

# ADVANCED ZONING for ANCs

Training Series by the D.C. Office of Zoning June 2022

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# **ADVANCED ZONING**

- Reviewing Applications
- Drafting ANC Reports
- Filing a Petition to the ZC
- Filing an Appeal to the BZA
- Filing Motions
- Responding to Modifications and Time Extensions
- Virtual Hearing Reminders
- Important OZ Links

\*\*Feel free to enter questions in the Webex Chat function and we will answer them at the end of the presentation\*\*

## Reviewing Applications



## **GENERAL CASE TYPES**

The BZA and ZC consider two types of cases:

#### **Rulemaking**:

- ANCs Provide Input
- ZC:
  - Includes amendments to the Zoning Regulations and some amendments to the Zoning Map
  - Deals with matters of policy "Petitions"
- BZA:
  - Chancery applications

#### Contested:

- Affected ANC is an Automatic Party
- Includes requests for zoning relief, planned unit developments, Campus Plans, Design Review, and some amendments to the Zoning Map
- Deals with a specific project and parties "Applications"





## NOTICE OF A CASE

• BZA/ZC must meet the notice requirements of the ANC Act and the Zoning Regulations (Timing, Type of Notice, etc.)

**Advisory Neighborhood Commission** 

- Notice sent by DCOZ will come to your official ANC email account (general account & SMD)
- You may receive several forms of notice at different stages of the application

		BOARD OF ZONING ADJUSTMENT PUBLIC HEARING NOTICE WEDNESDAY, JULY 20, 2022 VIRTUAL HEARING via WEBEX	
TO C follow	ONSIDER	THE FOLLOWING: The Board of Zoning Adjustment will adhere to the le but reserves the right to hear items on the agenda out of turn.	
		TIME: 9:30 A.M.	
/		WARD ONE	
Appli	cation of:	Jordan Rosenstadt	
Case	No.:	20746	
Addr	ess:	1314 T Street N.W. (Square 238, Lot 53)	
ANC		18	
Relief	e:	Special Exceptions from: • the rare addition requirements of Subtitle E § 205.4 (pursuant to Subtitles E §§ 205.4 and 5201; and Subtitle X § 901.2) • the lot occupancy requirements of Subtitle E § 304.1 (pursuant to Subtitle E § 5701 and Subtitle X § 901.2).	
Proje	et:	To construct a two-story with basement rear addition, and convert to a flat, an existing, attached, two-story with basement, principal dwelling unit, in the RF-1 Zone.	
		WARD EIGHT	
Appli	cation of:	A.R. Design Group, Inc.	
Case		20767	
Addr	ess:	2817 Buena Vista Terrace S.E. (Square 5729W, Lot 1)	
ANC		8B	
Relief	ĉ.	Special Exception from: • the matter-of-right uses of Subtitle U § 401 (pursuant to Subtitle U § 421 and Subtitle X § 901.2)	
	ct:	To construct third story, side and rear additions with cellar, and add an additional	

## NOTICE OF A CASE

• Notice of Intent: In ZC cases, Applicants mail a notice of intent (NOI) to the affected ANC and to all owners within 200 feet of the property prior to filing

ZONING COMMISSION

CASE SUMMARY

🗖 Air Rights 🛛 🗖 Modification

- Notice of Application: Applicants must serve their application on the affected ANC at the time of filing with DCOZ
- Notice of Public Hearing: DCOZ provides notice of public hearings on contested cases to the affected ANC and owners of property within 200 ft. of the subject property
- Notice is also **posted on the property** before a public hearing

)/	BOARD OF ZONING ADJU	
	APPLICATION NO:	
	CASE SUMMARY:	
	Special Exception	
	<ul><li>Variance</li><li>Foreign Mission</li><li>Modification</li></ul>	
	Public Hearing Date/Time:	
	Further Public Hearing Date/Time:	
	Location:	
	For more information please contact the District of Columbia ( (202) 727-6311 • website: www.dcoz.dc.gov • e-mail: «	dcoz@dc.gov
	THIS SIGN SHALL NOT BE REMOVED, DEFACED, OR DESTROYED UND	ER PENALTY OF THE LAW.

