §3011.3 shall be filed by the Director of the Office of Planning with the Director of the Office of Zoning at least ten (10) days in advance of the hearing. The Director of the Office of Zoning shall include these reports and recommendations in the public record.

3012.4 The Director of the Office of Zoning shall notify the Director of the Office of Planning in writing of the required attendance of agency representatives at the public hearing.

3012.5 If an Advisory Neighborhood Commission (ANC) wishes to participate in a matter being considered as a contested case proceeding under §§3022 through 3023 [Chapter 6, Rules of Practice and Procedures], the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing. In a matter being considered as a rulemaking proceeding under § 3021 [Chapter 5, Rules of Practice and Procedure], there shall be no filing deadline as long as the record in that case is open. All written reports shall contain the following:

- (a) An identification of the application;

- (b) When the public meeting of the ANC to consider the 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 application, as related to the standards against which the application shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the application;
- (g) The vote on the motion to adopt the report to the Commission;
- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the chairman or vice-chairman of the ANC.

3012.6 The Commission shall give “great weight” to the written report of the ANC, as required by D.C. Code §1-261 (1981). In the event the ANC submits its report on the basis of understandings, agreements or meetings with the applicant which later are modified by the applicant, the designated representative of the ANC may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated representative of the ANC. The Commission may leave the record open to permit the ANC to submit a revised report.

3012.7 A proceeding that is a contested case within the meaning of D.C. Code §1-1502(8) (1981) shall be conducted pursuant to the requirements of the D.C. Administrative Procedure Act.

3013 SUPPLEMENTAL FILINGS

3013.1 As soon as practical, but in no case less than twenty (20) 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 Director:

- (a) Any additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing and any 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;

- (b) A list of witnesses who are prepared to testify on the applicant's behalf;
- (c) 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;
- (d) Any additional information, reports, or other materials the applicant or petitioner may wish to introduce;
- (e) Reduced plans, which plans shall be no larger than eleven inches by seventeen inches (11 in. x 17 in.) show the "north arrow" reading up, and include a bar scale;
- (f) A list of maps, plans, or other documents that are readily available to the general public and which will be offered into evidence; and
- (g) An estimate of the time required for the presentation of the applicant's case, subject to the decision of the presiding officer as provided in §3020.1(j).

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

3013.3 In the case of a map amendment pursuant to the provisions of §3021, the supplemental information filed by the petitioner shall include the names and addresses of the owners of all property proposed to be rezoned.

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 §3103.5, 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 §3013.4 shall apply to the following benefits and amenities;

- (a) Minority participation opportunities through agreement with the D.C. Local 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 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
- (g) Any other amenity that would require the agreement of or administration by any government agency or private entity.

3013.6 For all applications filed pursuant to §3022, the supplemental information filed also shall include the following:

- (a) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property; provided, however, in the case of a residential condominium or cooperative with twenty five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units; and
- (b) The name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.

3013.7 The Director shall not issue any notice of hearing until the applicant or petitioner certifies in writing that all of the requirements of this section have been compiled with.

3013.8 No application shall be modified less than twenty (20) days prior to public hearing.

3013.9 The Commission may permit the modification of the application at the hearing.

3013.10 If the application includes a report by a transportation consultant or expert, a copy of such report shall be provided to the Department of Public Works at least twenty (20) days prior to the public hearing.

3014 NOTICE OF HEARINGS: GENERAL

- 3014.1 Notice of a hearing pursuant to the provisions of §3021 or §3022 shall be given as follows:
- (a) Notice of the hearing shall be published in the D.C. Register at least forty (40) days in advance of the hearing;
 - (b) By posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and
 - (c) By providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.
- 3014.2 Each notice shall include a general summary of the application or petition under consideration and shall state the time and place of the public hearing, the name of the applicant or petitioner, the action of the Commission prayed for, and whether the proceedings will be conducted pursuant to §3021 or §3022 of this chapter.
- 3014.3 For hearings to amend the Zoning Map pursuant to §3021, the petitioner shall post the street frontage of each square affected by the rezoning proposal with a notice of public hearing. This information shall be posted at least forty (40) days in advance of the hearing.
- 3014.4 The notice required by §3014.3 shall be supplied by the Director showing the following:
- (a) The calendar number of the petition;
 - (b) The nature of the petition;
 - (c) The name of the petitioner;
 - (d) The property involved; and
 - (e) The location, time, and date of the public hearing.
- 3014.5 The petitioner shall comply with the requirements of §§3015.7 through 3015.9, regarding filing of a sworn affidavit and maintenance of the posting.
- 3014.6 The Commission shall give any additional notice of the hearing, including the application of the provisions contained in §3015 as it deems appropriate, feasible and applicable.

3015 NOTICE OF CONTESTED CASE HEARINGS

- 3015.1 Notice of a hearing pursuant to the provisions of §3022 of this title shall be given in accordance with the requirements of §3014 and the additional requirements set forth in this section.
- 3015.2 Notice of the hearing published in the *D.C. Register* shall also include lot, square, and street address of the property involved; and the number of the Advisory Neighborhood Commission area in which the property is located. This notice shall also cite the requirements for intervention as party.
- 3015.3 At least forty (40) days prior to a hearing, the Commission shall mail a copy of the notice to the following:
- (a) Owners of all property within two hundred feet (200 ft.) of the property included in the application; provided, however, in the case of a residential condominium or cooperative with twenty five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units;
 - (b) Each person having a lease with the owner for all or part of any building located on the property involved in the application; and
 - (c) The Advisory Neighborhood Commission for the area in which the property is located, or for any other Advisory Neighborhood Commission which is within two hundred feet (200 ft.) of the property involved in the application.
- 3015.4 When a Zoning Map amendment, planned unit development, or air space development is requested by a property owner for his or her property, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty (40) days in advance of the hearing.
- 3015.5 The notice required by §3015.4 to be placed upon applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.
- 3015.6 All notices required by §3015.4 shall be supplied by the Director and shall show the following:
- (a) The calendar number of the application;
 - (b) The nature of the application;

- (c) The name of the applicant;
- (d) The property involved; and
- (e) The location, time, and date of the public hearing.

3015.7 When required to post any notice by §3015.4, the applicant shall file with the Director a sworn affidavit demonstrating compliance with the applicable provisions of §3015.4 and the provisions of §3015.5. This affidavit shall be filed not less than thirty (30) days prior to the public hearing. A form of affidavit supplied by the Director may be used, but is not required.

3015.8 The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage, or other location where applicable under §3015.4, of each sign.

3015.9 The applicant shall make a reasonable effort to maintain the posting by checking the signs weekly and re-posting when necessary. The applicant shall swear or affirm at the hearing that this has been done.

3015.10 Notice of the public hearing pursuant to §3015.3 shall not be a jurisdictional prerequisite to action by the Commission. It shall be intended to offer supplemental notice only.

3015.11 If a failure of notice under §3015.3 is alleged and proven, the Commission may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis of these considerations, the Commission may determine whether the public hearing will be postponed, continued or held as scheduled.

3016 [RESERVED]

3017 [RESERVED]

3018 [RESERVED]

3019 [RESERVED]

3020 HEARING PROCEDURES: GENERAL

3020.1 The presiding officer shall have authority to do the following

- (a) Regulate the course of the hearing;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Assign exhibit numbers for all written documentary and other tangible matter offered in evidence;
- (d) Dispose of procedural requests or similar matters, including motions to amend and to order hearings reopened;
- (e) Rule upon motions to consolidate applications for hearing;
- (f) Call, qualify, and examine witnesses;
- (g) Introduce into the record documentary or other evidence;
- (h) Request any party or person at any time during the hearing to state his or her respective position concerning any issues in the proceeding and theory in support of that position;
- (i) Rule upon the qualifications of witnesses offered as experts;
- (j) Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness;
- (k) Take any other action authorized by this title or that are necessary under this chapter.

3020.2 Except as provided in §3020.3, the applicant, persons and parties(except an ANC) in support shall collectively have a maximum sixty (60) minutes, exclusive of cross-examination, to present testimony, and all persons and parties (except an ANC) in opposition shall collectively have no more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition. Nothing herein shall prohibit the Commission from placing reasonable restrictions on cross-examination, including time limits and limitations on the scope of cross-examination, by the applicant or parties in support or opposition.

3020.3 The Commission may grant additional or lesser time to that under §3020.2 to an applicant and persons and parties in support, or to persons and parties in opposition, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

3020.4 If surprise to the applicant or petitioner, or to a party in a proceeding under §3022, is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant, petitioner, or party

sufficient time to offer rebuttal evidence. This evidence shall be filed with the Director at least fourteen (14) days before the hearing is resumed.

3021 RULEMAKING HEARINGS

3021.1 The rules of procedure set forth in this section shall apply to rulemaking proceedings, including petitions for amendments to the text of the Zoning Regulations of the District pursuant to §102 of chapter 1 of this title, and to certain applications for a change in the Zoning Maps of the District designated by the Commission pursuant to §3010.7 as coming within the rulemaking power of the Commission.

