

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 16-11(2)

Z.C. Case No. 16-11

Park View Community Partners & the District of Columbia  
(Consolidated PUD and Related Map Amendment @ Square 2890, Part of Lot 849<sup>1</sup>)  
June 9, 2022

**DENIAL OF MOTIONS FOR RECONSIDERATION, STAY OF ORDER,  
AND REHEARING**

At its June 9, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered two post-hearing motions filed in the record of Z.C. Case No. 16-11:

1. Bruce Monroe Park Neighbors’ (“BMPN”) motion for reconsideration and stay of Z.C. Order 16-11(1) (Exhibit [“Ex.”] 370); and
2. Park Morton Residents Council’s (“PMRC”) motion for reconsideration of Z.C. Order 16-11(1) and rehearing of Z.C. Cases 16-11 and 16-12 (Ex. 371).

The Commission **DENIED** the motions for the reasons discussed below.

**Procedural History**

1. By Z.C. Order No. 16-11(1), effective May 6, 2022, (“Order on Remand”; Ex. 368) the Commission responded to the remand instructions of the District of Columbia Court of Appeals set forth in *Cummins v. D.C. Zoning Comm’n*, 229 A.3d 768 D.C. 2020) (the “Opinion”; Ex. 253).
2. The Order on Remand once more approved the application of Park View Community Partners and the District of Columbia (“Applicant”) for a consolidated planned unit development (“PUD”) and a related Zoning Map Amendment (“Application” or “Project”) for Part of Lot 849 in Square 2890 (“PUD Site”).
3. The Commission previously approved the Application by Z.C. Order No. 16-11 (“Order 16-11” or “Original Order”; Ex. 251.), effective May 5, 2017.<sup>2</sup> The Original Order was

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<sup>1</sup> Lot 849 was subsequently subdivided into Lots 119 and 120. This subdivision does not impact the merits of the Application.

<sup>2</sup> Concurrent with the subject Application the Commission approved a separate PUD and related Zoning Map amendment for the Park Morton public housing site located at Lots 124-126 and 844 in Square 3040, Lots 128-

appealed to the District of Columbia Court of Appeals, which resulted in the Opinion remanding the Original Order and instructing the Commission to consider the adverse impacts of the PUD and potential Comprehensive Plan inconsistencies and recognize conflicting policies by taking into consideration seven issues identified by the Court. (Opinion at 27-30.)

4. After the Court of Appeals issued the Opinion, the D.C. Council enacted two sets of amendments to the Comprehensive Plan. The Comprehensive Amendment Act of 2017 amended the framework element, and was effective August 27, 2020, as D.C. Law 23-217; and the Comprehensive Plan Amendment Act of 2020 amended the text of the Comprehensive Plan and its Future Land Use Map, and was effective on August 21, 2021, as D.C. Law 24-20 (collectively, the “2021 Comprehensive Plan Amendments”).
5. The parties to the Original Order and, therefore, to the Order on Remand, were the Applicant, Advisory Neighborhood Commission (“ANC”) 1A, ANC 1B, PMRC, the resident council for the individuals currently living at the Park Morton public housing site located near the PUD Site, and BMPN, a group of owner-residents located within 200 feet of the PUD Site.
6. To process the remand instructions, the Commission issued two procedural orders. The first requested written submissions from the parties in response to the seven issues raised by the Court. The second requested both a limited scope hearing to evaluate the issues raised in the Court’s Opinion under the 2021 Comprehensive Plan Amendments and requested the Office of Planning (“OP”) and the parties to provide written submissions analyzing the Application under the 2021 Comprehensive Plan Amendments. (Ex. 254, 266.)
7. Among the 2021 Comprehensive Plan Amendments to the Zoning Maps and text is a new requirement that the Commission evaluate all zoning actions through a racial equity lens as part of the overall Comprehensive Plan consistency analysis. (*See* 10-A DCMR § 2501.8.)
8. The Commission held a limited scope hearing on October 19, 2021, which was limited to the Application’s consistency with the 2021 Comprehensive Plan Amendments. To approve the Application, the Commission had to conclude that the Application was “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” (*See* Subtitle X § 304.4(a).)

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134 and 846 in Square 3039, and Lots 18-20 in Square 3043. (“Park Morton”). This was assigned Z.C. Case No. 16-12 and the Order became final and effective on May 5, 2017, the same date as the Original Order for the subject Application.. However, the 16-12 decision was not appealed. There is nothing in the Opinion that addresses the substance of the 16-12 decision, nor do the remand instructions in the Opinion direct the Commission to revisit the 16-12 decision.

9. At its public meeting on November 18, 2021, the Commission considered the entire record of the case in its deliberations of the remanded issues and voted to again approve the Application.
10. On May 6, 2022, the Order on Remand was published in the *D.C. Register* (69 DCR 4858 *et seq.*) and became final and effective upon publication.

### **Contents of the Motions and the Opposition Thereto**

#### **BMPN’s Motion for Reconsideration and Stay of the Order on Remand.**

BMPN’s motion asserts the Commission should reconsider the Order on Remand for the following reasons:

- An active lawsuit in D.C. Superior Court undermines the Commission’s reliance on the Comprehensive Plan Amendments in the Order on Remand by alleging that the amendments to the Comprehensive Plan are unlawful and that development projects that would impact the neighborhoods of any D.C. residents registered as Plaintiffs<sup>3</sup> in the lawsuit should not be considered under the amendments; (Ex. 370 at 1.)
- The Commission is arbitrarily choosing which regulations to apply because the Order on Remand “rests on old zoning regulations in place when the application was filed. . .[B]ut the Zoning Commission conveniently uses the new Comp Plan policies and maps in approving and publishing the Remand Order”; and (*Id.* at 1.)
- The “impacts of the PUD application remain either under evaluated or completely un-evaluated by the relevant District agencies.” (*Id.* at 2.)

#### **PMRC’s Motion for Reconsideration of Order on Remand and Rehearing of Z.C. Case Nos. 16-11 and 16-12.**

PMRC’s motion asserts the Commission should reconsider the Order on Remand and grant a rehearing for the following reasons:

- The Commission’s evaluation of the Application through a racial equity lens, as required by the amendments to the Comprehensive Plan, relied on processes and tools which fall short of the Commission’s own standards and industry standards. (Ex. 371 at 1, 3.) As new evidence to support this contention, PMRC argues that the Commission introduced an initial racial equity analysis tool after it deliberated on the remanded issues in this case and a few days before it issued the Order on Remand; therefore, the Commission’s heavy reliance on OP’s racial equity analysis instead of applying its own racial equity analysis tool in its deliberations was improper. PMRC further asserts that the Commission’s racial

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<sup>3</sup> The motion notes that Marc Poe, who is a member of BMPN, and its official representative in these remand proceedings, is a Plaintiff in the D.C. Superior Court litigation.

equity analysis in the Order on Remand was not up to “industry standards,” based on emailed comments from an employee of the District Council’s Office on Racial Equity (“CORE”) it received and attached to the motion, which PMRC explained is the type of expert testimony that could be raised in rehearing;

- The Commission’s exclusion of Z.C. Case No. 16-12 as part of its review of this Application on remand resulted in a failure to “properly judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any adverse effects on PMRC and residents of Park Morton and surrounding neighborhood... especially the loss of [N]ew Communities Initiative (NCI) Build-First.” (*Id.* at 2, 4.) Thus, the Commission has an obligation to reconsider and rehear Z.C. Case No. 16-12 simultaneous with reconsidering and rehearing this Application on remand. As new evidence to support this claim PMRC argues that the District of Columbia Housing Authority recently presented a new development plan altering the Project phasing contrary to Z.C. Order Nos. 16-11 and 16-12; and stated it would prioritize the return of certain families to the development approved in Z.C. Case No. 16-12, and that these families were also the intended beneficiaries of a similar commitment in the Order on Remand; and
- The Commission erred in its conclusion that the approval of this NCI related PUD did not cause the adverse impact of displacement. More specifically, the Commission’s recognition in the Order on Remand that the Project will no longer serve as a Build-First Site is “recognizing an adverse impact without naming and evaluating it as such.” (*Id.* at 7.)

### **The Applicant’s Opposition to the Two Motions.**

The Applicant filed a combined opposition to both motions. (Ex. 372.)

In response to the BMPN motion, the Applicant made several arguments, including:

- There is nothing in the Zoning Regulations nor the D.C. Zoning Act that limits or bars the Commission from deciding zoning cases during the pendency of a challenge to the Comprehensive Plan by an individual in the D.C. Superior Court. Indeed, BMPN did not cite any statute, regulation, or applicable case law to support its legal position. BMPN never objected to the Commission’s second procedural order instructing it to analyze the Application under the 2021 Comprehensive Plan Amendments. In short, BMPN did not submit any evidence demonstrating that the Commission’s decision to evaluate the case under the updated Comprehensive Plan was erroneous; and
- The D.C. Court of Appeals concluded that the issue of sufficiency of District agency reports was moot because the parties forfeited the issue.

With respect to the PMRC motion, the Applicant argued:

- The Order on Remand included a detailed racial equity analysis in accordance with § 2501.8 of the Comprehensive Plan Amendments and consistent with the information included in the Commission’s published racial equity analysis tool. The email attachment from a CORE employee that PMRC claims is “new evidence” does not demonstrate that the Commission’s racial equity analysis was flawed but is instead the personal opinion of an employee at CORE and has no probative bearing in this case; and
- The purpose of this proceeding is to respond to the issues identified by the D.C. Court of Appeals’ Opinion regarding the appeal of Z.C. Case No. 16-11. Given that Z.C. Case No. 16-12 was not appealed, and there is nothing in the D.C. Court of Appeals Opinion that addresses the substance of that completely separate case, the Commission properly rejected PMRC’s attempts to use this proceeding to reopen and reevaluate Z.C. Case No. 16-12.

No other parties filed responses to the motions.

### **CONCLUSIONS OF LAW**

Pursuant to Subtitle Z § 700.6, a motion for reconsideration or rehearing must state with specificity the respect in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought. The Commission may not grant a request for rehearing unless new evidence is submitted that could not reasonably have been presented at the original hearing. (Subtitle Z § 700.7.)

#### **BMPN’s Motion**

The Commission is not persuaded by the arguments in BMPN’s motion for reconsideration and stay of the Order on Remand. The motion does not state with specificity the respect in which the order is claimed to be erroneous as required by Subtitle Z § 700.6. Instead, it contains broad assertions that the 2021 Comprehensive Plan Amendments are invalid because of pending litigation in D.C. Superior Court, that the Commission arbitrarily applied the amendments in the Order on Remand, and that the reports of D.C. agencies evaluating the PUD are insufficient. None of these arguments are a specific assertion of error in the Order on Remand.

The Commission’s Order on Remand contains a clear and detailed explanation for its conclusion that the Project is not inconsistent with the Comprehensive Plan. The Order on Remand states that the Commission’s decision relied primarily on the Comprehensive Plan that was in effect at the time it made its original decision to approve the Application, and that its reliance on and analyses of the 2021 Comprehensive Plan Amendments was secondary. (Order on Remand at 111.) The Commission therefore does not believe that pending litigation in D.C. Superior Court regarding the validity of the 2021 Comprehensive Plan Amendments is a basis of error in the Order on Remand nor does it believe it arbitrarily applied the Comprehensive Plan in the Order on Remand.

Moreover, as previously noted, the D.C. Court of Appeals explicitly rejected the argument regarding sufficiency of District agency reports. The Court of Appeals concluded in the Opinion that the issue of the sufficiency of agency reports was forfeited by the parties in the original

proceeding, and in listing the remand instructions to the Commission, did not direct the Commission to revisit this issue. (Opinion at 31-32.) The Order on Remand explicitly discussed the reasons the Commission decided not to revisit the issue of the sufficiency of the agency reports in the remand proceedings. (Order on Remand at 8.) The Commission sees no reason to revisit this issue, and the BMPN motion does not provide one.

Finally, the BMPN motion does not address why BMPN believes it has met the legal standard for a stay of the Order on Remand.

For the reasons stated, the Commission **DENIES** the BMPN motion for reconsideration and stay of the Order on Remand.

### **PMRC's Motion**

The Commission is not persuaded by the arguments in PMRC's motion for reconsideration and rehearing.

First, the Commission believes the Order on Remand correctly concludes that the PUD is not inconsistent with the Comprehensive Plan, including the new provisions in the 2021 Comprehensive Plan Amendments cited by PMRC, which impose racial equity analysis requirements on the Commission. The Order on Remand contains a thorough explanation of how and why the Commission reached its conclusion that the Project advanced racial equity, including why it proceeded with deliberating in this case without first developing a formal racial equity analysis tool. (Order on Remand at 99-103, 109, 114.) The Commission is not persuaded by PMRC's arguments that this decision was in error. The Commission believes that the new evidence of an email from a CORE employee is not sufficient to justify rehearing this case. The fact that the Commission later issued its own racial equity analysis tool does not change anything about its conclusion in the Order on Remand. Finally, the email from the CORE employee merely expresses the personal thoughts of an individual that disagrees with the conclusions in the Order on Remand.

Second, the Commission believes it has no basis to grant the request to rehear Z.C. Case No. 16-12. The Commission's decision in that case became final and effective in May 2017. It was not appealed. It involves an entirely different property. It was not the subject of the ongoing remand proceeding in case Z.C. Case No. 16-11 that was the subject of the Order on Remand.

Third, the Commission's Order on Remand explained its conclusions regarding the issue of displacement and the Project's consistency with the relevant Comprehensive Plan and other planning policies, including NCI. Clearly PMRC disagrees with the reasoning of the decision. However, the Commission does not believe this amounts to an error that requires reconsideration of the decision or further hearings.

For the reasons stated, the Commission **DENIES** the PMRC motion for reconsideration and rehearing.

On June 9, 2022, at its regularly scheduled public meeting, the Commission considered the motions for reconsideration, rehearing, and stay, and the Applicant's response thereto. For the reasons discussed above, the motions are hereby **DENIED**.


**VOTE FINAL ACTION: 3-0-2**


(Anthony J. Hood, Robert E. Miller, and Peter G. May to **DENY**; Joseph Imamura not voting having not participated; third Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on July 8, 2022.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**