## RESEARCHING A CASE

• Interactive Zoning Information System (IZIS): https://dcoz.dc.gov/service/interactive-zoninginformation-system



## Drafting ANC Reports



Pursuant to Subtitle Y § 406.2 and Subtitle Z § 406.2, the BZA and ZC shall give "**great weight**" to the written report of the affected ANC



- **Requirements for Great Weight** (or, see Form 129):
  - Case name and number;
  - Date of the public meeting of the ANC
  - Statement that proper notice of that public meeting was given by the ANC;
  - Number of members of the ANC that constitute a quorum and number of members present;
  - The issues and concerns of the ANC about the application, as related to the standards against which the application shall be judged;
  - Recommendation, if any, of the ANC;
  - Outcome of the vote on the motion to adopt the report;
  - Signature of the ANC Chairperson or Vice-Chairperson

	FOR	M 129 -										ORT		
Pursuant	to Subtitle Z §	Before con 406.2 and		-								report	of the A	dvisor
	hood Commiss													
			IDENT	IFICATI	ION OF	APPEAL, P	ETITIC	ON, OR AP	PLICATIO	N:				
Case No.:				Case	e Name:									
Address or 9	Square/Lot(s) of	Property:												
Relief Requi	ested:													
					ANC M	EETING I	NFORM	ATION						
Date of ANC	Public Meeting	F D	D	/ 1	1 1/1	/ Y	Y	Was proper	notice give	en?:	Yes		No	
Description	of how notice v	vas given:												
Number of I	members that o	onstitutes a	quorun	1:		N	lumber	of member	s present	at the r	meeting			
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From DC Court of Appeals decision in *Metropole Condominium Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079 (2016):

As for the recommendation of the ANC supporting the application, we note that case law does not require the BZA to give "great weight" to the ANC's recommendation but does require the BZA to give great weight to any **issues and concerns** raised by the ANC in reaching its decision.



The great weight requirement extends only to issues and concerns that are "legally relevant".



## WEIGHING IN AT SETDOWN

Setdown is the process by which the ZC determines whether a case is ready for public hearing

- Prior to ZR16, only Office of Planning could weigh in on this determination
- Under ZR16, ANCs may submit a Setdown Form (Form 130) to provide their input on this decision

If the ANC decides to weigh in, the ANC Setdown Form must be filed to the record no later than 30 days after the date the application/petition is referred



## WEIGHING IN AT SETDOWN

At this stage, the ANC should not discuss the merits of the case

The ZC determination is only whether the case is generally ready for a public hearing to be scheduled

In the case of a <u>map amendment</u>, the ANC could also weigh in on whether it should be a rulemaking or a contested case



### WEIGHING IN AT SETDOWN

### **Appropriate Issue for Setdown?**



The Petition is ready for hearing but should be set down as a contested case because...



The benefits and amenities proposed by the Applicant in this PUD are insufficient for the following reasons...



The plans included in the Application are unclear and additional information is needed...

	BOARD OF Z				ISSION AN		UMBIA		-			
FORM 130	- ADVISORY	NEIGHE	BORHO	OD CON	MISSION	(ANC)	SETD	OWN	FOR	м		
	fore completing											
Pursuant to Subtitle Z §§ following information:	400.7 and 400	8 of Title	11 DCM	R Zoning	Regulations,	the AN	C Setdo	wn Fo	rm sh	all con	tain	the
	ID	ENTIFICAT	ION OF P	ETITION C	R APPLICATI	ON:						
Case No.:		Applican	t Name:									
ANC (ex. 1A):	Date Referre	ed to ANC:										
Date Setdown Form Due:												
		AN	C MEETIN	IG INFORM								
Date of ANC Public Meeting:	D D .	/ M N	/ /	YY	Vas proper no	tice given	1?: Y	es		No	Ц	_
Description of how notice was	given:											_
												_
		_							_			_
Number of members that cons	titutes a quorum	:		Number	of members p	present at	t the mee	ting:				
								_				-
Does the ANC recommend the			_	r public hea	ring?:		۲	es		No		
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Does the ANC recommend the Recorded vote on the motion to Please provide feedback below	o adopt the report or on whether the	rt (i.e. 4-1-1 above case	): MATERIA shouid be	AL SUBSTA	NCE or hearing or a						sed):	

#### **BZA APPLICATIONS**

The ANC may propose conditions for the Board to adopt as part of its Order

**NOTE:** If the ANC makes clear that its support is *contingent* upon the adoption of certain conditions and the Board does not adopt those conditions, the ANC will be considered opposed to the application

#### Any conditions should be:

- Related to zoning issues (within the BZA's jurisdiction)
- Related to the zoning relief requested (intended to mitigate a potential adverse impact)
- Clear and specific enough to be enforceable by the Zoning Administrator



#### **BZA APPLICATIONS**

<u>Application</u>: Special exception relief from the **parking and loading requirements** to construct a **new 8-unit apartment building** in the RA-2 Zone.