3021.2 The rules in this section shall supplement the rules set forth in §§3011, 3013, 3014, 3015, 3020 and 3024.

3021.3 Any person may appear at a hearing in a rulemaking proceeding, and may present, within the time limits determined by the Commission, evidence, testimony or argument that is relevant and not unduly repetitious.

3021.4 No person shall have the standing of a party in a rulemaking proceeding.

3021.5 The order of procedure at the hearing shall be as follows:

- (a) Call to order and opening statement by the presiding officer;
- (b) Introductory statement by Commission staff;
- (c) Consideration of pending motions and procedural matters;
- (d) Applicant's or petitioner's case;
- (e) Reports or statements by the Office of Planning and other public agency representatives;
- (f) Affected Advisory Neighborhood Commissions;
- (g) Persons in support of the application or petition; and
- (h) Persons in opposition to the application or petition.

3022 CONTESTED CASE HEARINGS

3022.1 The procedure set forth in DC Code §1-1509 and this section shall apply to applications for a change in the Zoning Map of the District pursuant to §102 of chapter 1 of this title, and to applications for planned unit developments,

air space developments, and similar plan review activities of the Commission, except as otherwise provided in §3010.7.

3022.2 This section shall supplement the rules set forth in §§3010, 3013, 3014, 3015, 3020 and 3024.

3022.3 Except for the applicant and the ANC, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, the following information:

- (a) The person's name and address;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) Whether the person will appear through legal counsel and, if so, the name and address of the legal counsel;
- (e) A list of witnesses who will testify on the person's behalf; and
- (f) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by such person, or in which such person has an interest, that will be affected by the action requested of the Commission;
 - (2) The legal interest such person has in such property, such as owner, tenant, trustee or mortgagee;
 - (3) The distance between such person's property and the property that is the subject of the application before the Commission;
 - (4) The environmental, economic, or social impacts that are likely to affect such person and/or such person's property if the action requested of the Commission is approved or denied;
 - (5) Any other matters that would demonstrate how the person would be affected or aggrieved by action upon the application; and
 - (6) In considering any request for party status pursuant to ¶¶ (1) through (5) above, the Commission shall grant party

status only if the person has clearly demonstrated that his or her interests will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

- 3022.4 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of §3022.3 have been complied with and whether the specific information presented qualifies the person as a party.
- 3022.5 A party may cross-examine any other party or person, except the Commission; Provided, that the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.
- 3022.6 Evidence shall be taken in conformity with D.C. Code §1-1509(b)(1981).
- 3022.7 Witnesses shall be examined and cross-examined orally under oath or affirmation.
- 3022.8 The order of procedure for presenting evidence at the hearing shall be as follows:
- (a) Call to order and opening statement by the presiding officer;
 - (b) Introductory statement by Commission staff;
 - (c) Consideration of pending motions and procedural matters;
 - (d) Applicant's case;
 - (e) Reports or statements by the Office of Planning and other public agency representatives;
 - (f) Affected Advisory Neighborhood Commission(s);
 - (g) Parties in support of the application or petition;
 - (h) Persons in support of the application;
 - (i) Parties in opposition to the application;
 - (j) Persons in opposition to the application; and
 - (k) Rebuttal by applicant.

3022.9 In a contested case proceeding under this chapter, no decision or order of the Commission on an application or petition shall be made except upon the exclusive record of the proceedings before the Commission.

3023 EX PARTE COMMUNICATIONS

3023.1 In any proceeding that is a contested case within the meaning of D.C. Code §1-1502(8) (1981) and §3010.2, all members of the Commission shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding.

3023.2 The prohibition provided in §3023.1 shall begin to apply upon the referral of any application or petition pursuant to §3011, and shall not terminate until the final disposition of the case.

3023.3 The prohibition provided in §3023.1 shall not extend to communication between the Commission and the staff concerning matters of record.

3023.4 As used in this section, the term “*ex parte* communication” shall mean an oral or written communication not in the public hearing record with respect to which reasonable prior notice to all participants to the proceeding is not given.

3023.5 As used in this section, the phrase “participants to the proceedings” shall mean all parties to the proceeding and any other persons who have been granted limited participation.

3024 CLOSING THE RECORD

3024.1 The record shall be closed at the end of 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 directed by the presiding officer.

3024.2 An applicant that has been required by §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 that memorandum, shall submit a written agreement, executed by the applicant and all appropriate agencies or entities, before the record closes.

3024.3 In a contested case proceeding conducted under §3022, the Commission 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. These responses shall be filed within seven (7) days following the date by which the exhibits, information, or briefs were due.

- 3024.4 In a rulemaking proceeding conducted under §3021, the Commission may allow persons an opportunity to file written responses to any exhibits, information, or briefs submitted within the period designated by the Commission.
- 3024.5 The Commission reserves the right to reopen the record at any time prior to the issuance of a final decision. In a proceeding under §3022, notice of reopening the record shall be served upon all parties to the proceeding.
- 3024.6 Legal advice from the Office of the Corporation Counsel may be requested or received at any time.
- 3024.7 The Commission shall have the authority to close the record at the end of a contested case hearing, including an application for a planned unit development, and to vote either to approve or deny an application as its proposed action. The Commission may describe such conditions as the Commission desires to have included in its final decision or order, subject to the requirements of D.C. Code §1 – 1509(e) and §§3025.3, 3028.3, 3028.4, 3028.5, 3028.6, 3028.7, 3028.8 and 3029.9.

3025 POST-HEARING PROCEDURES: GENERAL

- 3025.1 Prior to filing the final decision, the Commission may on its own motion reopen the record and require further hearing on designated issues before the Commission.
- 3025.2 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or his or her legal representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.
- 3025.3 A proposed action to amend the text or map of the Zoning Regulations or to approve a planned unit development or air space development shall be referred to the National Capital Planning Commission for comment and review pursuant to §492(b)(2) of Public Law 93-198, 87 Stat. 774 (District of Columbia Home Rule Act).
- 3025.4 The report of the National Capital Planning Commission shall be in writing. It also may be presented orally by the chairperson of the Planning Commission or a duly authorized representative of the Planning Commission.

3026 PROPOSED ORDERS

- 3026.1 In a contested case proceeding under §3022, the parties are encouraged to submit to the Office of Zoning proposed findings of fact and conclusions of law within such time as the presiding officer may direct, which in any event shall not be less than seven (7) days after the transcript of the hearing is delivered to the Office of Zoning.
- 3026.2 To assist parties in preparing proposed findings of fact and conclusions of law, the Office of Zoning shall make available to all parties and to the public a generic model of the form and substance of findings of fact and conclusions of law.
- 3026.3 Notice of the availability of the transcript shall be given to the parties in writing by the Director.
- 3026.4 Copies of proposed findings and conclusions shall be served by each party upon all other parties.

3027 PROPOSED ACTION

- 3027.1 The Commission may take a proposed action at the close of a hearing pursuant to §3021, or at a later time when the record is closed.
- 3027.2 In a rulemaking proceeding conducted under §3021, the following shall apply:
- (a) A proposed decision to amend the text or map of the Zoning Regulations shall be published in the *D.C. Register* as proposed rulemaking; and
 - (b) A proposed decision not to amend the text or map shall not be published in the *D.C. Register*.
- 3027.3 In a contested case proceeding conducted under §3022, a proposed decision shall not be published in the *D.C. Register*.

3028 FINAL ACTION

- 3028.1 In a rulemaking proceeding conducted under §3021, to take final action to amend the text or map of the Zoning Regulations, the Commission may proceed following receipt of the report of the National Capital Planning Commission or after thirty (30) days of the referral set forth in §3020, whichever is sooner; Provided, that in no case shall the Commission take final action sooner than thirty (30) days after publication of the proposed rulemaking in the *D.C. Register*.

- 3028.2 In a rulemaking proceeding under §3021, to take final action that does not amend the text or map of the Zoning Regulations, the Commission may proceed without referral to or report from the National Capital Planning Commission and without publication of proposed rulemaking in the *D.C. Register*.
- 3028.3 In a contested case proceeding conducted under §3022, to take final action to amend the Zoning Map or approve a planned unit development or air space development, the Commission may proceed following receipt of the report from the National Capital Planning Commission or after thirty (30) days of the referral set forth §3020, whichever is sooner.
- 3028.4 To take final action that does not amend the Zoning Map or that denies a planned unit development, the Commission may proceed without a referral to or report from the National Capital Planning Commission.
- 3028.5 The Commission shall issue its written order on an application or petition no later than 45 days after the Commission's vote to take final action on such application or petition.
- 3028.6 The final action of the Commission on an application or petition shall be in the form of a written order that shall be filed in the record. In a proceeding under §3022, the order shall be accompanied by findings of fact and conclusions of law. The order shall be published in the *D.C. Register*.
- 3028.7 In a proceeding under §3021, the order shall be published as a final rulemaking action.
- 3028.8 In a proceeding under §3022, prior to publication in the *D.C. Register*, copies of the order shall be served on any party who appeared and participated in the hearing in person or by counsel.
- 3028.9 A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register*, unless a later effective date is provided for by the Commission. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by chapter 24, and upon filing with the District a covenant ensuring compliance with approved plans.

