Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 643-A
CASE NO. 89-2M/84-18F
(PUD MODIFICATION - BROOKINGS)
February 12, 1990

This contested case proceeding is before the Commission on the Motion of Paul J. Riley, a party in opposition to the application, for an extension of time in which to file a motion for reconsideration.

Zoning Commission Order No. 643 was published in the D.C. Register on December 15, 1989, and became final on that date. On December 12, 1989, a copy of the order was mailed to Mr. and Mrs. Riley, in care of Mr. Riley at his office address, 1730 K Street, N.W., Suite 304, Washington, D.C., 20006. According to the return receipt on file in the record of this case, that copy was delivered on December 14 1989.

On January 2, 1990, Mr. Riley submitted a request that the Zoning Commission reconsider Order No. 643. Pursuant to 11 DCMR 3029.5, such a motion should have been filed no later than December 26, 1989. The request was accepted by staff and placed on the agenda of the Commission for the meeting on February 12, 1990.

By letter dated January 18, 1990, (Ex. 97), counsel for applicant requested the Executive Director of the Commission staff to return the January 2, 1990 motion for reconsideration, on the ground that the motion was not timely filed. In order to allow the Zoning Commission to address the question of timeliness, the Executive Director adhered to the decision to place the matter on the February 12, 1990 agenda of the Commission.

On February 6, 1990, Mr. Riley filed the motion for an extension of time that is now before the Commission. The motion invokes 11 DCMR 3001.5, pursuant to which the Commission may for good cause extend the period of time that is prescribed for a party to act. The motion recites the following:

> The record reflects that this party has appeared and has participated on his own behalf, in person, and without counsel, since June 20, 1989, and his

> communications to the Commission since that date have consistently identified his address of record as 1734 P Street, N.W., Washington, D.C., 20036. This party was not served a copy of the written order at his address of record prior to the publication of the order in the D.C. Register. Therefore, the propriety of publication of Order No. 643 can not be said to be certain at this time.

In his June 5, 1989 request that he and his wife be granted party status in this proceeding (Ex. 37), Mr. Riley had stated that he would be legal counsel for his wife and himself, and stated his address as counsel as:

> 1730 K Street, N.W.
> Suite 304
> Washington, D.C. 20006

This same address appears on the letterhead of Ex. 37, and on other correspondence submitted by Mr. Riley on behalf of his wife and himself in this proceeding, and on two envelopes in which their January 2, 1990 request for reconsideration was mailed to other parties.

The Commission concludes that there is not good cause for the requested extension. It was entirely reasonable to mail the copy of the Order to Mr. Riley at 1730 K Street. It is reasonable for staff to rely on the statement of an attorney that he is appearing on behalf of a party and that his address is as he states it to be. It is not reasonable for an attorney to use an alternative address from time to time as the case proceeds and thereby expect to obligate the Commission staff to stop using the address set forth in the request for party status.

The Commission has considered the other matters set forth by Mr. Riley in support of the extension of time, and concludes that they do not show good cause, and do not warrant explicit discussion.

In short, Mr. Riley has set forth no persuasive reason why the motion for reconsideration could not have been timely filed.

Based upon the foregoing, the Commission denies the request for an extension of time to file a motion for reconsideration, by a vote of 3-0 (John G. Parsons and

Maybelle Taylor Bennett to deny the request; Lloyd D. Smith to deny by proxy vote; and Tersh Boasberg and William Ensign, not voting, not having participated in the proceeding.

Maybelle Taylor Bennett

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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