

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-29(1)

Z.C. Case No. 15-29

Jemal's Gateway DC, LLC

(Consolidated PUD and Related Map Amendment @ Square 2960, Lot 17)

ORDER DENYING MOTION FOR LEAVE TO FILE

MOTION FOR RECONSIDERATION

March 13, 2017

By Z.C. Order No. 15-29, the Zoning Commission for the District of Columbia ("Commission") granted the application of Jemal's Gateway DC, LLC ("Applicant") for approval of a consolidated planned unit development ("PUD") and a related Zoning Map amendment from the C-2-A and R-1-B Zone Districts to the C-2-B Zone District for Lot 17 and a portion of a public alley to be closed in Square 2960 ("PUD Site").¹

The parties to Z.C. Case No. 15-29 were the Applicant and Advisory Neighborhood Commission ("ANC") 4A.

On February 17, 2017, Z.C. Order No. 15-29 was published in the *DC Register* and became final and effective upon publication. (11-Z DCMR § 604.9.)

Subsection § 700.3 of the Zoning Commission's Rules of Practice and Procedure (Title 11-Z DCMR) 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.)

Subsection 101.9 of those rules provides that the Commission may, for good cause shown, waive any of the provisions of Title 11-Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

Pursuant to § 101.9, on February 21, 2017, the Reverend David L. Jefferson and Naima Jefferson ("Jeffersons"), who were not parties to the case, filed a Motion for Leave to File and Motion to

¹ These zone districts were renamed as of September 6, 2016, but these re-designations did not impact the Commission's analysis of the motion that is the subject of this Order.

Reconsider Z.C. Order 15-29 (Exhibit ["Ex."] 64.) The Commission must first consider that portion of the filing that seeks leave to file ("Motion for Leave to File"). Since the reconsideration motion would have been timely filed, the Commission treats the Motion for Leave to File as requesting a waiver of the requirement that a motion for reconsideration be filed by a party ("Party Status Requirement"). In support of the requested waiver, the Jeffersons cite their discovery of a well construction application dated May 6, 2013, in which the Applicant checked "yes" to the question "is the site potentially or known to be contaminated." The Motion argues that the need to protect the public against this potential contamination constitutes good cause to waive the Party Status Requirement.

By letter dated February 28, 2017, the Applicant submitted a request for the Commission to deny the Motion for Leave to File ("Request for Denial.") (Ex. 65.) The Request for Denial did not address the Motion's assertion of good cause, but instead argued that a waiver would prejudice the Applicant by reopening the record to a non-party to file documents after the application was reviewed by the D.C. Office of Planning, the District Department of Transportation, Advisory Neighborhood Commissions 4A and 4B, and the Zoning Commission.

The Motion for Leave to File is denied. 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 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.") Although the need to apprise the Commission of a hitherto unknown and real health risk could constitute such circumstances, this is not what has been presented here. There is no evidence that the site was in fact contaminated, and even if it were, the District's environmental laws would require remediation. The Commission, thus, concludes that this speculative assertion of remediable contamination does not furnish good cause for waiving the Party Status Requirement or, for that matter, granting a motion for reconsideration. Having found no evidence of good cause to grant the waiver, the Commission makes no finding as to whether granting the waiver would prejudice the right of a party or is prohibited by law.


For the reasons stated above, the Motion for Leave to file is hereby **DENIED**.

On March 13, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission **DENIED** the Motion for Leave to File at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to deny, Peter A. Shapiro not participating in the hearing, 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 August 11, 2017.

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

 for

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING