GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14(2)
Z.C. CASE NO. 13-14
Vision McMillan Partners LLC and the Office of the Deputy Mayor for Planning and Economic Development
(1st-Stage and Consolidated Planned Unit Development and Related Map Amendment for Square 3128, Lot 800)
April 27, 2015

Order

At the public meeting held on April 27, 2015, the Zoning Commission for the District of Columbia ("Commission") considered whether to waive its procedural rules and accept a request from the McMillan Coalition for Sustainable Agriculture ("MCSA"), a non-party to the proceeding, for reconsideration of the Commission's final order in Z.C. Case No. 13-14. For the reasons discussed below, the Commission declined to waive its rules and did not accept its reconsideration request.

By Z.C. Order No. 13-14 in Case No. 13-14, the Commission granted the application of Vision McMillan Partners, LLC and the Office of the Deputy Mayor for Planning and Economic Development ("Applicant") for first-stage and consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment to the C-3-C and CR Zone Districts for the property at Lot 800 in Square 3128, known as the McMillan Sand Filtration Site.

Z.C. Order No. 13-14 was published in the *D.C. Register* on April 17, 2015, and was followed by a corrected order ("Order") published in the *D.C. Register* on April 24, 2015. The Order became final and effective upon publication. Pursuant to § 3029.5 of the Commission's Rules of Practice and Procedure, a "motion for reconsideration, rehearing, or re-argument of a final order in contested case under § 3022 may be filed by a *party* within ten (10) days of the order having become final." (Emphasis added). Therefore, any party who wished to file a motion for reconsideration was required to do so by May 4, 2015. A non-party cannot file such a motion at all.

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On April 17, 2015, MCSA, which was denied party status at the May 1st hearing date, filed a waiver to accept a motion for reconsideration of the Order from a non-party. Pursuant to § 3008.8 of the Commission's rules, the "Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." MCSA requested a waiver to allow a non-party to file a request for reconsideration. The Applicant opposed the request.

As noted by the Commission in Z.C. Order No. 11-17(3), "only the existence of 'extraordinary circumstances' would justify the waiver of the requirement that only a party may file a motion for reconsideration." Citing *Application No. 18263 of Stephanie and John Lester* (2001), the Commission held that one such extraordinary circumstance is when no notice of a hearing is given. *Id., citing Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 471 n2 (D.C. 1972).

Here, MCSA claims that its organization was wrongfully denied party status when the Commission held at the May 1st hearing that MCSA was not affected more significantly, distinctively or uniquely in character or kind by the proposed zoning action than those of other persons in the general public. 11 DCMR § 3022.3(f)(5); *see also* Zoning Commission Hearing Transcript, May 1, 2015, at 10-13. Nevertheless, at the request of MSCA (Exhibit No. 392), the Commission re-deliberated at length about whether to grant party status to MSCA at the start of the May 8th hearing. To assist in its deliberations, the Commission requested MCSA to come to the witness table to respond to additional questions, but MCSA was not present. MCSA offered no explanation of why it was not in the hearing room or any extenuating circumstance that excused their absence, other than "they had not yet arrived." The May 8th hearing notice clearly indicated the start time of 6:30 p.m., that party status would be considered at the beginning of each hearing, and the Commission considered MCSA's request approximately 10 minutes later. It is clear that MCSA received notice of the hearing since it did attend the hearing that night by its own admission. The Commission concludes that no extenuating circumstances exist for waiving the limitation that only those who did request and were granted party status may file motions for reconsideration or re-argument.

For all the reasons stated above, MCSA's Motion to Waive Rules and Accept Reconsideration and Re-Argument is hereby **DENIED**.

This Order is not subject to further review by the Commission and any request to undertake such a review will not be accepted.

On April 27, 2015, upon the motion of Chairman Hood, as second by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at is public meeting by a vote of **4-0-1** (Anthony J. Hood**,** Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen, not having participated, not voting).

In accordance with 11 DCMR § 3028.8, this Order is final and effective upon its publication in the *D.C. Register* on May 22, 2015.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING