

TITLE 11 - ZONING

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

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3000 GENERAL PROVISIONS

- 3000.1 This chapter supplements procedures set out in the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 641.15 (2001) (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))); the Zoning Regulations of the District of Columbia, Title 11 DCMR; and the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501 to 2-511 (formerly codified at D.C. Code §§ 1-1501 to 1-1510 (1999 Repl.)).
- 3000.2 This chapter shall be effective on October 1, 1999, and applicable in its entirety to applications or petitions filed after that date with the Zoning Commission for the District of Columbia, and to applications or petitions filed as of that date, but for which the Commission had not granted a public hearing.
- 3000.3 No application or petition shall be dismissed on the grounds that the applicant or petitioner failed to comply with the provisions of this chapter unless, after due notice of deficiency and expiration of a reasonable time as fixed by the Commission, the deficiency has not been corrected.
- 3000.4 In any conflict between the provisions of this chapter and the Zoning Regulations, the Zoning Regulations shall govern.
- 3000.5 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.

- 3000.6 In any conflict between this chapter and the D.C. Administrative Procedure Act, the Act shall govern.
- 3000.7 The Director shall, following approval by the Commission, issue and revise application and petition forms and instructions to ensure presentation of adequate information required for the understanding and processing of applications and petitions.
- 3000.8 The Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
- 3000.9 Legal advice from the Office of the Attorney General may be requested or received at any time.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 737, 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, 7855-7856 (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, 8537-38 (October 20, 2000).

3001 COMPUTATION OF TIME

- 3001.1 In computing any period of time specified in this title, calendar days shall be counted.
- 3001.2 In computing any period of time specified in this title, the day of the act, event, or default after which the designated period of time begins to run shall not be included.
- 3001.3 The last day of the period computed as provided in § 3001.2 shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor holiday.
- 3001.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon that party, and the notice or paper is served upon that party by mail, three (3) days shall be added to the prescribed period.
- 3001.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the Commission may, for good cause, extend or reduce the time fixed or the period of time prescribed.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7856-57 (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, 8538 (October 20, 2000).

3002 APPEARANCE AND REPRESENTATION

- 3002.1 In a proceeding before the Commission, any person or party may appear on that person or party's own behalf.
- 3002.2 Any person or party may be represented by any other person duly authorized in writing to do so.
- 3002.3 The authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Commission.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7857 (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, 8538 (October 20, 2000); and Final rulemaking published at 49 DCR 2742, 2748 (March 22, 2002).

3003 SERVICE OF PAPERS; METHODS OF SERVICE; PROOF OF SERVICE

- 3003.1 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.
- 3003.2 Where there are numerous parties to a proceeding, the Commission may designate representative parties or make other special provisions regarding the service of papers.
- 3003.3 Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection, or as otherwise authorized by law:
- (a) By personal delivery, on handing the paper to the person to be served, or leaving it at that person's office with that person's clerk or other person in charge or, if there is no one in charge, by leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, by leaving it at that person's usual place of residence with some person of suitable age and discretion then residing in that place;
 - (b) By telegram or mailgram, when deposited with a telegram or mailgram company, properly addressed and with charges prepaid;

- (c) By first-class mail, 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 Commission in a proceeding.

3003.4 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 for each document filed.

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

- (a) Written acknowledgement of the party served or that party's attorney of record;
- (b) The certificate of the attorney of record if the attorney made the service; or
- (c) The certificate of the person making the service.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7857-58 (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, 8538-39 (October 20, 2000); and Final Rulemaking published at 49 DCR 2742, 2748 (March 22, 2002).

3004 PUBLIC MEETING AND HEARING TRANSCRIPTS

3004.1 The transcripts of Commission public meetings and hearings are a matter of public record and shall be open for inspection at the Office of Zoning.

3004.2 The public meetings and hearings shall be reported under the supervision of the presiding officer, by transcription or by other means, by an official reporter who may be designated from time to time by the Director (or designee) or who may be a regular employee of the Office of Zoning.

3004.3 The transcript prepared by the reporter shall be the sole official transcript of the public meetings and hearings.

3004.4 Copies of the transcript will be made available in the Office of Zoning fourteen (14) calendar days after the public meeting or hearing.

3004.5 A motion to correct a transcript may be made only when the alleged error is substantive.

- 3004.6 A motion to correct a transcript shall be filed with the Commission within ten (10) calendar days after the transcript has been made available in the Office of Zoning.
- 3004.7 Copies of the motion to correct a transcript shall be served simultaneously on all parties or their authorized representatives.
- 3004.8 The Commission will rule on a motion to correct a transcript at a public meeting or hearing.
- 3004.9 Objections to the motion to correct a transcript shall be filed with the Commission within five (5) calendar days and served upon the parties.
- 3004.10 The Commission, on its own motion at a public meeting or hearing, may order changes to a transcript at any time for any reason.
- 3004.11 If a motion to correct a transcript is granted, the corrected transcript will be made available in the Office of Zoning fourteen (14) calendar days after the Commission grants the motion.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7858-59 (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, 8539 (October 20, 2000); Final Rulemaking published at 49 DCR 2742, 2748 (March 22, 2002); and by Final Rulemaking and Order No. 10-15 published at 57 DCR 11218 (November 26, 2010).

3005 MEETINGS AND HEARINGS

- 3005.1 On or about the first (1st) day of each three (3) month period during the year, the Director shall cause to be published in the D. C Register, and shall post in the Office of Zoning, a 12-month calendar or schedule of dates setting forth the dates of meetings and hearings that will occur during such period, as well as the dates by which an application or petition must be filed with the Commission to allow its consideration on a specific hearing date. Such calendar or schedule also shall set forth any additional hearing dates as may be required by the Commission to permit consideration of applications or petitions 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.
- 3005.2 The meetings and hearings of the Commission shall be open to the public, except that a meeting to consider personnel matters, litigation, or other matters that are privileged or sensitive and not required to be open by applicable law may be closed at the discretion of the Commission.

