

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-27(1)

Z.C. Case No. 15-27

KF Morse, LLC

(Consolidated PUD, First-Stage PUD, and Related Map Amendment

@ Square 3587, Lots 805, 814, and 817)

November 27, 2017

ORDER DENYING REQUEST TO FILE UNTIMELY MOTION FOR
RECONSIDERATION BY A NON-PARTY

By Z.C. Order No. 15-27, the Zoning Commission for the District of Columbia (“Commission”) granted the application of KF Morse, LLC (“Applicant”) for approval of a consolidated planned unit development (“PUD”), a first-stage PUD, and a related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 300, 325, and 350 Morse Street, N.E. (Square 3587, Lots 805, 814, and 817) (“PUD Site”).¹

The parties to Z.C. Case No. 15-27 were the Applicant, Advisory Neighborhood Commission (“ANC”) 5D, and 1250 4TH ST EDENS, LLC and UNION MARKET APARTMENTS, LLC, which were granted a consolidated party status in support of the application.

Z.C. Order No. 15-27 was published in the *D.C. Register* on July 21, 2017, and became final and effective upon publication. (11-Z DCMR § 604.9.) The Office of Zoning served the parties with copies of Z.C. Order No. 15-27 on July 27, 2017.

Motion for Reconsideration

11-Z DCMR § 700.3 provides:

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).

Therefore, any motion to reconsider Z.C. Order No. 15-27 had to have been filed by a party no later than July 31, 2017.

¹ Z.C. Case No. 15-27 was set down for a public hearing prior to September 6, 2016, and therefore the Commission’s approval of Z.C. Case No. 15-27 was based upon the standards set forth in the 1958 Zoning Regulations.

On October 13, 2017, Union Market Neighbors (“UMN”), which was neither a party nor a participant in Z.C. Case No. 15-27, filed Form 153 requesting that the Commission reopen the record and reconsider the issuance of Z.C. Order No. 15-27 (“Original Motion”). (Exhibit [“Ex.”] 80.) On November 7, 2017, UMN filed an amended Form 153, with attachments and the required Certificate of Service, further requesting that the Commission reopen the record and reconsider Z.C. Order No. 15-27 (“Amended Motion”). (Ex. 80A.) The Commission interpreted the motions as also seeking a waiver from the requirements of 11-Z DCMR § 700.3, that any motion for reconsideration be filed by a party within 10 days of the Order having become final. The Original Motion and the Amended Motion hereinafter are referred to collectively as the “Motion.”

By letters dated October 16, 2017 and November 13, 2017, the Applicant requested that the Commission deny the Motion (“Request for Denial”). The Applicant contended that denial was appropriate because UMN failed to establish good cause for the two waivers sought. (Ex. 80, 82.) The Commission agrees.

Regarding the request to waive the party status requirement, the Commission has repeatedly stated the importance of 11-Z DCMR § 700.3 (and its predecessor 11 DCMR § 3029.5 of the 1958 Zoning Regulations). (*See, e.g.* Z.C. Order No. 11-24, p. 3, denying a motion for reconsideration filed 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.”) In this case, UMN makes no effort to explain why it, as a non-party, should be able to file a motion for reconsideration. Instead UMN submitted concerns over impacts of the application that it could have presented during the hearing had it chosen to participate.

Regarding the request to waive the requirement that a motion for reconsideration be filed on or before July 31, 2017, UMN offers no explanation as to why the July 31, 2017 deadline could not have been met. Therefore, the Commission denies the request to waive the party status and timeliness requirements. The motions for reconsideration is thus deemed not have been filed.

Motion to Reopen the Record

11-Z DCMR § 602.6 provides:

Any supplemental material received by the Commission after the close of the record that bears upon the substance of the application or petition shall be returned by the Director and not accepted into the files of the Commission. However, if the materials are accompanied by a separate request to re-open the record, the request shall be accepted and presented to the Commission for consideration. **The request must demonstrate good cause and the lack of prejudice to any party.** Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record.

(Emphasis added).

Any motion to reopen the record must demonstrate good cause and the lack of prejudice to any party. The Applicant's Request for Denial asserted that UMN did not submit any evidence demonstrating "good cause" to justify reopening the record. Rather, UMN provided new information to supplement the record after the record was closed. The Commission finds that reopening the record would prejudice the Applicant by allowing a non-party to file additional materials in the record after the application was thoroughly reviewed and approved through the public hearing process. Moreover, the Commission finds that it cannot grant a motion to reopen the case record after the final Order has been issued.

The motion to reopen the record is therefore denied.

Motion to Strike

The Applicant's Request for Denial included a request for the Commission to strike the materials included as attachments to the Motion ("Motion to Strike"). Since the Commission has denied the request to file the motion for reconsideration, none of the accompanying materials are deemed in the record.

Further, as noted above, the Commission finds that UMN did not demonstrate any good cause to justify reopening the record, and that reopening the record to accept the materials included as attachments to the Motion would prejudice the Applicant. Therefore, the Commission grants the Motion to Strike and removes from the record of this case the materials included as attachments to the Motion.

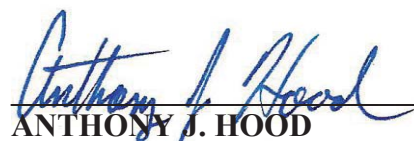
On November 27, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Commission **DENIED** the request to accept an untimely motion for reconsideration filed by a non-party, and, to the extent it was needed, **DENIED** the Motion to Reopen the Record at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Peter A. Shapiro to deny; Michael G. Turnbull not present, not voting).

On November 27, 2017, upon the motion of Chairman Hood, as seconded by Commissioner May, the Commission **APPROVED** the Motion to Strike at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Peter A. Shapiro to deny; Michael G. Turnbull not present, not voting).

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 February 1, 2019.

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