3029 RECONSIDERATION AND REFILING

- 3029.1 Requests for reconsideration of an application or petition dismissed without a hearing shall not be entertained.

- 3029.2 No application or petition essentially the same as that dismissed without a hearing shall be accepted for filing within six (6) months after dismissal; Provided, that an application or petition dismissed without prejudice may be refiled at the convenience of the applicant or petitioner.
- 3029.3 An application or petition may be withdrawn prior to advertisement of a hearing. Following advertisement, an application or petition may be withdrawn only with the consent of the Commission. In either case, an application or petition shall not be accepted for re-filing within six (6) months after the withdrawal.
- 3029.4 No application or petition essentially the same as that denied following a hearing shall be accepted for filing within one (1) year after denial.
- 3029.5 A motion for reconsideration, rehearing or re-argument of a final decision in a contested case hearing under §3022 may be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Commission shall not receive or consider any motion for reconsideration, rehearing or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.
- 3029.6 A motion for reconsideration, rehearing or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.
- 3029.7 Within seven (7) 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.
- 3029.8 Neither the filing nor the granting of the motion shall stay a decision unless the Commission orders otherwise.
- 3029.9 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.
- 3029.10 A motion for reconsideration, rehearing or re-argument of a final decision in a rulemaking proceeding conducted under §3021 of this title shall not be accepted or considered, except that a member of the Commission may initiate a motion for reconsideration up to thirty-five (35) days after the vote on the final action (26 DCR 1865, 1883)

3030 CONSENT CALENDAR

- 3030.1 The purpose of this section is to create an expedited procedure to be known as the "Consent Calendar." The procedure shall allow the Zoning Commission, in the interest of efficiency, to make without public hearing,

minor modifications and technical corrections to previously approved final orders, rulemaking or other actions of the Zoning Commission, including corrections of inadvertent mistakes.

3030.2 For purposes of this section, “minor modifications” shall mean modifications of little or no importance or consequence as determined in the sole discretion of the Commission.

3030.3 Any party to a proceeding before the Zoning Commission, or the Zoning Commission upon its own motion, may request that a matter be placed on the Consent Calendar.

3030.4 The request shall be in writing, stating the nature of, reasons and grounds for the minor modification or technical correction and shall include a copy of any original Zoning Commission final order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected.

3030.5 All written requests for placement of a matter on the consent calendar shall be made to the Director of the Office of Zoning.

3030.6 All written requests shall be served by the moving party on all parties in the original proceeding at the same time that the request is served on the Director of the Office of Zoning.

3030.7 The Director of the Office of Zoning shall, at his or her sole discretion, determine the appropriate form of public notice and any additional service, and shall take into account the nature of the request, and any issues relating to efficiency and fairness.

3030.8 Within seven (7) days after a request to put a matter on the Consent Calendar has been filed and served, any other party may file a response in opposition to or in support of the request. The responding party shall serve all other parties at the time that the response is filed with the Office of Zoning.

3030.9 The Director of the Office of Zoning shall provide written comments and recommendations to the Zoning Commission on each request for placement of a matter on the Consent Calendar.

3030.10 In reviewing requests for placement of a matter on the Consent Calendar, the Director of the Office of Zoning may request advice from other District agencies, including the Office of Corporation Counsel.

3030.11 Based upon the written request for placement of a matter on the Consent Calendar, all supporting and opposing submissions and the reports of other District agencies, the Director of the Office of Zoning shall determine which

matters shall be placed on the Consent Calendar for consideration and action by the Zoning Commission without public hearing at its monthly meeting.

3030.12 Any member of the Zoning Commission may remove any item from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or is removed from the Consent Calendar shall be acted upon by the Zoning Commission according to the applicable procedures contained in other sections of this title.

3030.13 All relief granted by the Zoning Commission under this section shall be consistent with the intent of the Commission in approving its original order, map, plan, rulemaking or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

3031 [RESERVED]

3032 [RESERVED]

3033 [RESERVED]

3034 [RESERVED]

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3038 [RESERVED]

3039 [RESERVED]

3040 FILING FEES

3040.1 At the time of filing an application for an amendment to the Zoning Map, the applicant shall pay a filing fee of two hundred fifty dollars (\$250).

- 3040.2 At the time of filing an application for an amendment to the text of the Zoning Regulations the applicant shall pay a filing fee of two hundred fifty dollars (\$250).
- 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 if required, the applicant shall pay a filing fee of five hundred dollars (\$500).
- 3040.4 At the time of filing an application for a modification to an approved planned unit development (PUD), 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 four hundred dollars (\$400).
- 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 (PUD), the applicant shall pay a filing fee of four hundred dollars (\$400).
- 3040.6 All fees shall be paid by check or money order made payable to the order of the D.C. Treasurer.

3041 HEARING FEES

- 3041.1 If the Commission schedules a public hearing on an application for an amendment to the Zoning Map, prior to advertisement of the hearing, the applicant 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, five hundred dollars (\$500);
 - (b) For rezoning to any R-4, R-5-A district, for each acre or part of an acre, two hundred dollars (\$200);
 - (c) For rezoning to any R-5-B district, for each acre or part of an acre, two thousand five hundred dollars (\$2,500);
 - (d) For rezoning to any R-5-C, R-5-D or R-5-E district, for each acre or part of an acre, five thousand dollars (\$5000);
 - (e) For rezoning to any SP, W, or CR district, for each twenty thousand square feet (20,000 sq. ft.) or part of that area, two thousand dollars (\$2,000);

- (f) For rezoning to any C-1 or C-2 district, for each ten thousand square feet (10,000 sq. ft.) or part of that area, one thousand two hundred fifty dollars (\$1,250);
- (g) For rezoning to any C-3, C-4, or C-5 district, for each ten thousand square feet (10,000 sq. ft.) or part of that area, two thousand five hundred dollars (\$2,500);
- (h) For rezoning to any C-M or M district, for each twenty thousand square feet (20,000 sq. ft.) or part of that area, two thousand dollars (\$2,000);
- (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 residential district (R-1, R-2, R-3, R-4, or R-5) shall be fifty thousand dollars (\$50,000); and
- (k) For an application that purposes 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 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 an application for an amendment to the text of the Zoning Regulations, prior to the advertisement of the hearing, the application shall pay a hearing fee of two hundred fifty dollars (\$250) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of one thousand dollars (\$1,000).

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:

- (a) For each one hundred square feet (100 sq. ft.) of gross floor area included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, five dollars (\$5.00) with a maximum of fifty thousand dollars (\$50,000);
- (b) For each one hundred square feet (100 sq. ft.) of gross floor area included in the application, devoted to any use other than a

dwelling unit and the immediate area needed to serve that dwelling unit, ten dollars (\$10.00);

(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 (2nd) stage of a two-step, planned unit development application.

3041.5 In the case of an application 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 plan 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 of one thousand dollars (\$1,000).

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

3042 WAIVER OF HEARING FEES

3042.1 In the case of an application to permit the construction of a low or moderate income subsidized housing development, the D.C. Department of Housing and Community Development may request the Commission to waive the normal hearing fee.

3042.2 For the purposes of this section, the term “subsidized housing development” shall mean a housing development that receives funding from a recognized District or federal government housing subsidy program. Low or moderate income projects shall be as defined by the U.S. Department of Housing and Urban Development.

3042.3 To obtain the waiver, the applicant shall file with the application the request of the D.C. Department of Housing and Community Development for the waiver.

3042.4 The request shall certify that the proposed development meets the requirements of §3042.2, and shall state why the proposed waiver should be granted.

3042.5 The Commission shall rule upon the request for waiver of fees at the time the matter is set for public hearing.

3043 EXEMPTION FROM FEES

3043.1 The following persons or groups shall not be required to pay either a filing fee or hearing fee:

- (a) A department, office, or agency of the government of the District, where the property is owned by that agency and the property is to be used for a government building or use; and
- (b) The National Capital Planning Commission.

3043.2 There shall be no fee required for the filing of a petition before the Commission. The consideration of the petition shall be at the discretion of the Commission.

3044 [RESERVED]

3045 MISCELLANEOUS FEES

3045.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning shall be as follows:

- (a) The fee for providing a zoning certification shall be fifteen dollars (\$15.00);
- (b) The fee for photocopying shall be twenty cents (20¢) per page; and
- (c) A copy of the Zoning Map shall cost five dollars (\$5.00).

3045.2 All fees shall be paid by check or money order made payable to the order of the D.C. Treasurer.

3046 DEFINITIONS

3046.1 When used in this chapter, the following term shall have the meanings ascribed:

Commission - the Zoning Commission for the District of Columbia.

Director - the **Director** of the Office of Zoning, or such successor official as shall be designated to be the supervisor of the full-time administrative staff of the Commission.

Member - a member of the Commission of the District.

Party - an applicant, or the Advisory Neighborhood Commission within which the property is located or any person who is admitted as a party by the Commission pursuant to §3022. Parties shall have all those rights set forth in this chapter, specifically including §§3000, 3004, 3020, 3022, 3024, 3025, 3036 and 3029.

Person - includes an individual, partnership, association, corporation, public agency, or governmental unit or department.