- 3005.3 The proposed agenda for each meeting or the schedule for each hearing shall be posted in the office of the Commission and available to the public at least four (4) days prior to a meeting or hearing.
- 3005.4 Copies of the agenda shall be available to the public at the meeting or hearing.
- 3005.5 Nothing in this section shall preclude the Commission from amending the agenda at a meeting or hearing.
- 3005.6 A meeting of the Commission shall be held at least once each month in accordance with a schedule to be established by the Commission, and additional meetings as needed may be called by the presiding officer or by three (3) members.
- 3005.7 The Commission shall schedule any hearings as needed, in addition to those placed on the quarterly calendar pursuant to § 3005.1, for the purpose of receiving evidence and testimony on specific applications and petitions advertised in advance. Such hearings shall be held at the time and place the Commission or the presiding officer designates.
- 3005.8 Unless all parties to a hearing agree otherwise, or unless the Commission orders otherwise, the Commission shall not postpone or continue a public hearing on a contested case for a period in excess of thirty (30) days from the date of the granting of such postponement or continuance.
- 3005.9 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required.
- 3005.10 A majority of the Commission shall constitute a quorum.
- 3005.11 A member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the application or petition.
- 3005.12 A member attending a decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on the application or petition.
- 3005.13 A majority of the Commission members present at a meeting or hearing may take a procedural action, but shall not take a proposed or final action on a petition or application unless the members also constitute a majority of the Commission.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7859-60 (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, 8539 (October 20, 2000); Final Rulemaking and Order No. 09-18 published at 57 DCR 5053 (June 11, 2010).

3006 EVIDENCE

- 3006.1 Exhibits may be offered in evidence at the hearing.
- 3006.2 Exhibits may be in the form of photographs, models, graphs, or other appropriate visual displays.
- 3006.3 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced or folded to a size not to exceed legal size of eight and one-half by fourteen inches (8¹/₂ in. x 14 in.).
- 3006.4 No material that exceeds legal size shall be submitted for the record.
- 3006.5 If models are used, photographs of the models not exceeding legal size shall be supplied at the public hearing.
- 3006.6 The Zoning Act of 1938, the Zoning Regulations (including appendices and the official Zoning Map), and this chapter shall be a part of the record of every proceeding before the Commission, and it shall not be necessary for any party or person formally to move their introduction into evidence.
- 3006.7 The applicant, a public agency representative, a party, or a person may appear as a witness and offer evidence at a hearing.
- 3006.8 In a contested case under § 3022, witnesses may be examined or cross-examined by the Commission, the applicant, or any party so determined by the Commission under this chapter.
- 3006.9 In a rulemaking case under § 3021, only the Commission may examine witnesses.
- 3006.10 In any case, any authorized representative of any public agency may pose a question to a witness through the presiding officer.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7860-61 (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, 8539 (October 20, 2000).

3007 NOTICES TO ADVISORY NEIGHBORHOOD COMMISSIONS

- 3007.1 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.
- 3007.2 A notice of application shall constitute the notice required by D.C. Official Code § 1309.10(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 and Order No. 10-04 published at 57 DCR 9736 (October 15, 2010).

3008-3009 [RESERVED]

3010 APPLICATIONS AND PETITIONS

- 3010.1 Any proceeding before the Commission shall be initiated by the filing of an application or petition with the Commission on the form and in the number that the Commission may prescribe, except that the Commission may initiate a case on its own motion.
- 3010.2 Contested cases are adjudicatory in nature; present issues for resolution at a public hearing that potentially will affect a relatively small number of persons or properties; and involve primarily questions of fact applicable to a small number of persons or properties, while broader issues of public policy are secondary concerns. Contested cases include, without limitation, the following:
- (a) Planned unit developments filed according to chapter 24 of this title;
 - (b) Requests for zoning map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley;
 - (c) Applications for air space development; and
 - (d) Applications for Zoning Commission review and approval pursuant to chapters 16, 18, 28, and 29 of this title, as well as § 1709.21.
- 3010.3 Contested cases shall be initiated by the filing of an application. Public hearings on a contested case shall be processed and conducted according to the D.C. Administrative Procedure Act, D.C. Official Code § 2-509 (2001) (formerly codified at D.C. Code § 1-1509 (1999 Repl.)), and § 3022 of this chapter, unless the Commission determines otherwise pursuant to § 3010.7.
- 3010.4 Rulemaking cases are cases that are legislative in nature and cases in which the issues to be resolved at the public hearing may affect large numbers of persons or property or the public in general, including:
- (a) A zoning text or map amendment that is proposed in furtherance of the Comprehensive Plan or other public law or policy;
 - (b) Cases in which the primary issues involve land use and urban planning and zoning policies, such as the development pattern of the city or a

particular geographic area, population density, distribution of employment centers, traffic and transportation patterns, and related matters; and

- (c) Cases in which the facts, information, and opinions sought for the public hearing are to come from a wide cross-section of the public.

3010.5 Rulemaking cases include:

- (a) Proposals to amend the text of the Zoning Regulations;
- (b) Proposals initiated by public agencies to amend the zoning map for a neighborhood, commercial district, or other geographic area encompassing multiple properties, unless determined otherwise by the Commission pursuant to § 3010.7; and
- (c) Proposals initiated by private persons, organizations, or other entities to amend the zoning map in cases where:
 - (1) The petitioner does not own all of the property proposed to be rezoned; or
 - (2) The petitioner owns all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties.

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

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

3010.8 A proceeding that is a contested case within the meaning of D.C. Official Code § 2-502(8) (2001)(formerly codified at D.C. Code § 1-1502(8)) (1999 Repl.), shall be conducted pursuant to the requirements of the D.C. Administrative Procedure Act.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7861-63 (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, 8539-41 (October 20, 2000); as amended by Final Rulemaking published at 51 DCR 6837, 6849 (July 9, 2004); as amended by Final Rulemaking published at 52 DCR 63, 71 (January 7, 2005); as amended by Final Rulemaking and Order No. 06-32 published at 56 DCR 5052 (June 26, 2009); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

3011 REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS

- 3011.1 Except as provided in § 2523.4, as soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that the applications for Zoning Commission review and approval filed pursuant to chapters 16, 18, 28, and 29 of this title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. The exception from the requirements of this subsection shall not apply to an application for Zoning Commission approval pursuant to § 1612 unless accompanied by a written report of the Office of Planning certifying that the application is compliant with the standards of that section.
- 3011.2 The report of the Office of Planning on whether the matter should be set for public hearing shall be in writing and filed with the Director of the Office of Zoning at least ten (10) days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the public records of the Commission.
- 3011.3 After considering the application or petition and the recommendations of the Office of Planning, and after reasonable opportunity for the applicant or petitioner to present the applicant's or petitioner's views, the Commission may dismiss the application or petition or set it down for public hearing or other proceeding.
- 3011.4 The vote of a majority of the full Commission shall be required to deny or dismiss an application or petition without a hearing. The vote of a majority of the members present may set the matter down for a public hearing or other proceeding.
- 3011.5 If the matter is denied or dismissed without a public hearing, the Commission shall issue a dismissal order, copies of which shall be published in the D.C. Register, served on the applicant or petitioner, and provided to the public library system and to the appropriate locations. The order shall include a statement of reasons for the dismissal.
- 3011.6 If the Commission denies or dismisses an application or petition without prejudice, the order shall also state the type of modification the Commission considers appropriate.
- 3011.7 If the matter is set down for a public hearing, the Commission shall at the same meeting:

- (a) Confirm whether the matter will be heard as a contested or rulemaking case according to the standards in § 3010 and provide that the notice of hearing will state such classification;
- (b) Schedule the date or dates for the public hearing, providing for an adequate number of public hearing sessions within a short time span, taking into account the nature and complexity of the case as presented in the report of the Office of Planning and any additional comments by the Office of Planning or the Director of the Office of Zoning; and
- (c) Make every effort to expedite cases regarding which the Office of Planning report and comments at the meeting suggest that:
 - (1) The case has substantial merit in the public interest;
 - (2) The issues in the case are relatively straight forward, and few if any modifications to the proposal are likely to be necessary; and
 - (3) Little or no opposition has yet appeared, and the concerns at this preliminary stage appear to be capable of resolution in an expedited processing.

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

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7863-66 (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, 8541 (October 20, 2000); as amended by Final Rulemaking published at 51 DCR 6837, 6849 (July 9, 2004); as amended by Final Rulemaking published at 52 DCR 63, 71 (January 7, 2005); as amended by Final Rulemaking published at 52 DCR 9874, 9886 (November 4, 2005); as amended by Final Rulemaking and Order No. 04-05 published at 56 DCR 6181 (August 7, 2009); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

3012 AGENCY REPORTS

3012.1 As to those applications or petitions for which set down is required, as soon as an application or petition is set down for a public hearing, the matter shall be referred to the D.C. Office of Planning and any other public agencies that may be requested to provide information and assistance, depending on the nature of the case. As to those applications for which set down is not required pursuant to § 3011.1, as soon as an application requesting Zoning Commission review and approval pursuant to chapter 16, 18, 28 and 29 of this title is accepted for filing by

the Director of the Office of Zoning, a copy of the application shall be referred to the D.C. Office of Planning and other appropriate agencies for review and comment. A copy shall also be sent for review and comment to:

- (a) The National Capital Planning Commission of:
 - (1) All chapter 18 applications;
 - (2) Those applications for approval pursuant to 11 DCMR §1610.1 (a) and (d);
 - (3) The portion of the application for Master Plan approval relating to the single building south of H Street pursuant to 11 DCMR § 2918.1; and
 - (4) Those applications for Stage 1 or Consolidated approval for any part of the single building south of H Street pursuant to 11 DCMR § 2919.1;
- (b) The Capitol Police Board for those applications for approval pursuant to 11 DCMR § 1612.18; and
- (c) The District Department of Transportation for those applications for special exception approval pursuant to § 2803.

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

3012.3 The written reports and recommendations requested by the Commission pursuant to § 3012.1 shall be filed by the Director of the Office of Planning with the Director of the Office of Zoning at least ten (10) days in advance of the hearing. The Director of the Office of Zoning shall include these reports and recommendations in the public record.

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

3012.5 If an Advisory Neighborhood Commission (ANC) wishes to participate in a contested case under § 3022, the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing. In a rulemaking under § 3021, there shall be no filing deadline as long as the record in that case is open. All written reports shall contain the following:

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

3012.6 The Commission 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; D.C. Official Code § 1-309.10(d)(2001)). In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the applicant or petitioner which later are modified by the applicant or petitioner, the designated ANC representative may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated ANC representative. The Commission may leave the record open to permit the ANC to submit a revised report.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7865-66 (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, 8541-42 (October 20, 2000); as amended by Final Rulemaking published at 51 DCR 6837, 6849 (July 9, 2004); as amended by Final Rulemaking published at 52 DCR 63, 71 (January 7, 2005); as amended by Final Rulemaking published at 52 DCR 9874,9886 (November 4, 2005); as amended by Final Rulemaking published at 54 DCR 1579,1593 (February 16, 2007); as amended by Final Rulemaking and Order No. 04-05 published at 56 DCR 6181 (August 7, 2009); 57 DCR 000126 (2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

