

## TITLE 11 – ZONING

### SUBTITLE Y     **BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE**

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## CHAPTER 1 ADMINISTRATION

### **100 BOARD OF ZONING ADJUSTMENT JURISDICTION; AUTHORITY; POWERS**

- 100.1 This subtitle supplements procedures set out in the Zoning Act of 1938; the Civil Infractions Act; the Foreign Missions Act; 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.
- 100.2 This subtitle shall be effective on the effective date of this title, and applicable in its entirety to applications or appeals filed after that date with the Board of Zoning Adjustment for the District of Columbia, and to applications or appeals filed as of that date.
- 100.3 The Board, pursuant to § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code §§ 6-641.07(f) and (g)(2)-(3) (2012 Repl.)), shall have original jurisdiction to grant variances under Subtitle X, Chapter 10 and special exceptions under Subtitle X, Chapter 9, and to exercise all other powers authorized by the Zoning Act.
- 100.4 The Board, pursuant to § 8 of the Zoning Act, D.C. Official Code §§ 6-641.07(f) and (g)(1), shall also hear and decide zoning appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations, Title 11 DCMR.
- 100.5 The Board, pursuant to § 301 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, as amended; D.C. Official Code § 2-1803.01 (2012 Repl.)) (Civil Infractions Act), shall entertain and decide appeals (civil infraction appeals) timely filed by persons aggrieved by orders issued by Administrative Law Judges pursuant to the Civil Infractions Act, or by the Mayor, involving infractions of subchapter 1 of Title 6 of the District of Columbia Official Code, 2012 Repl., pertaining to the height of buildings, or of the Zoning Regulations.
- 100.6 The Board, pursuant to § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, 286; D.C. Official Code § 6-1306 (2012 Repl.)), shall have the authority to make determinations regarding the location, replacement, or expansion of chanceries in the R, RF, RA, MU-1, MU-2, MU-15, MU-16, and M-23 zones in the District of Columbia, and to hear and decide appeals of administrative decisions relating to a chancery based in whole or in part upon the Zoning Regulations and Zoning Map, subject to the procedures and criteria established in § 206 of the Foreign Missions Act, D.C. Official Code § 6-1306, and in the pertinent provisions of the Zoning Regulations, including Subtitle X, Chapter 2.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **101 GENERAL PROVISIONS**

- 101.1 In any conflict between this subtitle and any other provisions of this title, the other provisions of this title shall govern.
- 101.2 In any conflict within this subtitle between general and specific provisions, the specific provisions shall govern.
- 101.3 In any conflict between this subtitle and the D.C. Administrative Procedure Act, the Act shall govern.
- 101.4 In any conflict between this subtitle and the Zoning Act, the Act shall govern.
- 101.5 Legal advice from the Office of the Attorney General may be requested or received at any time.
- 101.6 Informal requests for advice or moot questions shall not be considered by the Board.
- 101.7 When used in this subtitle the following terms shall have the meanings ascribed:
- (a) ANC: Advisory Neighborhood Commission;
  - (b) Board: Board of Zoning Adjustment; and
  - (c) Director: Director of the Office of Zoning or his/her designee.
- 101.8 In this subtitle the term “affected Advisory Neighborhood Commission” or “affected ANC” refers to the ANC within which the property that is the subject of an application is located; except if an area represented by another ANC is directly across the street from property that is the subject of an application the term shall also refer to that ANC.
- 101.9 Except for Subtitle Y §§ 100 through 105, 604.6, 700.3, and 1602.5 the Board may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **102 ORGANIZATION**

- 102.1 The Board shall consist of five (5) members and shall have the duties and powers set forth in this subtitle.

- 102.2 The Board, pursuant to D.C. Official Code § 6-641.07, shall consist of three (3) Mayoral appointees, one (1) member of the National Capital Planning Commission (or staff designee), and one (1) member of the Zoning Commission (or staff designee).
- 102.3 Three (3) members of the Board shall constitute a quorum. A quorum is necessary to conduct a hearing or meeting, but a lesser number may publicly announce a postponement or adjournment. If necessary, the Director may announce a postponement.
- 102.4 The Board shall elect its Chairperson and Vice-Chairperson at its first meeting held in February of each calendar year, unless a vacancy occurs at some other point during the calendar year, at which point the Board shall hold elections in a timely manner.
- 102.5 The Chairperson shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chairperson, the Vice-Chairperson shall preside.
- 102.6 The Chairperson of the Board shall be selected from one (1) of the three (3) Mayoral appointees to the Board.
- 102.7 A Board member may vote or cast an absentee vote at a meeting only if the Board member attended all of the hearings on the application or appeal or reviewed the complete record. Nothing in this subsection shall be construed to require a Board member to read the transcript in order to vote on a subsequent application to extend or modify the order granting the application.
- 102.8 While a majority of the Board members present at a meeting or hearing may take a procedural action, any final action on an application or appeal requires the concurrence of at least three (3) of the five (5) Board members.
- 102.9 No Board member shall vote on any post-hearing motion unless the Board member participated in, and voted on, the original decision, or the Board member reviewed the complete record.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **103 MEETINGS AND HEARINGS**

- 103.1 On or about the first (1<sup>st</sup>) day of the calendar year, the Director shall publish in the *D.C. Register* a twelve-month (12-month) calendar or schedule of meeting dates, and continually update the Office of Zoning electronic calendar to reflect the meeting dates.
- 103.2 The meetings and hearings of the Board shall be open to the public; provided that, for the reasons cited in § 405(b) of the D.C. Administrative Procedures Act, as amended by the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350;

D.C. Official Code § 2-575(b)), including receiving advice from the Office of Attorney General on legal matters and training, the Board may hold a closed meeting, but only after the Board meets in public session and votes in favor of entering into or scheduling a closed meeting.

- 103.3 All records of the Board shall be filed with the Office of Zoning and shall be open to public inspection.
- 103.4 Subject to the direction of the Board and its Chairperson, the Director shall perform the following duties:
- (a) Conduct all correspondence of the Board, send out all notices required by this title, attend all meetings and hearings of the Board, compile all required records, and maintain the necessary files and indexes;
  - (b) Enter in the Board case record the number assigned to each application or appeal, the name of the applicant or appellant, a short description of the premises (by street number or otherwise), the nature of the application or appeal, and the final disposition of the proceeding;
  - (c) Enter in the Board case record all continuances, postponements, dates of sending notices, and other steps taken or acts done by the Board or its officers on behalf of the Board;
  - (d) Issue and revise application and appeal forms to ensure presentation of adequate information required for the understanding and processing of applications and appeals; and
  - (e) Certify the zoning of a property upon the request of the public subject to the payment of the fee set forth in Subtitle Z § 1604.
- 103.5 The proposed public agenda for each meeting shall be posted on the Office of Zoning website and available to the public at least four (4) days prior to each meeting.
- 103.6 Copies of the agenda shall be available to the public at the meetings or hearings.
- 103.7 Nothing in this section shall preclude the Board from amending the agenda at a meeting or hearing.
- 103.8 A meeting of the Board shall be held in accordance with a schedule to be established by the Board pursuant to Subtitle Y § 103.1, and additional meetings may be scheduled or cancelled, as needed. Meetings may be called by the presiding officer or by three (3) Board members.
- 103.9 The Board shall schedule hearings for the purpose of receiving evidence and testimony on specific applications and appeals advertised in advance.

- 103.10 Meetings and hearings shall be held at such time and place as the Board or the Office of Zoning may designate.
- 103.11 When postponing or continuing a contested case, the Board shall make reasonable efforts to schedule the public hearing within thirty (30) days.
- 103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the purposes of this section, the form of the public announcement may be a sign placed at the entrance to the Board's hearing room.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **104 TRANSCRIPTS OF PUBLIC MEETINGS AND HEARINGS**

- 104.1 The transcripts of Board public meetings and hearings are a matter of public record and shall be available through the Office of Zoning.
- 104.2 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 by the Director or who may be an employee of the Office of Zoning.
- 104.3 The transcript prepared by the reporter shall be the sole official transcript of public meetings and hearings.
- 104.4 Copies of the transcript shall be made available by the Office of Zoning fourteen (14) days after the public meeting or hearing.
- 104.5 A motion to correct a transcript may be made only when the alleged error is substantive.
- 104.6 A motion to correct a transcript shall be filed with the Board within ten (10) days after the transcript has been made available in the Office of Zoning.
- 104.7 Copies of the motion to correct a transcript shall be served simultaneously on all parties or their authorized representatives.
- 104.8 The Board shall rule on a motion to correct a transcript at a public meeting or hearing.
- 104.9 Objections to the motion to correct a transcript shall be filed with the Board within five (5) days of service upon the parties.
- 104.10 The Board, on its own motion at a public meeting or hearing, may order changes to a transcript at any time for any reason.

104.11 If a motion to correct a transcript is granted, the corrected transcript shall be made available by the Office of Zoning fourteen (14) days after the Board grants the motion.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **105 RULES OF ETHICS**

105.1 The following Rules of Ethics are intended to be complementary to, and not in place of, the ethical requirements applicable to all District officials, as those requirements are stated in the Ethics Manual for the District of Columbia and the District and federal laws it references. To the extent there is any conflict between the rules that follow and requirements described in the Ethics Manual, the more stringent requirement shall govern.

105.2 Members of the Board shall at all times maintain a high level of ethical conduct in connection with the performance of their official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the government of the District of Columbia.

105.3 Members of the Board shall avoid all actions which might result in, or create the appearance of, the following:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of government.

105.4 Members of the Board shall not ask for or accept, either directly or through someone else, any gift, gratuity, favor, loan, entertainment, or anything of value from a person who has or is seeking a contract with the District of Columbia; is regulated by the District; or has any interest that may be affected by the Board member's performance of official duties.

105.5 In any proceedings before the Board, all members of the Board shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding.



- 105.6 The prohibition in Subtitle Y § 105.5 shall begin to apply upon the referral of any application or appeal pursuant to Subtitle Y §§ 400.4 and 500.4, and shall not terminate until the final disposition of the case.
- 105.7 The prohibition in Subtitle Y § 105.5 shall not extend to communication between the Board and the Office of Zoning concerning matters of record.
- 105.8 A member of the Board shall disqualify himself or herself in a proceeding before the Board in which the Board member's impartiality might reasonably be questioned, including but not limited to instances where:
- (a) The member of the Board has a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) The member of the Board served as a representative in the matter in controversy, or has been a material witness concerning it;
  - (c) The member of the Board knows, or reasonably should have known, that he or she, individually or as a fiduciary, or the Board member's spouse, domestic partner, parent or child wherever residing, or any other member of the Board member's family residing in the Board member's household, has an economic interest in the matter in controversy or in a party to the proceeding or has any other more than *de minimus* interest that could be substantially affected by the proceeding; or
  - (d) The member of the Board or their spouse, domestic partner, parent, or child wherever residing, or any other member of the Board member's family residing in the Board member's household:
    - (1) Is a party to the proceeding, or an officer, director, or trustee of a party;
    - (2) Is acting as a lawyer or otherwise representing a party in the proceeding; or
    - (3) Is known to have a more than *de minimus* interest that could be substantially affected by the proceeding.
- 105.9 A member of the Board subject to disqualification by the terms of Subtitle Y § 105.8 may disclose on the record the basis of the member's disqualification and may ask the parties and their representatives to consider whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and their representatives all agree that the Board member should not be disqualified, and the Board member is then willing to participate, the Board member may participate in the proceeding.

- 105.10 No member of the Board shall represent any person before the Board or Zoning Commission other than himself or herself while a member of the Board.
- 105.11 No former member of the Board shall represent any person before the Board or Zoning Commission other than himself or herself for a period of one (1) year after the date that the member's service on the Board terminates.
- 105.12 For a period of two (2) years after the date on which the member's service on the Board terminates, no former member of the Board shall assist in representing, including aiding, counseling, advising, and consulting, another person in a particular matter involving a specific party before the Board or Zoning Commission other than himself or herself, if he or she participated personally and substantially in the particular matter while a member of the Board.
- 105.13 No former member of the Board shall represent any person other than himself or herself in a particular matter for which the Board member had a substantial involvement while a member of the Board.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 2 PUBLIC PARTICIPATION**

### **200 APPEARANCE AND REPRESENTATION**

- 200.1 In a proceeding before the Board, any person or party may appear on that person or party's own behalf.
- 200.2 Any person or party may be represented by any other person duly authorized in writing to do so.
- 200.3 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 Board.
- 200.4 The applicant shall submit a letter of authorization to the Office of Zoning at least fourteen (14) days prior to the public hearing.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **201 APPLICATIONS AND APPEALS**

- 201.1 Any variance or special exception proceeding before the Board shall be initiated by the filing of an application with the Board on the form and in the manner that the Director may prescribe.
- 201.2 A variance or special exception case shall be considered as a contested case proceeding, as defined by D.C. Official Code § 2-502(8). Public hearings on contested cases shall be processed and conducted according to the provisions of the D.C. Administrative Procedure Act.
- 201.3 Any application for a chancery or foreign mission subject to the Foreign Missions Act shall be initiated by the filing of an application with the Board on the form and in the manner that the Director may prescribe; such case shall be considered as a rulemaking proceeding.
- 201.4 Any appeal case proceeding before the Board shall be initiated by the filing of an appeal with the Board on the form and in the manner that the Director may prescribe.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **202 DECORUM AND GOOD ORDER**

- 202.1 This section applies to all proceedings before the Board.
- 202.2 No person shall utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct, including the display of any signs or objects, that has the effect of (as determined by the presiding officer) impeding any meeting, hearing, or other proceeding or the orderly conduct of official business of any

member, officer, employee, or agent of the Board or the Office of Zoning; or enter or remain in, during the course of any meeting, hearing, or other proceeding of the Board, any area set aside for use by persons other than the general public.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **203 EVIDENCE**

203.1 The provisions of this section apply as follows:

- (a) This section applies in its entirety to zoning appeals and variance and special exception applications;
- (b) Except for Subtitle Y § 203.2, the provisions of this section shall not apply to civil infraction appeals; provided, however, that if a party in a civil infraction appeal uses a demonstrative aid during oral argument, the demonstrative aid shall be filed in the record in accordance with the requirements of Subtitle Y §§ 203.3 through 203.6; and
- (c) The provisions of Subtitle Y § 203.3 through 203.6 shall apply in a chancery proceeding.

203.2 Exhibits may be offered in evidence at the hearing.

203.3 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced to a size not to exceed tabloid size of eleven inches (11 in.) by seventeen inches (17 in.).

203.4 If models are used, images of the models not exceeding tabloid size of eleven inches (11 in.) by seventeen inches (17 in.) shall be submitted into the record.

203.5 If PowerPoint presentations, computer simulations, slides, or similar media are used, a paper copy of the exhibit shall be filed with the Board.

203.6 If a video is used, six (6) copies of the video on DVD shall be filed with the Board.

203.7 In special exception and variance applications, and zoning and civil infraction appeals, the Zoning Act of 1938, as amended, the Zoning Regulations, and the official Zoning Map, shall be a part of the record of every proceeding before the Board, and it shall not be necessary for any party or person formally to move their introduction into evidence.

203.8 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant or appellant need only provide a complete citation to the source of the document and indicate where the public may view the document.

- 203.9 An individual offered as an expert witness shall provide written evidence to the Board of expertise including but not limited to educational attainment, licensing, accreditation, and examples of relevant or comparable work and employment.
- 203.10 An expert witness shall be present at the hearing and be available for questions from the Board and cross examination by any other party.
- 203.11 The applicant, appellant, public agency representatives, additional parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.
- 203.12 In a contested case, witnesses may be examined or cross-examined by the Board, the applicant, or any party so determined by the Board under this subtitle.
- 203.13 In a chancery case under Subtitle X, Chapter 2, only the Board may examine witnesses. A public agency representative may pose a question to a witness through the presiding officer.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **204 COMPUTATION OF TIME**

- 204.1 In computing any period of time, days shall refer to calendar days, unless otherwise specified.
- 204.2 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.
- 204.3 The last day of the period computed as provided in Subtitle Y § 204.2 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 official District of Columbia holiday.
- 204.4 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, and the paper or notice is served upon the party by mail, three (3) days shall be added to the prescribed period.
- 204.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended or reduced by the Board with notice to all parties or announcement on the record.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **205 SERVICE OF DOCUMENTS; METHODS OF SERVICE; PROOF OF SERVICE**

- 205.1 Any document 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 documents. When a party has appeared through a representative, service may be made upon the representative of record.
- 205.2 Where there are numerous parties to a proceeding, the Board may designate representative parties or make other special provisions regarding the service of documents.
- 205.3 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 to the party's address of record by either handing the document to the person to be served, handing it to a responsible individual of suitable age, or leaving it in a conspicuous place;
  - (b) By express mail, when properly addressed and with charges prepaid;
  - (c) By first-class mail, when deposited in the United States mail, properly stamped and addressed;
  - (d) By facsimile, when transmitted with the proper facsimile number corresponding to the intended recipient;
  - (e) By electronic mail (e-mail), when transmitted with the proper e-mail address; or
  - (f) In any specific manner prescribed by the Board in a proceeding.
- 205.4 Each document required to be served upon a party and filed by a party, whether in hard copy, by e-mail, or electronically, must include a signed statement that the document was served on the parties. Such a statement is known as a "certificate of service." The certificate of service shall identify the individual serving the paper, the parties served and their addresses, the way it was served, and the date served.
- 205.5 A certificate of service may be represented by:
- (a) Written acknowledgement of the party served or that party's representative of record; or
  - (b) The written statement of the person making the service.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **206 SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL**

- 206.1 This section includes provisions for the public to file documents electronically through the Interactive Zoning Information System (IZIS) and by e-mail with the Office of Zoning. It also permits the Office of Zoning to serve orders and notices by e-mail.
- 206.2 The submission of any comments electronically following the procedures set forth in this section constitutes filing for all purposes under these rules.
- 206.3 Comments may be submitted electronically through IZIS or by e-mail; except that no comments shall be submitted into the record electronically after 9:00 a.m. on the day of the hearing.
- 206.4 All comments submitted electronically through IZIS shall:
- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it; and
  - (b) Describe the nature of the documents (for example, “Comments in Support,” “Comments in Opposition,” or “General Comments”).
- 206.5 All comments submitted by e-mail shall:
- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;
  - (b) Describe the nature of the documents (for example, “Comments in Support,” “Comments in Opposition,” or “General Comments”);
  - (c) Include the case number and case name in the subject line of the e-mail; and
  - (d) Be sent to [bzasubmissions@dc.gov](mailto:bzasubmissions@dc.gov).
- 206.6 The filing of any documents electronically following the procedures set forth in this section constitutes filing for all purposes under these rules.
- 206.7 All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF) and shall not be filed after 9:00 a.m. on the day of the hearing.
- 206.8 All documents filed electronically through IZIS shall:
- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;

- (b) Contain the case number assigned by the Office of Zoning;
- (c) Describe the nature of the documents (for example, “Letter in Support,” “Letter in Opposition”, or “Request for Party Status”); and
- (d) Not exceed the maximum allowable size of eight (8) megabytes.

206.9 All documents filed by e-mail shall:

- (a) Include the name, mailing address, telephone number, and e-mail address of the person filing it;
- (b) Describe the nature of the documents (for example, “Letter in Support,” “Letter in Opposition”, or “Request for Party Status”);
- (c) Include the signature of the originator;
- (d) Contain no more than ten (10) pages;
- (e) Include the case number and case name in the subject line of the e-mail; and
- (f) Be sent to [bzasubmissions@dc.gov](mailto:bzasubmissions@dc.gov).

206.10 All filings submitted through IZIS on or before 11:59 p.m. shall be recorded as being received on the same day.

206.11 All e-mail filings sent between 12:01 a.m. and 5:00 p.m. on any Office of Zoning business day shall be recorded on the date it was received.

206.12 The filing date for an e-mail filing received between 5:01 p.m. and 12:00 a.m. shall be recorded on the next business day.

206.13 The date and time recorded in the correct Office of Zoning electronic mailbox at [bzasubmissions@dc.gov](mailto:bzasubmissions@dc.gov), shall be conclusive proof of when it was received.

206.14 Parties shall be responsible for monitoring their e-mail accounts and for opening e-mails.

206.15 The Office of Zoning shall serve orders and notices by e-mail to any party who provides an e-mail address. The party is responsible for ensuring that the Office of Zoning has an accurate, up-to-date e-mail address.

206.16 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected ANCs, the Commissioner representing the affected single member district, and the Office of ANCs (“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 e-mail.



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

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016); Final Rulemaking & Order No. 08-06I published at 64 DCR 2791 (March 17, 2017).

## **CHAPTER 3 APPLICATION REQUIREMENTS**

### **300 APPLICATION REQUIREMENTS: SPECIAL EXCEPTION AND VARIANCE**

- 300.1 Each application seeking approval of a special exception or variance pursuant to Subtitle X, Chapter 9 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 300.2 No special exception or variance application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.
- 300.3 The application shall be filed on a form as may be designated by the Director.
- 300.4 The owner of property for which zoning relief is sought, or an authorized representative, shall file an application with the Office of Zoning.
- 300.5 If the owner will be represented by a third party, including the lessor or contract purchaser of the property, a letter of authorization signed by the owner authorizing the representative to act on the owner's behalf with respect to the application, and a certification signed by the representative that they have read the Board's Rules of Practice and Procedure (Subtitle Y) and are able to competently represent the owner shall be submitted into the record. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.
- 300.6 An application shall contain either:
- (a) A memorandum from the Zoning Administrator stating that a building permit application has been filed and certifying the required zoning relief; or
  - (b) A certification by an architect or attorney certifying the required zoning relief and that:
    - (1) The architect or attorney is duly licensed to practice in the District of Columbia;
    - (2) The architect or attorney is currently in good standing and otherwise entitled to practice in the District of Columbia; and
    - (3) The relief requested is required in order for the proposed structure to be erected or the proposed use to be established.
- 300.7 Each application shall be made in an appropriate manner provided by the Director.

300.8

In addition to the memorandum or certification required by Subtitle Y § 300.6 and the information required by Subtitle Y § 300.5 relating to appearance and representation, the applicant shall furnish two (2) paper copies of all information required by the application form at the time of filing the application, including:

- (a) A completed application form;
- (b) A plat, drawn to scale and certified by a survey engineer licensed in the District of Columbia or by the D.C. Office of the Surveyor, showing the boundaries and dimensions of the existing and proposed structures and accessory buildings and structures on the specific piece of property, if necessary;
- (c) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and building materials, and where applicable, parking and loading plans;
- (d) A detailed statement of existing and intended use of the structure, or part thereof;
- (e) A detailed statement of how the application meets each element of the review standards for special exceptions specified in Subtitle X § 901, or for variances specified in Subtitle X § 1002;
- (f) Three (3) or more color images, not to exceed letter-size (8½ in. x 11 in.), showing the pertinent features of the structure, and property involved (front, rear, and sides, if possible and applicable);
- (g) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and two (2) copies of self-stick labels printed with their names and addresses;
- (h) The name and address of each person having a lease with the owner for all or part of any structure located on the property involved in the application;
- (i) A copy of the certificate of occupancy or other documentation showing the current authorized use(s) on the property. In cases where a change in one (1) nonconforming use to another nonconforming use is requested, a copy of the certificates of occupancy or other documentation showing the past authorized uses;
- (j) A copy of the resume of any expert witness who will be testifying in the case;
- (k) A written summary of the testimony of all witnesses;

- (l) A statement of the efforts that have been made to apprise the affected ANC and other individuals and community groups concerning the application, if any; and
- (m) If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant may provide a complete citation to the source of the document and indicate where the public may view the document.

300.9 An application for a school plan shall also include a plan for the school showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including, but not limited to, the following:

- (a) Buildings and parking and loading facilities;
- (b) Screening, signs, streets, and public utility facilities;
- (c) Athletic and other recreational facilities;
- (d) A description of all activities conducted or to be conducted on the school, and of the capacity of all present and proposed school development; and
- (e) Any other relevant information.

300.10 Except as provided in Subtitle Y §§ 300.14 and 300.15 with respect to traffic and transportation reports, all statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the applicant may wish to offer in evidence at the public hearing shall be filed at the time of filing the application.

300.11 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

- (a) The Office of Planning; and
- (b) The affected ANC.

300.12 Nothing in this subsection is intended to affect the discretion of the Director to reject an application for failure to comply with the provisions of this subsection or this title.

300.13 If the application includes a report by a transportation consultant or expert, the applicant shall provide a copy of the report to the District Department of Transportation on the same day of filing with the Office of Zoning.

300.14 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Board any traffic or transportation

reports to be submitted in support of the application. All such reports shall include the resume of the expert who prepared the report. At or before the time of filing the traffic or transportation report with the Board, the applicant shall serve a copy of the report on the affected ANC, the Office of Planning, and the District Department of Transportation.