### Which conditions are most likely to be adopted?

- The Applicant shall not apply for an after-hours construction permit.
  The Applicant shall provide a SmarTrip card and Capital Bikeshare free ride coupon to each new resident.
- The Applicant shall work with the ANC to resolve any issues with onstreet truck parking.
- The Applicant shall designate a Loading Coordinator for the building, who shall be responsible for scheduling all resident move-ins and move-outs.

*Note*: Applicants and ANCs can agree to conditions separately from the BZA process



## ZC Planned Unit Developments – Benefits & Amenities

- Conditions in a PUD Order are not limited to mitigation. PUDs include conditions that finalize the negotiations between the Applicant and the ANC as to the **public benefits and amenities** proffered
- Public Benefit Categories can be found in Subtitle X § 305 and include categories like:

### Affordable housing

Employment and training opportunities

Mass transit improvements

Superior urban design and architecture

Environmental and sustainable benefits

#### **ZC Planned Unit Developments – Benefits & Amenities**

Subtitle X § 305.3: All public benefits shall meet the following criteria:

- <u>Tangible and quantifiable items;</u>
- Able to be <u>completed or arranged prior to issuance of a certificate of occupancy</u>;
- May primarily benefit a particular neighborhood or area of the city
- Monetary contributions only permitted if:
  - Made to a District of Columbia government program OR
  - No certificate of occupancy may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

Subtitle X § 305.4: A majority of public benefits of the proposed PUD should relate to the geographic area of the Advisory Neighborhood Commission in which the application is proposed.



### **FILING AN ANC REPORT**

Create an account in IZIS to upload pdfs instantly to the case record

### Backup submission email accounts:

- <u>BZAsubmissions@dc.gov</u> for BZA cases only!
- <u>ZCsubmissions@dc.gov</u> for ZC cases only!

**NOTE:** Electronic submissions must be filed via IZIS or via the backup email accounts listed above; sending an email to DCOZ staff is not enough to ensure filing!

+ File New BZA Case
+ File New ZC Case
+ File COVID Time Extension
+ File Request for Party Status
+ File Documents in an Existing Case
+ Submit Comments in a Case
File a Government Agency Report (ANC,OP,NCPC,DDOT,DDOE,etc)
Notification Sign-up
Request Certification of Zoning

### **FILING AN ANC REPORT**

ANC Reports should be filed before the case is decided

If the ANC wishes to participate as a party in the hearing, ANC Reports are due at least 7 days before the hearing (can be waived)

Let the BZA or ZC know if the ANC is not submitting a report or official recommendation

+ File New BZA Case
+ File New ZC Case
+ File COVID Time Extension
+ File Request for Party Status
+ File Documents in an Existing Case
+ Submit Comments in a Case
File a Government Agency Report (ANC,OP,NCPC,DDOT,DDOE,etc)
Notification Sign-up
Request Certification of Zoning

## Filing Cases BZA Appeals & ZC Rulemaking Petitions



### FILING **PETITIONS** TO THE ZC

An ANC may file a petition for a text or map amendment to the ZC

• Petitions must be filed through IZIS: <u>https://app.dcoz.dc.gov/Login.aspx</u>

#### **Filing Requirements**

- See Subtitle Z § 304 for **map** amendments
- See Subtitle Z § 305 for **text** amendments

#### <u>Process</u>

- Once submitted and accepted as complete, the ZC will consider the petition when **OP files a setdown report**
- If set down, the ZC can hold a public hearing, then publish a Notice of Proposed Rulemaking
- After reviewing any comments received, ZC can take final action



### FILING **APPEALS** TO THE BZA

An ANC can challenge a decision made by an administrative officer or body in the administration or enforcement of the Zoning Regulations

Did the Zoning Administrator (or other zoning official) err in interpreting or applying the Zoning Regulations?



### FILING **APPEALS** TO THE BZA

#### **Filing Requirements**

See Subtitle Y § 302.12 for the required information

- What decision is being appealed?
- Is the appeal timely? (60-day deadline)
- What are the zoning issues on appeal?

Must be filed through IZIS: <u>https://app.dcoz.dc.gov/Login.aspx</u>

<u>Timeliness</u>: The appeal must be filed within **60 days** from the date the person filing the appeal:

- Had notice or knowledge of the decision at issue, OR
- Reasonably should have had notice or knowledge of the decision, whichever is earlier (Subtitle Y § 302.2)
- The 60-day deadline can be waived by the Board if:
  - Exceptional circumstances
  - Waiver will not prejudice the parties to the appeal



### **Filing Motions**

Requesting Postponement, Reconsideration, or Rehearing



### FILING MOTIONS

- A motion is a request by a party for the BZA/ZC to take an action.
- Unless made during a hearing, all motions shall be in writing and signed by ANC Chair or Vice Chair.
- At the time of filing any motion, a party must serve all other parties.
- Parties opposing a motion shall have 7 days to file and serve a response.





### FILING MOTIONS

#### Motion to Postpone a Public Hearing

- Make the motion in writing include request and reasons and signed by Chair or Vice Chair
- Submit the motion to the case record
  - Upload through IZIS; or
  - Email to <u>bzasubmissions@dc.gov</u> or <u>zcsubmissions@dc.gov</u>
- Send the motion to all other parties
- Parties are allowed 7 days to respond, unless the Chair decides otherwise
- If more than 7 days before the hearing, the Chair may decide the motion or defer to the full Board or Commission





### FILING MOTIONS

### **Request for Reconsideration and/or Rehearing**

(Subtitle Y § 700 and Subtitle Z § 700)

- A Motion for Reconsideration/Rehearing of a final order in a contested case may be filed by a party within 10 days of the order's issuance in BZA cases or within 10 days of publication in the *DC Register* for ZC Cases.
- The motion must be served on all other parties.

### Motion for **Reconsideration**

• How is the final order erroneous? What are the errors in fact or law?

### Motion for **Rehearing**

- What is the newly discovered evidence?
- No request for rehearing shall be considered unless new evidence is submitted that could not reasonably have been presented at the original hearing

### **Responding to**

### Modifications & Time Extensions



### MODIFICATIONS

After a final order is issued, an Applicant may request:

- Minor Modification (without Hearing)
- Modification of Consequence (without Hearing)
- Modification of Significance (with Hearing)
  Subtitle Y § 703-704 and Subtitle Z § 703-704

**Modifications** do not allow the BZA/ZC to revisit the entire case, only to consider what is being added or modified.



### TIME EXTENSIONS

After a final order is issued, an Applicant may request:

- An extension of the order's validity
- Subtitle Y § 705 and Subtitle Z § 705

**Time Extensions** do not allow the BZA/ZC to revisit the decision in a case, only to decide whether there is good cause to extend the validity of the order.



### ANC **RESPONSES**

Affected ANCs will be served with any request for modification or time extension.

- The ANC can provide input on the request in the form of an ANC Report filed to the record
  - Make sure the issues & concerns are relevant to the request
- For modifications that require a public hearing, the affected ANC may participate as a party, as with any contested case



## Virtual Hearing Reminders



### **Virtual Hearings**

#### HOW TO WATCH OR LISTEN

Watch live via Webex, YouTube; listen via phone

Recording available next day on DCOZ Website and on YouTube

#### HOW TO SIGN UP TO PARTICIPATE

Fill out form on DCOZ website <a href="https://dcoz.dc.gov/service/sign-testify">https://dcoz.dc.gov/service/sign-testify</a>

Or, sign up with DCOZ staff •ZC: 202-727-0340 •BZA: 202-727-5471





### Virtual Hearings

### **Virtual Hearing Procedures**

Subtitle Y § 103.13 and Subtitle Z § 103.13

- Sign up in advance to testify
- No "live video" during testimony
- Request to reopen record if technical difficulties
- All submissions except for official ANC Reports must be submitted at least 24 hours prior to Hearing



## Important OZ Links





# Interactive Zoning Information System (IZIS)

Searching Case Records: https://app.dcoz.dc.gov/CaseReport/CaseSearch.aspx

Filing a Case / Uploading Documents: https://app.dcoz.dc.gov/Login.aspx

#### **Review Case Records**



Use the case search page to access case information,

A Username and Password are not required to use this

Go to Case Records >

#### File, Manage, and Submit Cases



Login to IZIS to file and manage, or to submit documents or cc

A Username and Password are required to use this system.

Go to File & Manage Cases >



Resourc



https://maps.dcoz.dc.gov/zr16





## **DCOZ Website**

Office of Zoning Website: http://dcoz.dc.gov/

Virtual Hearing Links and Information:

http://dcoz.dc.gov/service/watch-live-virtual-zcbza-hearingsmeetings

## **QUESTIONS?**

Please feel free to contact us:

James Moeller, General Counsel james.moeller@dc.gov / 202-805-7507

Sharon Schellin, Secretary to the Zoning Commission sharon.schellin@dc.gov / 202-727-0340

Clifford Moy, Secretary to the Board of Zoning Adjustment clifford.moy@dc.gov / 202-727-0348

Zelalem Hill, Special Assistant, ANC Liaison zelalem.hill@dc.gov / 202-727-0312

