

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
: :
WATERFRONT ASSOCIATES, LLC : Case No.
: 02-38A
: :
-- -- -- -- -- -- -- -- :

Monday,
September 17, 2007

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 02-38A by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

SHARON S. SCHELLIN Secretary

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

APPEARANCES:

On Behalf of the Applicant, Waterfront Associates, LLC:

WHAYNE QUIN, ESQ.
of: Holland and Knight
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-7274

On Behalf of Tiber Island Cooperative Homes, Inc.:

MICHAEL B. McGOVERN, ESQ.
of: Hanson & Molloy
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036
(202) 833-9300

The transcript constitutes the minutes from the Public Hearing held on September 17, 2007.

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<u>(APPLICATION FOR A</u>	
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P R O C E E D I N G S

7:01 p.m.

VICE-CHAIRPERSON HOOD: Good

evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Monday, September 17th, 2007. My name is Anthony J. Hood.

Joining me this evening are Commissioner Carol Mitten and Commissioner John Parsons.

This evening's hearing is a continuation, my fault, from the June 14th, 2007 hearing of Zoning Commission Case No. 02-38A, which is the Waterfront Associates case, for property located at 401 M Street, S.W., known as Waterside Mall, and also as Lot 89 in Square 542.

The purpose of this evening's hearing is for rebuttal cross examination only. We will be hearing no further testimony.

The parties of this case are Waterfront Associates, LLC, who's the

1 Applicant, ANC6D, Carrollsburg Square
2 Condominium Association and Tiber Island
3 Cooperative Homes, Inc.

4 Please be advised that this
5 proceeding is being recorded by a court
6 reporter and is also Webcast live.
7 Accordingly, we must ask you to refrain from
8 any disruptive noises or actions in the
9 hearing room. Please turn off all beepers and
10 cell phones at this time, so not to disrupt
11 these proceedings.

12 At this time the Commission will
13 consider any preliminary matters.

14 Does the staff have any
15 preliminary matters?

16 MS. SCHELLIN: The Applicant did
17 make a submittal on September 12th, that
18 they're asking that the record be reopened to
19 accept, and following that, we did receive
20 three letters from three parties, also asking,
21 joining in in that request, asking that we do
22 open the record to accept that filing.

23 And then, I'm sorry, there also,

1 once that's taken care of, there's a letter
2 also from Mr. Solan.

3 VICE-CHAIRPERSON HOOD: Okay. Mr.
4 Parsons, if we could just do general consensus
5 to reopen the record from the Applicant --
6 reopen the record for the letter submitted
7 from the Applicant, from ANC6D, from
8 Carrollsbury Square Condominium Association.

9 Why don't we just -- and also from
10 Tiber Island. I think they requested it too.
11 Yes. Tiber Island. Let's deal with those.
12 General consensus?

13 COMMISSIONER PARSONS: Yes.

14 VICE-CHAIRPERSON HOOD: Okay. Ms.
15 Schellin, did you want to comment on the next
16 letter?

17 MS. SCHELLIN: Just that we did
18 have a request from Mr. Solan, asking that the
19 case be reopened, so that a further hearing
20 can be held to allow Southwest/Southeast
21 residents to present testimony as stated in
22 his letter of, that was received September
23 14th.

1 VICE-CHAIRPERSON HOOD: Okay. Mr.
2 Parsons, I am of the mind to go ahead and
3 accept it into the record but I'm not sure if
4 I necessarily agree with it. I'm not sure
5 where you fall on that issue.

6 COMMISSIONER PARSONS: I agree. I
7 mean, we have a letter here from the ANC that
8 seems to be favorable to this sketch, which is
9 all it is. It's an indication of where this
10 property will go. I can't imagine us opening
11 a hearing based on this sketch, but wait till
12 they come forward with a specific proposal in
13 the future.

14 VICE-CHAIRPERSON HOOD: So are you
15 in agreement with not accepting this into the
16 record?

17 COMMISSIONER PARSONS: Well, I
18 don't mind accepting into the record. I just
19 don't feel we should honor the request.

