

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

■ \_\_\_\_\_

IN THE MATTER OF:

BOARD OF ZONING ADJUSTMENT ORDERS

||  
||  
||  
||  
||

Case No.  
09-01

■ \_\_\_\_\_

Monday,  
March 30, 2009

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case No. 09-01 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman  
MICHAEL G. TURNBULL, FAIA, Commissioner  
(OAC)  
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary  
DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS  
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes  
from the Public Hearing held on March 30,  
2009.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Proposed Action  
Z.C. Case No. 09-01  
Request by the Office of Planning for text  
amendments to Zoning Regulations to allow time  
extensions and modifications  
of BZA orders  
Karen Thomas . . . . .6  
Jeff Utz . . . . . 10  
Steven Sher . . . . . 10  
Vote to approve 09-01 (3-0-2) . . . . . 14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

P-R-O-C-E-E-D-I-N-G-S

6:35 p.m.

CHAIRPERSON HOOD: Okay. We're going to go ahead and get started.

Good evening, ladies and gentlemen. This is the public hearing of the Zoning Commission for Monday, March 30th, 2009. My name is Anthony Hood. Joining me are Commissioners May and Turnbull. We're also joined by the Office of Zoning staff, Ms. Schellin and Ms. Hanousek; Office of Attorney General, Ms. Glazer; Office of Planning, Ms. Steingasser and Ms. Thomas.

Okay. The subject of this evening's hearing is Zoning Commission case No.09-01. This is a request by the Office of Planning for text amendments to Zoning Regulation to allow time extensions and modifications of BZA orders.

Notice of today's hearing was published in the D.C. Register on February 6th, 2009.

1                   We're going to go through 11 DCMR  
2                   3021 procedures as follows: preliminary  
3                   matters, presentation by the Office of  
4                   Planning, report of other Government agencies,  
5                   if any, report of ANCs; all ANCs are affected,  
6                   organizations and persons in support,  
7                   organizations and persons in opposition.

8                   Time constraints. Organizations,  
9                   five minutes. Individuals, three minutes.

10                  All persons appearing for the  
11                  Commission are fill out two witness cards.  
12                  And upon coming before the Commission, please  
13                  turn your microphone on and state your name  
14                  and address, and begin speaking. When  
15                  finished, please turn your microphone off.

16                  The staff will be available  
17                  throughout the hearing to discuss procedural  
18                  questions.

19                  Please turn off all beepers and  
20                  cell phones at this time so not to disrupt  
21                  these proceedings.

22                  At this time, the Commission will

1 consider any preliminary matters.

2 Ms. Schellin, do we have any  
3 preliminary matters?

4 MS. SCHELLIN: No, sir.

5 CHAIRPERSON HOOD: Okay.

6 Colleagues, as we know, this is pretty  
7 straightforward. We may have some questions,  
8 so I'm going to ask the Office of Planning to  
9 give us a very abbreviated version.

10 Ms. Thomas?

11 MS. THOMAS: Yes, sure. Good  
12 evening, Mr. Chairman, Members of the  
13 Commission. I'm Karen Thomas with the Office  
14 of Planning.

15 And I pretty much stand on the  
16 record with respect to our March 20th report.  
17 I just highlight the submission we made today,  
18 March 30th, if you have copies of it. What I  
19 tried to address there was we inadvertently  
20 missed some comments submitted requesting that  
21 we toll the expiration date of an order when  
22 the time extension request is filed and we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 adopt proposed amendments as an emergency rule  
2 making.

3 We addressed the toll on the  
4 expiration date on the advice of the American  
5 General to consider whether the request be  
6 filed within a certain date before expiration  
7 of the order and to consider what the status  
8 of the order would be between the date the  
9 order expired and the date the BZA decision  
10 becomes final. And to that end, we submitted  
11 three additional provisions to Section 3130,  
12 and that would be 3130.8, 3130.9 and 3130.10.  
13 And if you have the addendum, you can take a  
14 look at it. I'll be happy to answer any  
15 questions. Thank you.

16 CHAIRPERSON HOOD: Thank you very  
17 much, Ms. Thomas.

18 Ms. Steingasser you want to add  
19 anything.

20 MS. STEINGASSER: No, sir.

21 CHAIRPERSON HOOD: Okay.

22 Okay. Commissioner Turnbull?

1                   COMMISSIONER TURNBULL: Thank you,  
2 Mr. Chair.

3                   I have one question. On 3130.7,  
4 which talks about a time extension to 3130.6  
5 shall not exceed two years or one year for an  
6 electronic equipment facility. Why the  
7 difference?

8                   MS. THOMAS: Yes, in 3130.1, on  
9 the time limits on board action, that section  
10 specifically calls out electronic equipment  
11 facilities. And so we just tried to keep that  
12 consistent.

13                  COMMISSIONER TURNBULL: I'm just  
14 curious though, why do we have the one thing  
15 called out?

16                  MS. STEINGASSER: The EEFs are  
17 currently called out for just a one-year  
18 approval from the BZA. They have one year to  
19 commence, to file for a building permit. We  
20 wanted to be consistent with the approval  
21 times, whether it was a two-year or a one-  
22 year. If I can remember back, the EEFs, we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 did not want them to have the standard two-  
2 year because of the potential adverse effect  
3 they can have on streetscapes and street  
4 activity. So we wanted to make sure that if  
5 they were approved as a special exception,  
6 they would go straight to permit and not  
7 linger out there.

8 COMMISSIONER TURNBULL: Okay.  
9 Thank you.

10 CHAIRPERSON HOOD: Okay. I have  
11 no questions. I didn't see any reports of any  
12 other government agencies.

13 Do we have anyone present from any  
14 of the ANCs?

15 Okay. So what I'd like to do is  
16 call Mr. Sher and Mr. Eptein to the table.

17 And, oh, I'm sorry. If you can  
18 introduce yourself? Oh, Mr. Rice? Okay.

19 MR. UTZ: Utz.

20 CHAIRPERSON HOOD: Utz? Utz. Mr.  
21 Utz. Sorry about that.

22 What I'll do is start with Mr.

1           Utz, since I mispronounced who you were.

2                       MR. UTZ:  No problem.  Happens all  
3           the time.

4                       Well, we, I believe, too, would  
5           just like to --

6                       PARTICIPANT:  Please state your  
7           name.

8                       MR. UTZ:  Yes, it's Mr. Utz, Jeff  
9           Utz.  I do have two witness cards I'll bring  
10          over there that I filled out.

11                      We, too, would just like to stand  
12          on the record in support of the case as  
13          amended by today's OP report.  We think it's  
14          a good move.  It puts the BZA powers in  
15          alignment with the PUD powers that you all  
16          have and think that's a good thing for  
17          consistency sake.

18                      CHAIRPERSON HOOD:  Thank you.

19                      MR. UTZ:  Thanks.

20                      CHAIRPERSON HOOD:  Mr. Sher?

21                      MR. SHER:  Mr. Chairman and

22          Members of the Commission, for the record, my

1 name is Steven E. Sher, the Director of Zoning  
2 and Land Use Services with the law firm of  
3 Holland & Knight.

4 We support what has been proposed  
5 before you by the Office of Planning. I just  
6 had a chance to quickly scan what they filed  
7 today and I don't have any difficulty with  
8 that either. I thought it was useful that in  
9 their report dated March 20th, they added the  
10 proposal to set what the fee would be for an  
11 extension which was not otherwise provided  
12 for, so I think that's in there as well.

13 The only thing I would say about  
14 that is it sets the fee on a sliding scale  
15 based on a percentage of what the original  
16 application fee was and I don't know whether  
17 it just doesn't make more sense to have a flat  
18 fee for whatever the extension is. You charge  
19 \$400 for filing an extension for a PUD  
20 regardless of what the other fees for a PUD  
21 are. You might pay a big fee for a commercial  
22 PUD and a not very big fee for a residential

1 PUD, but the extension is just the same. I  
2 don't know that the consideration that goes  
3 into deciding the extension is significantly  
4 different depending on what the fee for the  
5 original case was, so we might think about  
6 whether that ought to be the same \$400 that  
7 you charge for a PUD extension or whether you  
8 just want to leave it. I don't really care  
9 much. My clients will pay it whatever it is.  
10 So that would be the only comment I'd have.

11 CHAIRPERSON HOOD: Thank you very  
12 much. I'm not all up to the fees.

13 Ms. Steingasser, could you help  
14 us?

15 MS. STEINGASSER: We have no  
16 objection to a flat fee or a percentage-based  
17 fee. The Office of Zoning had recommended the  
18 percentage-based.

19 CHAIRPERSON HOOD: That was the  
20 recommendation from the Office of Zoning?  
21 Okay. So I think we're just -- anybody want  
22 to -- we've heard Mr. Sher's -- I don't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 necessarily want to get into -- I don't.

2 Okay.

3 Thank you, Mr. Sher. We heard  
4 you.

5 MR. SHER: That's fine.

6 CHAIRPERSON HOOD: All right.  
7 Appreciate all your comments.

8 Is there anyone else to testify?  
9 Do we have anyone else on the list? I don't  
10 see anyone in the audience. Not seeing  
11 anyone.

12 Okay. Colleagues, I think this is  
13 pretty straightforward. We don't need to  
14 belabor. I would not want us to belabor.

15 Oh, I'm sorry. Matt, you have any  
16 questions?

17 PARTICIPANT: No, I don't.

18 CHAIRPERSON HOOD: Okay. That's  
19 our new colleague. He usually has questions  
20 during the hearing. Forgive me for oversight.  
21 I won't forget that next Monday when it's  
22 about 11:30. But you know what, Matt? I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 don't mind because you and I are all right.

2 I like you. All right?

3 Okay. With that, what I would  
4 like to do, colleagues, is move approval of  
5 Zoning Commission Case No. 09-01, time  
6 extensions and minor modifications issued by  
7 the Board of Zoning Adjustment with the  
8 updated version, which is submitted in the  
9 Office of Planning's amendment addendum dated  
10 March 30th, 2009 and ask for a second.

11 COMMISSIONER MAY: Second.

12 CHAIRPERSON HOOD: Move and  
13 properly seconded. Any further discussions?  
14 Any further discussion?

15 All those in favor?

16 ALL: Aye.

17 CHAIRPERSON HOOD: Ms. Schellin,  
18 it sounds unanimous of those present. Could  
19 you record the vote?

20 MS. SCHELLIN: Yes. Staff records  
21 the vote 3-0-2 to approve Zoning Commission  
22 case No. 09-01 for proposed action.

1 Commissioner Hood moving, Commissioner Mays  
2 seconding, Commissioner Turnbull in favor.  
3 Commissioners Keating and Jeffries not  
4 present, not voting.

5 CHAIRPERSON HOOD: Ms. Schellin,  
6 do you we have anything else before us?

7 MS. SCHELLIN: No, sir.

8 CHAIRPERSON HOOD: Okay. With  
9 that, this hearing is adjourned. Thank you  
10 everyone for their participation.

11 (Whereupon, the meeting was  
12 adjourned at 6:46 p.m.)

13

14

15

16

17

18

19

20

21

22