Presiding officer - the chairperson of the Commission, or the chairperson *pro tem* of the Commission.

**CHAPTER 31 BOARD OF ZONING ADJUSTMENT RULES OF
PRACTICE AND PROCEDURE**

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3100 JURISDICTION; AUTHORITY

3100.1 The Board shall have original jurisdiction to grant variances in accordance with the provisions of §3103; to grant special exceptions in accordance with

the provisions of §3104; and to exercise all other powers authorized by the Zoning Act.

3100.2 The Board, pursuant to provisions of the Zoning Act, also shall hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of this Title.

3100.3 Unless otherwise noted, the authority for this Chapter is An Act approved June 20, 1938, *52 Stat. 797*, chapter 534, as amended at *56 Stat. 122*, D.C. Code Ann. §5-413 *et seq.* (1981).

3101 ORGANIZATION; POWERS

3101.1 In accordance with the provisions of the Zoning Act, the Board shall consist of five (5) members and shall have such duties and powers as are set forth in the Zoning Act and this Title.

3101.2 Three (3) members of the Board shall constitute a quorum of the Board, but a lesser number may meet and adjourn.

3101.3 The Board shall elect its chairperson and vice-chairperson at its first meeting held in January of each calendar year.

3101.4 The chairperson shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the chairperson, the vice-chairperson shall preside. In the event of the absence or disability of the chairperson and the vice chairperson, the senior member of the Board in terms of years of service shall preside.

3101.5 In exercising the powers set forth in this Chapter, the Board may, in conformity with the provisions of D.C. Code Ann. §§5-413 to 5-432 (1981), “reverse or affirm, wholly or partly; or may modify the order, requirement, decision, determination, or refusal appealed from; or may make any order that may be necessary to carry out its decision or authorization; and to that end shall have all the powers of the officer or body from whom the appeal is taken.”

3101.6 Except for §§ 3100 through 3105 and 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this Chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

- 3101.7 No application or appeal shall be dismissed on the grounds that the applicant failed to comply with the provisions of this Chapter unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected.

3102 GENERAL PROVISIONS

- 3102.1 The rules of practice and procedure set forth in this Chapter are intended to supplement the procedures set forth in the Zoning Enabling Act (D.C. Code Ann. §5-413 *et seq.* (1981)), the Zoning Regulations and the District of Columbia Administrative Procedure Act (D.C. Code Ann. §§1-1501 *et seq.* (1981)).
- 3102.2 The provisions of this Chapter became effective on _____, __, 1999 and apply to all applications or appeals filed after that date with the Board, or pending as of such date but for which notice of public hearing had not been given.
- 3102.3 In any conflict between this Chapter and any other provision of this Title, the other provisions of this Title shall govern. In any conflict with this Chapter between general and specific rules, the specific rules shall govern.
- 3102.4 The Board at any time and from time to time may seek the legal advice of the Office of the Corporation Counsel on any matter or matters relating to compliance with and enforcement of the provisions of this Title.

3103 VARIANCES

- 3103.1 The power of the Board to grant variances, as set forth in the Zoning Act, is set forth in §3103.2.
- 3103.2** As set forth in D.C. Code Ann. §5-424(g)(3) (1981), “[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing

the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.”

3104 SPECIAL EXCEPTIONS

3104.1 Pursuant to authority contained in the Zoning Act, the Board is authorized to grant special exceptions, as provided in this Title, where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title, as follows:

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>DISTRICT</u>	<u>SECTION IN WHICH THE CONDITIONS ARE SPECIFIED</u>
Antenna towers for TV or FM broadcasting and accessory buildings	Any R district	§211
Apartments, row houses	Any R-5-A district	§§350.4(c), 353, 401.3 and 410.1 through 410.7
Athletic field of local community organization	Any R district	§209
Automobile sales or repair	CR district	§614
Bowling alley	W, CR or C-1 districts	§§609, 709 and 908
Building service trade	W, CR or C-1 district	§§612 and 911
Child development center	Any R district	§205
Commercial adjuncts to apartment house	Any R-5 district	§354
Commercial adjuncts to hotel less than 100 rooms or suites	R-5-B, R-5-C, R-5-D or R-5-E district	§356
Community-based residential facility	Any R, SP, W, CR, C-1 or C-2 district	§§217 through 220, 303 through 306, 357 through 360, 337, 513, 616, 711, 731 and 913
Community center building of local community organization	Any R district	§209
Dormitory, fraternity or sorority house on campus	R-1, R-2 or R-3 district	§210
Electric substation	Any R, SP, W or CR district	§§207, 509, 608 and 907

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>DISTRICT</u>	<u>SECTION IN WHICH THE CONDITIONS ARE SPECIFIED</u>
	CR district	
Excavation of clay, sand or gravel	Any R or C district	§2505
Exceptions to area and density regulations - groups of residential buildings	R-5-A or R-5-B district	§§410.12 and 410.14 through 410.16
Exceptions to carport space location requirements	Any district	§§2116.5 through 2116.9 and 2300.7
Exceptions to density §5306.1 regulations for roof structures	Any district	§§411.10, 537.1 and 845.1
Exceptions to location, density and height regulations for antennas	Any district	§§211 and 212
Exceptions to parking space location requirements	Any district	§§213, 510, 708, 730, 743.2(d), 753.1(c), 805, 826 and 2116.5 through 2116.9
Exceptions to parking requirements for non-residential uses	Any district	§2108
Exceptions to parking requirements for row-houses	Any district	§2117.9(c)
Extension of use, height and bulk across district boundary	Any district	§§107 and 2514.2
Gasoline service station	C-1, C-2 or C-3 district	§§ 706, 726 and 743.1
Hospital or clinic	W or CR district	§§606 and 906
Hospital - college or university	R-1, R-2 or R-3 district	§210
Hotel	SP district	§512
Intermediate materials recycling facility	Any C-M district	§802
International organization	SP district	§508
Laboratory	CR district	§613
Laundry or dry cleaning establishment	C-2, C-3 or C-4 district	§§729, 743.2(c) and 753.1(b)
Light manufacturing, processing, fabricating	W or CR district	§§610 and 909
Loading berths - modification of standards	Any district	§2204.13
Loading berths - reduction in Downtown Area	Any district	§2202.2
Massage establishment	C-2, C-3, C-4, CM or M district	§§731, 743.3, 753.2, 802.2 and 822.2

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>DISTRICT</u>	<u>SECTION IN WHICH THE CONDITIONS ARE SPECIFIED</u>
	CM or M district	822.2
Mechanical parking garage	C-3-A district	§743.1
Milling	W or CR district	§§610 and 909
Motorcycle sales or repair	C-2, C-3-A or CR district	§§614, 726 and 743.2(a)
Natural gas regulator station	Any R, SP or W district	§§207, 509 and 907
Nonconforming use - change	Any district	§§2000.6 and 2003
Nonconforming use - extension	Any district	§2000.6
Office for chancery, non-profit organization, labor union or professional person	SP district	§508
Park of local community organization	Any R district	§209
Parking garage	R-4, R-5 or SP district	§§333, 355 and 506
Parking lot	Any R or SP district	§§212, 333 and 505
Parking spaces - reduction in Downtown Urban Renewal Area	Any district	§§2103.2 through 2103.6
Parking spaces - reduction near Metrorail station	Any district	§2107
Playground of local community organization	Any R district	§209
Private stable - accessory use	Any R district	§208
Public storage garage	R-4 or R-5 district	§333
Public utility pumping station	Any R, SP, W, CR or C district	§§207, 509, 608, 707, 728, 743.2(b), 753.1(a) and 907
Rear yard, waiver of	C-3 or C-4 district	§774.2
Reduction of parking spaces	Any district	§2105.2
Repair garage	C-2 or C-3 district	§§726 and 743.1
Residence of teachers or staff of private school	R-1, R-2, R-3 or R-4 district	§206
School - college, university or other academic institution of higher learning	Any R, SP or CR district	§§210, 507 and 615
School - private school, trade school, college or university	W district	§912

<u>TYPE OF SPECIAL EXCEPTION</u>	<u>DISTRICT</u>	<u>SECTION IN WHICH THE CONDITIONS ARE SPECIFIED</u>
School - private other than trade school	Any R district	§206
Storage of wares and goods	R-4 or R-5 district	§333
Swimming pool of local community organization	Any R district	§209
Telephone exchange	R-4, R-5, SP, W or CR district	§§332.1(b), 509, 608 and 907
Warehouse	W or CR district	§§611 and 910
Waiver or modification of parking lot standards	Any district	§§2303.2 through 2303.5
Wholesale use	W or CR district	§§611 and 910
Uses not specified in §4502.2 and not prohibited in §4502.4	CR district	§617
Uses not specified in §4402.2 and not prohibited in §4402.2	W district	§914

3104.2 In the case of a use that was originally permitted and lawfully established as a matter-of-right and for which the regulations now require special exception approval from the Board, any extension or enlargement of that use shall require special exception approval from the Board.

3104.3 In determining whether to approve any extension or enlargement under §3104.2, the Board shall apply the standards and criteria of the Zoning Regulations to the entire use rather than to just the proposed extension or enlargement.

3105 MEETINGS AND HEARINGS

3105.1 On or about the first (1st) day of each three (3) month period during the year, the Director shall cause to be published in the *D.C. Register*, and shall post in the Office of Zoning, a twelve (12)-month calendar or schedule of dates setting forth the dates upon which meetings and hearings shall occur, as well as the dates by which an application or appeal must be filed with the Board to allow its consideration on a specific hearing date. Such calendar or schedule also shall set forth any additional hearing dates as may be required by the Board to permit consideration of applications or appeals which have been timely and appropriately filed for a specific hearing date and which, but for

reasons of excessive number of cases, continuances or otherwise, are not able to be heard or considered on such date.

- 3105.2 All 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 Board shall keep minutes of its proceedings as prescribed in §3105.6(d).
- 3105.3 All records of the Board shall be filed in the Office of Zoning and shall be open to public inspection.
- 3105.4 The Board shall annually, on or before the first (1st) day of September, make a report to the Zoning Commission and the Mayor, summarizing cases considered and actions taken for the immediately preceding fiscal year.
- 3105.5 Informal requests for advice or moot questions shall not be considered by the Board.
- 3105.6 Subject to the direction of the Board and its chairperson, the Director shall perform the following duties:
- (a) Conduct all correspondence of the Board, send out all notices required by this Title, attend all meetings and hearings of the Board, keep the docket and minutes of the Board's proceedings, compile all required records and maintain the necessary files and indexes;
 - (b) Enter in the docket the number assigned to each appeal or application, the name of the appellant or applicant, a short description of the premises (by street number or otherwise), the nature of the appeal or application and the final disposition of the proceeding;
 - (c) Enter in the docket all continuances, postponements, dates of sending notices and other steps taken or acts done by the Board or its officers on behalf of the Board; and
 - (d) Enter in the minute book the resolution relating to each case acted on by the Board, the vote of each member of the Board (those absent or failing to vote being so marked), all other actions of the Board and the full reasons for its decisions.
 - (e) Issue certifications of zoning on plats duly issued by the Office of the Surveyor, in accordance with the procedures established by the Director.

- 3105.7 The proposed public agenda for each meeting shall be posted in the Office of Zoning, and shall be made available to the public at least seven (7) days prior to the relevant meeting or hearing. The schedule for each public hearing shall be posted in the Office of Zoning, and shall be made available to the public, at least thirty (30) days prior to the public hearing.
- 3105.8 Copies of the agenda or schedule for each meeting or hearing shall be available to the public at the relevant meeting or hearing.
- 3105.9 The Board may amend the agenda or schedule at the relevant meeting or hearing.
- 3105.10 In addition to those hearings placed on the calendar pursuant to §3105.1, the Board shall schedule such hearings as may be needed in order to receive evidence and testimony on specific applications and appeals that have been previously advertised. Such additional hearings shall be held at the time and place as the Board or the presiding officer designates.
- 3105.11 Unless all parties to a hearing before the Board agree otherwise, or unless the Board orders otherwise, the Board shall not postpone or continue a hearing for a period in excess of thirty (30) days from the date of such postponement or continuance or until the next available scheduled hearing date, whichever is earlier.
- 3105.12 Meetings and hearings shall be held at such time and place as the Board or the presiding officer may designate.
- 3105.13 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.
- 3105.14 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.
- 3105.15 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.

3106 APPEARANCE AND REPRESENTATION

- 3106.1** 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. The authorization shall state specifically

that the authorization includes the power of the agent or representation to bind the person in the case before the Board.

3106.2 Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board, not less than fourteen (14) days prior to the date set for the hearing, the following information:

- (a) The person's name and address;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application or appeal;
- (d) Whether the person will appear through legal counsel and, if so, the name and address of such legal counsel; and
- (e) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by such person, or in which such person has an interest, that will be affected by the action requested of the Board;
 - (2) The legal interest such person has in such property, such as owner, tenant, trustee or mortgagee;
 - (3) The distance between such person's property and the property that is the subject of the application or appeal before the Board;
 - (4) The environmental, economic or social impacts that are likely to affect such person and/or such person's property if the action requested of the Board is approved or denied; and
 - (5) Any other relevant matters that demonstrate how such person likely will be affected or aggrieved if the action requested of the Board is approved or denied.

3106.3 In considering any request for party status pursuant to §3106.2, the Board shall grant party status only if the person has clearly demonstrated that his or her interests will be more significantly, distinctively or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

3106.4 No member of the Board or 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 Zoning Commission.

3106.5 No former member of the Board or the Zoning Commission shall represent any person before the Board other than himself or herself for a period of six (6) months after the date that the member's service on the Board or Zoning Commission terminates.

3106.6 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.

3107 APPEARANCE IN PARKING LOT APPLICATIONS

3107.1 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.

3108 DECORUM AND GOOD ORDER

3108.1 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 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.

3109 APPLICATION FORMS

3109.1 The Director shall, following approval of the Board, issue and revise application forms and appeal forms and instructions to ensure presentation of adequate information for the understanding and processing of applications and appeals.

3110 TIME

3110.1 In computing any period of time specified in this Chapter, calendar days shall be counted.

- 3110.2 In computing any period of time specified in this Chapter, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or official District of Columbia holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor official holiday.
- 3110.3 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 (3) days shall be added to the prescribed period.
- 3110.4 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.

3111 SERVICE OF PAPERS; METHODS; PROOF

- 3111.1 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.
- 3111.2 Service may be made by personal delivery, by first class mail, by telegram or 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.
- 3111.3 Service upon a party may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection or as otherwise authorized by law:
- (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 there;
 - (b) By telegram 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;
- (d) By telecopy, or FAX, when telecopied with the proper telephone number of the intended recipient's telecopier;
- (e) By e-mail when transmitted electronically, properly addressed to the attention of the intended recipient, with the proper e-mail address; or
- (f) In any specific manner specified by the Board in a proceeding.

3111.4 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 of the following methods:

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

3112 **PRE-HEARING PROCEDURES FOR APPEALS**

3112.1 The rules of procedure in this section shall apply to all appeals filed with the Board pursuant to §§3100 and 3200.

3112.2 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.

3112.3 An authorized agent may file an appeal on behalf of the aggrieved person.

3112.4 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.

3112.5 Each appeal shall be made on the appropriate form provided by the Board. All information required by such form shall be furnished by the appellant at the time of filing the appeal.

3112.6 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.

- 3112.7 Each appeal, along with any application filed pursuant to §3113 of this Chapter, shall be numbered serially and docketed and may be placed upon the calendar of the Board by geographic areas by the Director. When the appeal is accepted, a copy of the appeal form shall be sent to the ANC within which the property is located.
- 3112.8 A public hearing shall be held on each appeal to the Board.
- 3112.9 Appeals shall be heard in the order in which they appear on the calendar; provided, the hearing date for an appeal may be advanced by order of the Board for good cause shown.
- 3112.10 No later than fourteen (14) days before the date of the hearing for the appeal, 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 into 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 place of filing a copy.
- 3112.11 An appeal may be withdrawn by the appellant at any time. Withdrawal shall not authorize the removal of any document from the files of the Board. The appeal fee shall not be refunded upon withdrawal. Without special leave of the Board, a new appeal shall not be accepted again for filing for at least ninety (90) days after withdrawal of the appeal.
- 3112.12 Without special leave of the Board, an appeal dismissed by the Board for failure to comply with the procedural requirements of this Title shall not be accepted again for filing for at least ninety (90) days after the date of the order dismissing the appeal.
- 3112.13 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.
- 3112.14 Notice of the public hearing shall be given by the Director not less than forty (40) days before the date of the hearing as follows:
- (a) By publishing the notice in the *D.C. 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; and
- (d) By posting the calendar of cases to be heard by the Board in the Office of Zoning.

3112.15 At the time of the hearing on the appeal, the Board, in its discretion and for good cause shown, may 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.

3112.16 The Board from time to time may adjourn a public hearing. If the time and place of the adjourned hearing is publicly announced when the adjournment is had, no further notice of the adjourned hearing need be published.

3113 PRE-HEARING PROCEDURES FOR APPLICATIONS

3113.1 The rules of procedure in this section shall apply to all applications filed with the Board (including applications filed pursuant to §§3107 and 3108 of this Title in effect prior to _____, 1999, and §§ 3103 and 3104 of this Title); provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134, and the provisions of §3113.2 below shall apply only to applications filed pursuant to §§3107 and 3108 of this Title in effect prior to _____, 1999, and §§3103 and 3104 of this Title.

3113.2 As an alternative to filing the zoning memorandum as required by the application form, applications for variances and special exceptions pursuant to §§3107 and 3108 of this Title in effect prior to _____, 1999, and §§3103 and 3104 of this Title may be filed with the Director by architects or attorneys without the necessity of prior certification by the Division of Zoning of the Department of Consumer and Regulatory Affairs, provided that the architect or attorney certifies that the requirements set forth in the immediately succeeding sentence are true and correct. Such architect or attorney shall certify to the Board that: (i) the architect or attorney is duly licensed to practice in the District of Columbia; (ii) the architect or attorney currently is in good standing and otherwise is entitled to practice in the District of Columbia; and (iii) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application. Nothing in this subsection is intended to affect the discretion of the Director to reject an application for failure to comply with the provisions of this subsection or this Title.

