

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 08-07D(1)

Z.C. CASE NO. 08-07D

Four Points Development, LLC

(PUD Time Extension @ Square 5785, Lot 839 and Part of Lot 906)

ORDER DENYING WAIVER TO PERMIT THE FILING BY A NON-PARTY OF A
MOTION TO RECONSIDER Z.C. ORDER NO 08-07D

November 19, 2018

Pursuant to Z.C. Order No. 08-07D, effective as of October 12, 2018, the Zoning Commission for the District of Columbia (“Commission”) granted a request submitted by Four Points Development, LLC (“Applicant”) for a two-year extension of the time period in which to begin construction of the approved second-stage planned unit development (“PUD”) for “Building 1” located at Lot 839 and part of Lot 906 in Square 5785 (“Property”).

No new parties may be added to a case when a time extension is being considered. Therefore, the parties to Z.C. Case No. 08-07D were the same as in Z.C. Case No. 08-07A, which was the case that granted the second stage PUD. Those parties were the Applicant and Advisory Neighborhood Commission (“ANC”) 8A.

Subtitle Z § 700.3 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) provides 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.

(Emphasis added.)

Subsection 101.9 of Subtitle Z provides that 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.”

On October 22, 2018, the Current Area Residents East of the River (“CARE”), which was not a party to Z.C. Case No. 08-07A, requested a waiver of the party status requirement (“Waiver

Request”) (Exhibit [“Ex.”] 8.). On October 29, 2018, the Applicant filed a letter requesting that the Commission deny the waiver. (Ex. 9.)

Although the Waiver Request was embedded within what was entitled a Motion to Reconsider, no such motion could be deemed filed unless the waiver was granted. Therefore, at its public meeting held on November 19, 2018, the Commission first considered the Waiver Request and, for the reasons stated below, voted to deny the request, such that the Motion to Reconsider is not considered as having been filed.

As set forth below, CARE did not demonstrate any good cause for waiving the party status requirement.

CARE’s Waiver Request argued that the good cause to waive the party requirement was based on Z.C. Case No. 08-07, which granted the first-stage PUD for the Property and which was decided over 10 years ago when there was no ANC for the single member district (“SMD”) for the Property. Thus, CARE alleged that community members believed that the project had been approved and nothing could be done to contest it. (*See* Waiver Request, p. 1.) However, CARE’s argument ignores the fact that the extension was for the second-stage approval for Building 1, which was granted in 2015, not 10 years ago as claimed by CARE. During the second-stage approval process the ANC, the SMD, and many other community organizations and individuals participated in the public hearing process. For example, there was testimony presented by SMD Commissioner Fuller at the December 18, 2014 public hearing; there was an ANC letter dated December 3, 2014, submitted to the case record with a draft community benefits agreement; there was a party status request filed by the Concerned Citizens of Anacostia; there was testimony from five individuals in support of the application and two individuals in opposition to the application at the public hearing; and there were letters in support of the application filed by 43 individuals and local organizations. (*See* Z.C. Case No. 08-07A public hearing transcript dated 12/18/2014 and Ex. 23, 26-31, 34-68, 70-71, 76, and 78.)

In addition, the Applicant indicated in its Request for Denial that it presented and described the extension request for Building 1 at ANC 8A’s regularly-scheduled public meetings on May 1, 2018 and June 5, 2018, and at an SMD meeting on May 8, 2018. There is nothing in the record to controvert this assertion.

Thus, the Commission finds that CARE’s argument that the party requirement should be waived now because of alleged inadequate ANC representation 10 years ago is unfounded as it applies to this Commission’s review and approval of the second-stage PUD for Building 1 and the extension thereof. Therefore, the Commission concludes that CARE did not provide any legitimate basis for waiving the party requirement of 11-Z DCMR § 700.3.

The Commission also finds that reopening the case record to allow a non-party to file documents after the PUD extension application was thoroughly reviewed by the Commission following

deliberations at a public meeting, would be prejudicial to the Applicant. The Commission’s rules precluded the Applicant from filing for a building permit while its time extension request was pending. Allowing for this non-party to file for reconsideration in the absence of good cause would needlessly cause further delay and likely increase the costs of establishing a project that the Commission has already determined to provide benefits greater than matter of right development on the site.

In numerous orders the Commission has repeatedly stated the importance of the party status requirement. (*See, e.g.* Z.C. Order No. 11-24, p. 3 (denying a waiver request to 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”); Z.C. Order No. 16-07(1), p. 2) CARE has failed to meet this standard. Therefore, for the reasons stated above, the Waiver Request is hereby **DENIED**.

On November 19, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission **DENIED** CARE’s request to waive the party status requirement as described in the Waiver Request at its public meeting by a vote of **5-0-0**. (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull 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 December 28, 2018.

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. BARDIN
DIRECTOR
OFFICE OF ZONING