

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-17(1)
Z.C. Case No. 21-17
Congress Park Community Partners, LLC
(Zoning Map Amendment @ Square 5914, Eastern Portion of Lot 806)
July 28, 2022

ORDER DENYING WAIVER AND MOTION FOR RECONSIDERATION

By Z.C. Order No. 21-17, effective July 15, 2022, the Zoning Commission for the District of Columbia (“Commission”) approved an application (the “Application”) for a Zoning Map amendment by Congress Park Community Partners, LLC (the “Applicant”) for approval of an amendment of the Zoning Map from the RA-1 zone to the MU-8B zone (the “Map Amendment”) for the eastern portion of Lot 806 in Square 5914 (the “Property”)¹, pursuant to Subtitle X § 500.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016), to which all references are made unless otherwise specified.

PROCEDURAL HISTORY OF THE ZONING MAP AMENDMENT PROCEEDING

In addition to the Applicant, Advisory Neighborhood Commission (“ANC”) 8E, the ANC in which the Property is located, was automatically a party to Z.C. Case No. 21-17. The Commission received no requests for party status.

On March 31, 2022, at its regularly scheduled public meeting, the Commission voted to take final action to approve the Map Amendment. On July 15, 2022, Z.C. Order No. 21-17 was published in the *D.C. Register* (69 DCR 008688 *et seq.*) and became final and effective upon publication.

OFFICE OF THE ATTORNEY GENERAL (“OAG”) WAIVER REQUEST AND MOTION

On July 25, 2022, OAG filed a waiver request together with a motion (the “Motion”) to reconsider Z.C. Order No. 21-17 (the “Order”). (Exhibit [“Ex.”] 104.) OAG requested a waiver pursuant to Subtitle Z § 101.9 from the requirements of Subtitle Z §§ 407.1 and 700.3 that both a motion and a motion for reconsideration be filed by a party as OAG is not a party to Z.C. Case No. 21-17. The Motion asserted that the Order violates the Comprehensive Plan requirement of Title 10A DCMR § 1808.2 because it approved an increase in permitted density for the Property, which is located

¹ A subdivision plat was recorded in the Office of the Surveyor on February 3, 2022, at Book 219, Page 112, such that the eastern portion of Lot 806 that is subject to this Application is now known as Lot 9 in Square 5914.

on the same block as the Congress Heights Metro Station, through a Map Amendment and not through a Planned Unit Development (“PUD”) as required.

OAG asserted that the Commission is justified in granting the waiver request because OAG is acting in its capacity as a District agency, fulfilling the charge of D.C. Code § 1-301.81 to uphold the public interest, and meets the requirements of Subtitle Z § 101.9 because the Order’s significant Comprehensive Plan inconsistencies constitute good cause and OAG’s service of the waiver request on all parties permits them to respond without prejudice.

Party Responses

By letter dated July 26, 2022, the Applicant responded in opposition to both OAG’s waiver request and the Motion (“Applicant’s Response”). (Ex. 105.) The Applicant’s Response asserts that OAG’s waiver request should be denied because the language of Subtitle Z § 700.3, which requires motions for reconsideration to be filed by a party, is clear; it has been applied many times by the Commission; and it should be applied in this case. The Applicant’s response explains that despite OAG’s assertion that it represents the public interest, the record in Z.C. Case No. 21-17 demonstrates overwhelming support for the Map Amendment and that the public interest is well served by the Commission having approved the Map Amendment based on the following submissions in the case record:

- The ANC 8E report in unanimous support; (Ex. 14A.)
- A Community Benefits Agreement (CBA) which includes commitments such as the project being 100% affordable, ANC office space, employment opportunities, and contributions to various community initiatives; and (Ex. 14B.)
- Over 65 letters in support from various community members.

By letter dated July 27, 2022, ANC 8E responded to the Motion. (Ex. 106.) The letter does not respond to OAG’s waiver request. However, the letter restates ANC 8E’s support for the approved Map Amendment. The letter also acknowledges that the ANC is aware of the Comprehensive Plan requirement OAG cites in the Motion, stating “although the site is not being developed as a PUD, the Applicant has executed a CBA. . . We understand that the PUD is meant to provide an additional layer of accountability; though the Map Amendment does not afford the same level of accountability, we look forward to continuing work with [the Applicant] to ensure they are honoring all of their commitments to the community.” Finally, the letter explains that the ANC Commissioners were convened by phone to submit a response to the Motion prior to the Commission’s July 28, 2022 public meeting.

On July 28, 2022, at its regularly scheduled public meeting, the Commission considered OAG’s waiver request and the Applicant’s Response thereto as well as ANC 8E’s letter. For the reasons discussed below, the Waiver and the Motion are hereby denied.

CONCLUSIONS OF LAW

At the June 28th public meeting, the Commission had to first consider and decide in favor of granting OAG’s waiver request before it could consider the merits of the Motion. If the Commission decided to deny OAG’s waiver request, it could not consider the merits of the Motion and therefore the Motion would be denied.

Pursuant to Subtitle Z §§ 407.1 and 700.3, a motion is a request that may be filed by a party. Pursuant to Subtitle Z § 101.9, the Commission may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.


The Commission is not persuaded that granting OAG's waiver request to allow a non-party to file a motion for reconsideration is warranted in these circumstances. The Commission believes the language of Subtitle Z §§ 407.1 and 700.3 is clear that a motion is to be filed by a party, as noted in the Applicant's Response, and agrees that the rule applies in these circumstances. OAG is not a party to Z.C. Case No. 21-17. The Commission also believes that OAG's waiver request lacks good cause because the Map Amendment's inconsistency with the Comprehensive Plan requirement of § 1808.2 was acknowledged and weighed against competing Comprehensive Plan policies in the Order. Moreover, the Commission finds OAG's claim that it has a public interest to uphold unpersuasive given the considerable public support for the approved Map Amendment, including the support of ANC 8E.


At its July 28, 2022 public meeting, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **DENY** the Waiver and consequently the Motion by a vote of **3-0-2** (Anthony J. Hood, Robert E. Miller, and Peter G. May to deny; Joseph S. Imamura, not having participated in the case, not voting; 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 August 19, 2022.

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


SARA A. GARDIN
DIRECTOR
OFFICE OF ZONING