Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 522
Case No. 86-22
(Vesting of Construction Rights - Text Amendment)
February 26, 1987

The Zoning Commission for the District of Columbia adopted Zoning Commission Order No. 516 in this case on January 5, 1987. The Acting Executive Director transmitted the Order and a Notice of Final Rulemaking to the Office of Documents on January 8, 1987, at 9:54 A.M., to allow for publication in the D.C. Register on January 16, 1987. The Notice of Final Rulemaking appeared in the D.C. Register on January 16, 1987 (34 DCR 433). Zoning Commission Order No. 516 appeared in the D.C. Register on January 23, 1987 (34 DCR 625). The delay in publication of the Order did not result from any substantive or procedural deficiency in the Order. Rather, it was caused by administrative oversight in the Office of Documents.

There was reasonable notice to the public that the effective date of the Commission's action would be January 16, 1987. The publication of final rulemaking on that date effected legal notice of the Commission's adoption of the final rule. On and after January 8, 1987, Order No. 516, reciting the prospective publication and effective date of January 16, 1987, was available for the public to inspect in the Office of the Zoning Secretariat, and copies of Order No. 516 were available upon request.

In the absence of a waiver of the provisions of 11 DCMR 3028.8, the final and effective date of Order No. 516 would be January 23, 1987, notwithstanding the Order's recital of a final and effective date of January 16. On February 12, 1987, the Commission determined that good cause existed to reopen the record in Case 86-22, to receive a draft order of the Acting Executive Director which identified the circumstances of the publication of Order No. 516 and the Notice of Final Rulemaking, and that reopening the record for that purpose would not prejudice any party, there being no parties in Case 86-22, nor prejudice any person in any legally cognizable way.

Having reopened the record, and having considered the matters set forth above, the Commission determines that

there is good cause to waive the provisions of 11 DCMR 3028.8, and that the waiver will not prejudice any party, and will not prejudice any person in any legally cognizable way.

A final and effective date of January 23, 1987 for Order No. 516 would arguably cause a gap between the expiration of the emergency rulemaking which was adopted in Zoning Commission Order No. 503, and the effective date of the aforementioned final action by the Commission. Throughout the proceedings in Case 86-22, the Commission, its staff, and others, including the National Capital Planning Commission, proceeded diligently on a schedule that would provide for a final rule to be effective on January 16, 1987, before the expiration of the emergency rule. The Commission's clear and unequivocal intention to do so was a matter of public record, which all persons with an interest in this case either well knew, or had good reason to know.

There are no parties to this proceeding, and an effective date of January 16, 1987 therefore will not prejudice the rights of any party. Moreover, an effective date of January 23, 1987 would create no "right" which deserves legal protection. Any person who prepared, before January 20, 1987, to file an application on that date either had to be unaware of this case and of the significance of that date, or if aware of the date's significance, had to recognize, while engaged in such preparations, that there was a clear prospect that the Commission would act timely, with the result that the preparations would bear no fruit. Neither justice nor fairness require that either category of persons retain an advantage which was caused by accident.

For the reasons stated above, the Zoning Commission for the District of Columbia hereby ORDERS, nunc pro tunc, that Zoning Commission Order No. 516 shall be, and shall operate as having been, effective on the date of publication in the D.C. Register of final rulemaking in this case, that is, on January 16, 1987. This order was adopted by the Zoning Commission at a special public meeting on February 26, 1987 by a vote of 4-0 (Maybelle T. Bennett, John G. Parsons, and Lindsley Williams, to adopt and Patricia N. Mathews, to adopt by absentee vote - George M. White, not present, not voting).

In accordance with 11 DCMR section 3028, this order is final and will take effect upon publication in the D.C. Register,

that is, on 03 APR 1987, and upon becoming final and effective, shall operate as ORDERED above.

LINDSLEY WILLIAMS
Chairman
Zoning Commission

EDWARD L. CURRY
Acting Executive Director
Zoning Secretariat

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