GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14(3)
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 PUD and Related Map Amendment for Square 3128, Lot 800)
July 30, 2015

At the public meeting held on July 30, 2015, the Zoning Commission for the District of Columbia ("Commission") considered whether to waive its procedural rules and accept a request from the Advisory Neighborhood Commission ("ANC") 5E, a 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 a 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.

On July 23, 2015, ANC 5E filed a waiver to accept a motion for reconsideration of the Order out of time. 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." ANC 5E requested a waiver to accept its motion 78 days late. The Applicant opposed the request.

ZONING COMMISSION
District of Columbia
CASE NO.13-14
EXHIBIT NO.884

The ANC claimed that its extreme tardiness was excusable because the next ANC meeting after publication of the Order was not until May 19, 2015. Yet the ANC still failed to take action at that meeting and apparently continued the matter to its June 16th and July 24th public meetings.

The Commission concludes that ANC 5E has failed to demonstrate good cause to waive the time limits by more than seven times. Nor did the ANC show that such an extreme request would not prejudice the other parties. The reconsideration deadlines provide important protections to the administrative process. The timeframes allow the Commission to conduct its business in an orderly fashion, and provide certainty and finality to agency actions. It is fundamentally unfair to applicants and the Commission alike to allow a party to delay the process for more than two months because the party was unable to make timely decisions. The fact that the party in question is an ANC does not alter this analysis. The District of Columbia Court of Appeals has made it clear that when an ANC participates in a contested case it must follow established timeframes. (*See e.g. Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment* 697 A.2d 3, 10 - 11 (D.C. 1997) (ANC statute "cannot reasonably be read as imposing a requirement on the BZA to allow an ANC (or anyone else) thirty days to respond to a supplemental submission in a zoning appeal.")) For all the reasons stated above, ANC 5E's Motion to Waive Rules and Accept Reconsideration is hereby **DISMISSED**.

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

On July 30, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **DENIED** the Motion for Reconsideration and Waiver of § 3029.5 at its Special Public Meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to deny; 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 November 13, 2015.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING