

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-07(1)
Z.C. Case No. 16-07
W-G 9th & O, LLC
(Consolidated PUD and Related Map Amendment @ Square 399)
April 24, 2017

**ORDER DENYING REQUEST TO ACCEPT LATE-FILED MOTION FOR
RECONSIDERATION FILED BY A NON-PARTY**

By Z.C. Order No. 16-07, the Zoning Commission for the District of Columbia (“Commission”) granted the application of W-G 9th & O, LLC (“Applicant”) for approval of a consolidated planned unit development (“PUD”) and related zoning map amendment from the C-2-A Zone District to the C-2-B Zone District for property located at 810 O Street, N.W. (Square 399, Lot 66) (“PUD Site”).

The parties to Z.C. Case No. 16-07 were the Applicant and Advisory Neighborhood Commission (“ANC”) 6E.

Z.C. Order No. 16-07 (the “Order”) was published in the *DC Register* on March 10, 2017, and became final and effective upon publication. 11-Z DCMR § 604.9.

11-Z DCMR § 700.3 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).

Therefore, any motion to reconsider the Order had to have been filed by a party no later than March 20, 2017.

On April 3, 2017, OneDC, which was neither a party nor a participant in the case, filed a Form 153 (the “Request”) asking the Commission to waive 11-Z DCMR § 700.3 and accept an untimely filing of a motion for reconsideration the (“Proposed Motion”) and to reopen the record

of Z.C. Case No. 16-07¹. (Exhibit [“Ex.”] 46.) The Commission interpreted the Request as also seeking a waiver of the requirement that any motion for reconsideration, whether timely or not, be filed by a party (the “Party Status Requirement”).

By letter dated April 20, 2017, the Applicant requested the Commission to deny the Proposed Motion (“Opposition.”). (Ex. 47.) Since the Proposed Motion could not be filed unless the Request were granted, the Commission will consider the Applicant’s filing as asking the Commission to deny the Request. The Applicant contended that denial was appropriate because OneDC failed to establish good cause for the two waivers sought. The Commission agrees.

As to the request to request to waive the Party Status Requirement, the Commission has repeatedly stated the importance of 11-Z DCMR § 700.3 (and its predecessor 11 DCMR § 3029.5 of the 1958 Zoning Regulations). *See, e.g.* Z.C. Order No. 11-24, p. 3, denying a motion for reconsideration filed 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.” OneDC makes no effort to explain why it as a non-party should be able to file a motion for reconsideration, but instead expresses concerns over impacts of the Application that it could have presented during the hearing had it chose to participate. With respect to the waiver of the requirement that a motion for reconsideration of the Order be filed on or before March 20, 2017, OneDC offers no explanation as to why the March 20th deadline could not have been met.


The Request therefore is denied.

On April 24, 2017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission **DENIED** the Request by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro 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 August 25, 2017.

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

 for

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

¹ The request to reopen the record was unnecessary. A motion for reconsideration is always filed after the record is closed. The only issue here is whether the Commission should permit the untimely filing of such a motion by a non-party.