- 300.15 No later than twenty-one (21) days before the date of the hearing for the application, the applicant shall file with the Board any supplemental statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other supplemental material that the applicant may wish to offer into evidence at the hearing. Any map, plan, or other document, or matter readily available to the general public need only be fully referenced and the source given by the applicant in place of filing a copy.
- 300.16 Except for rebuttal or impeachment, the applicant may not offer any document not previously identified in the required filings, unless the presiding officer determines that the witness or document was not known or available to the applicant at the time the filings were due.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **301 CHANCERY APPLICATION REQUIREMENTS**

- 301.1 The owner of property upon which a chancery is proposed to be located, replaced, or expanded, or an authorized representative, shall file an application with the Board.
- 301.2 The application of an authorized representative shall include a letter signed by the owner authorizing the representative to act on the owner's behalf with respect to the application.
- 301.3 The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.
- 301.4 An application shall contain a letter or other transmittal from the United States Department of State indicating that the Department of State has reviewed the application as required by § 205 of the Foreign Missions Act, D.C. Official Code § 6-1305, and has approved the application for the purposes of filing and processing by the Board.
- 301.5 Each application shall be made on the appropriate form provided by the Director. In addition to the information required by this section relating to appearance and representation, the applicant shall furnish all information required by the application form at the time of filing the application, including, as applicable:
- (a) A plat, drawn to scale and certified by a survey engineer licensed in the District of Columbia or by the D.C. Office of the Surveyor, and showing the lot numbers and lot area of all properties within the square;

- (b) A site plan showing the boundaries and dimensions of the existing and proposed structures and accessory buildings and structures, and, if applicable, any area of relief requested;
- (c) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and, where applicable, parking and loading plans;
- (d) A detailed statement addressing the review standards for chancery uses specified in Subtitle X § 201.8; and
- (e) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property, and self-stick labels printed with their names and addresses.

301.6 If the application is for a location in a low- to medium-density residence zone, a written statement by the applicant attesting to:

- (a) A calculation of the land area within the square, or other area determined pursuant to Subtitle X § 201.4, of all low- to medium-density residence zoned lots, identified by lot numbers;
- (b) For each lot within the square devoted to a use other than a residential use within a low- to medium-density residence zone, the number and date of the certificate of occupancy authorizing the use and the use designation authorized; and
- (c) A copy of each certificate of occupancy referenced in Subtitle Y § 301.6(b).

301.7 If the application is for a location in a low- to medium-density residence zone and an area other than a square has been used to calculate the percentage of existing uses pursuant to Subtitle X § 201.4, a statement shall be included explaining the basis for using the area, which shall not be based solely on previous Board action for another location.

301.8 When calculating the land area devoted to residential use, the area shall include the entire lot area of any property devoted to residential use in the computation of the land area.

301.9 If the chancery is to be located in a project with more than residential uses, the applicant shall calculate the land area within the square devoted to residential use by using a ratio equal to the proportion of residential use to other uses in the project.

301.10 Except as provided in Subtitle Y § 301.13, all statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans,

photographs, or other exhibits that the applicant may wish to offer in evidence at the public hearing shall be filed at the time of filing the application.

- 301.11 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant need only provide a complete citation to the source of the document and indicate where the public may view the document.
- 301.12 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:
- (a) The Office of Planning; and
  - (b) The affected ANC.
- 301.13 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Board any traffic or transportation reports to be submitted in support of the application. At or before the time of filing the traffic or transportation report with the Board, the applicant shall serve a copy of the report on the ANC for the area within which the property is located, the Office of Planning, and the District Department of Transportation.
- 301.14 No later than twenty-one (21) days before the date of the hearing for the application, the applicant shall file with the Board any supplemental statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other supplemental material that the applicant may wish to offer into evidence at the hearing.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06P published at 65 DCR 11927 (October 26, 2018).

## **302 ZONING APPEAL FILING REQUIREMENTS**

- 302.1 Any person aggrieved or any officer or department of the government of the District of Columbia or the federal government affected by an order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely zoning appeal with the Board. For the purposes of this subsection, a discretionary decision not to bring an enforcement action for a violation of the Zoning Regulations shall not be deemed a “refusal.”
- 302.2 A zoning appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.

- 302.3 If the decision complained of involves the erection, construction, reconstruction, conversion, or alteration of a structure or part thereof, the following paragraphs shall establish the latest date on which a zoning appeal may be filed:
- (a) No zoning appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof. For purposes of this subparagraph, the phrase “under roof” means the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place; and
  - (b) The provisions of this subsection shall not relieve an appellant of the jurisdictional requirement in Subtitle Y § 302.2 of filing a timely zoning appeal.
- 302.4 Notwithstanding Subtitle Y §§ 302.2 and 302.3, for purposes of establishing the timeliness of a zoning appeal under this subsection, an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal.
- 302.5 A zoning appeal may only be taken from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building permit or certificate of occupancy, may be appealed unless the document modifies or reverses the original decision or reflects a new decision.
- 302.6 The Board may extend the sixty (60) day deadline for the filing of a zoning appeal only if the appellant demonstrates that:
- (a) There are exceptional circumstances that are outside of the appellant’s control and that could not have been reasonably anticipated that substantially impaired the appellant’s ability to file a zoning appeal to the Board; and
  - (b) The extension of time will not prejudice the parties to the zoning appeal.
- 302.7 Each appeal shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 302.8 No appeal shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 302.9 The appeal shall be filed on a form as may be designated by the Director.
- 302.10 An authorized representative may file a zoning appeal on behalf of the appellant. The zoning appeal shall include a letter signed by the appellant authorizing the representative to act on the aggrieved person’s behalf with respect to the zoning



appeal. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the aggrieved person.

302.11 Each zoning appeal shall be made in an appropriate manner provided by the Director.

302.12 The appellant shall furnish two (2) copies of all information required by the form at the time of filing the appeal, including:

- (a) The name of the administrative official or public agency whose decision is the subject of the zoning appeal;
- (b) A statement identifying the administrative decision appealed, by permit or certificate number, or other identifying information, together with a copy of the decision;
- (c) The square(s) and lot(s) and/or street address of the property involved, and the zone district within which it is located;
- (d) The name and address of the owner, lessee, operator, and/or contract purchaser of the property that is the subject of the appeal, if not the appellant;
- (e) A statement demonstrating that the zoning appeal meets the jurisdictional requirement of timeliness, as specified in Subtitle Y § 302.2, which shall specifically indicate:
  - (1) The date upon which the appellant first had notice or knowledge of the decision being appealed; and
  - (2) The circumstances under which such notice or knowledge occurred;
- (f) A statement as to how the appellant has standing to bring the appeal, specifically with regard to the administrative decision being appealed:
  - (1) For an appeal brought by an officer or department of the government of the District of Columbia or the federal government the statement shall explain how they are affected by the administrative decision; and
  - (2) For all other appeals, the statement shall explain how the appellant is aggrieved;
- (g) A statement of the issues on appeal, identifying the relevant subsection(s) for each issue of the Zoning Regulations;

- (h) All statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the appellant may wish to offer in evidence at the public hearing;
- (i) A copy of the resume of any expert witness who will be testifying in the case;
- (j) A written summary of the testimony of all witnesses; and
- (k) If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the appellant need only provide a complete citation to the source of the document and indicate where the public may view the document.

302.13 An appeal may not be amended to add issues not identified in the statement of the issues on appeal submitted in response to Subtitle Y § 302.12(g) unless the appellee impeded the appellant's ability to identify the new issues identified.

302.14 Except for rebuttal or impeachment, the appellant may present no witness nor offer any document not previously identified in the filings required by Subtitle Y § 302 unless the presiding officer determines that the witness or document was not known or available to the appellant at the time the filings were due.

302.15 No appeal shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the zoning appeal and all accompanying documents have been served upon:

- (a) The person whose administrative decision is the subject of the appeal;
- (b) The owner, of the property involved in the administrative decision, if not the appellant; and
- (c) The affected ANC, if not the appellant.

302.16 No later than twenty-one (21) days before the date of the public hearing on the zoning appeal, the appellant shall file with the Board any supplemental documents.

302.17 No later than seven (7) days before the public hearing, the appellee and all persons with party status and the affected ANC shall file any responsive briefs and supporting information, whether in support of or opposition to the appeal. All filings shall be accompanied by a certificate of service.

302.18 No later than three (3) days before the public hearing, the appellant may file a brief and supporting information in reply to any of the responsive briefs.

302.19 Upon motion by appellee, party, or intervenor and for good cause, the Board may elect to waive Subtitle Y § 302.17 and permit any responsive briefs and supporting information, whether in support of or opposition to the appeal at the public hearing.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **303 CIVIL INFRACTION APPEAL FILING REQUIREMENTS**

303.1 Any person aggrieved by an order issued by an Administrative Law Judge (ALJ) pertaining to alleged civil infractions of the Height Act and the Zoning Regulations may file a timely civil infraction appeal with the Board.

303.2 A civil infraction appeal shall be filed within fifteen (15) days after service of the order.

303.3 An authorized representative may file a civil infraction appeal on behalf of the appellant. The civil infraction appeal shall include a letter signed by the appellant authorizing the representative to act on the appellant's behalf with respect to the civil infraction appeal. The Board may at any time require additional evidence demonstrating the authority of the representative to act for the appellant.

303.4 A civil infraction appeal shall be taken through the filing of a Notice of Appeal on the form provided by the Director. The appellant shall furnish two (2) copies of all information required by the form at the time of filing the appeal, including:

- (a) That an appeal is taken;
- (b) A copy or identification of the order from which the appeal is taken;
- (c) A concise statement indicating why the appellant believes the final decision is in error;
- (d) The full name, street address, and telephone number of the appellant and the appellant's counsel, if any;
- (e) Whether oral argument is requested; and
- (f) The signature of the appellant or the appellant's counsel.

303.5 At the time of filing the civil infraction appeal, the fee shall be paid pursuant to Subtitle Y, Chapter 16.

303.6 A Notice of Appeal shall not be accepted unless accompanied by a certificate of service demonstrating that a copy of the Notice and all accompanying documents have been served upon each party admitted to participate in the proceeding, who shall hereafter be referred to as the "other parties".

303.7

Upon receiving a complete appeal, the Director shall issue a briefing order outlining the documents that are pertinent to the appeal, including the following:

- (a) The appellant shall serve and file a brief that includes:
  - (1) A table of contents, with page references, and a table of cases alphabetically arranged with asterisks placed before the cases chiefly relied upon, and statutes, rules, regulations, and other authorities cited, with references to the pages of the brief where they are cited;
  - (2) A statement of the issues presented for review;
  - (3) A statement of the facts of the case. A statement will first indicate briefly the nature of the case, the course of proceedings, and its disposition by the ALJ. There will follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record;
  - (4) An argument, which may be preceded by a summary. The argument shall contain the contentions and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied upon; and
  - (5) A short conclusion stating the precise relief sought; and
- (b) The appellee and any intervenor may serve and file a brief within forty (40) days of service of the appellant's brief; and the appellant may serve and file a reply brief within twenty-one (21) days of service of the appellee's brief.

303.8

Each brief must contain or be accompanied by a certificate of service.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 4 PRE-HEARING AND HEARING PROCEDURES: APPLICATIONS**

### **400 REVIEW AND PROCESSING OF APPLICATIONS**

- 400.1 The Director shall review for completeness every application filed with the Board within five (5) days of its receipt.
- 400.2 Upon completing the review of an application, the Director shall notify the applicant in writing of any deficiency. The notice shall list the information necessary to make the application complete and the date the information must be received, which shall not be less than five (5) days after the date of notice. If the applicant fails or refuses to correct the deficiencies in the application by the date stated, the Director shall not accept the application for filing.
- 400.3 As soon as an application is accepted for filing by the Director, the Director shall place a copy of the application in the public record of the Board.
- 400.4 Upon acceptance of an application, the Director shall provide a notice of filing to:
- (a) The applicant;
  - (b) The affected ANC, with a copy of the application form;
  - (c) The affected Single-Member District ANC Commissioner;
  - (d) The Office of Planning;
  - (e) The District Department of Transportation; and
  - (f) The Councilmember for the ward within which the property is located.
- 400.5 Unless waived by an applicant, a public hearing, even if expedited under Subtitle Y § 400.7, shall be held on each application. Applications shall be heard in the order in which they are filed with the Board and appear on the calendar. The hearing date may be advanced or postponed by order of the Board for good cause shown.
- 400.6 All applications shall be immediately scheduled for hearing consistent with the notice provisions of this subtitle.
- 400.7 The Board shall have the authority to expedite applications; provided:
- (a) The Office of Planning recommends expediting the case and indicates the reason an expedited processing is necessary and desirable; and
  - (b) Expediting the application shall not result in removing another application from the public hearing agenda for that date.