- 3013.1 As soon as practical, but in no case less than twenty (20) days before the notice of hearing is scheduled to be published in the *D.C Register*, the applicant or petitioner shall file twenty (20) copies of the following with the Director:
- (a) Any additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing and any additional copies of the original application or petition and supportive material, if unchanged; or, if the Commission requested the applicant or petitioner to make any changes in the application or petition, copies of the updated application or petition and supportive material;
 - (b) A list of witnesses who are prepared to testify on the applicant's or petitioner's behalf;
 - (c) A written summary of testimony of all witnesses or of the written report and the area of expertise of any expert who will be called to testify at the hearing;
 - (d) Any additional information, reports, or other materials the applicant or petitioner may wish to introduce;
 - (e) Reduced plans, which plans shall be no larger than eleven inches by seventeen inches (11 in. x 17 in.), show the "north arrow" reading up, and include a bar scale;
 - (f) A list of maps, plans, or other documents that are readily available to the general public and that will be offered into evidence; and
 - (g) An estimate of the time required for the presentation of the applicant's or petitioner's case, subject to the decision of the presiding officer as provided in § 3020.1(j).
- 3013.2 At the same time as filing the material that is required by § 3013.1, the applicant or petitioner, when necessary to support the application or petition, shall file two (2) sets of full-size plans.
- 3013.3 In the case of a map amendment pursuant to § 3021, the supplemental information filed by the petitioner shall include the names and addresses of the owners of all property proposed to be rezoned.
- 3013.4 If the application is processed as a map amendment, public air space application, or planned unit development, and proffers any benefit or amenity listed in § 3013.5, the applicant shall file a memorandum of understanding that has been executed by the applicant and the agency that would enter into or administer the agreement to provide the benefit or amenity.

- 3013.5 The provisions of § 3013.4 shall apply to the following benefits and amenities:
- (a) Minority participation opportunities through agreement with the D.C. Local Business Opportunity Commission;
 - (b) First-source employment opportunities through agreement with the Department of Employment Services;
 - (c) Cash contributions to the D.C. Public Schools or other agency;
 - (d) Services provided for the elderly, handicapped, children, or others through agreement with one or more agencies;
 - (e) Agreement with the Department of Transportation, the National Park Service, or other public agency or private entity to provide or maintain improvements to the public property;
 - (f) The production of housing units through agreement with the Department of Housing and Community Development, the affected Advisory Neighborhood Commission, or any other public agency or private entity; and
 - (g) Any other amenity that would require the agreement of or administration by any public agency or private entity.
- 3013.6 For all applications filed pursuant to § 3022, the supplemental information filed also shall include the:
- (a) Names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property; provided, however, in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of the condominium or cooperative that represents all of the owners of all such dwelling units; and
 - (b) Name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.
- 3013.7 The Director shall not issue any notice of hearing until the applicant or petitioner certifies in writing that all of the requirements of this section have been complied with.
- 3013.8 No application or petition shall be modified less than twenty (20) days prior to public hearing.

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

3013.10 If the application or petition includes a report by a transportation consultant or expert, the applicant or petitioner shall provide a copy of the report to the Department of Transportation at least twenty (20) days prior to the public hearing.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7866-7868 (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, 8542-43 (October 20, 2000).

3014 NOTICE OF HEARINGS: GENERAL

3014.1 Notice of a hearing pursuant to the rulemaking provisions of § 3021 or the contested case provisions of § 3022 shall be given by:

- (a) Publishing notice of the hearing in the D.C. Register at least forty (40) days in advance of the hearing;
- (b) Posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and
- (c) Providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.

3014.2 Each notice shall include a general summary of the application or petition under consideration, and shall state the time and place of the public hearing, the name of the applicant or petitioner, the action of the Commission prayed for, and whether the proceedings will be conducted pursuant to §§ 3021 or 3022.

3014.3 For hearings to amend the Zoning Map pursuant to § 3021, the petitioner shall post the street frontage of each square affected by the rezoning proposal with a notice of public hearing. This information shall be posted at least forty (40) days in advance of the hearing.

3014.4 The notice required by § 3014.3 shall be supplied by the Director of the Office of Zoning showing the:

- (a) Calendar number of the petition;
- (b) Nature of the petition;
- (c) Name of the petitioner;

- (d) Property involved; and
- (e) Location, time, and date of the public hearing.

3014.5 The petitioner shall comply with the requirements of §§ 3015.7 through 3015.9 regarding filing of a sworn affidavit and maintenance of the posting.

3014.6 The Commission may give any additional notice of the hearing, including notice in the manner prescribed in § 3015, as it deems necessary or appropriate.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7868 (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, 8544 (October 20, 2000); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010).

3015 NOTICE OF CONTESTED CASE HEARINGS

3015.1 Notice of a contested case hearing pursuant to § 3022 shall be given in accordance with § 3014 and the additional requirements of this section.

3015.2 Notice of the hearing published in the D.C. Register shall include lot, square, and street address of the property involved; and the number of the Advisory Neighborhood Commission (ANC) area in which the property is located. This notice shall also cite the requirements for participation as a party.

3015.3 At least forty (40) days prior to a hearing, the Commission shall mail a copy of the notice to:

- (a) Owners of all property within two hundred feet (200 ft.) of the property included in the application; provided, however, in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of the condominium or cooperative that represents all of the owners of all such dwelling units;
- (b) Each person having a lease with the owner for all or part of any building located on the property involved in the application; and
- (c) The ANC for the area in which the property is located, or for any other ANC that is within two hundred feet (200 ft.) of the property involved in the application.

3015.4 When a Zoning Map amendment, planned unit development, air space development, or Zoning Commission review and approval pursuant to chapters 16, 18, 28, and 29 of this title is requested by a property owner for the property owned, the applicant shall give additional notice of the public hearing by posting

the property with notice of hearing at least forty (40) days in advance of the hearing.

- 3015.5 The notice required by § 3015.4 to be placed upon an applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.
- 3015.6 All notices required by § 3015.4 shall be supplied by the Director, and shall show the:
- (a) Calendar number of the application;
 - (b) Nature of the application;
 - (c) Name of the applicant;
 - (d) Property involved; and
 - (e) Location, time, and date of the public hearing.
- 3015.7 When required to post any notice by § 3015.4, the applicant shall file with the Director a sworn affidavit demonstrating compliance with §§ 3015.4 and 3015.5. This affidavit shall be filed not less than thirty (30) days prior to the public hearing. A form of affidavit supplied by the Director may be used, but is not required.
- 3015.8 The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage or other location of each sign.
- 3015.9 The applicant shall make a reasonable effort to maintain the posting by checking the signs weekly and reposting when necessary. The applicant shall swear or affirm at the hearing that this has been done.
- 3015.10 Notice of the public hearing pursuant to § 3015.3 shall not be a jurisdictional prerequisite to action by the Commission. It shall be intended to offer supplemental notice only.
- 3015.11 If a failure of notice under § 3015.3 is alleged and proven, the Commission may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis of these considerations, the Commission may determine whether the public hearing will be postponed, continued, or held as scheduled.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7870-71 (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, 8545 (October 20, 2000); as amended by Final Rulemaking published at 51 DCR 6837, 6850 (July 9, 2004); as amended by Final Rulemaking published at 52 DCR 63, 72 (January 7, 2005); as amended by Final Rulemaking and Order No. 04-05 published at 56 DCR 6181 (August 7, 2009); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

3016-3019 [RESERVED]

3020 HEARING PROCEDURES: GENERAL

3020.1 The presiding officer shall have 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) Dispose of procedural requests or similar matters, including motions to amend and to order hearings reopened;
- (e) Rule upon motions to consolidate applications or petitions for hearing;
- (f) Call, qualify, and examine witnesses;
- (g) Introduce into the record documentary or other evidence;
- (h) Request any party or person at any time during the hearing to state that party or person's position concerning any issues in the proceeding and theory in support of that position;
- (i) Rule upon the qualifications of witnesses offered as experts;
- (j) Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness; and
- (k) Take any other action authorized by this title or necessary under this chapter.

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

on cross-examination, including time limits and limitations on the scope of cross-examination, by the applicant or parties in support or opposition.

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

3020.4 If surprise to the applicant or petitioner or to a party in a contested case under § 3022 is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant, petitioner, or party sufficient time to offer rebuttal evidence. This evidence shall be filed with the Director at least fourteen (14) days before the hearing is resumed.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7871-73 (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, 8546 (October 20, 2000).

3021 RULEMAKING HEARINGS

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

3021.2 The rules in this section shall supplement the rules in §§ 3010, 3011, 3013, 3014, 3015, 3020, and 3024.

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

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

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

- (a) Call to order and opening statement by the presiding officer;
- (b) Introductory statement by Commission staff;
- (c) Consideration of pending motions and procedural matters;
- (d) Applicant's or petitioner's case;

- (e) Reports or statements by the Office of Planning and other public agency representatives;
- (f) Affected Advisory Neighborhood Commissions;
- (g) Persons in support of the application or petition; and
- (h) Persons in opposition to the application or petition.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7873 (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, 8546 (October 20, 2000).

3022 CONTESTED CASE HEARINGS

- 3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by chapters 16, 18, 28, and 29 of this title, as well as §§ 1709.21 and 2523.2, except as otherwise provided in § 3010.7.
- 3022.2 This section supplements the rules in §§ 3010, 3011, 3013, 3014, 3015, 3020, and 3024.
- 3022.3 Except for the applicant and the ANC, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, the following information:
- (a) The person's name and address;
 - (b) A request to appear and participate as a party;
 - (c) Whether the person will appear as a proponent or opponent of the application;
 - (d) If the person will appear through legal counsel and, if so, the name and address of the legal counsel;
 - (e) A list of witnesses who will testify on the person's behalf; and
 - (f) A written statement setting forth why the person should be granted party status, including reference to the following:

- (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the action requested of the Commission;
- (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 application before the Commission;
- (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Commission 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 action than those of other persons in the general public.

3022.4 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of § 3022.3 have been complied with and whether the specific information presented qualifies the person as a party. The Commission 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 action than those of other persons in the general public.

3022.5 A party may cross-examine any other party or person, except the Commission; provided, that the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.

3022.6 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b)(2001) (formerly codified at D.C. Code § 1-1509(b) (1999 Repl.)).

3022.7 Witnesses shall be examined and cross-examined orally under oath or affirmation.

3022.8 The order of procedure for presenting evidence at the hearing shall be as follows:

- (a) Call to order and opening statement by the presiding officer;
- (b) Introductory statement by Commission staff;
- (c) Consideration of pending motions and procedural matters;

- (d) Applicant's case;
- (e) Reports or statements by the Office of Planning and other public agency representatives;
- (f) Affected ANCs;
- (g) Parties in support of the application;
- (h) Persons in support of the application;
- (i) Parties in opposition to the application;
- (j) Persons in opposition to the application; and
- (k) Rebuttal by applicant.

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7873-76 (October 1, 1999); as amended by Final Rulemaking, 47 DCR 9347, 9349-50 (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, 8567-47 (October 20, 2000); as amended by Final Rulemaking published at 51 DCR 6837, 6850 (July 9 2004); as amended by Final Rulemaking published at 52 DCR 63, 72 (January 7 2005); as amended by Final Rulemaking and Order No. 06-32 published at 56 DCR 5052 (June 26, 2009); as amended by Final Rulemaking and Order No. 04-05 published at 56 DCR 6181 (August 7, 2009); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 3, 2011).

3023 EX PARTE COMMUNICATIONS

3023.1 In any proceeding that is a contested case within the meaning of D.C. Official Code § 2-502(8)(2001)(formerly codified at D.C. Code § 1-1502(8) (1999 Repl.)), all members of the Commission shall be prohibited from receiving or participating in any ex parte communication relevant to the merits of the proceeding.

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

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

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

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7876 (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, 8547 (October 20, 2000).

3024 CLOSING THE RECORD

3024.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer. Any other materials received by the Commission after the close of the record shall be returned by the Director and not received into the files of the Commission. 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.

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

3024.3 In a contested case proceeding under § 3022, the Commission shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing. These responses shall be filed within seven (7) days following the date by which the exhibits, information, or briefs were due.

3024.4 In a rulemaking under § 3021, the Commission may allow persons an opportunity to file written responses to any exhibits, information, or briefs submitted within the period designated by the Commission.

3024.5 The Commission reserves the right to reopen the record at any time prior to the issuance of a final decision. In a contested case under § 3022, notice of reopening the record shall be served upon all parties to the proceeding.

3024.6 [DELETED]

3024.7 The Commission may close the record at the end of a contested case hearing and vote either to approve or deny an application as its proposed action. The Commission may describe such conditions as the Commission desires to have included in its final decision or order, subject to the requirements of D.C. Official Code § 2-509(e) (2001) (formerly codified at D.C. Code § 1 - 1509(e) (1999 Repl.)), and §§ 3025.3, 3028.3, and 3028.4.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7876-77 (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, 8547 (October 20, 2000); as amended by Final Rulemaking published at 47 DCR 9741, 9743 (December 8, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

3025 POST-HEARING PROCEDURES: GENERAL

3025.1 Prior to filing the final decision, the Commission may on its own motion re-open the record and require further hearing on designated issues before the Commission.

3025.2 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or the party's authorized representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.

3025.3 A proposed action to amend the text of the Zoning Regulations or the Zoning Map, or to approve a planned unit development or air space development shall be referred to the National Capital Planning Commission for comment and review pursuant to § 492(b)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 774, 810; D.C. Official Code § 6-641.05 (formerly codified at D.C. Code § 5-417 (1994 Repl.))).

3025.4 The report of the National Capital Planning Commission shall be in writing. It also may be presented orally by the chairperson or a duly authorized representative.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7877 (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, 8547 (October 20, 2000).

3026 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

3026.1 In a contested case under § 3022, the parties are encouraged to submit to the Office of Zoning proposed findings of fact and conclusions of law within such time as the presiding officer may direct, which in any event shall not be less than seven (7) days after the transcript of the hearing is delivered to the Office of Zoning.

- 3026.2 To assist parties in preparing proposed findings of fact and conclusions of law, the Office of Zoning shall make available to all parties and to the public a generic model of the form and substance of findings and conclusions.
- 3026.3 Notice of the availability of the transcript shall be given to the parties in writing by the Director.
- 3026.4 Copies of proposed findings and conclusions shall be served by each party upon all other parties.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7877-78 (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, 8548 (October 20, 2000).

3027 PROPOSED ACTION

3027.1 The Commission may take a proposed action at the close of the hearing pursuant to §§ 3021 and 3022, or at a later time when the record is closed.

3027.2 In a rulemaking under § 3021, the following shall apply:

- (a) A proposed decision to amend the text of the Zoning Regulations or the Zoning Map shall be published in the D.C. Register as proposed rulemaking; and
- (b) A proposed decision not to amend the text or map shall not be published in the D.C. Register.

3027.3 In a contested case under § 3022, a proposed decision shall not be published in the D.C. Register.

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to chapters 16, 18, 28, and 29 of this title, as well as §§ 1709.21 and 2523.2, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting and, in the case of an application pursuant to § 2523, at the initial public meeting regarding the application.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7878 (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, 8548 (October 20, 2000); as amended by Final Rulemaking and Order No. 06-32 published at 56 DCR 5052 (June 26, 2009); as amended by Final Rulemaking and Order No. 04-05 published at 56 DCR 6181 (August 7, 2009); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010); as amended by Final Rulemaking and Order No. 09-21 published at 58 DCR 4788 (June 23, 2011).

3028 FINAL ACTION

- 3028.1 In a rulemaking under § 3021, to take final action to amend the text of the Zoning Regulations or the Zoning Map, the Commission may proceed following receipt of the report of the National Capital Planning Commission or after thirty (30) days of the referral required under § 3025, whichever is sooner; provided, that in no case shall the Commission take final action sooner than thirty (30) days after publication of the proposed rulemaking in the D.C. Register.
- 3028.2 In a rulemaking under § 3021, to take final action that does not amend the text of the Zoning Regulations or the Zoning Map, the Commission may proceed without referral to or report from the National Capital Planning Commission and without publication of proposed rulemaking in the D.C. Register.
- 3028.3 In a contested case under § 3022, to take final action to amend the Zoning Map or to approve planned unit development or air space development, the Commission may proceed following receipt of the report from the National Capital Planning Commission or after thirty (30) days of the referral required under § 3025, whichever is sooner.
- 3028.4 To take final action that does not amend the Zoning Map or that denies a planned unit development, the Commission may proceed without a referral to or report from the National Capital Planning Commission.
- 3028.5 The Commission shall issue its written order on an application or petition no later than forty-five (45) days after the Commission's vote to take final action on the application or petition.
- 3028.6 The final action of the Commission on an application or petition shall be in the form of a written order that shall be filed in the record.
- 3028.7 In a rulemaking proceeding under § 3021, the order shall be published in the D.C. Register as a final rulemaking action.
- 3028.8 In a contested case under § 3022, the order shall be accompanied by findings of fact and conclusions of law. The order shall be published in the D.C. Register. Prior to publication in the D.C. Register, copies of the order shall be served on any party who appeared and participated in the hearing in person or by authorized representative.
- 3028.9 A written order setting forth a final action shall become final and effective upon publication in the D.C. Register, unless the Commission specifies a later effective date. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by chapter 24 of this title, and upon

filing with the District of Columbia a covenant ensuring compliance with approved plans.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7878-79 (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, 8548-49 (October 20, 2000).

