

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-17(4)
Z.C. CASE NO. 11-17
Adams Morgan Church Hotel, LLC
(Consolidated Planned Unit Development and Related Zoning Map Amendment for
Square 2560, Lots 127, 872, and 875)
April 18, 2013**

Order

At a public meeting on April 18, 2013, the Zoning Commission for the District of Columbia ("Commission") considered and denied a motion requesting "reconsideration, re-argument, and/or rehearing" of Z.C. Case No. 11-17 filed by Champlain Street Neighbors: Hotel Study Group ("CSN"). As a preliminary matter to that determination the Commission granted a motion to strike all of the attachments to the CSN motion and denied CSN's request to amend and supplement its original motion. The factual and legal bases for the Commission's determinations follow.

Factual background

By Z.C. Order No. 11-17 in Z.C. Case No. 11-17, the Commission granted the application of Adams Morgan Church Hotel, LLC, (along with successor entity Adams Morgan Hotel Owner, LLC, the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment from the RC/C-2-B and R-5-B Zone Districts to the RC/C-2-B Zone District for properties in Square 2560 known as Lots 127, 872, and 875. The parties to the proceeding were the Applicant, Advisory Neighborhood Commission ("ANC") 1C, the Kalorama Citizens Association ("KCA"), and CSN. The Commission held hearings on the PUD application on September 6, September 13, October 10, and October 22, 2012. The record was closed on February 25, 2013.

Z.C. Order No. 11-17 was published in the *D.C. Register* on March 15, 2013, and 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." Therefore, any such motion from CSN was required to be filed on March 25, 2013.

On March 22, 2013, the Commission received a Motion for Extension of Time to File Motion for Reconsideration of Final Order from CSN, requesting an additional 45 days to file such a motion.

(Exhibit 218.) The motion referenced both this case and Z.C. Case No. 12-17, which was a related rulemaking. CSN noted that a Spanish language version of Z.C. Order 11-17 had not yet been issued, and that it should be granted sufficient time to review a translated order and prepare a motion.

The Applicant requested that the Commission deny CSN's request to the extent that it purported to seek an extension of time to file a motion to reconsider the rulemaking because § 3029.10 of the Commission's rules provide that motions to reconsider rulemaking actions "shall not be accepted or considered." As to this application, the Applicant opposed CSN's request, but did not object to a limited extension of 10-days following the translation of Z.C. Order No. 11-17 into Spanish.

On March 25, 2013 a Spanish language version of Z.C. Order No, 11-17 was provided to the parties. On that same date the Commission issued an Order on Motion (Exhibit 220), in which the Commission ordered that: (1) CSN shall have until April 4, 2013 (i.e., 10 days from the delivery of the translated order) to file any Motion for Reconsideration; and (2) the Office of Zoning shall accept no submissions from any party to this proceeding other than a timely filed motion for reconsideration filed by CSN and any responses thereto filed by the other parties ("Procedural Order"). The Procedural Order only pertained to Z.C. Case No. 11-17, since, as noted, a motion to reconsider a rulemaking may not be accepted or considered.

On April 4, 2013, CSN filed a "Post-Hearing Submission to Zoning Commission", included as Exhibit 227 of the Record. Apparently CSN intended the document to serve as a motion for reconsideration, re-argument, and re-hearing. For the sake of brevity the submission will hereinafter be referred to as CSN's "Motion for Reconsideration." Attached to the Motion for Reconsideration are nearly 200 pages of documentation that purport to provide new information necessary for the Commission's consideration¹.

On April 5, 2013, CSN filed a "Motion to Amend and Supplement the Request for Reconsideration, Re-Argument, and/or Re-Hearing of Final Order No. 11-17", included as Exhibit 229 of the Record ("Motion to Amend").

The Applicant opposed the Motions for Reconsideration and to Amend by letter dated April 12, 2013. (Exhibit 230.) In its opposition, the Applicant requested that the Commission deny CSN's Motion for Reconsideration as without merit, for failure to substantiate with specificity and claims of error in the Commission's Order and for simply rearguing positions the Commission has already reviewed and considered. Further, the Applicant requested the Commission to strike any and all attachments to CSN's Motion for Reconsideration as violating the Procedural Order's prohibition against the filing of additional submissions. Finally, the Applicant requested that the Commission strike CSN's Motion to Amend for the same reason.

