

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS
TITLE 10A HISTORIC PRESERVATION

CHAPTER 4 MAYOR’S AGENT REVIEW OF WORK AFFECTING HISTORIC LANDMARKS AND HISTORIC DISTRICTS

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400 GENERAL PROVISIONS

The Mayor’s Agent shall make the final determination on the approval or denial of applications for demolition, alteration, new construction, and subdivision subject to the Historic Protection Act (D.C. Official Code §§ 6-1104(e), 6-1105(f), 6-1106(e), and 6-1107(f)), and shall make preliminary determinations of compliance with the Act pursuant to D.C. Official Code § 6-1108.

The Mayor’s Agent shall make these findings after having received and duly considered the recommendations from either the Review Board or the Commission of Fine Arts, or both, as appropriate.

The Mayor’s Agent may make a preliminary or final determination without a public hearing, if not required by law. Any determination shall be made in accordance with this chapter.

If a public hearing is required by law, or the Mayor’s Agent deems it appropriate to hold a public hearing, it shall be held in accordance with the provisions of this chapter and Chapter 30. As provided in § 104, the Mayor’s Agent (Hearing Officer) may assume the duties of the Mayor’s Agent for this purpose.

The Mayor’s Agent shall take no action on applications for conceptual design review.

The following terms specifically applicable to this chapter are defined in Chapter 99:

- (a) Necessary in the public interest;
- (b) Consistent with the purposes of the Act;

- (c) Special merit;
- (d) Unreasonable economic hardship;
- (e) Low-income owner;
- (f) Design.

401 STANDARDS FOR APPROVAL AND DENIAL

In making a finding on demolition, alteration, or subdivision, the Mayor's Agent shall apply the standard that no permit shall be issued and no subdivision shall be admitted to record unless:

- (a) Issuance of the permit or admission of the subdivision to record is necessary in the public interest, or
- (b) Failure to issue a permit or admit the subdivision to record will result in unreasonable economic hardship to the owner.

In making a finding on new construction, the Mayor's Agent shall apply the standard that the permit shall be issued unless:

- (a) After due consideration of the zoning laws and regulations of the District of Columbia, the Mayor's Agent finds that the design of the building and the character of the historic district or historic landmark are incompatible;
- (b) Provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor's Agent may deny a construction permit entirely upon finding that any additional construction will be incompatible with the character of the historic district or historic landmark.

In making any determination, the Mayor's Agent shall consider the recommendations of the Review Board and Commission of Fine Arts, as applicable, giving due regard to their statutory role as advisors to the Mayor on the consistency of proposed work with the purposes of the Act.

In making a determination that work is necessary in the public interest because it is consistent with the purposes of the Historic Protection Act, the Mayor's Agent shall apply the criteria in D.C. Official Code § 6-1101(b), also stated in § 2002. The Mayor's Agent shall consider all applicable criteria in making a determination, and shall find that all applicable criteria have been met for a determination of consistency.

402 APPROVAL WITHOUT A PUBLIC HEARING

Upon receipt of a recommendation of approval from the Review Board or CFA, the Mayor's

Agent may take any of the following actions without a public hearing, and without further public notice:

- (a) When the application is for alteration or subdivision, or demolition of a non-contributing building or structure, if the Mayor's Agent finds the proposal consistent with the purposes of the Act, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.
- (b) When the application is for new construction, if the Mayor's Agent finds that the design of the building and the character of the historic landmark or historic district are not incompatible, the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated.
- (c) When the application is for preliminary review, if the Mayor's Agent finds it appropriate to issue a preliminary finding of compliance with the Act, the Mayor's Agent shall notify the applicant of this finding in writing.

If the Mayor's Agent has made a preliminary finding of compliance with the Act, upon receipt of a final permit application from DCRA, the Mayor's Agent shall find either:

- (a) That the final application is consistent with the approved preliminary application, in which case the Mayor's Agent shall approve the application and return it to DCRA with the approval indicated; or
- (b) That the final application is not consistent with the approved preliminary application, in which case the Mayor's Agent shall refer the application to the Board or CFA as appropriate for further review.

The Mayor's Agent may delegate to the staff the authority to approve applications consistent with the recommendations of the Board or the CFA.

403 NOTIFICATION OF THE INTENT TO SCHEDULE A PUBLIC HEARING

Upon receipt of a recommendation from the Review Board or CFA, unless the applicant withdraws the application, the Mayor's Agent shall notify the applicant of the requirement to hold a public hearing if any of the following is involved:

- (a) Demolition of a building or structure that contributes to a historic landmark or historic district;
- (b) Subdivision of a historic landmark; or
- (c) A claim of unreasonable economic hardship or special merit.

Upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the intent to hold a public hearing, if deemed appropriate for any other reason.

The notice shall inform the applicant of any applicable fees for the hearing as provided in Chapter 33.

When the application is for demolition, alteration, or subdivision, the notice shall require the applicant to submit a written response within ten (10) days of receipt, stating one or more of the following as the applicant's claim:

- (a) That the issuance of the permit or admission of the subdivision to record is necessary in the public interest because it is consistent with the purposes of the Act as set forth in D.C. Official Code § 6-1101(b).
- (b) That the issuance of the permit or admission of the subdivision to record is necessary in the public interest because it is necessary to construct a project of special merit; or
- (c) That denial of the permit or failure to admit the subdivision to record will result in unreasonable economic hardship to the owner.

404 NOTIFICATION OF THE RIGHT TO REQUEST A PUBLIC HEARING

Upon receipt of a recommendation from the Review Board or CFA, the Mayor's Agent shall notify the applicant of the right to request a public hearing if either of the following applies:

- (a) If the Review Board or CFA has recommended that a proposed demolition, alteration, subdivision, or preliminary application is not consistent with the purposes of the Act; or
- (b) When the application is for new construction, if the Review Board or CFA has recommended that the design of the building and the character of the historic landmark or historic district are not compatible.

The notice shall inform the applicant of any applicable fees for the hearing as provided in Chapter 33.

The notice shall require the applicant to request a hearing in writing within ten (10) days of the date of the notice, and to state one or more of the reasons in § 403.4 as the nature of the applicant's claim.

If the applicant fails to request a hearing, the Mayor's Agent may deny the issuance of the permit or admission of the subdivision to record without a hearing.

If the Mayor's Agent denies the issuance of the permit or the admission of the subdivision to record, the HPO shall notify the applicant in writing and return the application to DCRA with the denial indicated.

405 SCHEDULING OF A PUBLIC HEARING

Upon receiving a response to the hearing notice and statement of the nature of the applicant's claim, the Mayor's Agent shall schedule the hearing to occur within ninety (90) days.

If the applicant does not comply with the requirement to notify the Mayor's Agent of the nature of the applicant's claim, the Mayor's Agent may nonetheless schedule the hearing, and any delay caused by the applicant's failure to provide any information required by these regulations shall toll the running of the one hundred twenty (120) day period provided by the Act.

406 NOTICE OF A PUBLIC HEARING

The Mayor's Agent shall give notice of a public hearing not less than thirty (30) days before the hearing, as follows:

- (a) By first class mail to the applicant, the owners of all property abutting the property involved in the application, and the affected Advisory Neighborhood Commission; or
- (b) By first class mail to all persons listed on the public mailing list described in Chapter 32.

Notice of the public hearing shall state the following:

- (a) The time, date, and location of the hearing;
- (b) The name of the applicant;
- (c) The case number and nature of the application;
- (d) The street address of the property involved;
- (e) The lot and square number of the property involved;
- (f) The nature of the applicant's claim;
- (g) The number of the affected ANC; and
- (h) The filing requirements for participation as a party.

407 SUPPLEMENTAL PRE-HEARING FILINGS

In all cases, the applicant shall file the following information with the Mayor's Agent at least twenty (20) days before the public hearing:

- (a) A written statement setting forth the grounds upon which the applicant bases the

claim of consistency, special merit, or economic hardship;

- (b) Architectural drawings of sufficient completeness to indicate the proposed exterior design of the building, structure, or alteration within its historic context;
- (c) Photographs sufficient to document the historic features or properties affected by the proposed work;
- (d) A list of witnesses who are prepared to testify on behalf of the applicant; and
- (e) Any additional information, reports, or other materials that the Mayor's Agent specified when scheduling the public hearing.

When the applicant intends to make a claim of unreasonable economic hardship, the applicant shall file the following information, by affidavit, with the Mayor's Agent at least twenty (20) days before the hearing:

- (a) The amount paid for the property; the date of purchase, and the name of the seller, including a statement of the relationship, if any, between the owner and the seller;
- (b) The assessed value of the land and improvements on the land according to the two most recent assessments;
- (c) The amount of real estate taxes for the previous two years;
- (d) The amount of annual debt service, if any, for the previous two years;
- (e) All appraisals obtained within the previous two years by the owner or applicant in connection with his or her purchase, financing, or ownership of the property;
- (f) Any listing of the property for sale or rent, the price asked, and offers received, if any;
- (g) Any consideration by the owner as to profitable adaptive uses for the property;
- (h) For income-producing property, the amount of annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and annual cash flow for the previous two years; and
- (i) For a low-income owner, a statement of present household income and the number of persons in the household.

The Mayor's Agent may require that an applicant furnish additional information that may be relevant to a determination of unreasonable economic hardship. The Mayor's Agent may provide in appropriate instances that this additional information be furnished under seal.

When the applicant seeks a bench decision, the applicant is encouraged to submit proposed findings of fact and conclusions of law to the Mayor's Agent at least twenty (20) days before the hearing.

If any required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with the affidavit a statement of the missing information and the reasons it cannot be obtained.

Unless furnished under seal, the staff shall make the applicant's supplemental filing information available for public inspection.

408 REQUEST FOR PARTY STATUS

Any affected person or group other than the applicant wishing to participate as a party in a public hearing shall file the following information with the Mayor's Agent not less than fifteen (15) days before the hearing:

- (a) The requesting party's name and address;
- (b) Whether the party will appear as a proponent or opponent of the application;
- (c) Whether the party will appear through legal counsel, and if so, the name and address of legal counsel; and
- (d) A written statement setting forth the manner in which the party may be affected or aggrieved by action upon the application, and the grounds upon which the party supports or opposes the application.

The Mayor's Agent shall determine whether the person or group qualifies as a party as provided in Chapter 30.

409 PUBLIC HEARING PROCEDURE

The Mayor's Agent shall hold the public hearing in accordance with the procedures in Chapter 30.

The Mayor's Agent shall hold the public hearing within one hundred twenty (120) days of receipt of an application, but any failure to conclude the hearing within this time period does not constitute an entitlement to approval of the application.

410 ISSUANCE OF FINAL ORDER

Upon closure of the hearing record, the Mayor's Agent shall issue a final written order, including findings of fact and conclusions of law. The final order shall be filed with the record of the case.

The final order shall be based only upon the exclusive record of the hearing or any lesser

portions of the exclusive record that may be agreed upon by the parties at the hearing.

The Mayor's Agent shall give notice to each party participating in the hearing, by serving the party with a copy of the final order.

The final order shall be issued as expeditiously as possible after closure of the hearing record.

The final order shall be effective fifteen (15) days after service.

411 CONDITIONS OF FINAL ORDER

The Mayor's Agent may include any conditions or restrictions deemed appropriate as terms of the approval.

As a condition of the issuance of a final order, the Mayor's Agent may require the execution of a signed memorandum describing the conditions of any negotiated settlement or consensus agreement among interested parties.

The Mayor's Agent may require that a project return to the Board or CFA for further review and refinement after approval, particularly when the project is described only in concept.

When approving a project of special merit, the Mayor's Agent may specify any documents or assurances the applicant must submit in order to demonstrate the ability to complete the project, as required for permit issuance.

The Mayor's Agent may impose a performance schedule as a condition of any order, and may impose a time limit on the validity of any order. If no time limit is specified, an order shall be considered valid for a period of five (5) years.