3029 RECONSIDERATION AND REFILING

- 3029.1 Requests for reconsideration of an application or petition dismissed without a hearing shall not be entertained.
- 3029.2 No application or petition essentially the same as that dismissed without a hearing shall be accepted for filing within six (6) months after dismissal; provided, that an application or petition dismissed without prejudice may be refiled at the convenience of the applicant or petitioner.
- 3029.3 An application or petition may be withdrawn prior to advertisement of a hearing. Following advertisement, an application or petition may be withdrawn only with the consent of the Commission. In either case, an application or petition shall not be accepted for refiling within six (6) months after the withdrawal.
- 3029.4 No application or petition essentially the same as that denied following a hearing shall be accepted for filing within one (1) year after denial.
- 3029.5 A motion for reconsideration, rehearing, or re-argument of a final order in a contested case under § 3022 may be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Commission shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final order in a contested case proceeding that is filed prior to the order having become final.
- 3029.6 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought. No request for rehearing shall be considered by the Commission 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.
- 3029.7 Within seven (7) days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.
- 3029.8 Neither the filing nor the granting of the motion shall stay a decision unless the Commission orders otherwise.

3029.9 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.

3029.10 A motion for reconsideration, rehearing, or re-argument of a final order in a rulemaking under § 3021 shall not be accepted or considered, except that a member of the Commission may initiate a motion for reconsideration up to thirty-five (35) days after the vote on the final action.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7879-80 (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, 8548-49 (October 20, 2000); as amended by Final Rulemaking and Order No. 12-11 published at 60 DCR 8967 (June 14, 2013).

3030 CONSENT CALENDAR

3030.1 The purpose of this section is to create an expedited procedure to be known as the "Consent Calendar." The procedure shall allow the Commission, in the interest of efficiency, to make, without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking, or other actions of the Commission, including corrections of inadvertent mistakes.

3030.2 For purposes of this section, "minor modifications" shall mean modifications of little or no importance or consequence.

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

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

3030.5 All written requests for placement of a matter on the Consent Calendar shall be made to the Director.

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

3030.7 The Director shall, in the Director's sole discretion, determine the appropriate form of public notice and any additional service, taking into account the nature of the request and any issues relating to efficiency and fairness.

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

- 3030.9 The Director shall provide written comments and recommendations to the Commission on each request for placement of a matter on the Consent Calendar.
- 3030.10 In reviewing requests for placement of a matter on the Consent Calendar, the Director may request advice from other District agencies, including the Office of the Attorney General.
- 3030.11 Based upon the written request for placement of a matter on the Consent Calendar, all supporting and opposing submissions and the reports of other District of Columbia agencies, the Director shall determine which matters shall be placed on the Consent Calendar for consideration and action by the Commission without public hearing at its monthly meeting.
- 3030.12 Any member of the Commission may remove any item from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or that is removed from the Consent Calendar shall be acted upon by the Commission according to the applicable procedures contained in other sections of this chapter.
- 3030.13 All relief granted by the Commission under this section shall be consistent with the intent of the Commission in approving its original order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7880-82 (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, 8549-50 (October 20, 2000).

3031-3034 [RESERVED]

3035 COLLEGE AND UNIVERSITY USES: ZONING COMMISSION APPROVAL

- 3035.1 Effective December 8, 2000, the Zoning Commission shall hear and decide all applications filed under § 3104 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.

- 3035.2 This section applies to all applications filed on or after December 8, 2000, with the Commission and to all applications filed before that date with the Board but for which the public hearing on the application has not commenced.
- 3035.3 The Board shall continue to hear and decide all applications for which the public hearing commenced before December 8, 2000, and, in the cases that it has heard and decided, all post-hearing motions under § 3126 and requests for modification of approved plans under § 3129.
- 3035.4 The Commission shall use the standards for special exception approval in § 3104, subject to the conditions specified in §§ 210, 507, 615, and 916, in reviewing and approving college and university uses.
- 3035.5 Except for § 3128 relating to the Commission's *sua sponte* review of Board orders and decisions, the Commission shall use the Board of Zoning Adjustment Rules of Practice and Procedure in chapter 31 of this title that apply to special exception proceedings in processing, reviewing, and approving college and university uses.
- 3035.6 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(3). The provisions of § 3181 relating to the administration of fees shall apply, except that in an application to be heard by the Commission, the applicant shall appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal at a meeting or hearing as a preliminary matter to hearing the application.

SOURCE: Final Rulemaking published at 47 DCR 9725, 9738 (December 8, 2000).

3036-3039 [RESERVED]

3040 FILING FEES

- 3040.1 At the time of filing an application or petition for an amendment to the Zoning Map, the applicant or petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).
- 3040.2 At the time of filing a petition for an amendment to the text of the Zoning Regulations, the petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).
- 3040.3 At the time of filing an application for approval of a planned unit development, air space development, or any other action where review of a specific site or building plan is required, the applicant shall pay a filing fee of six hundred fifty dollars (\$650).
- 3040.4 At the time of filing an application for a modification to an approved planned unit development, air space development, or any other action where review of a

specific site or building plan was required, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).

3040.5 At the time of filing a request for approval of an extension of time to the validity of an order for a previously approved planned unit development, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).

3040.6 All fees shall be paid by check or money order made payable to the D.C. Treasurer.

SOURCE: Final Rulemaking published at 46 DCR 7855, 7882-83 (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, 8550 (October 20, 2000); as amended by Final Rulemaking and Order No. 10-09/10-10 published at 57 DCR 9480 (October 8, 2010).