## **401 EXPEDITED REVIEW**

- 401.1 An applicant may waive its right to a hearing for an eligible application and request an expedited review process subject to the provisions of this section.
- 401.2 An eligible application is an application for:
- (a) A modification to a theoretical subdivision resulting from an addition to a one (1) dwelling unit building pursuant to Subtitle C § 305.8;
  - (b) An addition to a dwelling or flat or new or enlarged accessory structures pursuant to Subtitle D § 5201 or Subtitle E § 5201; or
  - (c) A park, playground, swimming pool, or athletic field pursuant to Subtitle U § 203.1(d).
- 401.3 Each application shall be accompanied by a waiver of the applicant’s right to a public hearing made on the appropriate form provided by the Director.
- 401.4 Subject to the removal process described in Subtitle Y §§ 401.7 and 401.8, an eligible application that includes a waiver of hearing will be placed on an expedited review calendar and decided without hearing at the Board’s next regularly scheduled session after:
- (a) The completion of the public notice procedures set forth in Subtitle Y § 402; and
  - (b) The completion of the affected ANC review period of thirty (30) days from the date it receives notice of the application, excluding Saturdays, Sundays, and holidays, plus an additional fourteen (14) days.
- 401.5 Notice of expedited review shall be given in the same manner and include the same information as required by Subtitle Y §§ 402.2 through 402.5, except that references to “public hearing” or “hearing” shall mean “expedited review” and all other requirements of Subtitle Y § 402 shall apply with the same proviso.
- 401.6 The public notice of an expedited review and the affected ANC notice of an application requesting expedited review shall also indicate:
- (a) The procedure for requesting the removal of the application from the expedited review calendar is as described in Subtitle Y §§ 401.9 and 401.10; and
  - (b) That the only public notice of the hearing date for a removed application will be the posting of that date in the Office of Zoning beginning on the

date that the application was removed and continuing until the date of such hearing.

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

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

401.8 An application tentatively placed on an expedited review calendar also will be removed and rescheduled for a hearing if requested by the following entities or persons in accordance with Subtitle Y § 401.9, unless the request is denied by the presiding officer pursuant to Subtitle Y § 401.10:

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

401.9 A request to remove made pursuant to Subtitle Y § 401.8 shall:

- (a) Be filed with the Office of Zoning no later than fourteen (14) days prior to the date that the expedited review is scheduled;
- (b) Be accompanied by a statement indicating that the requester, or the requester's representative, intends to appear as a witness at the hearing; and
- (c) Include a summary proffer of the testimony to be given at that time.

401.10 The presiding officer shall grant a request to remove an application made pursuant to Subtitle Y § 401.8 unless the proffered testimony is irrelevant, in which case the request shall be denied.

401.11 Orders granting an application approved by expedited review need not contain findings of facts or conclusions of law, but shall reflect the nature of the relief granted and any conditions imposed.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06G published at 64 DCR 22 (January 6, 2017).

## **402 PUBLIC NOTICE REQUIREMENTS**

402.1 Not less than forty (40) days before the public hearing on an application, the Director shall give notice of public hearing by:

- (a) Publishing the notice of public hearing in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the applicant;
- (c) Providing a copy of the notice of public hearing to the affected ANC, and for any other ANC that is within two hundred feet (200 ft.) of the property involved in the application;
- (d) Providing a copy of the notice of public hearing to the owners of all property within two hundred feet (200 ft.) of the subject property; provided, however, that 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 of the association of the condominium or cooperative that represents all of the owners of the dwelling units;
- (e) Providing a copy of the notice of public hearing to each person having a lease with the owner for all or part of any building located on the subject property;
- (f) Providing a copy of the notice of public hearing to the Office of Planning and all other appropriate government agencies;
- (g) Providing a copy of the notice of public hearing to the Councilmember for the ward within which the property is located; and
- (h) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

402.2 The notice of public hearing on an application shall include:

- (a) The case number of the application;
- (b) The name of the applicant;



- (c) The citation to the legal authority pursuant to which the application has been filed;
- (d) The nature of the proposed zoning relief;
- (e) The square(s) and lot(s) and/or street address of the property involved;
- (f) The location, date, and time of the public hearing;
- (g) The number of the affected ANC; and
- (h) In the case of a special exception or variance application, the requirements for participation as a party.

402.3 The applicant shall give additional notice of the public hearing by posting the property with notice of hearing in a form that is prescribed by the Director at least fifteen (15) days in advance of the public hearing.

402.4 The notice required by Subtitle Y § 402.3 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.

402.5 The notice required by Subtitle Y § 402.3 shall be removed by the applicant within two (2) days after the conclusion of the public hearing.

402.6 The notice required by Subtitle Y § 402.3 shall be supplied by the Director indicating the:

- (a) The case number of the application;
- (b) The name of the applicant;
- (c) The nature of the application;
- (d) The square(s) and lot(s) and/or street address of the property involved; and
- (e) The location, time, and date of the public hearing.

402.7 The Board may give any additional notice of the public hearing that it deems necessary or appropriate.

402.8 The applicant shall comply with the requirements of Subtitle Y §§ 402.9 and 402.10 regarding filing of a sworn affidavit and maintenance of the posting.

402.9 When required to post any notice by Subtitle Y § 402.3, the applicant shall complete and file with the Director a completed affidavit of posting form, demonstrating compliance with Subtitle Y §§ 402.3 and 402.4. This affidavit shall be filed not less than five (5) days prior to the public hearing.

- 402.10 The applicant shall maintain the posting by checking the signs at least once every five (5) days and reposting as necessary. The applicant shall file an affidavit of maintenance of the posting between two (2) and six (6) days prior to the public hearing.
- 402.11 If the Board finds a failure or defect in the notice of public hearing, the Board shall determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:
- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
  - (b) Attendance or lack thereof at the public hearing; and
  - (c) The nature and extent of the construction and/or use proposed under the application.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2). Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

### **403 PARTIES: GENERAL GUIDELINES**

- 403.1 This section and Subtitle Y § 404 only apply to applications for special exceptions and variances because parties are permitted to participate in those proceedings. These provisions do not apply to chancery applications, which are rulemaking proceedings and therefore no parties are allowed.
- 403.2 The use of the term “person” includes entities.
- 403.3 All persons may present testimony before the Board, but parties may also present witnesses, cross-examine witnesses, file pleadings and proposed orders, receive pleadings and proposed orders filed by other parties, and receive the final order issued by the Board.
- 403.4 Being a party is not a prerequisite to filing a petition to review a Board decision with the District of Columbia Court of Appeals.
- 403.5 The following persons automatically have party status:
- (a) The applicant; and
  - (b) The affected ANC; except that if the subject property is located on a street that serves as a boundary line between two ANC’s, both ANCs are automatic parties.
- 403.6 In a variance or special exception proceeding before the Board, a party shall be afforded all the procedural rights provided in this subtitle, including the right to receive a copy of any:

- (a) Service by any other party in the case of documents at the same time or before the document is filed with the Board; and
- (b) Written notice of any decision or order entered in the case.

403.7 In all variance or special exception proceedings before the Board, a party may:

- (a) Submit motions and requests to the Board, and respond to any motions or requests submitted to the Board by others;
- (b) Present witnesses in support of the party's position;
- (c) Cross-examine all other parties and persons testifying in the case;
- (d) Submit proposed findings of fact and conclusions of law; and
- (e) Exercise all other procedural rights provided in this subtitle.

403.8 In a chancery proceeding before the Board, no person shall have the standing of a party.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **404 REQUESTING PARTY STATUS**

404.1 Except for the Applicant and the affected ANC, to participate as a party in a proceeding before the Board, any affected person shall file with the Board a Request for Party Status on the form and in the manner that the Director may prescribe. The person requesting party status and their authorized representatives, if any, shall provide the following information in their initial filing with the Board:

- (a) Name, mailing address, telephone number, and e-mail address;
- (b) An identification of the application by number, the applicant's name, and the address of the property that is the subject of the application;
- (c) A request to appear and participate as a party;
- (d) Whether the person will appear as a proponent or opponent of the application;
- (e) If the person will appear through legal counsel or other authorized representation and, if so, the name and address of the legal counsel or other authorized representation;

- (f) If the person will be represented by an individual, the request shall contain a written authorization that includes the power of the representative to bind the person in the case before the Board;
- (g) If the party status request is not being made by an individual, but by an association, corporation, partnership, government agency, or other similar entity, the request shall include proof that the entity authorized the persons filing the request to do so. The proof may consist of a resolution of the person's board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board;
- (h) A list of witnesses who will testify on the person's behalf, a written summary of the testimony of all witnesses, and a complete and professional resume for any expert who may be called to testify at the public hearing; and
- (i) 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 Board;
  - (2) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
  - (3) The distance between the person's property and the property that is the subject of the application before the Board;
  - (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Board is approved or denied; and
  - (5) An explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

404.2 The Board shall determine whether to grant or deny party status requests at the opening of the first public hearing on the application except the Board may consider a party status request at a public meeting scheduled at least fourteen (14) days prior to the public hearing, if the person requesting party status requests advance consideration on the Request for Party Status form.

404.3 A Request for Party Status that is to be considered at a public hearing shall be

filed with the Board not less than fourteen (14) days prior to the public hearing.

- 404.4 A Request for Party Status that is requested to be considered at a public meeting shall identify the public meeting date sought and shall be filed with the Board not less than fourteen (14) days prior to that date.
- 404.5 If there is no public meeting scheduled within thirty (30) days of the public hearing, the person may request that the Chairperson schedule a special public meeting to hear the party status request.
- 404.6 At or before the time of filing the request, the person requesting party status shall serve a copy of the request on the applicant and the affected ANC.
- 404.7 At the time of the filing request, the person requesting party status shall file an affidavit of service to all parties with the Board.
- 404.8 Any opposition to a party status request by the applicant or affected ANC shall be filed within seven (7) days following the date by which it was served. An applicant's or affected ANC's failure to file a timely opposition shall be deemed signifying no objection to the Request for Party Status.
- 404.9 Replies to any opposition by the person requesting party status will not be accepted into the record.
- 404.10 A person requesting party status must be present at the public hearing or meeting at which the request is being considered; however, the attendance of the applicant or affected ANC at the public meeting is discretionary. Failure of the person or their representative to appear shall be deemed to constitute the withdrawal of the party status request.
- 404.11 During the portion of a public meeting in which a party status request is being considered, the Board may call forward the person making the request as well as the Applicant or affected ANC if an objection was timely made pursuant to Subtitle Y § 404.8. The Board may put questions to the person making the request and the Applicant or affected ANC and to hear argument on the issue.
- 404.12 The Board shall determine who will be recognized as a party. In so determining, the Board shall consider whether the provisions of Subtitle Y § 404.1 have been complied with and whether the specific information presented qualifies the person as a party.
- 404.13 The Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.
- 404.14 No person may request reconsideration of the denial of their party status request.

- 404.15 If a Request for Party Status is denied, another Request for Party Status may not be made.
- 404.16 If a person granted party status no longer wishes to participate in the application, the person or their representative shall file written notice of that intent, which shall be served on the other parties. Upon the filing of such notice, the person shall no longer be considered a party.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **405 REFERRALS TO AND REPORTS OF PUBLIC AGENCIES**

- 405.1 The provisions of this section apply as follows:
- (a) This section except for Subtitle Y § 405.8 applies in its entirety to all variance and special exception applications and all appeals; and
  - (b) Except for the provisions of Subtitle Y § 405.8, this section shall not apply to chancery proceedings.
- 405.2 The Office of Zoning shall refer all applications to the appropriate public agencies for review and comment within ten (10) days of the receipt of the application.
- 405.3 When an application is referred in advance of the public hearing on the application to any public agency for a report and recommendation, the report and recommendation of that agency shall be filed with the Board at least ten (10) days before the date set for the public hearing.
- 405.4 The Office of Planning shall report on the application’s compliance with each element of the special exception standards specified in Subtitle X § 901 and of any special condition applicable to the special exception, and each element of the variance standards specified in Subtitle X § 1002.
- 405.5 The Board shall give “great weight” to the written report of the Office of Planning pursuant to D.C. Official Code § 6-623.04.
- 405.6 Upon the request of the Board, the Director shall notify the public agency of the required attendance of an agency representative at the public hearing.
- 405.7 The failure of an agency to provide a report does not prevent the Board from hearing and deciding an application.
- 405.8 The Office of Zoning shall make the following referrals:
- (a) To the Office of Planning for review and comment, and shall specifically request a determination of the municipal interest;

- (b) To the Secretary of State for review and comment, and shall specifically request a determination of the federal interest, special security requirements, and the extent to which the site is capable of being adequately protected, as set forth in Subtitle X §§ 202.1(a), (c), (d), and (f); and
- (c) If the application would require the construction, demolition, or alteration of a building located in a historic district, the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark, the application shall be referred to the Historic Preservation Review Board, and if the property is located in the Old Georgetown District as described in D.C Official Code § 6-1201 it shall also be referred to the Commission of Fine Arts for its review and report as to whether the substantive criteria of Subtitle X § 202.2 have been met.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **406            ADVISORY    NEIGHBORHOOD    COMMISSION    (ANC) REPORT**

406.1            This section applies to an affected ANC.

406.2            The Board shall give "great weight" to the written report of the ANC that is received prior to the date of a Board meeting to decide the application provided that it contains the following:

- (a)            The case name and number;
- (b)            The date of the public meeting of the ANC to consider the application occurred;
- (c)            A statement that proper notice of that public 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 public meeting;
- (e)            The issues and concerns of the ANC about the application, as related to the standards against which the application shall be judged;
- (f)            The recommendation, if any, of the ANC as to the disposition of the application;
- (g)            The outcome of the vote on the motion to adopt the report to the Board; and
- (h)            The signature of the ANC Chairperson or Vice-Chairperson.

- 406.3 If an ANC wishes to participate in the hearing, it must file its written report with the Board at least seven (7) days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.
- 406.4 The oral testimony of the ANC representative shall not be given great weight unless accompanied within seven (7) days by written documentation approved by the respective ANC, which supports the testimony.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **407 MOTIONS PROCEDURE**

- 407.1 A motion is a request by parties for the Board to take an action.
- 407.2 Unless made during a hearing, all motions shall be in writing. The first page of every motion shall contain: the parties' names, the case number, and the name of the presiding officer, if known. Every motion shall state the legal and factual reasons for the motion and the requested action of the Board.
- 407.3 At the time of filing any motion, a party must serve all other parties.
- 407.4 Unless otherwise provided by these rules or ordered by the presiding officer, all parties opposing a motion shall have seven (7) days from the service of the motion to file and serve a response.
- 407.5 The presiding officer may decide any procedural motion including motions to continue without holding a hearing.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **408 HEARING PROCEDURES: GENERAL PROVISIONS**

- 408.1 The presiding officer at a public hearing on an application shall have the authority to:
- (a) Call the public hearing to order;
  - (b) Consider preliminary matters, including, but not limited to party status requests, motions, and qualifying expert witnesses;
  - (c) Conduct the public hearing;
  - (d) Rule upon offers of proof and receive relevant evidence;
  - (e) Exclude unduly repetitious, immaterial, or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;



- (f) Adjourn a public hearing and establish the date when the public hearing will be continued;
- (g) Close the public hearing and record;
- (h) Take action to maintain decorum and order; and
- (i) Take any other action authorized by or necessary under this subtitle.

- 408.2 Except as provided in Subtitle Y § 408.4, the applicant and all parties (except an affected ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an affected ANC) in opposition shall collectively have an amount of time equal to that of the applicant and parties in support, but in no case, more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition.
- 408.3 Individuals shall have a maximum of three (3) minutes and organization representatives shall have a maximum of five (5) minutes to present testimony.
- 408.4 The Board may grant additional or lesser time than that allowed under Subtitle Y §§ 408.2 and 408.3 to an applicant, individual, organization representative, or party, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.
- 408.5 Nothing herein shall prohibit the Board from placing reasonable restrictions on cross-examination, including limitations on the scope of cross-examination, by the applicant or parties in support or opposition.
- 408.6 A party may cross-examine any other party, individual, or organization representative, except the Board; provided, that the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious, or otherwise outside of the scope of cross-examination.
- 408.7 All testimony shall be provided under oath or affirmation.
- 408.8 The Board may pose questions to any witness.
- 408.9 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b) (2012 Repl.).
- 408.10 The Board may close the record at the end of a public hearing and, in a bench decision, vote at such time either to grant or deny the application. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **409 HEARING PROCEDURES: VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

409.1 The order for presenting evidence and arguments at public hearings on variance and special exception applications shall be as follows:

- (a) Preliminary and procedural matters;
- (b) Applicant's case;
- (c) Report and recommendations from the Office of Planning;
- (d) Reports and recommendations from other government agencies;
- (e) Reports and recommendations from the affected ANC, and the ANC's witnesses, if any;
- (f) Parties in support of the application;
- (g) Individuals and organization representatives in support of the application;
- (h) Parties in opposition to the application;
- (i) Individuals and organization representatives in opposition to the application;
- (j) Individuals and organization representatives who are undeclared with respect to the application;
- (k) Rebuttal by applicant; and
- (l) Closing statement by applicant.

409.2 In a special exception or a variance case, public agency representatives, parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.

409.3 In a special exception or a variance case, every party shall have the right to present in person or by counsel their case by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **410 HEARING PROCEDURES: CHANCERY APPLICATIONS**

410.1 All chancery proceedings shall be of a rulemaking nature.

- 410.2 The order of procedure at the hearing shall be as follows:
- (a) Call to order and opening statement by the presiding officer;
  - (b) Consideration of procedural matters;
  - (c) Applicant's case;
  - (d) Reports and statements by the Secretary of State and the Mayor;
  - (e) Reports and recommendations by other government agencies;
  - (f) Reports and recommendations from the affected ANC;
  - (g) Individuals and organization representatives in support of the application;  
and
  - (h) Individuals and organization representatives in opposition to the application.

410.3 Any person may appear at a hearing in a chancery application proceeding and present evidence, testimony, or argument that is relevant and not unduly repetitious within such time limits as the Board may determine.

410.4 All testimony shall be provided under oath or affirmation.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 5 PRE-HEARING AND HEARING PROCEDURES: ZONING APPEALS**

### **500 REVIEW AND PROCESSING OF APPEALS**

- 500.1 The Director shall review for completeness every appeal submitted with the Board within five (5) days of its receipt.
- 500.2 Upon completing the review of an appeal, the Director shall notify the appellant in writing of any deficiency. The notice shall list the information necessary to make the appeal complete and the date the information must be received, which shall not be less than five (5) days after the date of notice. If the appellant fails or refuses to correct the deficiencies in the appeal by the date stated, the Director shall not accept the appeal for filing.
- 500.3 As soon as an appeal is accepted for filing by the Director, the Director shall place a copy of the appeal in the public record of the Board.
- 500.4 Upon acceptance of a zoning appeal, the Director shall provide a notice of filing to:
- (a) The appellant;
  - (b) The administrative official or public agency whose decision is the subject of the appeal;
  - (c) The owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if not the appellant;
  - (d) The affected ANC;
  - (e) The affected Single-Member District ANC Commissioner;
  - (f) The Councilmember for the ward within which the property is located; and
  - (g) The Office of Planning.
- 500.5 Unless the Board has dismissed an appeal before a hearing, a public hearing shall be held on each appeal. Appeals and applications shall be heard in the order in which they are filed with the Board and appear on the calendar. The hearing date may be advanced or postponed by order of the Board for good cause shown.
- 500.6 All appeals shall be immediately scheduled for hearing consistent with the notice provisions of this subtitle.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **501 INTERVENOR STATUS: GENERAL GUIDELINES**

501.1 In a zoning appeal, the following persons automatically have party status:

- (a) The appellant;
- (b) The person whose administrative decision is the subject of the appeal, the appellee;
- (c) The owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if different from the appellant; and
- (d) The affected ANC.

501.2 In a civil infraction appeal, only the persons who participated as parties in the proceeding below shall have party status:

- (a) The appellant;
- (b) The District of Columbia Department of Consumer and Regulatory Affairs; and
- (c) Any person who participated as a party in the proceeding that is the subject of the order being appealed.

501.3 Any person may move to intervene in a zoning appeal and may become an intervenor thereto if the Board finds that the party has an interest that may not be adequately represented by the automatic parties; provided, that the intervention would not unduly broaden the issues or delay the proceedings.

501.4 In an appeal proceeding before the Board, an intervenor shall be afforded all the procedural rights provided in this subtitle, including the right to receive a copy of any:

- (a) Documents filed by any other party in the case at the same time or before the document is filed with the Board; and
- (b) Written notice of any decision or order entered in the case.

501.5 In all contested case proceedings before the Board, an intervenor may:

- (a) Submit motions and requests to the Board, and respond to any motions or requests submitted to the Board by others;
- (b) Present witnesses in support of the intervenor's position;
- (c) Cross-examine all other parties and persons testifying in the case;

- (d) Submit proposed findings of fact and conclusions of law; and
- (e) Exercise all other procedural rights provided in this subtitle.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **502 REQUESTING INTERVENOR STATUS**

502.1 Those persons who do not have automatic party status in a zoning appeal pursuant to Subtitle Y § 501.1, but who wish to participate as an intervenor in a contested case proceeding before the Board, shall file a written request for intervenor status with the Board that meets the following requirements:

- (a) The person requesting intervenor status and their authorized representatives, if any, shall provide the following information in their initial filing with the Board: Name, mailing address, telephone number, facsimile number, and e-mail address;
- (b) An identification of the appeal by number, the appellant's name, and the address of the property that is the subject of the appeal;
- (c) A request to appear and participate as an intervenor;
- (d) Whether the person will appear as a proponent or opponent of the appeal;
- (e) If the person will appear through legal counsel or other authorized representation and, if so, the name and address of the legal counsel or other authorized representation;
- (f) If the person will be represented by an individual, the request shall contain a written authorization that includes the power of the representative to bind the person in the case before the Board;
- (g) If the intervenor status request is not being made by an individual, but by an association, corporation, partnership, government agency, or other similar entity, the request shall include proof that the entity authorized the persons filing the request to do so. The proof may consist of a resolution of the person's board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members of the organization; or similar proof satisfactory to the Board;
- (h) A list of witnesses who will testify on the person's behalf; and
- (i) A written statement setting forth why the person should be granted intervenor 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 Board;
- (2) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
- (3) The distance between the person's property and the property that is the subject of the application before the Board;
- (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the appeal is affirmed or reversed; and
- (5) An explanation of how the party has an interest that may not be adequately represented by the automatic parties.

502.2 The Board shall determine whether to grant or deny intervenor status requests at the opening of the first public hearing on the appeal except the Board may consider an intervenor status request at a public meeting scheduled at least fourteen (14) days prior to the public hearing, if the person requesting intervenor status requests advance consideration on the Request for Intervenor Status form.

502.3 A Request for Intervenor Status that is to be considered at a public hearing shall be filed with the Board not less than fourteen (14) days prior to the public hearing.

502.4 A Request for Intervenor Status that is requested to be considered at a public meeting shall identify the public meeting date sought and shall be filed with the Board not less than fourteen (14) days prior to that date.

502.5 If there is no public meeting scheduled within thirty (30) days of the public hearing, the person may request that the Chairperson schedule a special public meeting to hear the intervenor status request.

502.6 At or before the time of filing the request, the person requesting intervenor status shall serve a copy of the request on the appellant and the affected ANC.

502.7 At the time of filing the request, the person requesting intervenor status shall file an affidavit of service to all parties with the Board.

502.8 Any opposition to an intervenor status request by the appellant or affected ANC shall be filed within seven (7) days following the date by which it was served. An appellant's or affected ANC's failure to file a timely opposition shall be deemed signifying no objection to the Request for Intervenor Status.

502.9 Replies to any opposition by the person requesting intervenor status will not be accepted into the record.

- 502.10 A person requesting intervenor status must be present at the public hearing or meeting at which the request is being considered; however, the attendance of the appellant or affected ANC at the public meeting is discretionary. Failure of the person or their representative to appear shall be deemed to constitute the withdrawal of the intervenor status request.
- 502.11 During the portion of a public meeting in which an intervenor status request is being considered, the Board may call forward the person making the request as well as the appellant or affected ANC if an objection was timely made pursuant to Subtitle Y § 502.8. The Board may put questions to the person making the request and the appellant or affected ANC and to hear argument on the issue.
- 502.12 The Board shall determine who will be recognized as an intervenor. In so determining, the Board shall consider whether the provisions of Subtitle Y § 502.1 have been complied with and whether the specific information presented qualifies the person as an intervenor.
- 502.13 In considering any request for intervenor status, the Board shall grant intervenor status only if:
- (a) The person requesting intervenor status, or their agent to represent the person in such proceedings, is present at the time of decision;
  - (b) The person requesting intervenor status has clearly demonstrated that:
    - (1) The person has a specific right or interest that will be affected by action on the appeal;
    - (2) The person's interest would likely be more significantly, distinctively, or uniquely affected by the proposed zoning relief than those of other persons in the general public;
    - (3) That specific right or interest will not be adequately represented by the automatic parties; and
    - (4) Their intervention would not unduly broaden the issues or delay the proceedings; and
- 502.14 In granting intervenor status, the Board may specify whether the person will be permitted to intervene in the appeal for general or limited purposes.
- 502.15 No person may request reconsideration of the denial of their intervenor status request.
- 502.16 If a Request for Intervenor Status is denied, another Request for Intervenor Status may not be made.



502.17 If a person granted intervenor status no longer wishes to participate in the appeal, the person or their representative shall file written notice of that intent, which shall be served on the other parties. Upon the filing of such notice, the person shall no longer be considered an intervenor.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

### **503            ADVISORY    NEIGHBORHOOD    COMMISSION    (ANC) REPORT**

503.1 This section applies to an ANC within which the property that is the subject of an appeal is located; except that if the subject property is located on a street that serves as a boundary line between two ANCs, the section applies to both ANCs.

503.2 The Board shall give "great weight" to the written report of the ANC, pursuant to § 3 of the Comprehensive ANCs Reform Amendment Act of 2000, as amended, effective June 27, 2000 (D.C. Law 13-35; D.C. Official Code §§ 1-309 *et seq.*) provided that it contains the following:

- (a) The case name and number;
- (b) The date the public meeting of the ANC to consider the appeal occurred;
- (c) A statement that proper notice of that public 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 public meeting;
- (e) The issues and concerns of the ANC about the appeal, as related to the standards against which the application or appeal shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the appeal;
- (g) The outcome of the vote on the motion to adopt the report to the Board;
- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the ANC Chairperson or Vice-Chairperson.

503.3 If an ANC wishes to participate as a party, it must file its written report with the Board at least seven (7) days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

503.4 The oral testimony of the ANC representative shall not be given great weight, unless accompanied within seven (7) days by written documentation approved by the respective ANC, which supports the testimony.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **504 NOTICE OF PUBLIC HEARING: ZONING APPEALS**

504.1 Not less than forty (40) days before the public hearing, the Director shall provide notice of the public hearing by:

- (a) Publishing the notice in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the appellant;
- (c) Providing a copy of the notice of public hearing to the administrative official or government agency whose decision is the subject of the appeal;
- (d) Providing a copy of the notice of public hearing to the owner, lessee, operator, or contract purchaser of the property that is the subject of the administrative decision, if not the appellant;
- (e) Providing a copy of the notice of public hearing to the affected ANC, and the affected Single-Member District ANC Commissioner;
- (f) Providing a copy of the notice of public hearing to the Councilmember for the ward within which the property is located; and
- (g) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

504.2 The notice of a public hearing on a zoning appeal shall include:

- (a) The case number of the zoning appeal;
- (b) The name of the appellant;
- (c) The citation to the legal authority pursuant to which the appeal has been filed;
- (d) The administrative action appealed from;
- (e) The square(s) and lot(s) and/or street address of the property that is the subject of the appeal;
- (f) The location, date, and time of the public hearing;
- (g) The number of the affected ANC(s); and

(h) The requirements for participation as an intervenor.

504.3 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Board of jurisdiction over the case. If a defect in the notice is alleged and proven, the Board may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:

- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
- (b) Attendance, or lack thereof, at the public hearing; and
- (c) The nature and extent of the construction and/or use involved in the appeal.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **505 NOTICE OF PUBLIC HEARING: CIVIL INFRACTION APPEALS**

505.1 Not less than forty (40) days before the public hearing, the Director shall provide notice of the public hearing by:

- (a) Publishing the notice in the *D.C. Register*;
- (b) Providing a copy of the notice of public hearing to the appellant;
- (c) Providing a copy of the notice of public hearing to the Administrative Law Judge; and
- (d) Posting in the Office of Zoning the schedule of cases to be heard by the Board on the public hearing date.

505.2 The notice of a public hearing on a civil infraction appeal shall include:

- (a) The case number of the civil infraction appeal;
- (b) The name of the appellant;
- (c) The citation to the legal authority pursuant to which the appeal has been filed;
- (d) The administrative action appealed from;
- (e) The square(s) and lot(s) and/or street address of the property that is the subject of the appeal; and
- (f) The location, date, and time of the public hearing.

- 505.3 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Board of jurisdiction over the case. If a defect in the notice is alleged and proven, the Board may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:
- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
  - (b) Attendance or lack thereof at the public hearing; and
  - (c) The nature and extent of the construction and/or use involved in the appeal.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **506 HEARING PROCEDURES: GENERAL PROVISIONS**

- 506.1 The presiding officer at a public hearing shall have the authority to:
- (a) Call the public hearing to order;
  - (b) Consider preliminary matters, including, but not limited to, intervenor status requests, motions, and qualifying expert witnesses;
  - (c) Conduct the public hearing;
  - (d) Rule upon offers of proof and receive relevant evidence;
  - (e) Exclude unduly repetitious, immaterial, or irrelevant testimony and permit a witness to adopt the prior testimony of another witness;
  - (f) Adjourn a public hearing and establish the date when the public hearing will be continued;
  - (g) Close the public hearing and record; and
  - (h) Take any other action authorized by or necessary under this subtitle.
- 506.2 Except as provided in Subtitle Y § 506.4, the appellant and all parties (except an affected ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an affected ANC) and intervenors in opposition shall collectively have an amount of time equal to that of the applicant and parties in support, but in no case, more than sixty (60) minutes, exclusive of cross-examination, to present testimony in opposition.
- 506.3 [DELETED]

- 506.4 The Board may grant additional or lesser time than that allowed under Subtitle Y § 506.2 to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between the appellant and those parties in support of the appeal and the appellee and those parties in opposition to the appeal.
- 506.5 All testimony shall be provided under oath or affirmation.
- 506.6 The Board may pose questions to any witness.
- 506.7 Nothing herein shall prohibit the Board from placing reasonable restrictions on cross-examination, including limitations on the scope of cross-examination, by the appellant or parties/intervenors in support or opposition.
- 506.8 The Board may close the record at the end of a public hearing and, in a bench decision, vote at such time to either affirm or reverse the decision that is the subject of the appeal. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06L published at 64 DCR 8596 (September 1, 2017).

## **507 HEARING PROCEDURES: ZONING APPEALS**

- 507.1 The order for presenting evidence and arguments at the public hearing on a zoning appeal shall be as follows:
- (a) Preliminary and procedural matters;
  - (b) Appellant’s case;
  - (c) The respective cases of the parties or intervenors in support of the appeal, in the following order:
    - (1) The owner, lessee, operator, or contract purchaser of the property involved, if not the appellant;
    - (2) The affected ANC, if not the appellant; and
    - (3) Any other party permitted to intervene in the proceeding in support of the appeal;
  - (d) The administrative official’s (appellee’s) case;
  - (e) The respective cases of the parties or intervenors in opposition to the appeal, in the following order:

- (1) The owner, lessee, operator, or contract purchaser of the property involved;
  - (2) The affected ANC; and
  - (3) Any other party permitted to intervene in the proceeding in opposition to the appeal;
- (f) Rebuttal evidence from the appellant, followed by rebuttal evidence from the parties in support of the appeal, in the order indicated in subparagraph (c) of this paragraph; and
- (g) Closing arguments, in the order established in subparagraphs (b) through (e) of this paragraph.

507.2 In a zoning appeal, parties may appear as witnesses and offer evidence at a hearing.

507.3 In a zoning appeal case, witnesses may be examined or cross-examined by the Board, the appellant, or any party or intervenor so determined by the Board under this subtitle.

507.4 The Board may close the record at the end of a public hearing and, in a bench decision, vote at such time to either affirm or reverse the decision that is the subject of the appeal. Alternatively, the Board may schedule the case for a regularly scheduled or special public decision meeting.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **508 ORAL ARGUMENT PROCEDURES: CIVIL INFRACTION APPEALS**

508.1 The order of procedure for presenting oral argument at a public hearing on a civil infraction appeal shall be as follows:

- (a) Preliminary and procedural matters;
- (b) Opening oral argument by the appellant;
- (c) Oral argument by any other party in support of the appeal;
- (d) Oral argument by the appellee, the D.C. Department of Consumer and Regulatory Affairs;
- (e) Oral argument by any other party in opposition to the appeal; and
- (f) Concluding oral argument by the appellant.

508.2 The Board, in its discretion, may permit the parties to appear before it and present oral argument before the Board in accordance with such limitations as to time of argument or other restrictions as the Board may prescribe.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## CHAPTER 6 POST-HEARING PROCEDURES

### 600 DISPOSITION OF CASE BY WITHDRAWAL OR DISMISSAL

600.1 This section applies to all applications and appeals.

600.2 An applicant or appellant may withdraw, respectively, an application or appeal at any time prior to the issuance of the Board's written final decision and order, subject to the following conditions:

- (a) The applicant or appellant shall file a written statement with the Board withdrawing the application or appeal;
- (b) Withdrawal shall not authorize the removal of any document from the files of the Board;
- (c) The application or appeal fee shall not be refunded upon withdrawal;
- (d) If an application is withdrawn before the close of the record, a new application or appeal shall not be accepted for filing for at least ninety (90) days after the date the written statement of withdrawal is filed;
- (e) If an application is withdrawn after the close of the record, a new application or appeal shall not be accepted for filing for at least one (1) year after the date the written statement of withdrawal is filed;
- (f) The Board will grant permission to file a new application after a shortened time period only upon motion and for good cause shown, provided the shortened time period will not prejudice the rights of any person; and
- (g) A withdrawn appeal may not be re-filed.

600.3 The Board may dismiss an application or appeal for failure of the applicant or appellant to comply with the procedural requirements of this subtitle, as follows:

- (a) Dismissal shall not authorize the removal of any document or paper from the files of the Board;
- (b) The application or appeal fee shall not be refunded upon dismissal;
- (c) If an application is dismissed before the close of the record, a new application or appeal shall not be accepted for at least ninety (90) days after the date of the written order dismissing the application or appeal;
- (d) If an application or appeal is dismissed after the close of the record, a new application shall not be accepted for filing for at least one (1) year after the date of the written order dismissing the application or appeal;



- (e) The Board will grant permission to file a new application after a shortened time period only upon motion and for good cause shown, provided the shortened time period will not prejudice the rights of any person; and
- (f) A dismissed appeal may not be re-filed.

600.4 No application or appeal shall be dismissed on the grounds that the applicant or appellant failed to comply with the provisions of this subtitle unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected, except that the Board may immediately dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **601 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

601.1 This section applies to all applications and zoning appeals filed with the Board under this subtitle except chancery applications.

601.2 When requested by the Board, a party shall submit proposed findings of fact and conclusions of law to the Office of Zoning 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, pursuant to Subtitle Y § 104.4.

601.3 Each party shall serve any proposed findings of fact and conclusions of law on all other parties at the same time as the proposed findings and conclusions are filed with the Board. The parties shall also file a certificate of service.

601.4 Unless the Board specifies otherwise, no responses shall be permitted to a party's proposed findings of fact and conclusions of law.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **602 CLOSING THE RECORD**

602.1 The record shall be closed following the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as may be directed by the presiding officer.

602.2 Each party shall serve any specific exhibits, information, or legal briefs on all other parties at the same time as specific exhibits, information, or legal briefs are filed with the Board.

- 602.3 The Board shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing. All responses shall be filed within seven (7) days after the date by which the exhibits, information, or briefs were due, unless otherwise directed by the presiding officer. Replies by other parties to the aforementioned responses will not be accepted into the record.
- 602.4 The Board may on its own motion reopen the record prior to making a final decision for the purposes of requesting additional submissions or conducting a further hearing on designated issues.
- 602.5 Notice of any further hearing need only be provided to the parties. Notice of the reopened record and any further hearing, plus a designation of the issues, shall be forwarded to any party who appeared and participated in the earlier hearings. If only additional submissions are requested, the notice shall identify which parties are required to make the submission which parties may reply, and the time period for doing so. If a further hearing is to be held, the notice of such hearing shall be sent at least ten (10) days prior to the date set for the further hearing.
- 602.6 Any supplemental material received by the Board after the close of the record that bears upon the substance of the application or appeal shall be returned by the Director and not accepted into the files of the Board. However, if the materials are accompanied by a separate request to reopen the record, the request shall be accepted and presented to the Board for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record.
- 602.7 The Director shall notify the parties by e-mail of the acceptance of supplemental material. Any response by a party to such supplemental material must be filed no later than seven (7) days after the date of the e-mail notice.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **603 EXCLUSIVE RECORD**

- 603.1 No decision or order of the Board on an application or appeal shall be made except upon the exclusive record of the proceedings before the Board.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

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

- 604.1 The provisions of this section apply as follows:
- (a) This section applies in its entirety to all variance and special exception applications and all appeals; and

(b) Except for the provisions of Subtitle Y §§ 604.3 through 604.7 and 604.12, this section shall not apply to chancery proceedings.

604.2 The concurring vote of three (3) of the five (5) Board members is necessary for any decision.

604.3 A final order on an application or appeal shall be in writing and accompanied by findings of fact and conclusions of law unless the order grants an application for which there was no party in opposition, in which case the order may be in summary form. All orders shall be filed in the record.

604.4 The prevailing party in any application or appeal may file a proposed order or a revision to a previously filed proposed order after a vote to approve or deny the application or affirm or reverse a decision is taken. No response to the proposed order may be submitted by any other party.

604.5 Formal notice of an order shall be given to any party to the application, by serving the party with a copy of the final order.

604.6 A copy of the final order shall be served on the Councilmember representing the ward within which the property is located and any affected ANC.

604.7 For purposes of this subtitle, a final order shall become final upon its filing in the record and service upon the parties, the date of which shall be stated at the conclusion of each order.

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

604.9 Approval of an application shall include approval of the plans submitted with the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Board orders otherwise.

604.10 An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise.

604.11 No order of the Board shall take effect until ten (10) days after it becomes final pursuant to Subtitle Y § 604.7.

604.12 For a chancery application, a decision of the Board is final upon publication in the *D.C. Register*. The decision shall become effective ten (10) days after having become final.

604.13 An applicant whose application has been denied or disapproved shall not institute a new application on the same facts within one (1) year after the date the order

upon the previous application became final, unless waived by the Board for good cause shown and proof of no prejudice to the parties or intervenors.

604.14 The Director or the Chairperson of the Board is authorized to sign a final order that has been approved by three (3) of the five (5) Board members whether those members participated in the decision or not.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## CHAPTER 7 APPROVALS AND ORDERS

### 700 RECONSIDERATION OF FINAL ORDER; REHEARING AFTER FINAL ORDER

- 700.1 The provisions of this section apply as follows:
- (a) This section applies in its entirety to variance and special exception applications and zoning appeals;
  - (b) The provisions of this section relating to reconsideration apply to civil infraction appeals; and
  - (c) This section does not apply to chancery proceedings.
- 700.2 Any party may file a motion for reconsideration of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. The motion shall be served on all other parties to the proceeding at or before the time the motion is filed with the Board.
- 700.3 The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a Board decision in a contested case proceeding that is filed prior to an order being issued pursuant to Subtitle Y § 604.7, nor shall it waive this prohibition.
- 700.4 No party may file a motion for reconsideration or rehearing after a petition to review an order granting or denying a special exception or variance application or affirming or reversing a decision on appeal has been filed with the District of Columbia Court of Appeals and any pending motion for reconsideration or rehearing shall be dismissed if such a petition is filed.
- 700.5 Any party in a zoning appeal or a variance or special exception proceeding may make a motion to request that the Board re-open the record and rehear the application or appeal, in whole or in part, to permit the party to present newly discovered evidence which, by due diligence, could not have been reasonably presented to the Board prior to the issuance of the Board's final order.
- 700.6 A motion for reconsideration or rehearing shall be filed on a form and in a manner as may be designated by the Director.
- 700.7 A motion for reconsideration shall state specifically:
- (a) All respects in which the final order is claimed to be erroneous; and
  - (b) The relief sought.
- 700.8 A motion for rehearing shall state specifically:

- (a) The newly discovered evidence;
- (b) The reason the newly discovered evidence could not have been reasonably presented to the Board prior to the issuance of the Board's final order; and
- (c) The relief sought.

700.9 Within ten (10) days after a motion for reconsideration or rehearing has been filed and served, any other party may file a written response in support of or opposition to the motion. The response shall be served on all other parties to the proceeding at or before the time the response is filed with the Board. Replies by other parties to the aforementioned answers will not be accepted into the record.

700.10 The Board, on its own motion, may decide to reconsider or rehear a case, no later than ten (10) days after the filing of the final order in the case record.

700.11 If a rehearing is granted, the Board shall give notice of the rehearing, together with a designation of the issues to be addressed, in accordance with the procedures specified for providing public notice in the original public hearing.

700.12 Unless the Board orders otherwise pursuant to Subtitle Y § 701.2, neither the filing nor granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision.

700.13 A motion for reconsideration or rehearing shall not be a prerequisite to judicial review.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **701 STAY OF FINAL DECISION AND ORDER**

701.1 The provisions of this section apply as follows:

- (a) This section applies in its entirety to zoning appeals and variance and special exception applications;
- (b) Except with respect to a stay pending rehearing, the provisions of this section apply to civil infraction appeals; and
- (c) This section shall not apply to chancery proceedings.

701.2 The Board, on its own motion or the motion of a party or petitioner to the District of Columbia Court of Appeals, may order the effectiveness of a final decision and order of the Board stayed pending reconsideration or rehearing, or appeal of the decision and order to the Court of Appeals.

- 701.3 Except for stays granted upon its own motion, the Board shall grant a stay only upon finding that all four of the following criteria are present:
- (a) The party seeking the stay (or, in the case of a stay to be issued on the Board's own motion, the party in whose favor the stay would be ordered) is likely to prevail on the merits of the motion for reconsideration or rehearing, the *sua sponte* review, or the appeal;
  - (b) Irreparable injury will result if the stay is denied;
  - (c) Opposing parties will not be harmed by a stay; and
  - (d) The public interest favors the granting of the stay.

- 701.4 In determining whether to grant a stay, the Board may consider the following factors:
- (a) Whether the party filing the motion is likely to succeed on the merits;
  - (b) Whether denial of the stay will cause irreparable injury;
  - (c) Whether, and to what degree, granting the stay will harm other parties; and
  - (d) Whether the public interest favors granting a stay.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06L published at 64 DCR 8596 (September 1, 2017).

## **702 VALIDITY OF APPROVALS AND IMPLEMENTATION**

- 702.1 An order granting a special exception or variance where the establishment of the use is dependent upon the erection or alteration of a structure shall be valid for a period of two (2) years, or one (1) year for an Electronic Equipment Facility, within which time an application shall be filed for a building permit for the erection or alteration approved. If the erection or alteration of more than one (1) structure is approved, a building permit application must be filed for all such structures within this two (2) year period.
- 702.2 An order granting a special exception or variance where the establishment of the use is not dependent upon the erection or alteration of a structure shall be valid for a period of six (6) months, within which time an application shall be filed for a certificate of occupancy for the use approved.
- 702.3 In the event a petition to review an order of the Board is filed in the District of Columbia Court of Appeals, all time limitations of Subtitle Y §§ 702.1 and 702.2 shall commence to run from the decision date of the court's final determination of the appeal. Unless stayed by the Board or a court of competent jurisdiction, an

applicant may proceed pursuant to the order of the Board prior to the court's final determination.

- 702.4 The filing of a request to modify plans or any other aspect of a Board order pursuant to Subtitle Y § 704 shall not toll the time periods in Subtitle Y §§ 702.1 and 702.2 and an order granting a modification shall not extend those time periods.
- 702.5 A structure erected pursuant to an area variance shall be deemed a conforming structure but any expansion that does not conform to the use and structure requirements of the Zoning Regulations shall require additional variance relief.
- 702.6 Expansion of a use authorized by a variance shall require the grant of another use variance.
- 702.7 Following approval of an application by the Board, the applicant may file an application for a building permit or certificate of occupancy with the proper authorities of the District of Columbia.
- 702.8 The Zoning Administrator shall not approve a permit application for zoning compliance unless the plans conform to the plans approved by the Board as those plans may have been modified by any guidelines, conditions, or standards that the Board may have applied, subject to the minor deviations permitted by Subtitle Y § 703.
- 702.9 The Zoning Administrator also shall not approve an application for a certificate of occupancy unless the requested use is identical to the use approved by the Board or is for a use permitted as a matter of right.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **703 CONSENT CALENDAR – TECHNICAL CORRECTIONS, MINOR MODIFICATION, AND MODIFICATION OF CONSEQUENCE, TO ORDERS AND PLANS**

- 703.1 This section applies to all applications and appeals filed with the Board under this subtitle.
- 703.2 The procedure shall allow the Board, in the interest of efficiency, to make, without public hearing, technical corrections, minor modifications, or modifications of consequence to previously approved final orders including any plans approved in such orders.
- 703.3 For purposes of this section, “minor modifications” shall mean modifications that do not change the material facts upon which the Board based its original approval of the application.



- 703.4 For the purposes of this section, the term “modification of consequence” shall mean a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.
- 703.5 Any party to a previously filed case in which an order has been issued may make a motion in writing to have a matter placed on the Consent Calendar.
- 703.6 An application for a technical correction, minor modification, or modification of consequence approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish two (2) copies of all information required by the form at the time of filing the application, including the following:
- (a) A completed application form;
  - (b) The nature of, reason(s), and grounds for the technical correction, minor modification, or modification of consequence;
  - (c) A copy of any Board final order, map, plan, or other action or relief proposed to be modified or corrected; and
  - (d) Proof of service to all parties.
- 703.7 No application for technical corrections, minor modifications, or modifications of consequence shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.
- 703.8 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 filed at the Office of Zoning.
- 703.9 Within ten (10) 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.
- 703.10 The Board, upon its own motion, may request that a matter be placed on the Consent Calendar.
- 703.11 Any member of the Board 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 Board according to the applicable procedures contained in other sections of this subtitle.
- 703.12 A decision on a request for technical corrections, minor modifications, or modifications of consequence shall be made by the Board on the basis of the

written request, the plans submitted therewith, and any responses thereto from other parties to the original application.

- 703.13 The Board may take one (1) of the following actions at a public meeting:
- (a) At the request of a Board member remove an item from the Consent Calendar;
  - (b) Grant or deny a request for technical correction, minor modification, or modification of consequence; or
  - (c) In the case of a modification of consequence, establish a timeframe for the parties in the original proceeding to file responses in opposition to or in support of the request and for the applicant to respond thereto; and schedule the request for deliberations; or
  - (d) Determine that the request is actually for a modification of significance in which case an application for such a modification must be filed pursuant to Subtitle Y § 704.

703.14 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

703.15 A request for minor modification of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application, or the circumstances of Subtitle Y § 702.3 apply, two (2) years after the date the decision date of the court's final determination of the appeal.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **704 MODIFICATION OF SIGNIFICANCE**

704.1 Any request for modification that cannot be processed pursuant to Subtitle Y § 703 shall require a public hearing.

704.2 An application for a modification of significance shall be made in an appropriate manner provided by the Director. The applicant shall furnish two (2) copies of all information required by the form at the time of filing the application, including the following:

- (a) A completed application form;
- (b) The nature of, reason(s), and grounds for the modification of significance;

- (c) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and two (2) copies of self-stick labels printed with their names and addresses;
- (d) A copy of the resume of any expert witness who will be testifying in the case;
- (e) A written summary of the testimony of all witnesses;
- (f) A copy of any Board final order, map, plan, or other action or relief proposed to be modified or corrected; and
- (g) Proof of service to all parties.

- 704.3 No application for modifications of significance shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.
- 704.4 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 filed at the Office of Zoning.
- 704.5 All requests for modifications of significance shall be served on all other parties to the original application at the same time as the request is filed with the Board.
- 704.6 A public hearing on a request for a significant modification shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification.
- 704.7 The scope of a hearing conducted pursuant to Subtitle Y § 704.1 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.
- 704.8 A decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.
- 704.9 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **705 TIME EXTENSIONS**

- 705.1 The Board may extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration

of the approval; provided, that the Board determines that the following requirements are met:

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

705.2 A time extension granted pursuant to Subtitle Y § 705.1 shall not exceed two (2) years, or one (1) year for an Electronic Equipment Facility.

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

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

705.5 If the request is not decided prior to an order's expiration date, no application for a building permit may be filed pursuant to the order unless and until a decision granting the request becomes final and effective pursuant to Subtitle Y § 604.8.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **706 EXPIRATION OF SPECIAL EXCEPTIONS AND USE VARIANCES**

706.1 If a special exception use or use variance is established, the use will only expire if:

- (a) An expiration date is specified in the order;

- (b) The special exception use or use variance is discontinued for any reason for any period of three (3) or more years occurring after October 8, 2010; except where governmental action impedes access to the premises; or
- (c) Either of the following occurs after the effective date of the order granting the variance:
  - (1) A certificate of occupancy for a different use is issued; or
  - (2) A residential use for which no certificate of occupancy is required is established.

706.2 If a special exception use or use variance expires, any subsequent use shall conform to the regulations of the district in which the use is located.

706.3 Notwithstanding Subtitle Y § 706.1(b), a special exception use or use variance shall not expire if there is objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.

706.4 An area variance shall expire if the structure erected or expanded pursuant to the variance is replaced by a structure that conforms to the structure requirements of the Zoning Regulations.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 8 REMAND PROCEDURE**

### **800 INTRODUCTION TO THE REMAND PROCESS**

800.1 This chapter provides regulations for the Board to follow when the District of Columbia Court of Appeals remands a Board decision for further proceedings.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

### **801 REMAND PROCEDURES**

801.1 Upon receipt of a Court of Appeals mandate remanding a Board decision, the Director shall request the Office of the Attorney General (“OAG”) to provide a memorandum that:

- (a) Summarizes the Court of Appeals holding;
- (b) Identifies the issues that must be decided on the remand; and
- (c) Provides such further information and analysis as to enable the Board to comply with the remand instructions.

801.2 Following receipt of the OAG memorandum, the Board may meet to determine whether it should request the parties to submit briefs, provide additional oral or documentary evidence, present oral argument, or to augment the record by other means.

801.3 If it is determined that any of these actions are needed, the Board shall issue a procedural order identifying the actions required and the timeframe within which those actions must occur. The order shall be sent to any party who participated in the earlier proceedings, or the party's authorized representative.

801.4 No new parties shall be added to the case, and the Office of Zoning shall not accept requests for party status.

801.5 If a further hearing is ordered, the procedural order shall be issued no earlier than fourteen (14) days prior to the date set for the further hearing. The Director may provide such other notice of the hearing, as he or she deems appropriate.

801.6 Testimony at any further hearing shall be limited to witnesses called by the parties, unless the procedural order states otherwise.

801.7 Once the Board Chairperson believes that the record is sufficient to permit deliberation, the Board Secretary shall distribute to each Board member the case record and schedule the case for decision.

801.8 Any Board member who did not participate in the original decision shall indicate that he or she has read the record as a prerequisite to participating in the remand deliberations.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

## **CHAPTER 9 THROUGH CHAPTER 15 [RESERVED]**

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).



## CHAPTER 16 FEES

### 1600 FILING FEES FOR APPLICATIONS AND APPEALS

1600.1 Except as provided in Subtitle Y §§ 1600.2 and 1600.3, at the time of filing an appeal or application with the Board of Zoning Adjustment, the appellant or applicant shall pay a filing fee in accordance with the following schedule:

- (a) Appeal of any decision of the Zoning Administrator or other administrative officer, one thousand forty dollars (\$1,040), except that the following appellants shall not be required to pay a filing fee:
  - (1) A department, office, or agency of the Government of the District of Columbia, including an Advisory Neighborhood Commission (ANC);
  - (2) The National Capital Planning Commission; and
  - (3) A citizens' association or association created for civic purposes that is not for profit; and
- (b) Application for a special exception:
  - (1) Accessory apartment, three hundred twenty-five dollars (\$325);
  - (2) Antenna or monopole, two thousand six hundred dollars (\$2,600);
  - (3) For an application for permission to locate, replace, or expand a chancery not meeting the conditions for a matter of right use, either:
    - (A) Sixty-five dollars (\$65) for each one hundred square feet (100 sq. ft.) or part thereof of gross floor area; or
    - (B) Five hundred dollars (\$500) when the expansion does not result in an increase to gross floor area, such as the erection or enlargement of a fence.
  - (4) Community-based institutional facility or emergency shelter, one hundred four dollars (\$104) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of five thousand two hundred dollars (\$5,200);
  - (5) Continuing care retirement community, one hundred four dollars (\$104) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of five thousand two hundred dollars (\$5,200);

- (6) Daytime care use, thirty-three dollars (\$33) for each individual based on the maximum capacity requested, with a maximum of three thousand two hundred fifty dollars (\$3,250);
- (7) Gasoline service station, five thousand two hundred dollars (\$5,200);
- (8) General institutional uses, one thousand five hundred sixty dollars (\$1,560);
- (9) Health care facility that houses individuals, thirty-three dollars (\$33) for each person housed based on the maximum capacity requested (not including resident supervisors and their families), with a maximum of three thousand two hundred fifty dollars (\$3,250);
- (10) Home occupation not permitted as a matter of right in the R, RF, or RA zones, one thousand five hundred sixty dollars (\$1,560);
- (11) Large format retail, five thousand two hundred dollars (\$5,200);
- (12) Lodging, for any number of rooms, one hundred four dollars (\$104) for each sleeping room or suite;
- (13) Office use in an MU-1 or MU-2 zone, for each one hundred square feet (100 sq. ft.) or part thereof of gross floor area, fifty-two dollars (\$52);
- (14) Parking lot, parking garage, or accessory parking, one hundred four dollars (\$104) for each parking space;
- (15) Private school, thirty-three dollars (\$33) for each full-time or part-time student based on the maximum capacity requested, with a maximum of three thousand two hundred fifty dollars (\$3,250);
- (16) Production, distribution, and repair uses, five thousand two hundred dollars (\$5,200);
- (17) Religious institutional uses or programs conducted by a religious congregation or group of congregations, one thousand five hundred sixty dollars (\$1,560);
- (18) Repair garage, one thousand five hundred sixty dollars (\$1,560);

- (19) Residential development, new, except those comprising all detached and semi-detached single dwelling units in the RA-1 and RA-6 zones pursuant to Subtitle U § 421.1, five hundred forty dollars (\$540) for each dwelling unit;
  - (20) Roof structures pursuant to Subtitle C § 1500.14, two thousand six hundred dollars (\$2,600);
  - (21) Theoretical lot pursuant to Subtitle C § 305.1, one thousand five hundred sixty dollars (\$1,560) for the first lot and five hundred twenty dollars (\$520) for each lot thereafter;
  - (22) Warehouse or wholesale use, five thousand two hundred dollars (\$5,200);
  - (23) Waste-related services, including, but not limited to, hazardous waste removal, automobile repair shop including body work within two hundred feet (200 ft.) of a residential zone, and an intermediate materials recycling facility, five thousand two hundred dollars (\$5,200); and
  - (24) For any other special exception not listed in this section, one thousand five hundred sixty dollars (\$1,560);
- (c) Application for a variance, one thousand forty dollars (\$1,040) for each provision of the Zoning Regulations from which a variance is requested;
  - (d) Owner-occupied, single dwelling unit or flat, regardless of the number of variances, special exceptions, or alternatives requested, three hundred twenty-five dollars (\$325); and
  - (e) For a time extension, a modification of a Board order or approved plans whether the modification is minor or not, for the owner of an owner-occupied single dwelling unit or flat, one hundred thirty dollars (\$130); for all other applicants, twenty-six percent (26%) of the original filing fee.

1600.2 In the case of an application combining two (2) or more actions described in Subtitle Y §§ 1600.1(b) and 1600.1(c), or for an application requesting consideration of more than one (1) alternative, the fee shall be the total of the amounts for each action or alternative computed separately.

1600.3 A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee for a special exception or variance where the property is owned by the District of Columbia or that agency or is under one (1) or both of their jurisdictions and the property is to be occupied for a government building or use.

**TABLE Y § 1600 – SCHEDULE OF FILING FEES**

<b>SPECIAL EXCEPTIONS</b>			
<b>Case Type</b>	<b>Unit</b>	<b>Fee</b>	<b>Maximum</b>
Accessory apartment		\$325	
Antenna or monopole		\$2,600	
Chancery	per 100 sq. ft.	\$65	
Chancery – when the expansion does not result in an increase to gross floor area, such as the erection or enlargement of a fence		\$500	
Community-based institutional facility or emergency shelter	per person	\$104	\$5,200
Continuing care retirement community	per person	\$104	\$5,200
Daytime care use	per student	\$33	\$3,250
Gasoline service station		\$5,200	
General institutional uses		\$1,560	
Health care facility	per person	\$104	\$6,000
Home occupation		\$1,560	
Large format retail		\$5,200	
Lodging	per room or suite	\$104	
Office use in MU-1 or MU-2 zone	per 100 sq. ft.	\$52	
Owner-occupied dwelling		\$325	
Parking lot, parking garage, or accessory parking	per space	\$104	
Private school	per student	\$33	\$3,250
Production, distribution, and repair pursuant to Subtitle U § 802.1(e)		\$5,200	
Religious institutional uses		\$1,560	
Repair garage		\$1,560	
Residential development pursuant to Subtitle U § 421.1	each dwelling unit	\$540	
Roof structures pursuant to Subtitle C § 1500.14		\$2,600	
Special exception (all other)		\$1,560	
Theoretical lot pursuant to Subtitle C § 305.1		\$1,560	
Additional Theoretical Lot Under Subtitle C § 305.1		\$520	
Time extension,/minor and non-minor modification (owner-occupied)		\$130	
Time extension/minor and non-minor modification (all others)		26%	
Warehouse or wholesale use		\$5,200	
Waste-related services		\$5,200	
Property owned or under jurisdiction of District or District and to be occupied for a government building or use		\$0	

<b>SPECIAL EXCEPTIONS</b>			
<b>VARIANCES</b>			
<b>Case Type</b>	<b>Unit</b>	<b>Fee</b>	<b>Maximum</b>
Owner-occupied dwelling		\$325	
Property owned or under jurisdiction of the District or a District agency to be occupied for a government building or use.		\$0	
All other		\$1,040	
<b>APPEALS</b>			
<b>Case Type</b>	<b>Unit</b>	<b>Fee</b>	<b>Maximum</b>
NCPC/ANCs/Citizens Association/Civic Association/Not-for-Profits		\$0	
All other organizations, groups or persons		\$1,040	

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 08-06E published at 63 DCR 10932 (August 26, 2016).

## **1601 MISCELLANEOUS FEES**

1601.1 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) for each property certified;
- (b) The fee for photocopying is twenty cents (.20¢) per page;
- (c) The fee for providing certification of an exhibit from a case record shall be fifteen dollars (\$15) for each exhibit certified; and
- (d) The fee for retrieving Office of Zoning records located off-site is thirty-two dollars (\$32) per each request for retrieval of up to five (5) case files. 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.

**TABLE Y § 1601 – SCHEDULE OF MISCELLANEOUS FEES**

<b>Service</b>	<b>Fee</b>
Zoning Certification	\$50.00
Photocopying	\$ 0.20
Certification of Exhibit	\$15.00
Retrieval of Records (located off-site)	\$32.00

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

**1602 ADMINISTRATION OF BOARD AND MISCELLANEOUS FEES**

- 1602.1 The Director shall be responsible for administering, interpreting, and applying the terms of the fee schedule in Subtitle Y §§ 1600.1 and 1601.1.
- 1602.2 All fees shall be paid by check or money order made payable to the D.C. Treasurer, or by credit card where indicated by the Office of Zoning.
- 1602.3 The Director shall conduct a review of the fee structure triennially and make recommendations for changes to the Zoning Commission.
- 1602.4 Any decision of the Director regarding the application of the fee schedule set forth in Subtitle Y § 1600.1 may be appealed to the Board by the appellant or applicant. The fee appeal shall be in writing and set forth specifically the error allegedly committed by the Director, the grounds for the appeal, and the relief requested.
- 1602.5 The Board shall decide the fee appeal at a meeting. The Board's decision shall be communicated by the Director to the Applicant in writing. No request for reconsideration of the Board's decision shall be accepted and the Board may not waive this prohibition.
- 1602.6 Once a filing fee has been submitted, it will not be refunded except that the Board may authorize the refund by the District of Columbia Treasurer of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Administrator.

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).