

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19684-A of C&S Development LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception pursuant to the inclusionary zoning dimensional modifications of Subtitle C § 1002.2, to subdivide the existing lot into three new lots and construct three flats in the RF-1 Zone at premises 2610 4th Street, N.E. (Square 3551, Lot 801).

HEARING DATES: February 7, 2018; February 28, 2018, and March 28, 2018²
DECISION DATE: April 4, 2018
RECONSIDERATION DATE: May 23, 2018

ORDER DISMISSING MOTION FOR RECONSIDERATION

On December 1, 2017 C&S Development, LLC (the “Applicant”) filed a request for a special exception pursuant to the inclusionary zoning (“IZ”) dimensional modifications of Subtitle C § 1001.1, to subdivide the existing lot into three new lots and construct three flats in the RF-1 Zone at premises 2610 4th Street, N.E. (Square 3551, Lot 801) (the “Subject Property”). The Office of Zoning originally scheduled this application for public hearing on February 7, 2018. After two postponements at the request of the Applicant, there was a public hearing on March 28, 2018. The Board of Zoning Adjustment (“Board”) granted Application No. 19684 on April 4, 2018 and issued a Summary Order for the application on April 5, 2018.

Subtitle B § 100.2 of the Zoning Regulations of 2016 (Title 11 DCMR) defines an affected Advisory Neighborhood as follows:

Affected Advisory Neighborhood Commission: The ANC for the area within which the property that is the subject of a Zoning Commission or Board of Zoning Adjustment application or appeal is located, except that if the subject property is located on a street that

¹ The original request included a request for special exception relief for rear addition under Subtitle E § 205.5 (Self-certification, Exhibit 13), but that relief was withdrawn. (Revised Self-Certification, Exhibit 50.)

² The underlying case was originally scheduled for a public hearing on February 7, 2018. That hearing was postponed at the Applicant’s request to February 28 and March 28, 2018 in order to allow the Applicant to attend the ANC 5E March meeting. (Exhibit 37.) The Office of Planning supported the request to postpone. (Exhibit 32.) The case was heard on March 28, 2018 and scheduled for decision on April 4, 2018.

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serves as a boundary line between two ANC's, then the term "affected ANC" means both ANC's.

ANC 5E met the first part of this definition. Subsection 406.2 of the Board's Rules of Practice and Procedure provides that the "Board shall give "great weight" to the written report of the ANC that is received prior to the date of a Board meeting to decide the application." ANC 5E did not submit a report for this Application at any time. Although ANC 5E, as the affected ANC, was also an automatic party to this Application, (*see* 11-B DCMR § 200.2 (Definition of "Party")), it did not participate.

On April 14, 2018, ANC Commissioner for Single Member District 5E10, Nancy Jones, filed a motion for reconsideration of the Board's decision, along with a petition in opposition to the decision. (Exhibits 53 and 54.) On April 24, 2018, Commissioner Jones submitted an additional statement indicating that she served the motion on the Applicant, as well as the Chair of ANC 5E, on April 19, 2018. (Exhibit 55.) The Applicant filed a response in opposition to the motion for reconsideration on April 30, 2018, arguing that the SMD Commissioner does not have standing to file the motion for reconsideration, as she was not a party to the case in her individual capacity. (Exhibit 57.) The opposition also made argument as to the lack of merit of the request, but the Board dismissed the motion on procedural grounds.

CONCLUSIONS OF LAW

Subtitle Y § 700.2 of the Board's Rules of Practice and Procedure provides that, "**Any party** may file a motion for reconsideration of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. The motion shall be served on all other parties to the proceeding at or before the time the motion is filed with the Board." (emphasis added.)

Contrary to the position of the Applicant, the issue is not one of *standing*, because there can be instances in which the party requirement can be waived and a motion for reconsideration granted when the movant had standing but was not given notice of the original hearing. *See Application No. 18263-A of Stephanie and John Lester (2001)*, citing *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 293 A.2d 470, 471 n.2 (D.C. 1972).

Here, Commissioner Jones was not a party, but did claim that she was acting as the ANC's representative, and did not request a waiver from 11-Y DCMR § 700.2.

Accordingly, because the motion was not filed by a party to the underlying case, and was not accompanied by a motion to waive the party status requirement, the motion for reconsideration does not meet an essential prerequisite of Subtitle Y § 700.2 and must be dismissed.

Accordingly, it is **ORDERED** that the motion for reconsideration is **DISMISSED**.


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VOTE: 4-0-1 (Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Robert E. Miller to DISMISS; Frederick L. Hill not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 27, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.