

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-18A(1)
Z.C. Case No. 15-18A
Initio, LP
(Minor Modification of Consolidated PUD and Related Map Amendment
@ Square 1194, Lot 811)
ORDER DENYING MOTION FOR LEAVE TO FILE
UNTIMELY MOTION FOR RECONSIDERATION FILED BY AS A NON-PARTY
February 26, 2018

By Z.C. Order No. 15-18, the Zoning Commission for the District of Columbia (“Commission”) granted the application of Initio, LP (“Applicant”) for approval of a consolidated planned unit development (“PUD”) and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for Lot 811 in Square 1194 (“PUD Site”). In connection with the PUD, the Commission waived the minimum land area requirements §. 2401.1 of the 1958 Zoning Regulations to an extent greater than permitted by § 2401.2, having lawfully found that it had the authority to exceed a self-imposed limitation on its waiver authority.

The original parties to Z.C. Case No. 15-18 were the Applicant and Advisory Neighborhood Commission (“ANC”) 2E

After the effective date of the Zoning Regulations of 2016, the Commission, through ZC Order No. 15-18A, granted a minor modification of the PUD to vacate Findings of Fact Nos. 37 and 38 and Conclusion of Law No. 4 in ZC Order No. 15-18 to in change the basis of its waiver of the minimum land area requirements to Subtitle X § 301 of the new regulations, which permitted the extent of the waiver granted under the 1958 regulations.

On February 2, 2018, Z.C. Order No. 15-18A was published in the *DC Register* and became final and effective upon publication. 11-Z DCMR § 604.9.

Subsection § 700.3 of the Zoning Commission’s Rules of Practice and Procedure (Title 11-Z DCMR) provides:

A motion for reconsideration, rehearing, or re-argument of a final order in a contested case under Subtitle Z § 201.2 **may be filed by a party** within ten (10) days of the order having become final. The motion shall be served upon all other parties.

(Emphasis added.)

Subsection 101.9 of those rules provides that the Commission may, for good cause shown, waive any of the provisions of Title 11-Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

On February 13, 2018, one day after the ten-day period expired, the Committee of 100 on the Federal City (“Committee”), which was not a party to the case, filed a Motion to Reopen the Record for an untimely Motion to Reconsider Z.C. Order 15-18A (“Motion”) (Exhibit 9.)¹ The Commission will treat the Committee’s Motion as requesting two waivers, one from the requirement that a motion for reconsideration be filed by a non-party and a second from the requirement to file a motion for reconsideration within 10 days of the order having become final. The Applicant filed an opposition.

Because the Committee was not a party to the original proceeding and the Motion to Reconsider was not timely filed, technically the Commission must grant the two waivers sought before it could formally accept the Committee’s Motion to Reconsider into the case record.

The Commission voted not to grant either request because the Committee made no effort to demonstrate good-cause as to why the waivers should be given, Instead the Commission simply argued the merits of its reconsideration request. However, proving the merits of a motion for reconsideration and proving good-cause to accept it are two different things.

For the reasons stated above, the Motion for Leave to file is hereby **DENIED** and the extent to which the Motion included a motion for reconsideration, that motion is deemed not to have been filed.

On February 26, 2018, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **DENIED** the Motion at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to deny).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the D.C. Register; that is, on December 28, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

¹ Oddly the form submitted by the Committee was dated May 11, 2017.