3113.3 The owner of property for which application is made may file an application with the Board as may be provided by the Board.

- 3113.4 An authorized agent may file an application on behalf of the owner. The application shall include a letter signed by the owner authorizing the agent to act on the owner's behalf in respect of the application. The Board may at any time require additional evidence demonstrating the authority of the agent to act for the owner.
- 3113.5 Each application to the Board shall be made on the appropriate form provided by the Board. All information required by the form shall be furnished by the applicant at the time of filing the application that includes:
- (a) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property; provided, however, in the case of a residential condominium or cooperative with twenty – five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units; and
 - (b) The name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.
- 3113.6 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.
- 3113.7 Each application, along with any appeal filed pursuant to §3112 of this Chapter, shall be numbered serially and docketed, and may be placed upon the calendar of the Board by geographic areas by the Director. When the application is accepted, a copy of the application form shall be sent to the ANC within which the property is located.
- 3113.8 No later than fourteen (14) days before the date of the hearing for the application, 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 into 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 applicant in place of filing a copy.
- 3113.9 If the application includes a report by a transportation consultant or expert, a copy of such report shall be provided to the Department of Public Works at least twenty (20) days prior to the public hearing.
- 3113.10 An application may be withdrawn by the applicant at any time. Withdrawal shall not authorize the removal of any document from the files of the Board. The application fee shall not be refunded upon withdrawal. Without special

leave of the Board, a new application shall not be accepted for filing again for at least ninety (90) days after withdrawal of the application.

- 3113.11 Without special leave of the Board, an application dismissed by the Board for failure to comply with the procedural requirements of this Title shall not be accepted for filing again for at least ninety (90) days after the date of the order dismissing the application.
- 3113.12 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.
- 3113.13 Notice of the public hearing shall be given by the Director not less than forty (40) days before the date of the hearing as follows:
- (a) By publishing the notice in the *D.C. Register*;
 - (b) By mailing the notice to the applicant and to the owners of all property within two hundred (200) feet of the property involved in the application; provided, however, in the case of a residential condominium or cooperative with twenty five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of such condominium or cooperative which represents all of the owners of all such dwelling units;
 - (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; and
 - (e) By posting the calendar of cases to be heard by the Board in the Office of Zoning.
- 3113.14 Additional notice of the public hearing shall be given by the applicant by posting the property with notice of the hearing at least fifteen (15) days in advance of the hearing.
- 3113.15 Notice shall be posted at each street frontage on the property involved and on the front of each building located on the subject property. Each notice shall be in plain view of the public.
- 3113.16 Notices shall be supplied by the 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.

- 3113.17 At least five (5) days prior to the public hearing, the applicant shall file with the Board a sworn affidavit demonstrating compliance with §3113.15. A form of affidavit supplied by the Board may be used but shall not be required.
- 3113.18 The applicant shall attach to the affidavit described in §3113.15 a photograph of each sign after posting and as viewed by the public, identifying the street frontage and location of each sign.
- 3113.19 The applicant shall make a reasonable effort to maintain the posted notice by checking the signs at least once every five (5) days, and by posting new notice(s) as necessary.
- 3113.20 In the case of an application for approval of a college or university campus plan, the notice shall be posted on all frontages of the property included within the plan which face any property not owned by the college or university.

3114 REPORTS OF GOVERNMENT AGENCIES FOR APPLICATIONS

- 3114.1 The rules of procedure in this section shall apply to all applications filed with the Board (including applications filed pursuant to §§3102 and 3103 of this Title in effect prior to _____, 1999, and §§3103 and 3104 of this Title); provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3114.2 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 (7) days prior to the date set for the hearing on such application.
- 3114.3 Upon agreement by all parties to a proceeding, the report and recommendation may become a part of the exclusive record at any time without benefit of cross-examination.
- 3114.4 In the absence of any such 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 be cross-examined by the parties, unless the Board finds the report and recommendation 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.

3114.5 After consultation with the presiding officer, the Director shall notify those representatives of the public agency or governmental unit or department who should be present at the hearing.

3114.6 If an application is referred in advance of the public hearing to any public agency or governmental unit or department for a report or recommendation, no report is received in the record and the time period specified in §2509 of this Title has elapsed, then the Board may proceed to decide the application based on the record not including such report and recommendation.

3115 ADVISORY NEIGHBORHOOD COMMISSIONS

3115.1 The written report of the ANC shall be submitted to the Board at least seven (7) days in advance of the hearing and shall contain the following information:

- (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; and
- (i) The signature of the chairperson or vice chairperson of the ANC.

3115.2 The Board shall give “great weight” to the written report of the ANC, as required by D.C. Code Ann. §1-261 (1981).

3115.3 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.

3116 EXPEDITED APPLICATIONS

3116.1 The Board shall have the authority to expedite applications; Provided, that:

- (a) The Office of Zoning recommends expediting the case and indicates the reason(s) an expedited processing is necessary and desirable; and
- (b) The result of expediting the subject application shall not result in removing another application from the hearing agenda for that date.

3117 HEARING PROCEDURES

3117.1 The rules of procedure in this section shall apply to public hearings on all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.

3117.2 A public hearing, even if expedited under section 3116.2 above, shall be held on each application or appeal. Applications and appeals shall be heard in the order in which they are filed with the Board and appear on the calendar. The hearing date for an application or appeal may be advanced or postponed by order of the Board for good cause shown.

3117.3 The presiding officer at a hearing shall have the authority to do any of the following:

- (a) Regulate the course of the hearing;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Assign exhibit numbers for all written, documentary and other tangible matter offered in evidence;
- (d) Hold conferences on the issues with the consent of the parties;
- (e) Except as required under §3117.5, dispose of procedural requests or similar matters (including motions to amend and to order hearings reopened) and rule upon motions to consolidate applications or appeals for hearing;

- (f) Call, qualify and examine witnesses and introduce into the record documentary or other evidence;
- (g) Request the parties at any time during the hearing to state their respective positions concerning any issue in the proceeding and theory in support thereof;
- (h) Adjourn a hearing and establish the date when the hearing will be continued; provided, however, that unless all parties to the proceeding before the Board agree otherwise, or the Board orders otherwise, no hearing shall be continued for a period in excess of thirty (30) days from the date of such adjournment or until the next available scheduled hearing date, whichever is earlier;
- (i) Close a hearing;
- (j) Rule upon the qualifications of witnesses offered as experts;
- (k) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness; and
- (l) Take any other action authorized by these rules or necessary under these rules.

3117.4 Except as set forth in §3117.5, an applicant, appellant, persons and parties (except an ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony, and all persons and parties (except an ANC) in opposition shall collectively have no more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition. Nothing herein shall prohibit the Board from placing reasonable restrictions on cross-examination, including time limits and limitations on the scope of cross-examination, by the applicant or appellant, or by any person or party in support or in opposition.

3117.5 The Board may grant additional or lesser time to that under §3117.4 to an applicant and persons and parties in support, or to a person or party in opposition to present a case in opposition. The Board shall ensure reasonable balance in the time allocation between proponents and opponents.

3117.6 Nothing set forth in §3117.3 shall preclude members from questioning witnesses in any hearing before the Board.

3117.7 The hearing shall 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.

3117.8 The prepared transcript shall be the sole official transcript of the hearing.

- 3117.9 The transcript shall be open for inspection at the Office of Zoning.
- 3117.10 Copies of the transcript shall be available to parties and to the public from the Office of Zoning upon payment of the charges fixed for making the copies.
- 3117.11 The order of procedure for presenting evidence at the hearing shall be as follows:
- (a) On appeals filed pursuant to §3112 of this Chapter:
 - (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; and
 - (6) Rebuttal and closing statement by appellant.
 - (b) On applications filed pursuant to §§3113, 3114 and 3107 of this Chapter:
 - (1) Applicant's case;
 - (2) Report and recommendation from the Office of Planning;
 - (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; and
 - (7) Rebuttal and closing statement by applicant.
- 3117.12** The Board shall have the authority to close the record at the end of a hearing, and to vote at such time either to approve or deny an application or appeal.
- 3118** [RESERVED]
- 3119** EVIDENCE

- 3119.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3119.2 In all appeals and applications 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.
- 3119.3 Every party may appear at a hearing to offer evidence and cross-examine witnesses.
- 3119.4 Evidence shall be taken in conformity with D.C. Code Ann. §1-1509(b) (1981), as amended.
- 3119.5 Exhibits may be offered in evidence at the hearing. These exhibits may be in the form of photographs, models, graphs or other materials.
- 3119.6 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 (i.e., 8½ inches by 14 inches).
- 3119.7 No material shall be submitted for the record which exceeds legal size or cannot be folded to legal size.
- 3119.8 If models are used, photographs of the models not exceeding legal size shall be supplied at the public hearing.
- 3119.9 The Zoning Enabling Act, the Zoning Regulations (including appendices and the official zoning maps) and this Chapter shall be a part of the record of every proceeding before the Board, and it shall not be necessary for any party formally to move for their introduction into evidence.

3120 [RESERVED]

3121 PROPOSED FINDINGS AND CONCLUSIONS; CLOSING THE RECORD

- 3121.1** The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3121.2 The parties are encouraged to submit to the Office of Zoning proposed findings of fact and conclusions of law within such time as the presiding

officer may direct, which in any event shall not be less than seven (7) days after the transcript of the hearing is delivered to the Office of Zoning.

- 3121.3 To assist any party in preparing proposed findings of fact and conclusions of law, the Office of Zoning shall make available to such party, upon request, a generic prototype or illustrative model of the form and substance of findings of fact and conclusions of law.
- 3121.4 Each party 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.
- 3121.5 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.
- 3121.6 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.
- 3121.7 Written responses shall be filed within seven (7) days following the date by which the exhibits, information or briefs were due, unless otherwise directed by the presiding officer.
- 3121.8 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 materials 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 the hearing representative parties to the proceeding who will be served and who may respond.
- 3121.9 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 Director and not received into the files of the Board.

3122 - 3123 [RESERVED]

3124 **POST-HEARING PROCEDURES: GENERAL PROVISIONS**

- 3124.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.

3124.2 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.

3124.3 Notice of a further hearing, plus a designation of issues to be addressed, shall be forwarded to any party who participated in the earlier proceedings, or representative parties pursuant to designations made under §3112.15 at least ten (10) days prior to the date set for further hearing.

3125 FINAL DECISION AND EFFECTIVE DATE OF DECISIONS

3125.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.

3125.2 The concurring vote of at least a full majority of the members of the Board shall be necessary for any decision.

3125.3 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.

3125.4 Formal notice of an 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.

3125.5 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 §3115 of this Chapter.

3125.6 For purposes of this Chapter, a decision or order of the Board shall be and become final upon its filing in the record and service upon the parties.

3125.7 Approval of an application shall include approval of the plans submitted with such 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.

3125.8 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.

- 3125.9 No order of the Board shall take effect until ten (10) days after it becomes final pursuant to §3125.6.
- 3125.10 The Director of the Office of Zoning or Chairperson of the Board is authorized to sign a final decision or order that has been approved by a majority of the Board.

3126 RECONSIDERATION OR REHEARING

- 3126.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3126.2 Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that such motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board.
- 3126.3 Any motion for reconsideration shall be served upon all other parties, or any representative parties pursuant to designations made pursuant to §3112.15.
- 3126.4 A motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought.
- 3126.5 Within seven (7) days after a motion for reconsideration has been filed and served, any other party may file an answer in opposition to or in support of such motion.
- 3126.6 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.
- 3126.7 The Board, on its own motion made not later than ten (10) days following the filing of the final decision in the record, may decide to reconsider or rehear an application or appeal.
- 3126.8 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.
- 3126.9 Unless the Board orders otherwise, neither the filing nor granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision.

- 3126.10 A motion for reconsideration or rehearing shall not be a prerequisite to judicial review.
- 3126.11 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 (1) year from the date of the order upon the previous appeal or application.

3127 EXCLUSIVE RECORD

- 3127.1 The rules of procedure in this section shall apply to all new appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3127.2 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.

3128 REVIEW BY ZONING COMMISSION

- 3128.1 Within the ten (10) day period set forth in §3125.9, the Zoning Commission may, *sua sponte*, determine to review any final order or decision of the Board.
- 3128.2 The Zoning Commission's determination to review an order or decision of the Board shall be transmitted forthwith to the Director, who shall forward to the Zoning Commission the record in the case and shall serve notice upon all parties to such case.
- 3128.3 Upon receipt of the record, the Zoning Commission shall review the case and take such action as it deems appropriate; provided, however, the Zoning Commission shall not reverse or modify any order or decision of the Board without affording the parties to such case an opportunity to present memoranda to the Zoning Commission in support of or in opposition to the action of the Board.
- 3128.4 Any action by the Zoning Commission may include, without limitation, any of the following:
- (a) Affirmance, modification or reversal of the Board's decision or order;
 - (b) Hearing argument on the Board record in the case; and
 - (c) Remanding the case to the Board for reconsideration, rehearing or other action pursuant to instructions of the Zoning Commission.

- 3128.5 The *sua sponte* review process contained in this §3128 shall not grant any rights of appeal to the Zoning Commission.
- 3128.6 Because there is no right of appeal to the Zoning Commission from any action of the Board, communications to the Zoning Commission (regardless of the form) requesting that *sua sponte* review be undertaken need not be answered by the Zoning Commission. *Sua sponte* review is a discretionary internal process.
- 3128.7 The Zoning Commission shall look to the following guidelines when determining whether to invoke its *sua sponte* review authority. The Zoning Commission may exercise *sua sponte* review as follows:
- (a) In a particular instance where it appears to the Zoning Commission that the Board 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 any action by the Board; or
 - (c) In an unusual instance, as determined by the Zoning Commission.

3129 MODIFICATION OF APPROVED PLANS

- 3129.1 The rules of procedure in this section shall apply to all appeals and applications filed with the Board under this Chapter; provided, however, the provisions of this section shall only apply to chancery applications to the extent specified in §3134.
- 3129.2 The Board shall consider requests to approve modifications to plans approved by the Board, as set forth in §§3125.7 and [3231.8]. 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.
- 3129.3 A request for modification of plans shall be filed with the Board not later than six (6) months after the final date of the final order approving the application.
- 3129.4 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 (10) days within which to submit written comments which such party may have concerning the requested modification.

- 3129.5 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.
- 3129.6 No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.
- 3129.7 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.

3130 TIME LIMITS ON BOARD ACTION

- 3130 No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.
- 3130.1 Any permit approved under this Chapter shall be issued within a period of six (6) months after the date of the filing of an application for the permit.
- 3130.2 The erection or alteration approved in the permit shall be started within six (6) months after the date of the issuance of the permit, and shall proceed to completion in accordance with its terms. If the work is not started within such period, the permit shall expire and shall not be renewed.
- 3130.3 An order of the Board authorizing the use of all or any portion of a structure or parcel of land shall not be valid for a period in excess of six (6) months, unless such use is established within that period; Provided, however, that where the permitted use is dependent upon the erection or alteration of a structure, the provisions of §§3130.1 through 3130.3 shall apply.
- 3130.4 In the event an appeal is filed in a court of competent jurisdiction from an order of the Board, all time limitations set forth in this §3130 shall commence to run from the decision date of the Court's final determination of the appeal. Unless stayed by the Board or a court of competent jurisdiction, an applicant or appellant may proceed pursuant to the order of the Board prior to the final determination.

3131 - 3133 [RESERVED]

3134 CHANCERY APPLICATIONS

- 3134.1 The provisions of this section shall apply to all applications for the location, replacement or expansion of chanceries which are subject to disapproval by the Board pursuant to Section 206(b) of the Foreign Missions Act (Title II, Public Law 97-241, 96 *Stat.* 286, August 24, 1982). These applications are made pursuant to the provisions of Chapter 10 of this Title.
- 3134.2 This section shall establish procedures for considering applications under the Foreign Missions Act and Chapter 10 of this Title as rulemaking proceedings.
- 3134.3 No person shall have the standing of a party in a proceeding under this section.
- 3134.4 The provisions of §§3101, 3102, 3105, 3106, 3108 through 3111 and 3115 of this Chapter shall be applicable to applications under Chapter 10 of this title, except that no person shall have the standing of a “party” in a proceeding under this section.
- 3134.5 The remaining provisions of this Chapter shall not be applicable to applications under Chapter 10 of this Title, except as specifically incorporated by §3134.6.
- 3134.6 The provisions contained in the following sections shall be applicable to applications under Chapter 10 of this Title, except that no person shall have the standing of a “party” in a proceeding under this section:
- (a) Applications: §§3113.3, 3113.4, and 3113.6 through 3113.10;
 - (b) Required Reports: §§3114.5 and 3114.6;
 - (c) Hearing Procedures: §§3117.7 through 3117.10;
 - (d) Records: §§3119.5 through 3119.8;
 - (e) Closing the Record: §§3121.5, 3121.9, 3124.2 and 3124.3; and
 - (f) Final Decision and final date: §§3125.2, 3125.8 and 3125.9.
- 3134.7 Each application submitted pursuant to this section shall be accompanied by a letter or other transmittal from the United States Department of State indicating that the Department of State has reviewed the application as required by §205 of the Foreign Missions Act and has approved the application for the purposes of filing and processing by the Board.

- 3134.8 A public hearing shall be held on each application.
- 3134.9 Notice for chancery applications shall be as follows:
- (a) Notice of the filing of a chancery application shall be published in the *D.C. Register*;
 - (b) Notice shall be given in the same manner as for an application under §3113; and
 - (c) A notice of proposed rulemaking shall be published in the *D.C. Register* at least forty (40) days in advance of the hearing.
- 3134.10 When an application is referred in advance of the public hearing to the Mayor, the United States Secretary of State and the Historic Preservation Review Board for recommendation, that report and recommendation shall be filed with the Board at least eight (8) days prior to the date set for the hearing.
- 3134.11 The presiding hearing officer shall have the authority to do any of the following:
- (a) Regulate the course of the hearing;
 - (b) Rule upon offers of testimony, statements and exhibits and receive relevant, non-repetitious testimony, statements and exhibits;
 - (c) Assign exhibit numbers for all written documentary and other tangible matter offered for the record;
 - (d) Dispose of procedural requests or similar matters, including motions to amend and to order hearings reopened;
 - (e) Call, qualify and examine witnesses, and introduce into the record documentary or other material;
 - (f) Request the persons appearing at the hearing to state their respective positions concerning any issue in the proceeding and his or her theory in support thereof;
 - (g) Adjourn a hearing and establish the date when the hearing will be continued;
 - (h) Close a hearing;
 - (i) Rule upon the qualifications of witnesses offered as experts;

- (j) Establish reasonable time limits for witnesses and fairly allocate time among the persons appearing at the hearing;
- (k) Exclude unduly repetitious or irrelevant testimony and permit a witness to adopt the prior testimony of another witness; and
- (l) Take any other action authorized by or necessary under this section.

3134.12 Any person may appear at a hearing in a chancery application proceeding and may present evidence, testimony or argument that is relevant and not unduly repetitious within such time limits as the Board may determine. Nothing in §3140.11 shall preclude members from questioning witnesses in hearings before the Board.

3134.13 The order of procedure at the hearing shall be as follows:

- (a) Call to order and opening statement by the presiding officer;
- (b) Consideration of pending motions and procedural matters;
- (c) Applicant's case;
- (d) Reports or statements by the Secretary of State and the Mayor;
- (e) Reports or recommendations by other public agencies or governmental units or departments;
- (f) The ANC within which the property is located;
- (g) Persons in support of the application; and
- (h) Persons in opposition to the application.

3134.14 The record in a chancery application proceeding shall consist of the following:

- (a) Every written statement filed shall be part of the record of the hearing;
- (b) Oral testimony offered at the hearing shall be part of the record of the hearing; and
- (c) The Foreign Missions Act, the Zoning Enabling Act and the Zoning Regulations (including appendices and the official zoning maps) shall be a part of the record of every proceeding before the Board.

3134.15 Notice of a further hearing, plus a designation of the issues, shall be forwarded to any person who appeared and participated in the earlier hearings at least ten (10) days prior to the date set for the further hearing.

3134.16 Each notice of a decision or order shall be made as follows:

- (a) Formal notice of a decision or order shall be given to the applicant by registered or certified mail, return receipt requested;
- (b) A copy of the decision or order shall be served on an ANC which submitted a written report in accordance with §3115; and
- (c) A copy of the decision shall be published in the *D.C. Register* as a notice of final rulemaking.

3134.17 For purposes of this section, a decision of the Board is final upon publication in the *D.C. Register*. The decision shall be and become effective ten (10) days after having become final, as specified in §3125.9.

3135 - 3179 [RESERVED]

3180 SCHEDULE OF FEES

3180.1 Except as provided in §§3180.3 and 3180.4 of this section, 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, eight hundred dollars (\$800) for each paragraph 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, eighty dollars (\$80) for each parking space;
 - (2) For a child development center or private school, twenty-five dollars (\$25) for each full-time or part-time student based on the maximum capacity requested, with a maximum of two thousand five hundred dollars (\$2,500);
 - (3) For a college or university use, five thousand dollars (\$5,000) for the processing of a new or revised campus plan, and two thousand five hundred dollars (\$2,500) 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 or for considering several buildings as one building under §410, four hundred dollars (\$400) for each dwelling unit;
 - (5) For a community-based residential facility, eighty dollars (\$80) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of four thousand dollars (\$4,000);
 - (6) For an office use in the SP District, forty dollars (\$40) for each one hundred square feet (100 ft.²) or part thereof of gross floor area;
 - (7) For roof structures under §411, two thousand dollars (\$2,000);
 - (8) For a hotel or inn in the SP district, eighty dollars (\$80) for each sleeping room or suite;
 - (9) For a gasoline service station, four thousand dollars (\$4,000);
 - (10) For a repair garage, one thousand two hundred dollars (\$1,200);
 - (11) For a home occupation under §203, one thousand two hundred dollars (\$1,200);
 - (12) For an accessory apartment under §202, two hundred fifty dollars (\$250);
 - (13) For a theoretical lot under §2516, one thousand two hundred dollars (\$1,200) for the first lot and four hundred dollars (\$400) for each lot thereafter;
 - (14) For an intermediate materials recycling facility (recycling facility) under §802, four thousand dollars (\$4,000);
 - (15) For an antenna under §211, two thousand dollars (\$2,000); and
 - (16) For any other special exception not listed in this section, one thousand two hundred dollars (\$1,200).
- (c) For an application for permission to locate, expand or reconstruct a chancery in a D, R-5-D, R-5-E or SP District, fifty dollars (\$50) for each one hundred square feet (100 ft.²) or part thereof of gross floor area.

- (d) For an application involving one owner-occupied single-family dwelling or flat, regardless of the number of variances, special exceptions or alternatives requested, two hundred fifty dollars (\$250).
- (e) For an appeal of any decision of the Zoning Administrator or other administrative officer, eight hundred dollars (\$800).
- (f) For a modification of plans or a modification of conditions of an order of the Board for a owner-occupied single-family dwelling or flat, one hundred dollars (\$100); for all other applicants, twenty percent (20%) 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 where the property is owned by the agency and the property is to be occupied for a government building or use.

3180.4 The following appellants shall not be required to pay a filing fee:

- (a) The National Capital Planning Commission;
- (b) Any ANC; and
- (c) A citizens association or association created for civic purposes and not for profit.

3181 ADMINISTRATION OF FEES

- 3181.1 All fees shall be paid by check or money order made payable to the District of Columbia Treasurer.
- 3181.2 The Director shall be responsible for administering, interpreting and applying the terms of the fee schedule set forth in §3180.
- 3181.3 Any decision of the Director regarding the application of the fee schedule set forth in §3180 may be appealed to the Board by the appellant or applicant. Such appeal shall be in writing and shall set forth specifically the error allegedly committed by the Director, the grounds for the appeal and the relief requested. The Board shall decide such appeal at a meeting or hearing as a preliminary matter to considering the application or appeal.
- 3181.4 The Board may authorize the refund of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Regulations Division, Department of Consumer and Regulatory Affairs.

3182 – 3198 RESERVED

3199 DEFINITIONS

- 3199.1 When used in this Chapter, the following terms and phrases shall have the meanings ascribed:

ANC - 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, Subchapter V of the D.C. Code Ann. (1981).

Board - the Board of Zoning Adjustment of the District of Columbia.

Decision - the concurring vote of at least a full majority of the Members with respect to any application or appeal filed with the Board.

Director - the Director of the Office of Zoning, or such successor official as shall be designated to be the supervisor of the full-time administrative staff of the Board.

Member - a member of the Board, including the member of the Zoning Commission or its staff serving on the Board.

Order - a written order of the Board evidencing its decision on an application or appeal.

Party - the following, as indicated:

- (a) On appeals to the Board pursuant to §§3100.2 and 3200.2 of this Title:
 - (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; and
 - (5) Any other person who is permitted by the Board to intervene, in accordance with §3112.15 of this Chapter;
- (b) On applications to the Board pursuant to §§107.7, 2403, 2404, 3102 and 3103 of this Title:
 - (1) The applicant;
 - (2) The ANC within which the property is located; and
 - (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 that will be uniquely affected by action on the application.

Person - an individual, partnership, association, corporation, public agency, governmental unit or department or other legal entity.

Presiding Officer - the Chairperson of the Board or the Chairperson *pro tem* of the Board.

Zoning Act – the Zoning Act of June 20, 1938 (52 Stat. 797), as amended from time to time.

Zoning Regulations - the Zoning Regulations of the District of Columbia, 11 D.C.M.R., as amended from time to time.

3199.2 Except for the definitions set forth in §3199.1, the provisions of §199 of Chapter 1 of this Title, and the definitions set forth therein, shall be incorporated by reference in this section.

Vote of the Zoning Commission taken at the regular meeting on December 14, 1998: 4-0 (Herbert M. Franklin, Anthony Hood, Jerrily R. Kress and John G. Parsons to approve as amended, Angel F. Clarens, not voting, not having participated in the case).

This order was adopted by the Commission at its monthly meeting on September 13, 1999 by a vote of 3-0: (John G. Parsons, Anthony Hood and Herbert M Franklin, to adopt, as amended Chapters 30 and 31 - Angel F. Clarens, not voting, not having participated in the case).

This order was adopted by the Commission at its monthly meeting on September 13, 1999 by a vote of 3-0: (Herbert M Franklin, John G. Parsons and Anthony Hood to adopt the text in Chapter 2522 – Angel F. Clarens, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on OCT 1 1999.


ANGEL F. CLARENS
Chairman,
Zoning Commission


JERRILY R. KRESS, FAIA
Director,
Office of Zoning