

TITLE 11 - ZONING

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

Secs.

3100	JURISDICTION; AUTHORITY; POWERS
3101	ORGANIZATION
3103	VARIANCES
3104	SPECIAL EXCEPTIONS
3105	MEETINGS AND HEARINGS
3106	APPEARANCE AND REPRESENTATION
3107	APPEARANCE IN PARKING LOT APPLICATION CASES
3108	DECORUM AND GOOD ORDER
3109	APPEAL AND APPLICATION FORMS
3110	COMPUTATION OF TIME
3111	SERVICE OF PAPERS; METHODS OF SERVICE; PROOF OF SERVICE
3112	PRE-HEARING PROCEDURES FOR APPEALS
3113	PRE-HEARING PROCEDURES FOR APPLICATIONS
3114	REPORTS OF PUBLIC AGENCIES FOR APPLICATIONS
3115	ADVISORY NEIGHBORHOOD COMMISSIONS
3116	EXPEDITED APPLICATIONS
3117	HEARING PROCEDURES
3118	[RESERVED]
3119	EVIDENCE
3120	[RESERVED]
3121	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; CLOSING THE RECORD
3122-3123	[RESERVED]
3124	POST-HEARING PROCEDURES: GENERAL PROVISIONS
3125	FINAL DECISION AND EFFECTIVE DATE OF DECISIONS

3126	RECONSIDERATION OR REHEARING
3127	EXCLUSIVE RECORD
3128	REVIEW BY ZONING COMMISSION
3129	MODIFICATION OF APPROVED PLANS
3130	TIME LIMITS ON BOARD ACTION
3131-3133	[RESERVED]
3134	CHANCERY APPLICATIONS
3135-3179	[RESERVED]
3180	SCHEDULE OF FEES
3181	ADMINISTRATION OF FEES
3182-3198	[RESERVED]
3199	DEFINITIONS

## **3100 JURISDICTION; AUTHORITY; POWERS**

- 3100.1 The Board of Zoning Adjustment shall have original jurisdiction to grant variances under § 3103 and special exceptions under § 3104, and to exercise all other powers authorized by the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code §§ 6-641.01 to 6-641.15 (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))) (the "Zoning Act").
- 3100.2 The Board, pursuant to the Zoning Act, shall also 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 the Zoning Regulations, Title 11 DCMR.
- 3100.3 The rules prohibiting *ex parte* communication in Commission contested cases, as set forth in § 3023 of this title, apply to all applications and appeals before the Board and commence upon the filing of such proceedings.
- 3100.4 In an appeal, the Board may, in conformity with the Zoning Act, D.C. Official Code § 6-641.07(g)(4) (formerly codified at D.C. Code § 5-424(g)(4) (1994 Repl.)), "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."

3100.5 Except for §§ 3100 through 3105, 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.

3100.6 No appeal or application shall be dismissed on the grounds that the appellant or 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, except that the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.

3100.7 The Board shall not consider informal requests for advice or moot questions.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (2001) (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).

SOURCE: Final Rulemaking published at 46 DCR 7853, 7853-89 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8551-53 (October 20, 2000); as amended by Final Rulemaking published at 47 DCR 9741, 9742 (December 8, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

**3101 ORGANIZATION**

3101.1 The Board shall consist of five (5) members and shall have the duties and powers set forth in the Zoning Act and the Zoning Regulations.

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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7889 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8553 (October 20, 2000).

**3102 GENERAL PROVISIONS**

- 3102.1 The rules of practice and procedure in this chapter supplement the procedures set forth in the Zoning Act, the Zoning Regulations, and the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 to 2-511 (2001) (formerly codified at D.C. Code §§ 1-1501 to 1-1510 (1999 Repl.)).
- 3102.2 This chapter became effective on October 1, 1999 and applies to all appeals or applications filed after that date with the Board, or pending as of October 1, 1999, 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 relating to compliance with and enforcement of this title.
- SOURCE: Final Rulemaking published at 46 DCR 7853, 7890 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8553-54 (October 20, 2000).

### **3103 VARIANCES**

- 3103.1 [DELETED]
- 3103.2 With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[ 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. Official Code §§ 6-641.01 to 6-651.02 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."
- 3103.3 Variances are classified as area variances or use variances.
- 3103.4 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.
- 3103.5 Examples of area variances are requests to deviate from:

- (a) Requirements that affect the size, location, and placement of buildings and other structures such as height, floor area ratio, lot occupancy, yard width and depth, and minimum court size;
- (b) Minimum parking or loading requirements to an extent greater than what may be permitted by special exception;
- (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential use;
- (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in § 2507.3;
- (e) The prohibition against certain enlargements and additions to nonconforming structures as stated at § 2001.3; and
- (f) Preconditions to the establishment of a matter of right use including, but not limited to, the minimum land area requirement of § 401.3 applicable to the conversion of a building an apartment house as permitted by § 330.5(e); provided that the waiver would not cause the proposed use to meet the definition of a more intense use.

3103.6 A use variance is a request to permit:

- (a) A use that is not permitted by right or special exception in the zone district where the property is located;
- (b) A use that is expressly prohibited in the zone district where the property is located; or
- (c) An expansion of a nonconforming use prohibited by § 2002.3.

3103.7 The standard for granting a variance, as stated in § 3103.1 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and
- (b) An applicant for a use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7890-91 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by

reference the text of Proposed Rulemaking published at 47 DCR 8335, 8553-54 (October 20, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

## 3104 SPECIAL EXCEPTIONS

3104.1 The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (formerly codified at D.C. Code § 5-424(g)(2) (1994 Repl.)), to grant special exceptions, as provided in this title, where, in the judgment of the Board, the 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:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Accessory apartment to one-family detached dwelling	R-1 District	§ 202.10
Accessory mechanical amusement machines used to display sexual activities or specific anatomical areas	C-3-C, C-4, C-5 (PAD) Districts	§ 2501.5
Accessory uses in C-5 (PAD) District not specifically permitted	C-5 (PAD) District	§ 761.5
Additions to one-family dwellings or flats	Any R District	§ 223
Adult day treatment facility	R-1, R-2, and R-3 District	§ 205
Animal Boarding	Any C-2, C-3, C-4, USN, C-M or M District	§§ 721.7, 721.8, 735, 736, 802.21 and 822.14
Animal shelter	Any C-2, C-3, C-4 or USN District	§ 739
Athletic field operated by local community organization	Any R District	§ 209
Antenna for commercial TV or FM	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 211, 514, 617, and 914
Antenna, other than commercial	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 212, 515, 617, and 914
Art gallery	R-5 District	§ 361

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
ARTS Overlay District - substitution of bonus use for existing legitimate theater use	ARTS Overlay District	§ 1904.5
ARTS Overlay District - use and area requirements	ARTS Overlay District	§§ 1901.4 and 1906.1
Automobile sales or repair	CR District	§ 614
Automobile accessory sales	C-1 District	§ 710
Boathouse	W-0 District	§ 921
Bowling alley	CR, C-1, W-1, W-2, and W-3 Districts	§§ 609, 709, and 908
Building lot control	Any R District or within 25 feet of an R District	§ 2516
Building service trades, including plumber, electrician, exterminator, and air-conditioning mechanic	CR, W-1, W-2, and W-3 Districts	§§ 612 and 912
CAP Overlay District - uses	CAP Overlay District	§§ 1201.3 and 1202
Caretaker's Residence	W-0 District	§ 924
Carport - location	Any District	§ 2300.8
CB/UT Overlay District - area requirements, tree removal, grading, and topographical change	CB/UT Overlay District	§§ 1568.3 and 1569
Child/elderly development center	Any R District	§ 205
Church programs	SP District	§ 517
Clerical and religious group residences	SP District	§ 516
Commercial adjuncts to hotel with less than 100 rooms or suites	R-5-B, R-5-C, R-5-D, and R-5-E Districts	§ 356
Community-based residential facility	Any R, SP, CR, C-1, or C-2 District, W-1, W-2, or W-3 Districts	§§ 218 - 221, 303 - 306, 335, 357 - 360, 513, 616, 711, 732, and 913
Community center building operated by local community organization	Any R District	§ 209

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS SPECIFIED ARE
Community service center	R-4 and R-5 Districts	§§ 334 and 352
Convenience stores and personal services in apartment house	R-5 Districts	§ 354
District government use in former public school buildings.	R-1 District	§ 222
Electric substation	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 207, 509, 608, and 907
Electronic Equipment Facility	C-3, C-4, USN, C-M, or M District	§§ 745, 756, 802.10 - 802.16, and 822.9 - 822.14
Excavation of clay, sand, or gravel	Any R or C District	§ 2505.3
Expansion of former public school buildings with District government uses, or other permitted uses.	R-1 District	§ 222
Extension of use, height, and bulk	Any District	§§ 107.8 and 2514.2
Fast food restaurant near Residence District	C-3-A District	§ 743.4
Floating home	W-0 District	§ 922.3 and §922.3
FT Overlay District - setback, landscaping, and fencing	FT Overlay District	§ 1564
Gasoline service stations	C-1, C-2, C-3, and USN Districts	§§ 706, 726, and 743.1
Green Area Ratio	All Districts Where Applicable	§ 3405
Home occupation not specifically permitted or prohibited in § 203	R-1 District	§ 203.10
Hospital or clinic	CR, W-1, W-2, or W-3 Districts	§§ 606 and 906
Hotel or inn	SP District	§ 512
Intermediate materials recycling facility	C-M District	§ 802.3
Laboratory, research or testing	CR District	§ 613
Langdon Overlay - setback, landscaping, fencing, and parking requirements	LO Overlay District	§ 806.6

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Laundry or dry cleaning establishment	C-2, C-3, C-4, C-5 (PAD), and USN District	§§ 729, 743.2(c), 753.1(b), and 761.2
Light manufacturing, processing, fabricating, or milling	CR, W-1,W-2,or W-3 Districts	§ 610 and 909
Loading berths - location and number	Downtown Urban Renewal Area and USN District	§ 2202.2
Loading berths - modification of access, maintenance, and operations standards	Any District	§ 2204.13
Marina	W-0 District	§ 922
Massage establishment	C-2, C-3, C-4, C-5 (PAD), USN, C-M, and M Districts	§§ 731, 743.3, 753.2, 761.2, 802.2, and 822.2
Mechanical parking garage	C-3 Districts	§ 743.1
Minimum Pervious Surface	All Districts Where Applicable	§ 412
Miscellaneous uses	CR or W Districts	§§ 618 , 915 and 922
Motorcycle sales or repair	CR, C-2, C-3-A, and C-3-B Districts	§§ 614, 727, and 743.2
MW Overlay District - lot greater than 10,000 square feet	MW Overlay District	§ 1308.2
Natural gas regulatory stations	Any R, SP, or CR District, W-1, W-2, or W-3 Districts	§§ 207, 509,608 and 907
Naval Observatory Precinct Overlay District - special exceptions	NO Overlay District	§ 1533
Neighborhood Commercial Overlay District - special exceptions	NC Overlay District	§ 1304
Nonconforming antenna - temporary replacement	Any District	§ 2001.12
Nonconforming use - change	Any District	§ 2003
Nonprofit organization use of existing residential building and land	Any R District	§ 217
Not-for-profit use in former public school buildings.	R-1 District	§ 222

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS SPECIFIED ARE
Office building - construction, addition, or conversion	SP District	§ 508.1
Park operated by local community organization	Any R District	§ 209
Parking garage	R-5 and SP Districts	§§ 355 and 506
Parking garage on alley lot	R-4 and R-5 Districts	§§ 333 and 352
Parking lot	Any R or SP District	§§ 213 and 505
Parking lot on alley lot	R-4 and R-5 Districts	§§ 333 and 352
Parking lot standards	R-1, R-2, R-3, R-4, and R-5-A Districts and contiguous districts	§§ 2303.2 - 2303.5
Parking spaces - location and amount	Downtown Urban Renewal Area	§§ 2103.2 - 2103.6
Parking spaces - location of accessory spaces	Any District	§§ 214, 510, 708, 730, 743.2(d), 751.1(c), 761.2, 803.1, 824, 926.1 and 2116.5-2116.9
Parking spaces - location, row dwellings	Any District	§ 2117.9(c)
Parking spaces - reduction or elimination for boathouses	W-0 District	§ 926.3
Parking spaces, nonresidential - reduction in required amount	Any District	§ 2108
Parking spaces, nonresidential - reduction in required amount outside Central Employment Area and with connection to Metrorail Station	Any District	§ 2107
Pet grooming establishment	Any C-2, C-3, C-4, USN, C-M, or M District	§§ 736, 802.25, and 822.20
Playground operated by local community organization	Any R District	§ 209
Prepared food shop with greater than eighteen seats for patrons	C-1, C-2-A	712

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Private stable	Any R District	§ 208
Public recreation and community center	Any R, SP, CR, or W District	§§ 402.7, 403.3, 408.1, 531.2, 532.3, 538.1, 632.1, 634.4, 931.3, 932.4, 937.1, and 2001.13
Public school (not meeting the Requirements of Chapter 4).	Any R District	206
Public storage garage on alley lot	R-4 and R-5 Districts	§§ 333 and 352
Public utility pumping stations	Any R, SP, CR, or C District, USN, W-1, W-2, or W-3 Districts	§§ 207, 509, 608, 707, 728, 743.2(b), 753.1, 761.2, and 907
RC Overlay District - area and use restrictions	RC Overlay District	§ 1403
Rear yard requirements - waiver	C-3 or C-4 District	§ 774.2
Repair garage	C-2, C-3, and USN Districts	§§ 726.1 and 743.1
Residential developments, new	R-5-A District	§ 353
Retail, service, arts and cultural uses as specified	W-0 District	§ 925
Roof structures - location, design, number, and all other regulated aspects	Any District	§§ 411.11, 537.1, 639.1, 777.1, 845.1, and 936.1
School - private school other than trade school	Any R District	§ 206
School - private school or trade school	W-1, W-2, or W-3 Districts	§ 912
School - residence for teachers and staff of private school	R-1, R-2, R-3, and R-4 Districts	§ 206
Sexually-oriented businesses	C-3, C-4, and C-5 (PAD) Districts	§§ 744, 754, and 761.2
Solid waste handling facility	C-M and M Districts	§§ 802.4 - 802.9 and 822.3 - 822.8
SSH Overlay District - nonresidential uses	SSH Overlay	§ 1553
Storage of wares and goods on alley lot	R-4 and R-5 Districts	§§ 333 and 352

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Surface Parking Lots Landscaping Standards	All Districts Where Applicable	§ 2111
Swimming pool operated by local community organization	Any R. District	§ 209
Telephone exchange	R4, R-5, SP, CR, and W-1,W-2, and W-3 Districts	§§ 332.1(b), 509, 608, and 907
TSP Overlay District - ground coverage and tree removal	TSP Overlay District	§ 1515
Veterinary boarding hospital	Any C-2, C-3, C-4, USN, C-M, or M District	§§ 738, 802.27, and 822.22
Warehouse use	CR, W-1, W-2, and W-3 Districts	§§ 611 and 910
Wholesale use	CR, W-1, W-2, and W-3 Districts	§§ 611 and 910
Yacht club	W-0 District	§ 923

3104.2 In the case of a use that was originally permitted and lawfully established as a matter of right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, 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.

3104.4 Effective December 8, 2000, the Zoning Commission shall, pursuant to § 3035 and the standards in § 3104.1, hear and decide all applications for special exception approval under §§ 210, 302.2, 322.2, 332.2, 352.2, 507, 615, and 916 of a campus development plan; the amendment of a campus development plan; the further processing of an approved campus development plan to permit the construction and use of a specific building or structure within a campus, whether the plan was approved by the Commission or the Board of Zoning Adjustment; and the interim use of land or improved property within a reasonable distance of a campus. The following table summarizes the uses that may be permitted:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
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College, university, or other academic institution of higher learning	Any R, SP or CR District, or W-1, W-2, or W-3 Districts	§§ 210, 507, 615, and 916
Dormitory, fraternity, or sorority house on campus	R-1, R-2, R-3, and SP Districts	§§ 210 and 507
Hospital - college or university, on campus	R-1, R-2, R-3, and SP Districts	§§ 210 and 507

3104.5 Except for the sua sponte review provisions of § 3128, the Commission shall use the Board of Zoning Adjustment Rules of Practice and Procedure in this chapter in processing, reviewing, and approving all applications for special exception approval for college and university uses, such that wherever a particular provision in this chapter refers to the Board of Zoning Adjustment, the word " Board" shall mean Zoning Commission.

3104.6 The sua sponte review provisions of § 3128 do not apply to cases heard and decided by the Commission under this section.

SOURCE: § 8207.2 of the Zoning Regulations, as amended by: Final Rulemaking published at 22 DCR 1901, 1904 (October 14, 1975); Final Rulemaking published at 28 DCR 3482, 3506 (August 7, 1981); Final Rulemaking published at 29 DCR 4913, 4919 (November 5, 1982); Final Rulemaking published at 31 DCR 6585, 6627 (December 28, 1984); Final Rulemaking published at 36 DCR 1509, 1522 (February 24, 1989); Final Rulemaking published at 39 DCR 8305, 8310 (November 13, 1992); Final Rulemaking published at 40 DCR 1951, 1954 (March 19, 1993); Final Rulemaking published at 46 DCR 7853, 7891-94 (October 1, 1999); Final Rulemaking published at 46 DCR 8289 (October 15, 1999); Final Rulemaking published at 47 DCR 9725, 9739-40 (December 8, 2000); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8554-59 (October 20, 2000); Final Rulemaking published at 48 DCR 9830, 9841 (October 26, 2001); and Final Rulemaking published at 49 DCR 8891, 8894-95 (September 27, 2002); Final Rulemaking published at 50 DCR 10137(November 28, 2003 ); Final Rulemaking published at 51 DCR 3440(April 2, 2004 ); Final Rulemaking published at 52 DCR 6358 (July 8, 2005); Final Rulemaking published at 53 DCR 6363(August 4, 2006); Final Rulemaking published at 53 DCR 9580 (December 1, 2006); Final Rulemaking published at 53 DC 10085 (December 22, 2006); Final Rulemaking published at 54 DCR 3072 (April 6, 2007); Final Rulemaking published at 54 DCR 8943 (September 14, 2007); Final Rulemaking published at 54 DCR 9393 (September 28, 2007); Final Rulemaking and Order No. 08-18 published at 56 DCR 2391 (March 27, 2009); Final Rulemaking and Order No. 09-11 published at 57 DCR 1242 (February 5, 2010); as amended by Final Rulemaking and Order No. 09-17A published at 57 DCR 1898 (March 5, 2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

## 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 appeal or application 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 appeals or applications that have been timely and appropriately filed for a specific hearing date and that, 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 the Board may in its discretion close 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. 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 [RESERVED]
- 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;
  - (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; and
  - (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 made available to the public at least seven (7) days prior to the meeting or hearing. The schedule for each public hearing shall be posted in the Office of Zoning and made available to the public at least thirty (30) days prior to the hearing.
- 3105.8 Copies of the agenda or schedule for each meeting or hearing shall be available to the public at the meeting or hearing.
- 3105.9 The Board may amend the agenda or schedule at the 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 appeals and applications 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7894-96 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8559-60 (October 20, 2000).

## **3106 APPEARANCE AND REPRESENTATION**

3106.1 In a proceeding before the Board, any person or party may appear on that person's or party's 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 appellant, applicant, 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 appeal or application;
- (d) Whether the person will appear through legal counsel and, if so, the name and address of the 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 the person, or in which the person has an interest, that will be affected by the zoning relief requested of the Board;
  - (2) The legal interest the person has in the property, such as owner, tenant, trustee or mortgagee;
  - (3) The distance between the person's property and the property that is the subject of the appeal or application before the Board;
  - (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the zoning relief requested of the Board is approved or denied; and
  - (5) An explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

3106.3 [REPEALED]

- 3106.4 No member of the Board or the Zoning Commission shall represent any person before the Board other than himself or herself while a member of the Board or the 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 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 a member of the Board or an employee of the District.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7896 - 98 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9347, 9350-51 (November 20, 2000); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8560 (October 20, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

### **3107 APPEARANCE IN PARKING LOT APPLICATION CASES**

- 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7898 (October 1, 1999).

### **3108 DECORUM AND GOOD ORDER**

- 3108.1 No person shall utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct that 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 agent 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7898 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8560 (October 20, 2000).

### **3109 APPEAL AND APPLICATION FORMS**

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

SOURCE: Final Rulemaking published at 46 DCR 7853, 7898 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8560 (October 20, 2000).

## **3110 COMPUTATION OF 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 that is neither a Saturday, Sunday, nor official holiday.

3110.3 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, 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7898-99 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8561 (October 20, 2000).

## **3111 SERVICE OF PAPERS; METHODS OF SERVICE; PROOF OF SERVICE**

3111.1 Any paper required to be served upon a party shall be served upon that party, or upon the representative designated by that party 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, first class mail, 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 the person's 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 that person's 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, when deposited 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 prescribed by the Board in a proceeding.

3111.4 Proof of service, stating the name and address of the person on whom the document was 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 the party's representative;  
or
- (b) The written statement of the person making the service.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7899-7900 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8561 (October 20, 2000).

## **3112 PRE-HEARING PROCEDURES FOR APPEALS**

3112.1 The rules of procedure in this section 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 follows:

- (a) An appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.
- (b) If the decision complained of involves the erection, construction, reconstruction, conversion, or alteration of a structure or part thereof, the following subparagraphs shall establish the latest date on which an appeal may be filed:
  - (1) No appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof. For purposes of this subparagraph, the phrase "under roof" means the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place; and
  - (2) The provisions of paragraph (b) of this subsection shall not relieve an appellant of the jurisdictional requirement in paragraph (a) of this subsection of filing a timely appeal.
- (c) Notwithstanding paragraphs (a) and (b) of this subsection, for purposes of establishing the timeliness of an appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.
- (d) The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:
  - (1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and
  - (2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

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 the person's 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, 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 for the area 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 The appellant may withdraw an appeal 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 for the area 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 by:

- (a) Publishing the notice in the D.C. Register;
- (b) Mailing the notice to the parties to the appeal;
- (c) Mailing the notice to the ANC for the area within which the subject property is located; and
- (d) 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 shall consider any request to intervene made pursuant to § 3106.2. The Board shall grant intervener status only if the person requesting intervener status has clearly demonstrated that they have a specific right or interest that will be affected by action on the appeal.

3112.16 In granting intervener status, the Board may specify whether the person will be permitted to intervene in the appeal for general or limited purposes.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7900-02 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8561-62 (October 20, 2000); Final Rulemaking published at 50 DCR 1200 (February 7, 2003); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

### **3113 PRE-HEARING PROCEDURES FOR APPLICATIONS**

3113.1 The rules of procedure in this section apply to all applications filed with the Board (including applications filed pursuant to §§ 3107 and 3108 in effect prior to October 1, 1999, and §§ 3103 and 3104); provided, however, the provisions of this section only apply to chancery applications to the extent specified in § 3134 and to applications processed under the expedited review procedures to the extent specified in § 3118.

3113.2 As an alternative to filing the zoning memorandum as required by the application form, applications for variances and special exceptions may be filed with the Director by architects or attorneys without the necessity of prior certification by the Zoning Administrator, provided that the architect or attorney certifies that the requirements set forth in the immediately following sentence are true and correct. Such architect or attorney shall certify to the Board that: (a) the architect or attorney is duly licensed to practice in the District of Columbia; (b) the architect or attorney currently is in good standing and otherwise entitled to practice in the District of Columbia; and (c) 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.
- 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, including:
- (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 the condominium or cooperative that represents all of the owners of all the 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, 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 for the area 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, the applicant shall provide a copy of the report to the Department of Transportation at least twenty (20) days prior to the public hearing.
- 3113.10 The applicant may withdraw an application 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 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 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 for the area 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 by:
- (a) Publishing the notice in the D.C. Register;
  - (b) Mailing the notice to the applicant and to the owners of all property within two hundred feet (200 ft.) 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 the condominium or cooperative that represents all of the owners of all the dwelling units;
  - (c) 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) Mailing the notice to the ANC for the area within which the subject property is located; and
  - (e) Posting the calendar of cases to be heard by the Board in the Office of Zoning.
- 3113.14 The applicant shall give additional notice of the public hearing by posting the property with notice of the hearing at least fifteen (15) days in advance of the hearing.
- 3113.15 The applicant shall post notice 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 for posting 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 for the area within which the property is located, and the location, time, and date of the public hearing.

- 3113.17 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 that face any property not owned by the college or university.
- 3113.18 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.
- 3113.19 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.
- 3113.20 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.
- 3113.21 At the time of the hearing on the application, the Board shall consider any request for party status made pursuant to § 3106.2. The Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7902-7905 (October 1, 1999); as amended by Final Rulemaking published at 46 DCR 8041, 8042 (October 8, 1999); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8562-64 (October 20, 2000); Final Rulemaking and Order No. 09-13 published at 57 DCR 3295 (April 16, 2010); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

## **3114 REPORTS OF PUBLIC 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 §§ 3107 and 3108 in effect prior to October 1, 1999, and §§ 3103 and 3104); 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 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 the 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 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 who should be present at the hearing.
- 3114.6 If an application is referred in advance of the public hearing to any public agency for a report or recommendation, no report is received in the record, and the time period specified in § 2509 has elapsed, then the Board may proceed to decide the application based on the record not including such report and recommendation.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7905 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8564 (October 20, 2000).

## **3115 ADVISORY NEIGHBORHOOD COMMISSIONS: REPORTS AND NOTICE**

- 3115.1 The written report of the ANC prepared in response to a notice of application provided pursuant to § 3115.5 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 authorized by the ANC to present the report; and
- (i) The signature of the ANC chairperson or vice-chairperson.

3115.2 The Board shall give "great weight" to the written report of the ANC, as required by § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000) (codified at D.C. Official Code § 1-309.10(d)(3)(A)(2001).

3115.3 In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the appellant or applicant that later are modified by the appellant or applicant, the designated ANC representative may comment orally concerning the specific inconsistencies. No other new matters may be presented orally by the designated ANC representative.

3115.4 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected Advisory Neighborhood Commissions, the Commissioner representing the affected single member district, and the Office of Advisory Neighborhood Commissions ("notice recipients") may be provided by electronic or first-class mail; provided, that the notice shall be by first-class mail unless a notice recipient agrees in writing to receive future notifications through electronic mail.

3115.5 A notice of an application shall constitute the notice required by D.C. Official Code § 1-309.10(b) and starts the time period for the affected Commission to review the application and submit its written report pursuant to D.C. Official Code §1-309.10(d).

SOURCE: Final Rulemaking published at 46 DCR 7853, 7905-06 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8565 (October 20, 2000); as amended by Final Rulemaking and Order No. 10-04 published at 57 DCR 9736 (October 15, 2010).

## **3116 EXPEDITED APPLICATIONS**

3116.1 The Board shall have the authority to expedite applications; provided:

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

SOURCE: Final Rulemaking published at 46 DCR 7853, 7906-07 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8565 (October 20, 2000).

## **3117 HEARING PROCEDURES**

- 3117.1 The rules of procedure in this section apply to public hearings on all appeals and applications filed with the Board under this chapter; provided, however, the provisions of this section only apply to chancery applications to the extent specified in § 3134.
- 3117.2 A public hearing, even if expedited under § 3116.1, shall be held on each appeal or application. Appeals and applications shall be heard in the order in which they are filed with the Board and appear on the calendar. The hearing date for an appeal or application 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:
- (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 appeals or applications 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) Subject to § 3105.11, adjourn a hearing and establish the date when the hearing will be continued;
  - (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 provided in § 3117.5, an appellant, applicant, and persons and parties (except an ANC in support) shall collectively have no more than 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.
- 3117.5 The Board may grant additional or lesser time to that under § 3117.4 to an appellant or 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 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:
    - (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 for the area 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:
  - (1) Applicant's case;
  - (2) Report and recommendation from the D.C. Office of Planning;
  - (3) Reports and recommendations from other public agencies;
  - (4) The ANC for the area 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 the applicant.

3117.12 The Board may close the record at the end of a hearing and vote at such time either to approve or deny the appeal or application.

SOURCE Final Rulemaking published at 46 DCR 7853, 7907-09 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8565-67 (October 20, 2000).

## **3118 EXPEDITED REVIEW**

3118.1 The purpose of this section is to create an expedited review process to be followed after an applicant waives its right to a hearing for an eligible application.

3118.2 An eligible application is an application for:

- (a) An addition to a one-family dwelling or flat or new or enlarged accessory structures pursuant to § 223; or
- (b) A park, playground, swimming pool, or athletic field pursuant to § 209.1.

3118.3 Subject to the removal process described in §§ 3118.6 and 3118.7, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board's next regularly scheduled session after:

- (a) The completion of the public notice procedures set forth in § 3118.4; and

- (b) The completion of the ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) calendar days.

3118.4 Notice of expedited review shall be given in the same manner and include the same information as required by §§ 3113.12 through 3113.16, except that references to “public hearing” or “hearing” shall mean “expedited review” and all other requirements of § 3113 shall apply with the same proviso.

3118.5 The public notice of an expedited review and the ANC notice of an application requesting expedited review shall also indicate:

- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described in §§ 3118.6 and 3118.7; and
- (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the date that the application was removed and continuing until the date of such hearing.

3118.6 An application tentatively placed on an expedited review calendar will be removed and rescheduled for a hearing:

- (a) At the oral or written request of a Board member made at any time prior to the vote on the application;
- (b) Upon the receipt of a timely filed request for party status in opposition to the application; or
- (c) At the written request of the Office of Planning, if filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled.

3118.7 An application tentatively placed on an expedited review calendar also will be removed and rescheduled for a hearing if requested by the following entities or persons in accordance with § 3118.8, unless the request is denied by the Presiding Officer pursuant to § 3118.9:

- (a) The affected ANC(s) or affected Single Member District(s);
- (b) The Councilmember representing the area in which the subject property is located or representing an area located within two-hundred feet (200 ft.) of the subject property; or
- (c) The owner or occupant of any property located within two-hundred feet (200 ft.) of the subject property.

- 3118.8 A request to remove made pursuant to § 3118.7 shall:
- (a) Be filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled;
  - (b) Be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing; and
  - (c) Shall include a summary proffer of the testimony to be given at that time.
- 3118.9 The Presiding Officer shall grant a request to remove an application made pursuant to § 3118.7 unless the proffered testimony is irrelevant, in which case the request shall be denied.
- 3118.10 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

SOURCE: Final Rulemaking and Order No. 09-13 published at 57 DCR 3295 (April 16, 2010); Final Rulemaking and Order No. 09-13A published at 57 DCR 6999 (August 6, 2010).

## **3119 EVIDENCE**

- 3119.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.
- 3119.2 In all appeals and applications, 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 Each party may appear at a hearing to offer evidence and cross-examine witnesses.
- 3119.4 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b)(2001) (formerly codified at D.C. Code 1-1509(b)(1999 Repl.)).
- 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 that exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size (8 1/2 inches by 14 inches).
- 3119.7 No material shall be submitted for the record that 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 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 their introduction into evidence.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7909-10 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8567 (October 20, 2000).

**3120 [RESERVED]**

**3121 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; CLOSING THE RECORD**

- 3121.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies 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 any 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 after 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 except that permitted by § 3121.5, that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board. However, if the materials are accompanied by a request to re-open the record, the request shall be accepted and presented to the Chair for consideration. The request must demonstrate good cause and the lack of prejudice to any party. If granted, the materials shall be entered into the record.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7910-11 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8567-68 (October 20, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

### **3122-3123 [RESERVED]**

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

3124.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section applies to chancery applications only 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.

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

SOURCE: Final Rulemaking published at 46 DCR 7853, 7911-12 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8568 (October 20, 2000).

## **3125 FINAL DECISION AND EFFECTIVE DATE OF DECISIONS**

3125.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies 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 is necessary for any decision.
- 3125.3 The concurring vote of at least a full majority of the members of the Board is necessary for any decision. After a vote to grant or deny an application or appeal, the prevailing party may file a proposed order or a revision to a previously filed proposed order. No response to the proposed order may be submitted by any other party.
- 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 and the accompanying findings of fact and conclusions of law, by first class mail, postage prepaid.
- 3125.5 A copy of the decision or order and the accompanying findings of fact and conclusions of law shall be served on the council member representing the ward within which the property is located and any ANC that submitted a written report in accordance with § 3115.
- 3125.6 For purposes of this chapter, a decision or order 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 the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Board orders otherwise.
- 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 or the Chairperson of the Board is authorized to sign a final decision or order that has been approved by a majority of the Board.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7912 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9347, 9352 (November 24, 200); and Final Rulemaking published at 49 DCR 2742, 2748 (March 22, 2002); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

## **3126 RECONSIDERATION OR REHEARING**

- 3126.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies 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 the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final order in a contested case proceeding that is filed prior to the order being issued nor waive this prohibition.
- 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 that 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 appellant or applicant 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7912-13 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8569 (October 20, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

## **3127 EXCLUSIVE RECORD**

3127.1 This section applies to all new appeals and applications filed with the Board under this chapter; provided, however, this section only applies 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7913-14 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8569 (October 20, 2000).

## **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 decision or order of the Board.

3128.2 The Commission's determination to review a decision or order of the Board shall be transmitted forthwith to the Director, who shall forward to the Commission the record in the case and shall serve notice of the Commission's determination to review the Board's decision or order upon all parties to such case.

3128.3 Upon receipt of the record, the Commission shall review the case and take such action as it deems appropriate; provided, however, the Commission shall not reverse or modify any decision or order of the Board without affording the parties to the case an opportunity to present memoranda to the Commission in support of or in opposition to the action of the Board.

3128.4 Any action by the Commission may include, without limitation, any of the following:

- (a) Hearing argument on the Board record in the case;
- (b) Affirmance, modification, or reversal of the Board's decision or order; and
- (c) Remanding the case to the Board for reconsideration, rehearing, or other action pursuant to instructions of the Commission.

3128.5 The sua sponte review process established in this section shall not grant any rights of appeal to the Commission.

3128.6 Because there is no right of appeal to the Commission from any action of the Board, the Commission need not answer any communications to the Commission (regardless of the form) requesting that sua sponte review be undertaken. Sua sponte review is a discretionary internal process.

3128.7 The Commission shall look to the following guidelines when determining whether to invoke its sua sponte review authority. The Commission may exercise sua sponte review as follows:

- (a) In a particular instance where it appears to the 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 Commission, as expressed in the Zoning Regulations, has been violated as a result of action by the Board; or
- (c) In an unusual instance, as determined by the Commission.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7914-15 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8569-70 (October 20, 2000).

## **3129 MODIFICATION OF APPROVED PLANS**

3129.1 This section applies to all appeals and applications filed with the Board under this chapter; provided, however, this section only applies to chancery applications to the extent specified in § 3134.

3129.2 The Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.

3129.3 A request for minor modification of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application.

3129.4 All requests for minor 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 that such party may have concerning the requested modification.

3129.5 A decision on a request for minor 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 Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application.

3129.7 A request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.

- 3129.8 The scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.
- 3129.9 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7915 (October 1, 1999); as amended by Final Rulemaking published at 46 DCR 8041, 8042 (October 8, 1999); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8570 (October 20, 2000); as amended by Final Rulemaking and Order No. 09-01 published at 56 DCR 4388 (June 5, 2009); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

### **3130 TIME LIMITS ON THE VALIDITY OF BOARD ORDERS**

- 3130.1 No order authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.
- 3130.2 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.
- 3130.3 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.
- 3130.4 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, §§ 3130.1 through 3130.3 shall apply.
- 3130.5 In the event an appeal is filed in a court of competent jurisdiction from an order of the Board, all time limitations in this section 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 appellant or applicant may proceed pursuant to the order of the Board prior to the court's final determination.
- 3130.6 The Board may extend the time periods in § 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
  - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
  - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
  - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

3130.7 A time extension granted pursuant to § 3130.6 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

3130.8 The Board's decision on the request shall be in writing and shall become final and effective upon its filing in the record and service upon the parties.

3130.9 A request for a time extension shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

3130.10 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order unless and until a decision granting the request becomes final and effective pursuant to § 3130.8.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7916 (October 1, 1999); as amended by Final Rulemaking published at 48 DCR 9830, 9841 (October 26, 2001); as amended by Final Rulemaking and Order No. 09-01 published at 56 DCR 4388 (June 5, 2009); as amended by Final Rulemaking and Order No. 10-08 published at 57 DCR 9492 (October 8, 2010); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

## **3131 COMMENCEMENT OF SPECIAL EXCEPTION TERMS**

3131.1 When the Board limits its approval of a special exception to a term of years, the length of that term begins on the date upon which the order became final.

SOURCE: Final Rulemaking and Order No. 10-08 published at 57 DCR 9492 (October 8, 2010).

## **3132 EXPIRATION OF SPECIAL EXCEPTION USES**

- 3132.1 If a special exception use is established, the use will only expire if:
- (a) An expiration date is specified in the order;
  - (b) The special exception use is discontinued for any reason for any period of three (3) or more years occurring after October 8, 2010; except where governmental action impedes access to the premises; or
  - (c) A certificate of occupancy for a different use is issued after October 8, 2010.
- 3132.2 If a special exception use expires, any subsequent use shall conform to the regulations of the district in which the use is located.
- 3132.3 Notwithstanding § 3132.1(b), a special exception use shall not expire if there is objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.

SOURCE: Final Rulemaking and Order No. 10-08 published at 57 DCR 9492 (October 8, 2010).

## **3133 [RESERVED]**

## **3134 CHANCERY APPLICATIONS**

- 3134.1 The provisions of this section shall apply to all applications made pursuant to chapter 10 of this title for the location, replacement, or expansion of chanceries that are subject to disapproval by the Board pursuant to § 206(b) of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code §§ 6-1306(b) (2001) (formerly codified at D.C. Code § 5-1206(b) (1994 Repl.))).
- 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 apply 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 Except as specifically incorporated in § 3134.6, the remaining provisions of this chapter shall not apply to applications under chapter 10 of this title.

3134.6 The following subsections apply to applications under chapter 10 of this title, except that no person shall have the standing of a "party" in a proceeding under this subsection:

- (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, D.C. Official Code § 6-1305 (2001)(formerly codified at D.C. Code § 5-1205 (1994 Repl.)), 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:

- (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 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;
- (f) The ANC for the area 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 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 first class mail, postage prepaid;
- (b) A copy of the decision or order shall be served on the councilmember representing the ward within which the property is located and any ANC that 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.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7916-20 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8571-72 (October 20, 2000); and Final Rulemaking-published at 49 DCR 2742, 2749 (March 22, 2002).

**3135-3179 [RESERVED]**

## 3180

## SCHEDULE OF FEES

### 3180.1

Except as provided in §§ 3180.1(e) and 3180.3, 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, one thousand forty dollars (\$1,040) for each provision 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, one hundred four dollars (\$104) for each parking space;
  - (2) For a child development center or private school, thirty-three dollars (\$33) for each full-time or part-time student based on the maximum capacity requested, with a maximum of three thousand two hundred fifty dollars (\$3,250);
  - (3) For a college or university use, six thousand five hundred dollars (\$6,500) for the processing of a new or revised campus plan, and three thousand two hundred fifty dollars (\$3,250) 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, five hundred twenty dollars (\$520) for each dwelling unit;
  - (5) For a community-based residential facility, one hundred four dollars (\$104) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of five thousand two hundred dollars (\$5,200);
  - (6) For an office use in the SP District, fifty-two dollars (\$52) for each one hundred square feet (100 ft.<sup>2</sup>) or part thereof of gross floor area;
  - (7) For roof structures under § 411, two thousand six hundred dollars (\$2,600);
  - (8) For a hotel or inn in the SP District, one hundred four dollars (\$104) for each sleeping room or suite;
  - (9) For a gasoline service station, five thousand two hundred dollars (\$5,200);

- (10) For a repair garage, one thousand five hundred sixty dollars (\$1,560);
  - (11) For a home occupation under § 203, one thousand five hundred sixty dollars (\$1,560);
  - (12) For an accessory apartment under § 202, three hundred twenty-five dollars (\$325);
  - (13) For a theoretical lot under § 2516, one thousand five hundred sixty dollars (\$1,560) for the first lot and five hundred twenty dollars (\$520) for each lot thereafter;
  - (14) For an intermediate materials recycling facility under § 802, five thousand two hundred dollars (\$5,200);
  - (15) For an antenna under § 211, two thousand six hundred dollars (\$2,600); and
  - (16) For any other special exception not listed in this section, one thousand five hundred sixty dollars (\$1,560);
- (c) For an application for permission to locate, replace, or expand a chancery in an R-5-D, R-5-E, or SP District or in the Diplomatic (D) Overlay District, or to reconstruct an existing chancery that is destroyed in an R-1, R-2, R-3, R-4, R-5-A, R-5-B, or R-5-C District, sixty-five dollars (\$65) for each one hundred square feet (100 ft.<sup>2</sup>) or part thereof of gross floor area;
- (d) For an application involving one owner-occupied, one-family dwelling or flat, regardless of the number of variances, special exceptions, or alternatives requested, three hundred twenty-five dollars (\$325);
- (e) For an appeal of any decision of the Zoning Administrator or other administrative officer, one thousand forty dollars (\$1,040), except that the following appellants shall not be required to pay a filing fee:
- (1) A department, office, or agency of the Government of the District of Columbia, including an Advisory Neighborhood Commission;
  - (2) The National Capital Planning Commission; and
  - (3) A citizens' association or association created for civic purposes that is not for profit; and

(f) For a time extension, a minor modification of plans or a modification of conditions of an order of the Board for an owner-occupied one-family dwelling or flat, one hundred thirty dollars (\$130); for all other applicants, twenty-six percent (26%) 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 for a special exception or variance where the property is owned by the District of Columbia or that agency or is under one or both of their jurisdictions and the property is to be occupied for a government building or use.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7920-22 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8572 (October 20, 2000). Final Rulemaking published at 54 DCR 3072 (April 6, 2007); as amended by Final Rulemaking and Order No. 09-01 published at 56 DCR 4388 (June 5, 2009); as amended by Final Rulemaking and Order No. 10-09/10-10 published at 57 DCR 9480 (October 8, 2010).

## **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 in § 3180.

3181.3 Any decision of the Director regarding the application of the fee schedule in § 3180 may be appealed to the Board by the appellant or applicant. The fee appeal shall be in writing and set forth specifically the error allegedly committed by the Director, the grounds for the appeal, and the relief requested. The Board shall decide the appeal at a meeting or hearing as a preliminary matter to considering the fee appeal or application.

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 Administrator.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7912-13 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8572-73 (October 20, 2000).

## **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 § 738 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774, 824, as amended; D.C. Official Code § 1-207.38 (formerly codified at D.C. Code § 1-251 (1999 Repl.))).

**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 appeal or application 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 appeal or application.

**Party** - the following, as indicated:

- (a) On appeals to the Board pursuant to §§ 3100.2 and 3200.2:
  - (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 not the appellant;
  - (4) The ANC for the area within which the property that is the subject of the appeal is located; and
  - (5) Any other person who is permitted by the Board to intervene pursuant to § 3112.15;
- (b) On applications to the Board pursuant to §§ 107.7, 3103, and 3104:

- (1) The applicant;
- (2) The ANC for the area within which the property is located; and
- (3) Any other person granted party status by the Board pursuant to § 3106.3.

**Person** - an individual, partnership, association, corporation, public agency, or other legal entity.

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

3199.2 Except for the definitions in § 3199.1, the provisions of § 199.1 and the definitions set forth therein, shall be incorporated by reference in this section.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7923-24 (October 1, 1999); Final Rulemaking published at 47 DCR 9347, 9352-53 (November 24, 2000); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8573 (October 20, 2000).