

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-07C(1)

Z.C. Case No. 08-07C

Four Points, LLC

(Second-Stage PUD @ Square 5784)

ORDER DENYING WAIVER TO PERMIT THE FILING BY A NON-PARTY OF A
MOTION TO RECONSIDER Z.C. ORDER NO. 08-07C

December 17, 2018

Pursuant to Z.C. Order No. 08-07C, effective as of November 9, 2018, the Zoning Commission for the District of Columbia (“Commission”) granted an application submitted by Four Points, LLC (“Applicant”) for a second-stage planned unit development (“PUD”) to develop Square 5784, Lots 899, 900, and 1101 (“Property”) with a new office building and ground-floor retail (“Building 4”).

The parties to Z.C. Case No. 08-07C were the Applicant and Advisory Neighborhood Commission (“ANC”) 8A.

Subtitle Z § 700.3 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) provides the following:

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.) Pursuant to 11-Z DCMR § 101.9, the Commission may, for good cause shown, waive any of the provisions of 11-Z DCMR if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

Pursuant to 11-Z DCMR § 101.9, on November 13, 2018, the Current Area Residents East of the River (“CARE”) filed a request for waiver of the party status requirement (“Waiver Request”). (Exhibit [“Ex.”] 50.) The waiver request was embedded within a document entitled Motion to Reconsider (“Motion”).

On November 20, 2018, the Applicant filed a letter requesting that the Commission deny the Waiver Request, or in the alternative deny the Motion, and strike from the record the materials included as attachments to the Motion. (Ex. 51.)

CARE was not a party to Z.C. Case No. 08-07C. Although the Waiver Request was embedded within what was entitled a Motion to Reconsider, no such motion could be deemed filed by a non-party unless the waiver was granted. Therefore, at its public meeting held on December 17, 2018, the Commission first considered the Waiver Request and, for the reasons stated below, voted to deny the request, such that the Motion to Reconsider is not considered as having been filed. Although the materials are therefore deemed to never have been filed, the Commission also granted the Applicant's motion to strike from the record the materials included as attachments to CARE's motion.

As set forth below, CARE did not demonstrate any good cause for waiving the party status requirement.

CARE's Motion argued that the good cause to waive the party status requirement was based on Z.C. Case No. 08-07, which granted the first-stage PUD for the Property and which was decided over 10 years ago when there was no ANC for the single member district ("SMD") for the Property. Thus, CARE alleged that community members believed that the project had been approved and nothing could be done to contest it. (Ex. 50, pp. 1-2.) However, the Commission finds that CARE's arguments regarding the lack of adequate ANC representation and the perceived inability of community members to participate in Z.C. Case No. 08-07C is not supported by the record. The ANC and other community organizations and individuals actively participated in the public hearing process for Building 4, as evidenced by the following: testimony presented by SMD Commissioner Greta Fuller (ANC 8A06) at the July 26, 2018 public hearing; testimony presented by the Executive Director of the Anacostia Coordinating Council ("ACC") at the July 26, 2018 public hearing; ANC resolution in unanimous support of the application, dated September 14, 2018 (Ex. 46); signed ANC community benefits agreement ("CBA"), dated September 14, 2018 (Ex. 46A); ACC letter in support of the application, dated August 4, 2018 (Ex. 45B); and letters of support from the Anacostia Economic Development Corporation, Anacostia Playhouse, ARCH Development Corporation, Check It Enterprises, Community College Prep Academy, Historic Anacostia Block Association, Menkiti Group, and Stockbridge Consulting. (Ex. 29-36.)

In addition, given that there is no evidence in the record to the contrary, the Commission credits the Applicant's indication that it described the application at ANC 8A's public meetings on September 4 and September 14, 2018; at an ANC Executive Committee meeting on August 20, 2018; and to the ACC on July 24 and August 2, 2018, with approximately 200 community members in attendance between the two meetings. (Ex. 45B.) Moreover, the Office of Zoning published notice of the application's filing in the *D.C. Register* on March 30, 2018; published notice of the public hearing regarding the application in the *D.C. Register* on June 8, 2018; and the Office of Zoning mailed notice of the public hearing to owners of property within 200 feet of the Property on May 31, 2018. In addition, the Property was posted with signs describing the application and advertising the public hearing date on June 12, 2018, which signs were maintained up until the public hearing. (Ex. 8, 14, 17, 18, 26.) All notice given for the application was done

in accordance with the Zoning Regulations, and each notice clearly indicates how to participate in the public hearing process.

Thus, the Commission finds that CARE's argument that the party status requirement should be waived now because of alleged inadequate ANC representation 10 years ago is unfounded as it applies to this Commission's review and approval of the second-stage PUD for Building 4.

CARE also argued that the party status requirement should be waived because "after closing of the record on October 4, 2018 news released that the Reunion Square development would be receiving 60 million dollars in Tax Increment Financing ("TIF"). (Ex. A). Since this is new information made available only after the hearing this motion for reconsideration should be granted." (Ex. 50, p. 2.) However, this claim goes to the merits of the motion for reconsideration, and not the Waiver Request.

Since the Commission has concluded that CARE failed to demonstrate good cause for waiving the party status requirement, it need not address the question of whether granting the waiver would prejudice the Applicant.

In numerous orders, the Commission has repeatedly stated the importance of the party status requirement. (See, e.g., Z.C. Order No. 11-24, p. 3 (denying a waiver request to by a non-party and reiterating that "only the existence of 'extraordinary circumstances' would justify the waiver of the requirement that only a party may file a motion for reconsideration, such as when no notice of a hearing is given"); Z.C. Order No. 16-07(1), p. 2.) CARE has failed to meet this standard. Therefore, for the reasons stated above, the Waiver Request is hereby **DENIED**.


On December 17, 2018, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **DENIED** the Waiver Request at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to deny, Peter A. Shapiro not present, not voting).

On December 17, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission **MOVED TO STRIKE** the materials included with the Motion from the case record by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to deny; Peter A. Shapiro not present, not voting).


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 February 1, 2019.

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