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July 26, 2022

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

Re: Z.C. Case No. 21-17 Applicant's Response to OAG's Motion for Reconsideration

Dear Members of the Commission:

On behalf of Congress Park Community Partners LLC, we hereby oppose OAG's Motion for Reconsideration (the "Motion") filed on July 25, 2022 and included as Exhibit 104 in this case.

The Motion should be denied because it does not meet the requirements of Subtitle Z, Sections 700.3 and 700.7 of the Zoning Regulations, which provide:

700.3 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.

700.7 No request for rehearing shall be considered by the Commission unless new evidence is submitted that could not reasonably have been presented at the original hearing. If a rehearing is granted, notice shall be given as in the case of an original hearing.

11-Z DCMR §§ 700.3 and 700.7.

With respect to Section 700.3, the Motion should be denied since OAG was not a party to the case. OAG requests a waiver from this requirement since, according to OAG, they are "acting in its capacity as a District agency, fulfilling the charge of D.C. Code § 1-301.81 to uphold the public interest."¹ Despite this assertion, the Zoning Commission has consistently denied requests for reconsideration filed by non-parties, many of whom also claim to represent significant interests. (*See, e.g.* Z.C. Order 15-29(1), denying motion for reconsideration by non-party notwithstanding

¹ OAG asserts that they represent the "public interest." However, the record in this case includes the unanimous support of ANC 8E (Exhibit 14A); a detailed Community Benefits Agreement at Exhibit 14B which includes commitments such as the project being 100% affordable, ANC office space, employment opportunities, and contributions to various community initiatives; and over 65 support letters from various community members. Thus, the record demonstrates overwhelming support for the map amendment and demonstrates that the public interest is well-served by approval of the map amendment.

non-party's argument of the "need to protect the public" from alleged soil contamination. *See also*, Z.C. Order Nos. 11-24, 11-17(1), (2) and (3). The language of Section 700.3 is clear, has been applied many times, and should be applied in this case to deny the Motion.


With respect to Section 700.7, OAG claims that the case should be reconsidered since the Zoning Commission was either unaware of, mislead, and did not fully address Section 1808.2 of the Comprehensive Plan. However, the record does not support this position. Indeed, the Applicant's applicant statement (Exhibit 3, page 19), the Office of Planning SetDown Report (Exhibit 15, page 17), the Office of Planning Hearing Report (Exhibit 25, pages 15-16), and the Applicant's proposed order (Exhibit 98, page 9), all address Section 1808.2. If OAG had a concern about the treatment or interpretation of this provision, they could have raised this concern during the case in the same manner they raised their IZ Plus comments, which comments were submitted by OAG well after the Section 1808.2 information was already in the record. (See Exhibit 100, filed on March 30, 2022.)

The fact that OAG now second-guesses or disagrees with the Zoning Commission's decision regarding Section 1808.2 does not constitute new evidence that could not have been reasonably presented at the original hearing and thus does not meet the standard of Section 700.7.

Based on the foregoing, the Applicant respectfully requests that the Zoning Commission deny OAG's Motion for Reconsideration.

Respectfully submitted,

Holland & Knight, LLP

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", with a long horizontal flourish extending to the right.

Kyrus L. Freeman

cc: Jennifer Steingasser, D.C. Office of Planning (via email)
ANC 8E (via email)
Max Tondro and Alex Cain, OAG (via email)