

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-24(1)
Z.C. Case No. 11-24
STANTON-EASTBANC, LLC
(Consolidated Approval of a Planned Unit Development and
Related Zoning Map Amendment @ Square 901, Lot 801)
April 8, 2013**

Order

At a public meeting held on April 8, 2013, the Zoning Commission for the District of Columbia ("Commission") denied the requests of Christopher Howell and Wendy Blair to accept their motions to reconsider Z.C. Order No. 11-24. Neither Mr. Howell nor Ms. Blair was a party to this proceeding and Ms. Blair's motion for reconsideration was submitted more than 10 days after Z.C. Order No. 11-24 became final. As a preliminary matter the Commission also declined to accept Mr. Howell's reply to an Opposition to his request. The factual and legal bases for the Commission decision follows:

By Z.C. Order No. 11-24 the Zoning Commission for the District of Columbia ("Commission") granted the application of Stanton-Eastbanc, LLC ("Applicant") requesting a consolidated planned unit development ("PUD"), and related amendment to the zoning map from R-4 to the C-2-B Zone District, for the property known as Square 901, Lot 801 ("Application").

Z.C. Order No. 11-24 was published in the *D.C. Register* on March 8, 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 party who wished to file a motion for reconsideration was required to do so by March 18, 2013. A non-party could not file such a motion at all.

On March 18, 2013, Christopher Howell, who was not a party, filed a "Motion for Leave to File" an attached motion to reconsider Z.C. Order No. 11-24. (Exhibit 488.)

On March 29, 2013, Wendy Blair, who also was not a party, filed a “Motion for Leave of the Zoning Commission to Reconsider” Z.C. Order No. 11-24. Exhibit 491.

Both motions sought a waiver of the portion of § 3029.5 that permits only parties to file for reconsideration. Ms. Blair also requested a waiver from the requirement that such motions be filed within 10 days after the order became final.

Subsection 3000.8 of the Commission’s Rules of Practice and Procedure provides:

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.

On March 25, 2013 the Applicant filed an Opposition to both Mr. Howell’s motion to file and to his motion for reconsideration. (Exhibit 489.)

On March 29, 2013, Mr. Howell also filed a Motion for Leave to File a Reply to the Opposition. The pleading indicated that Mr. Howell had attempted to file the reply on March 28th, but had been advised by the Office of Zoning that the Commission must first grant him permission to do so.

The Applicant did not file an opposition to Ms. Blair’s request for leave.

1. The Request to Accept a Reply to the Opposition

The Applicant’s Opposition concerned both Mr. Howell’s request for leave to file a motion for reconsideration and to the motion for reconsideration itself. Mr. Howell is asking permission to file a reply that addresses both aspects of the Opposition.

As to Mr. Howell’s request to waive the requirement of § 3029.5 that he be a party, such requests are allowed by 11 DCMR § 3000.8. That provision does not provide for either an opposition or a reply. However, the Commission has traditionally permitted applicants to oppose waiver requests, since one of the elements is whether a party will be prejudiced by the waiver. In the two instances where the Commission’s rules expressly permit parties to respond to a submission, replies are not authorized. *See* § 3024.3 (responses to the submissions of a party) and § 3029.5 (oppositions to motions for reconsideration). The Commission sees no reason to permit a reply to an opposition for a waiver and therefore denies Mr. Howell’s request to submit his.

As to Mr. Howell’s request to reply to that portion of the Applicant’s Opposition that pertained to his Motion for Reconsideration, the Commission’s decision not to accept that motion has rendered the Applicant’s Opposition moot along with Mr. Howell’s wish to reply to it.

2. The Requests for Waivers

Requests to Permit a Non-Party to File Motion for Reconsideration

The Commission concludes that neither Mr. Howell nor Ms. Blair has shown good cause for waiver of the prohibition against a non-party filing a motion for reconsideration.

As noted by the Board of Zoning Adjustment, 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. *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). Both Mr. Howell and Ms. Blair argue that their motions raise important issues. The Commission does not doubt Mr. Howell’s and Ms. Blair’s belief in the merit of their argument, but the fact that they hold such a belief is hardly “extraordinary” and therefore does not furnish a ground for waiving the party status requirement. Ms. Blair also states that several of the persons supporting her motion were members of groups who were granted party status. That alone does not turn those persons into parties or warrant a waiver of the party status prerequisite.

Request to File an Untimely Motion for Reconsideration

Although the Commission’s refusal to waive the party status requirement means that Ms. Blair’s motion will not be accepted, the Commission finds that a separate basis exists for the rejection of the motion; namely that Ms. Blair has not shown good cause why her motion could not be filed within the ten days provided by § 3029.5. Ms. Blair notes that many persons were involved in the decision to file the motion who “required more time to come together to review, discuss, and address documents as long and as technical as ... [Z.C. Order No. 11-24].”

Ms. Blair’s motion was filed 21 days after the Order became effective. This is more than twice the amount of time authorized by the rule. PUD orders are by their nature complex and the 10 days permitted by the rules for the filing of a reconsideration motion takes this into account. The fact that Ms. Blair chose to seek the support of community members does not furnish a basis for extending this time period. There is no requirement that a motion for reconsideration demonstrate the existence of community support, only that it demonstrates an erroneous action by the Commission. Therefore, the justifications offered by Ms. Blair for her delay in filing a motion for reconsideration are without merit.

At its public meeting held on April 8, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission voted **4-0-1** to **DENY**: (1) the Howell Motion for Leave to File Reconsideration Motion, (2) the Blair Motion for Leave, and (3) the Howell Motion for Leave to File a Reply to the Opposition to the Motion for Leave filed by the Applicant.

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In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register* on August 9, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING