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April 20, 2017

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: **Applicant's Opposition to the Motion to Reopen the Record in Z.C. Case No. 16-07**

Dear Members of the Commission:

On behalf of W-G 9th & O, LLC (the “Applicant”), we hereby oppose the “Request for Reopening the Record” (the “Motion”) filed by OneDC on April 3, 2017¹ asking that the Zoning Commission reopen the record in Z.C. Case No. 16-07 and reconsider the issuance of Z.C. Order No. 16-07.

The Motion should be denied because it does not meet the requirements of Subtitle Z § 602.6 of the Zoning Regulations. Specifically, Subtitle Z § 602.6 states the following:

Any supplemental material received by the Commission after the close of the record that bears upon the substance of the application or petition shall be returned by the Director and not accepted into the files of the Commission. However, if the materials are accompanied by a separate request to re-open the record, the request shall be accepted and presented to the Commission for consideration. *The request must demonstrate good cause and the lack of prejudice to any party.* Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record

See Subtitle Z § 602.6 (emphasis added). In this case, OneDC did not submit any evidence demonstrating “good cause” to justify reopening the record. Moreover, reopening the record would prejudice the Applicant by allowing a non-party to file additional materials in the record after the application was thoroughly reviewed and supported by the D.C. Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6E, and the Zoning Commission.

¹ Form 153 indicates that it was “sent initially on April 3, 2017 resent on April 17, 2017 by email.” See Form 153. However, the Applicant did not receive Form 153 until April 14, 2017, via email.

The Motion should also be denied because it does not meet the requirements of Subtitle Z § 700 of the Zoning Regulations. Specifically, Subtitle Z § 700.3 states 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.

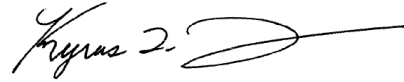
See Subtitle Z § 700.3 (emphasis added). In this case, OneDC was not a party in Z.C. Case No. 16-07 and did not participate in the Zoning Commission proceedings at all. The Zoning Commission has repeatedly stated the importance of Subtitle Z § 700.3 (and its predecessor 11 DCMR § 3029.5 of the 1958 Zoning 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.”

Assuming OneDC is requesting a waiver from Subtitle Z § 700.3 to permit the filing of the Motion despite the fact that it was not a party, OneDC has not presented any “good cause” for waiving the party requirement. Pursuant to its authority in Subtitle Z § 101.9, the Zoning Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgement of the Zoning Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. However, OneDC has not presented any basis to justify waiving Subtitle Z § 700.3. Moreover, granting a waiver from Subtitle Z § 700.3 in this case to accept the Motion would prejudice the Applicant by reopening the record after the application was reviewed and supported by OP, DDOT, ANC 6E, and the Zoning Commission; after the record has been closed for months; after the order has been issued in this case; and after OneDC has already filed an appeal with the D.C. Court of Appeals challenging the issuance of Z.C. Order 16-07. See Notice of Appeal attached hereto as Exhibit A.

In addition, Subtitle Z § 700.3 provides that 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.” Subtitle Z § 700.3 (emphasis added). In this case, Z.C. Order No. 16-07 was served on March 3, 2017, and became final and effective upon publication in the *D.C. Register* on March 10, 2017. Thus, pursuant to Subtitle Z § 700.3, the Motion must have been filed on or before March 20, 2017 at the latest. However, the Motion was “sent initially” on April 3, 2017 and “resent” on April 17, 2017. See Form 153. Both April 3rd and April 17th are well past the filing deadline in Subtitle Z § 700.3. Therefore, the Zoning Commission should also deny the Motion for being filed untimely.

Based on the foregoing, because OneDC (a) did not demonstrate good cause or lack of prejudice to reopen the record, (b) was not a party in the underlying Zoning Commission case and did not show good cause for waiving the party requirement, and (c) filed the Motion more than ten days after Z.C. Order No. 16-07 became final, the Zoning Commission should deny the Motion.

Sincerely,

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

Kyrus L. Freeman
Jessica R. Bloomfield

CERTIFICATE OF SERVICE

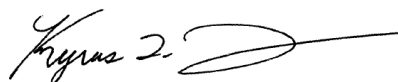
I hereby certify that on April 20, 2017, a copy of the Applicant's Opposition to the Motion to Reopen the Record in Z.C. Case No. 16-07 was served by email to the following:

Advisory Neighborhood Commission 6E
c/o Commissioner Frank S. Wiggins
wigginsanc6E@gmail.com

OneDC
c/o Dominic Moulden
614 S Street NW, Carriage House
Washington, DC 20001
dmoulden@onedconline.org

Stephen Cochran and Joel Lawson
D.C. Office of Planning
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Alan Bergstein
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Washington, DC 20001
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Kyrus L. Freeman

EXHIBIT A

**DISTRICT OF COLUMBIA COURT OF APPEALS
430 E STREET, NW
WASHINGTON, DC 20001**

)	
)	
Organizing Neighborhood Equity)	
Petitioner,)	
)	
v.)	District of Columbia
)	Zoning Commission
)	Final Order No. 16-07
District of Columbia)	dated March 10, 2017
Zoning Commission,)	
Respondent)	
)	
)	

PETITION FOR REVIEW

Pursuant to D.C. App. Rules 15, 25, & 26, Petitioner, Organizing for Neighborhood Equity (“OneDC”) seeks review of the final order of the District of Columbia Zoning Commission, ZC Order No. 16-07, published in the DC Register on March 10, 2017.

A favorable decision by the Court that will directly and concretely relieve injury to our members regarding the Commission's approval of a Planned Unit Development in the heart of the Shaw neighborhood.

A copy of the Final Order in Zoning Commission Case No. 16-07 is incorporated by reference. OneDC asks the Court to bring remedy to Petitioner by reversing the erroneous decision and the unlawful under authority expressed in this case by the DC Zoning Commission. We will bring forward applicable DC Code, DC Zoning Regulations, the DC Comprehensive Plan, and the law to show the merits of this case.

Parties to the agency hearings: W-G 9th & O, LLC c/o Holland & Knight, 800 17th Street N.W., Suite 1100, Washington, DC 20006 (Phone: 202.955.3000); Charles Thomas, Esquire, District of Columbia General Counsel, 1350 Pennsylvania Ave, NW, John A. Wilson Building, Suite 4, Washington, DC 20004, (202) 724-8026; ANC 6E, PO Box 26182, Washington, DC 20001.

As submitted to the Court on this the 3rd day of April, 2017, by,

Aristotle Theresa, Esq.
c/o CSRL-CRO, 1530 P Street NW
Washington, DC 20005
D.C. Bar No. 1014041
202-651-1148

Attached find a copy of the Decision/Order regarding Zoning Commission Case No. 16-07 dated March 10, 2017, by the District of Columbia Zoning Commission.