

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33C(1)
Z.C. Case No. 08-33C
Conference Center Associates I, LLC
(Modification of Consolidated Planned Unit Development)
January 11, 2016

ORDER GRANTING RECONSIDERATION

By Z.C. Order No. 08-33C issued November 9, 2015 and effective December 11, 2015, (“Order”) the Zoning Commission (“Commission”) granted the application of Conference Center Associates I, LLC (“Applicant”) for a modification to an approved planned unit development (“PUD”).

The PUD was initially granted by Z.C. Order No. 08-33, which authorized the construction of a hotel, conference center, restaurant, and parking structure. The modification initially requested by the Applicant consisted of only design revisions and a change to hotel brand from SpringHill Suites by Marriott to a combined Residence Inn/Courtyard by Marriott.

At the time of the original application, the project was located within the boundary of Advisory Neighborhood Commission (“ANC”) 5E. That ANC was therefore automatically a party to that case pursuant to 11 DCMR § 3099. After the original application was granted, but before the modification was requested, the Council of the District of Columbia enacted legislation redrawing ANC boundary lines, such that as of the date the modification request was filed the project was located within ANC 5A, which then became an automatic party in place of ANC 5E.

Although no longer an automatic party, ANC 5E was entitled to receive mailed notice of the hearing pursuant to 11 DCMR § 3015.3(c) because it was located within 200 feet of the property. Unfortunately, mailed notice was not given, although notice was posted at the project site and published in the *D.C. Register* as was also required. ANC 5E did not request party status and did not participate in the hearing. During the modification proceedings, the Commission agreed to modify Conditions 14, 15, and 17 of Z.C. Order No. 08-33, which required that hotel and other PUD space be made available to ANC 5E, by replacing the references to ANC 5E with references to ANC 5A.

On December 15, 2015, Advisory Neighborhood Commission 5E filed a motion for reconsideration (“Motion”). (Exhibit [“Ex.”] 28.) The Motion noted the absence of mailed

notice and asserted that the lack of notice led to ANC 5E's "disenfranchisement" because it was unable to participate in any discussion concerning the impact of the modification on the public benefits resulting from the PUD. In addition to the Motion, ANC 5E submitted a request to waive the requirements of § 3029.5 that only a party may file a motion for reconsideration ("Request"). (Ex. 28.) The Request also cites the lack of mailed notice as the basis for granting the waiver.

On December 23, 2015, the Applicant filed a response to the Motion ("Response"). (Ex. 29.) The Response did not address the issue of notice, but stated that subsequent to receiving the Motion a representative of the Applicant met with the ANC/Single Member District ("SMD") Commissioner for ANC 5E01 in order to discuss ANC 5E's request to review the project's amenities. The Response then expressed the Applicant's willingness to extend to ANC/SMD 5E01 all of the amenities to be provided to ANC 5A and offered revisions to Conditions 14, 15, and 17 to accomplish this. Through an email dated December 23, 2015, the ANC/SMD 5E01 Commissioner advised the Applicant's counsel that the Response "appropriately and effectively" addressed the concerns of ANC 5E. This email was submitted by the Applicant into the record. (Ex. 30.)

At a public meeting held January 11, 2016, the Commission considered the Motion as a Correspondence Item and voted to waive the party status requirement, grant the Motion for reconsideration, and revise Conditions 14, 15, and 17 in the manner proposed by the Applicant. As part of its discussion, the Commission expressed concern that ANC 5A may not have been served with the motion as required by § 3029.5 and therefore the Commission did not know whether that ANC objected to the change. The Commission then asked the Applicant's counsel to advise the Secretary whether ANC 5A was aware of the Motion. The Commission's Secretary indicated that the Applicant's Counsel had indicated that ANC 5A was aware of the Motion and had no objection provided that nothing was being taken away from it. After concluding that the revisions to the three conditions would not alter ANC 5A's right to receive the public benefits described therein, the Commission voted to waive the service requirements of § 3029.5.

CONCLUSIONS OF LAW

Under 11 DCMR § 3029.5, a party may file a motion for reconsideration of a Commission decision within 10 days after a final written order is issued. Here, although ANC 5E timely filed its motion, it was not a party to the modification proceeding and therefore sought a waiver of the party status requirement. Pursuant to 11 DCMR § 3000.8, the Commission may waive any of the provisions in Chapter 30 "for good cause shown" if it "will not prejudice the rights of any party" and "is not otherwise prohibited by law."

The Commission finds good cause to grant the waiver. ANC 5E did not receive mailed notice of the hearing as required by § 3015.3(c) and apparently was unaware of the other forms of notice given. Had ANC 5E received mailed notice, it would have been able to submit a request for party status under § 3022.3.

The Commission recognizes that the other forms of notice required by § 3015.3(c) were given and that the Commission and Board of Zoning Adjustment, in denying prior requests for party status waiver, have held that those forms of notice suffice. However, those instances can be distinguished from the circumstances that exist here in that this proceeding involves: (1) a modification; and (2) an ANC that: (a) was an automatic party to the original proceeding; (b) was identified as the recipient of public benefit in the original case; (c) lost automatic party status because of a redistricting; and (d) was nevertheless entitled to mailed notice of the hearing because of its status as an ANC located within 200 feet of the property. Had the Commission been aware that no mailed notice had been given ANC 5E, it almost certainly would not have proceeded with the modification until that defect was remedied. Now that this defect has been brought to its attention, the Commission has no qualms about waiving the party status requirement in order to allow the ANC to be heard.

The Commission further finds that no rights of either the Applicant or ANC 5A will be prejudiced by it granting the waiver, and that the waiver is not prohibited by law. The Applicant has not objected to the waiver and, as noted, ANC 5A will not be adversely impacted by the Commission's consideration of the motion.

Turning to the merits of the Motion, § 3029.6 provides that a motion for reconsideration "shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought." A fair reading of the Motion suggests that that failure to provide ANC 5E with mailed notice deprived it of an opportunity to object to the loss of the public benefits originally granted it by Conditions No. 14, 15, and 17. Because the ANC was unable to make such an objection, the Commission's decision to eliminate the references to ANC 5E from those conditions was erroneous. The Commission agrees. As to the relief needed, the Commission concurs with ANC 5E and the Applicant that the appropriate remedy would be the insertion of references to SMD 5E01 into Conditions 14, 15, and 17 so that ANC/SMD 5E01 will receive the same public benefits as will be afforded ANC 5A.

For all of these reasons, the Commission hereby **ORDERS** that the motion for **RECONSIDERATION** is **GRANTED** and **FURTHER ORDERS** that Conditions Nos. 14, 15, and 17 of Z.C. Order No. 08-33, as modified by Z.C. Order No. 08-33C, be revised to read as follows, with new language shown in bold and underlined and deleted language in strikethrough:

14. The Applicant shall provide ANC 5A, ~~or~~ SMD 5A05, or **SMD 5E01** with meeting room space for monthly public meetings on a scheduled basis, free of charge.
15. The Applicant shall establish a program to offer reduced rates for reasonable use of the hotel and conference center, including use of the conference facilities and rooms for the ballroom, by residents of ANC 5A **or SMD 5E01**, on a space available basis.
17. The Applicant shall provide meeting space for ANC 5A residents' **(or SMD 5E01 residents')** annual holiday party for a period of 20 years from the date the hotel

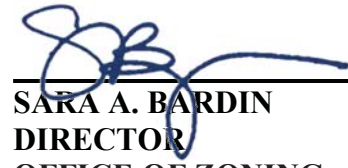
opens. The meeting space will be free of charge and will be on a space available basis.

On January 11, 2016, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **GRANTED RECONSIDERATION** and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to grant reconsideration and adopt).

In accordance with 11 DCMR § 3028.8, this Order is final and effective upon its publication in the *D.C. Register* on March 18, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING