Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

TO: Arnold R Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S Schellin
Acting Secretary to the Zoning Commission

DATE: January 26, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on February 3, 2006

1. Z.C. Order No 05-14A (Case No 05-14),
2. Z C. Order No 05-22 (Case No 05-22), and
3. Z C. Notice of Final Rulemaking & Order No 05-29 (Case No. 05-29)

The rulemaking is also provided on the attached diskette

Attachments

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ZONING COMMISSION
District of Columbia
CASE NO.05-14
EXHIBIT NO.19

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 05-14A
Z.C. Case No. 05-14
(*Sua Sponte* Review of Board of Zoning Adjustment Case No. 17302)
September 15, 2005

This Order arises from the Zoning Commission's *sua sponte* review of the decision by the Board of Zoning Adjustment ("BZA") to grant the application of Non-Profit Community Development Corporation of D C , Inc ("NPCDC") for a variance from the height limitations of 11 DCMR § 770 1 For the reasons discussed below, the Zoning Commission vacates as moot the BZA's Summary Order granting Application No 17302.

STATEMENT OF FACTS

1. NPCDC applied to the BZA for a height variance to allow it to construct a new 7-story mixed-use building at the premises located at 2750 14th Street, N W (Square 2667, Lot 849). The application was assigned BZA Application No. 17302

2 On April 12, 2005, the BZA held a hearing on the variance application. At the conclusion of the hearing, the BZA voted to approve the Application No 17302, and issued a summary order that same day ("Summary Order") The Summary Order granted the applicant an area variance to construct a building that exceeds the maximum height permitted by 11 DCMR § 770.1. The Summary Order became effective on April 22, 2005, pursuant to 11 DCMR § 3125 9.

3 At a special public meeting on April 29, 2005, the Zoning Commission initiated a *sua sponte* review of the BZA decision within ten (10) days of being advised of the issuance of the Summary Order, as authorized by 11 DCMR § 3128, and stayed the Summary Order

4. At its May 9, 2005 public meeting, the Zoning Commission offered NPCDC the choice of either. (a) submitting a brief explaining why the Commission should not reverse or modify the BZA's decision to grant the variance or (b) submitting a PUD application seeking the same zoning relief granted through the BZA's Summary Order The Commission indicated that if NPCDC chose to submit a PUD application, it would suspend its review of the BZA's decision

5 On May 16, 2005, NPCDC submitted a PUD application in lieu of a brief

6. NCPDC's PUD application requested approval of a building that included a mix of market rate and affordable housing, a childcare center, and ground floor retail space The zoning

flexibility sought was relief from the 65-foot height limitation of the C-2-B zone district to construct 74 25-foot tall building

7 The Zoning Commission took final action to approve the PUD application, including the zoning flexibility sought, at a special public meeting held July 25, 2005

8. At its regularly scheduled public meeting held September 15, 2005, the Commission voted to vacate as moot the BZA Summary Order by a vote of **5-0-0** (Carol J Mitten, Kevin L. Hildebrand, Anthony J Hood, Gregory N Jeffries, and John G Parsons to vacate)

CONCLUSIONS OF LAW

The Zoning Commission in its *sua sponte* review of a BZA decision or order, may affirm, modify, reverse, or remand the case back to the BZA for reconsideration, rehearing, or other action pursuant to instructions from the Commission. 11 DCMR § 3128 4

A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *In re Dom L S*, 722 A 2d 343, 348 (D C 1993) When a subsequent decision supersedes an order granting zoning relief, it is appropriate to vacate the earlier order *Interdonato v District of Columbia Bd of Zoning Adjustment*, 429 A.2d 1000, 1002 (D C 1981).

The Zoning Commission granted the same zoning flexibility through the PUD that the BZA granted to NPCDC through the Summary Order Therefore, the issues in the variance proceeding are no longer "live " The Commission therefore vacates as moot the BZA's decision to grant the variance

DECISION

Accordingly, it is hereby **ORDERED** that the BZA Summary Order issued in BZA Application No 17302 is **VACATED.**

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register*, that is, on _____