3041 HEARING FEES

3041.1 If the Commission schedules a public hearing on an application or petition for an amendment to the Zoning Map, prior to advertisement of the hearing, the applicant or petitioner shall pay a hearing fee in accordance with the following schedule:

- (a) For rezoning to any R-1, R-2, or R-3 District, for each acre or part of an acre, six hundred fifty dollars (\$650);
- (b) For rezoning to any R-4 or R-5-A District, for each acre or part of an acre, one thousand six hundred and twenty-five dollars (\$1,625);
- (c) For rezoning to any R-5-B District, for each acre or part of an acre, three thousand two hundred fifty dollars (\$3,250);
- (d) For rezoning to any R-5-C, R-5-D, or R-5-E District, for each acre or part of an acre, six thousand five hundred dollars (\$6,500);
- (e) For rezoning to any SP, W, or CR District, for each twenty thousand square feet (20,000 ft.²) or part of that area, two thousand six hundred dollars (\$2,600);
- (f) For rezoning to any C-1 or C-2 District, for each ten thousand square feet (10,000 ft.²) or part of that area, one thousand six hundred twenty-five dollars (\$1,625);
- (g) For rezoning to any C-3, C-4, or C-5 District, for each ten thousand square feet (10,000 ft.²) or part of that area, three thousand two hundred fifty dollars (\$3,250);

- (h) For rezoning to any C-M or M District, for each twenty thousand square feet (20,000 ft.²) or part of that area, two thousand six hundred dollars (\$2,600);
- (i) For any overlay district, the fee shall be computed in accordance with the requirement for the underlying zone;
- (j) The maximum hearing fee for rezoning to any Residence District (R-1, R-2, R-3, R-4, or R-5) shall be sixty-five thousand dollars (\$65,000); and
- (k) For an application or petition that proposes rezoning to more than one (1) zone district or is in the alternative, the fee shall be the total of the amounts for the area devoted to each proposed district or alternative computed separately.

3041.2 An applicant or petitioner shall not be required to pay a hearing fee for any alternative districts added by the Commission at the time it sets the case for hearing.

3041.3 If the Commission schedules a public hearing on a petition for an amendment to the text of the Zoning Regulations, prior to the advertisement of the hearing, the petitioner shall pay a hearing fee of three hundred twenty-five dollars (\$325) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of one thousand three hundred dollars (\$1,300).

3041.4 If the Commission schedules a public hearing on an application for approval of a planned unit development, air space development, or any other action where review of a specific site plan or building plan is required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule; provided that for those applications exempted from the setdown process, the fees shall be paid at the time the application is filed:

- (a) For each one hundred square feet (100 ft.²) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, seven dollars (\$7), with a maximum of sixty-five thousand dollars (\$65,000);
- (b) For each one hundred square feet (100 ft.²) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit, thirteen dollars (\$13);
- (c) In the case of an application that combines dwelling units and other uses, the fee shall be the total of the amounts for each use computed separately; and

(d) There shall be no charge for the hearing on the second stage of a two-stage planned unit development application.

3041.5 In the case of an application or petition combining two (2) or more actions described in this section, the fee charged shall be the greatest of all the fees computed separately.

3041.6 If the Commission schedules a public hearing on an application for a modification to an approved planned unit development, air space development, or any other action where review of a specific site or building plan was required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee equal to twenty six percent (26%) of the original hearing fee or one thousand three hundred dollars (\$1,300), whichever is greater.

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7883-85 (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, 8550 (October 20, 2000); as amended by Final Rulemaking published at 50 DCR 8824, 8825 (October 17, 2003); as amended by Final Rulemaking and Order No. 10-09/10-10 published at 57 DCR 9480 (October 8, 2010).

3042 WAIVER OF HEARING FEES

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

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

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

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

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7885-86 (October 1, 1999).

3043 EXEMPTION FROM FEES

- 3043.1 A department, office, or agency of the government of the District of Columbia is not required to pay a filing or hearing fee for an application, 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 used for a government building or use.
- 3043.2 The following person or entities shall not be required to pay a filing or hearing fee for a petition to amend the Zoning Map or the text of the Zoning Regulations:
- (a) A department, office, or agency of the government of the District of Columbia, including an Advisory Neighborhood Commission;
 - (b) The National Capital Planning Commission; or
 - (c) A citizens' association or association created for civic purposes that is not for profit.

SOURCE: Final Rulemaking, 46 DCR 7855, 7886 (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 (October 20, 2000); as amended by Final Rulemaking and Order No. 09-10 published at 57 DCR 3487 (April 23, 2010); as amended by Final Rulemaking and Order No. 10-09/10-10 published at 57 DCR 9480 (October 8, 2010).

3044 [RESERVED]

3045 MISCELLANEOUS FEES

- 3045.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as follows:
- (a) The fee for providing a zoning certification is fifty dollars (\$50.00);
 - (b) The fee for photocopying is twenty cents (20¢) per page;
 - (c) Repealed;
 - (d) Repealed; and
 - (e) The fee for retrieving Office of Zoning records located off-site is fifteen dollars (\$15.00) per record. This fee will be waived when the records are sought for noncommercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by a representative of the news media. The Office of Zoning may not require advance payment of the fee unless the requester has previously failed to pay fees in a timely fashion.

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7886 (October 1, 1999); as amended by Final Rulemaking published at 50 DCR 9391 (November 7, 2003); as amended by Final Rulemaking published at 53 DCR 9921, 9923 (December 15, 2006); as amended by Final Rulemaking and Order No. 10-09/10-10 published at 57 DCR 9480 (October 8, 2010); Final Rulemaking and Order No. 11-20 published at 59 DCR 2915 (April 13, 2012).

3099 DEFINITIONS

3099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Commission - the Zoning Commission for the District of Columbia.

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

Member - a member of the Zoning Commission of the District.

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

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

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

SOURCE: Final Rulemaking published at 46 DCR 7855, 7886-87 (October 1, 1999).