¹ To the extent the Motion for Reconsideration purported to encompass Z.C. Order No. 12-17, it was considered as not having been accepted pursuant to § 3029.10.

CONCLUSIONS OF LAW

1. Preliminary Matters

Applicant's Request to Strike Attachments to Motion for Reconsideration

The Applicant points out in its opposition that the Motion for Reconsideration includes nearly 200 pages of documentation - letters, email correspondence, photos, and excerpts from the Comprehensive Plan that purport to provide new information necessary for the Commission's consideration. The Motion for Reconsideration does not explain why this information was not presented to the Commission while the record was still open. The Commission agrees with the Applicant that these attachments are simply an effort to include evidence in the record that was not submitted before the record was closed. These attachments and exhibits are therefore stricken from the record.

CSN's Motion to Amend

One day after filing its Motion for Reconsideration, CSN filed a motion to amend it. According to the motion, the attached amendments included a new edited version of CSN's Motion for Reconsideration, revised attachment sheets, an affidavit as to the trueness of the copies, and a great many statements from various members of the public.

The Procedural Order unequivocally stated that "the Office of Zoning shall accept no submissions from any party to this proceeding other than a timely filed motion for reconsideration filed by CSN and any responses thereto filed by the other parties."² The Commission carefully considered CSN's claims that it needed 45 days to file a motion for reconsideration, but agreed with the Applicant that 10 days from the issuance of a Spanish language version of the order would suffice. CSN's motion is nothing more than an attempt to re-litigate that determination. Since no review of this or any other procedural ruling is permitted, the Motion to Amend is denied.

² The Office of Zoning Staff therefore did not provide the Motion's attachments to the Commission nor enter the attachments into the record. The Commission may not issue any order except upon "the exclusive record". D.C. Official Code § 2-509 (c). As noted by the Supreme Court, "[a]dministrative consideration of evidence... always creates a gap between the time the record is closed and the time the administrative decision is promulgated. *United States v. I. C. C.*, 396 U.S. 491, 521 (1970). Since the record was at this point closed, the Commission could not consider the type of substantive materials attached to the Motion to Amend unless and until it had granted the motion and made the material part of the exclusive record.

2. The Merits of the Motion for Reconsideration.

The Zoning Regulations permit parties to request reconsideration, re-hearing, or re-argument of a contested case. The Regulations require that such motions state specifically the aspects of the final order claimed to be erroneous, the grounds of the motion, and the relief sought. (11 DCMR § 3029.6.)

The Commission agrees with the Applicant that the Motion for Reconsideration does not point out any specific deficiencies with the Order, but instead re-argues issues that were already raised and considered by the Commission. Further, CSN's motion did not provide a basis for granting a rehearing because the evidence it proposes to introduce could reasonably have been presented at the original hearing. The Commission, therefore, concludes there is no basis for reconsidering re-arguing, or re-hearing its decision in Z.C. Case No. 11-17.

For all the reasons stated above, the request filed by the Applicant to strike all attachments and exhibits to CSN's Post-Hearing Submission to the Commission is hereby **GRANTED**.

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

VOTE: **5-0-0** (Marcie I. Cohen, Robert E. Miller, Peter J. May, Anthony J. Hood, and Michael G. Turnbull to grant.)

For all the reasons stated above, the Motion to Amend and Supplement the Request for Reconsideration, Re-Argument, and/or Re-Hearing of Final Order No. 11-17 filed by CSN is hereby **DENIED**.

VOTE: **5-0-0** (Peter J. May, Marcie I. Cohen, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to deny.)

For all the reasons stated above, the request for "reconsideration, re-argument, and/or rehearing" of Z.C. Case Nos. 11-17 and 12-17 included in CSN's Post-Hearing Submission to Zoning Commission is hereby **DENIED**.

VOTE: **5-0-0** (Peter J. May, Marcie I. Cohen, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to deny.)

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In accordance with 11 DCMR § 3028.8, this Order is final and effective upon its publication in the *D.C. Register* on August 9, 2013.



ANTHONY J. HOOD
Chairman
Zoning Commission



SARA A. BARDIN
Director
Office of Zoning