

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director
DATE: January 23, 2017
SUBJECT: Setdown Report for a Proposed Text Amendment (ZC 17- __)
Clarification of Vesting Rule Contained in Subtitle A § 301.5(a)

This report serves as the Pre-hearing Filing required by 11 DCMR Subtitle Z § 500.15 as a prerequisite to the advertisement of the proposed text amendment.

I. BACKGROUND AND SUMMARY RECOMMENDATION

Based on recent Board of Zoning Adjustment (BZA) applications and appeals, Office of Planning (OP) and Zoning Administrator (ZA) staff felt that clarification was needed to the zoning language governing the vesting of building permit applications. When the Commission sets down a map amendment for an area, a series of rules govern how building permit applications in the affected area are to be processed. Two important concepts contained in those rules are: (1) the building permit application must be complete and accepted by the Department of Consumer and Regulatory Affairs (DCRA) for processing by the date the Commission sets down the map amendment; and (2) the application must be processed without a “substantial change”. Questions have been raised about what constitutes both a complete application and a substantial change. The proposed text amendment seeks to clarify those concepts. OP recommends that the Commission set down the amendment for a public hearing.

II. PROPOSED TEXT AMENDMENT

OP proposes to amend Subtitle A, § 301.5(a), so that the entire subsection would read as shown below in redline version. The proposed text was developed together with ZA staff and counsel. For context, please see attached the complete existing text of sections 301.4, 301.5 and 301.6. The proposed amendment would more clearly state that DCRA must officially accept the application as being complete, rather than the application simply being filed. It would also define with more certainty the parameters by which DCRA would judge whether modifications to the permit application constitute substantial changes.

A 301.5(a) If one (1) of the building permit applications listed in Subtitle A § 301.6 is ~~filed~~ **officially accepted as being complete by DCRA** on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by Subtitle A § 301.4. The application shall be accompanied by any fee that is

required, ~~and~~ by the plans and other information required by Subtitle A § 301.2; ~~which shall be sufficiently complete to permit processing without substantial change or deviation,~~ and by any other plans and information that are required to permit complete review of the entire application under any applicable District of Columbia regulations;

Said building permit applications shall, prior to the date on which Zoning Commission makes a decision to hold a hearing on the amendment, be sufficiently complete to permit processing without substantial change or deviation, provided that said applications may be revised to address the requirements of the construction codes or to bring the application into greater compliance with zoning, so long as the proposed building does not expand or increase in lot occupancy, gross floor area, building height, penthouse height, number of stories or number of units. The application also may not change use or increase the intensity of the proposed use.

III. ATTACHMENTS

1. Existing Text of Subtitle A, Sections 301.4, 301.5 and 301.6

JS/mrj

Attachment 1
Existing Text of Subtitle A, Sections 301.4, 301.5 and 301.6

301.4 Except as provided in Subtitle A §§ 301.9 through 301.13, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

301.5 If an application for a type of building permit enumerated in Subtitle A § 301.6 is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone classification of the site of the proposed construction, the processing of the application and the completion of work pursuant to the permit shall be governed as follows:

- (a) If one (1) of the building permit applications listed in Subtitle A § 301.6 is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by Subtitle A § 301.4. The application shall be accompanied by any fee that is required, and by the plans and other information required by Subtitle A § 301.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information that are required to permit complete review of the entire application under any applicable District of Columbia regulations;
- (b) If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or if the case is pending, in accordance with either the most restrictive zone classification being considered for the site or, if more restrictive, the site's current zone classification;
- (c) For purposes of paragraph (b) of this subsection, the phrase "zone classification being considered for the site" shall include any zone district classification that the Zoning Commission has decided to notice for adoption and the zone district classification that is in effect on the date the application is filed;

- (d) The limitation in paragraph (b) of this subsection shall not prevent the issuance of a building permit that is necessary in an emergency to protect the public health or safety; and
- (e) The limitation in paragraph (b) of this subsection shall not apply to a decision to hold a hearing on an application to amend the Zoning Regulations or Zoning Maps filed by an owner of property pursuant to Subtitle Z of this title.

301.6 For the purposes of Subtitle A § 301.5, the term “building permit” refers to the following types of permits:

- (a) A permit for new construction, including constructing, adding to or moving a building or structure;
- (b) A permit to erect or replace an awning, canopy, tent, or other membrane structure, or similar structures as a principal structure;
- (c) A permit to erect a radio, television, or other telecommunications tower as a principle structure; or
- (d) A permit for a change of use or occupancy, increase in load or modification of floor layout of the building or structure.