20 VICE-CHAIRPERSON HOOD: Right;
21 okay. Mr. Quin, did you want to add
22 something.

23 MR. QUIN: Only that the letter

1 filed by Mr. Solan is as a person and this
2 hearing was continued solely for the parties
3 to have the right to cross examination, so I
4 don't even think there's standing at this
5 point, for a person to raise an issue with
6 regard to opening a record.

7 VICE-CHAIRPERSON HOOD: All right.
8 Thank you. Anything else, Mr. Quin?

9 MR. QUIN: No, sir.

10 VICE-CHAIRPERSON HOOD: Okay. So
11 by general consensus, we'll accept this, Mr.
12 Solan's letter, into the record. Okay. We're
13 going to deny the hearing, and we're going to
14 do that by general consensus. I really think
15 that it's all captured -- you have your ANC --
16 I mean, I've been down here a while and I've
17 seen a lot of parties. We have three
18 different parties, which I think is very
19 reflective and representative of the
20 neighborhood, and I think all the issues could
21 be dealt with and have been dealt with through
22 those three parties, especially with the ANC.

23 Mr. Quin, if we could have Mr.

1 Baranes come to the table.

2 MR. QUIN: Yes, sir. Yes. Just a
3 brief remark.

4 VICE-CHAIRPERSON HOOD: You have
5 an opening statement?

6 MR. QUIN: It's very brief. It's
7 just as you've stated, this is a very limited
8 hearing, for the sole purpose of permitting
9 cross examination of our architect, Shalom
10 Baranes, only by the parties, relating to the
11 alternative heights along M Street, and as you
12 also know, we filed a letter, Ms. Schellin
13 talked about that, and requested that the
14 condition to the order specifically permit the
15 proposed alternative heights on M Street.

16 So, frankly, I believe that the
17 cross examination issues are essentially moot
18 at this point, but if there are questions, Mr.
19 Baranes is here for questions.

20 VICE-CHAIRPERSON HOOD: I think it
21 seems to be a general agreement, from what
22 we've read, but the request still remains to
23 cross examine.

1 MR. QUIN: Yes.

2 VICE-CHAIRPERSON HOOD: So what
3 we're going to do -- and let me say who the
4 people who are going to cross examine, so
5 there won't be any issues.

6 Commissioner Skolnik for ANC 6D.
7 Is it Mr. Baker for Carrollsburg Square? And
8 Paul Greenberg for Tiber Island.

9 MR. GREENBERG: Actually, Mr.
10 McGovern will be --

11 VICE-CHAIRPERSON HOOD: You know,
12 this is what got us here, to begin with, cause
13 I will tell you, when I saw Mr. Greenberg
14 leave out -- but anyway. Mr. McGovern will be
15 representing Tiber Island. Okay.

16 Okay. Let's start with the ANC.
17 Commissioner Skolnik, come up for cross
18 examination, and I will tell you, we have the
19 transcript, so let's keep it to what he did on
20 rebuttal.

21 WHEREUPON,

22 SHALOM BARANES

23 was recalled as a witness and, having

1 previously been duly sworn, was further
2 examined and further testified as follows:

3 CROSS EXAMINATION

4 BY MR. SKOLNIK:

5 Q Good evening, Commissioners. I
6 just have three very quick questions. The ANC
7 did vote on this at our last meeting in order
8 to approve, so we're very much in favor of
9 this new submittal, and we wanted just to be
10 on the record that the Applicant is committed
11 and bound to this new project.

12 So I wonder if you could just sort
13 of comment on that, on just being bound to the
14 new submittal, something that you are fully in
15 favor of.

16 A Yes, we produced that sketch, and
17 we think it's a reasonable way to think about
18 those two buildings on M Street as we proceed
19 to develop the design further.

20 Q Okay. The next question I have
21 was are there any options that are lost with
22 this new submission? Are there any drawbacks
23 to this new, particular proposal, as opposed

1 to the previous plan?

2 A I would say there are no
3 drawbacks.

4 Q Okay. And the final question I
5 had was, in your previous testimony you
6 mentioned that there was -- you had left a
7 little bit of space in terms of volume for
8 stepping and for a green roof. Is any of that
9 options -- are any of those options lost with
10 this new submission?

11 A No. We have still incorporated a
12 little bit of extra space in the volume.

13 MR. SKOLNIK: Okay. That's it.
14 Thank you.

15 VICE-CHAIRPERSON HOOD: Thank you.

16 MR. BAKER: I want to thank the
17 Commission for allowing us to come back and
18 cross examine. We have met twice, all the
19 parties, and I think this process has sped up
20 much quicker because of those two meetings.

21 As I --

22 VICE-CHAIRPERSON HOOD: So the
23 mistake worked out just fine.

1 MR. BAKER: Worked out, I think,
2 very good.

3 VICE-CHAIRPERSON HOOD: Okay;
4 good.

5 CROSS EXAMINATION

6 BY MR. BAKER:

7 Q I ask, Mr. Baranes, that you state
8 that Bethesda is one of the most successful
9 retail developments in this region, and point
10 out there are 18 foot width sidewalks. Old
11 Georgetown Road is at least two lanes narrower
12 than M Street, and many --

13 VICE-CHAIRPERSON HOOD: Mr. Baker,
14 let me just ask, can you go to the question
15 because I'm being scrutinized. My chair is on
16 top of me about make sure I run this
17 correctly. She's --

18 BY MR. BAKER:

19 Q Would you consider, when you
20 prepare the massing of the M Street buildings,
21 to widen the sidewalks along M Street?

22 A I'm sorry. Could you repeat the
23 question.

1 Q Will you consider widening the
2 sidewalks along M Street when you work on this
3 remassing of the M Street buildings?

4 A Our intent is not to revisit that
5 issue. Our sidewalks are currently at 18 and
6 a half feet, and we intend to continue working
7 with that dimension.

8 Q And will you work with the parties
9 and the ANC as you develop these buildings?

10 A Yes. We'd be happy to meet with
11 you again during the process.

12 Q Okay. And my final question, you
13 make the statement that you're trying very
14 hard to build on the spirit of moderninity.
15 I see this in your 4th Street buildings. Will
16 you apply that same spirit to these M Street
17 buildings?

18 A Yes. We will.

19 MR. BAKER: Thank you very much.

20 VICE-CHAIRPERSON HOOD: Thank you.

21 Mr. McGovern.

22 Can you turn on your microphone
23 and repeat all that.

1 MR. MCGOVERN: Michael B. McGovern
2 for Tiber Island Cooperative Homes, Inc.

3 CROSS EXAMINATION

4 BY MR. MCGOVERN:

5 Q Mr. Baranes, in your direct
6 testimony on rebuttal, you expressed some
7 concern that perhaps Office of Planning would
8 not support a taller building, even though it
9 had the beneficial result of opening up, you
10 know, into the project, opening up the views
11 and having less massing on M Street.

12 Do you recall that testimony?

13 A Yes. I do.

14 Q And have you since met or
15 communicated with Office of Planning about
16 their views on adding the extra floor that you
17 --

18 A Yes.

19 Q And what is the result of those
20 meetings?

21 A I don't want to speak for Office
22 of Planning since they're represented here.
23 However, I believe that they're in general

1 support of this new direction.

2 VICE-CHAIRPERSON HOOD: We can ask
3 them at a later time, but what did you get out
4 of the meeting that you had?

5 THE WITNESS: I believe that
6 they're in support of this general direction.

7 BY MR. MCGOVERN:

8 Q And is that, in part, because of
9 the Metro station being right there?

10 A I don't know -- I don't want to
11 speak for them in terms of what their reasons
12 are.

13 Q Okay. Having met with the
14 neighbors and the ANC, and come up with this
15 revised plan, are you satisfied with the
16 revised plan?

17 A Yes. I am.

18 Q And do you think the neighborhood
19 input has been beneficial?

20 A Yes; it has.

21 Q And do you believe that the
22 current project is an improvement over the
23 previous proposal?

1 A Yes. I believe it is.

2 MR. MCGOVERN: Okay. I have no
3 further questions.

4 VICE-CHAIRPERSON HOOD: Mr.
5 McGovern, let me do this, and I know I'm going
6 out a little bit, because I want to make sure
7 we get everything covered. I'm going to ask
8 Mr. Jesick, you heard Mr. McGovern's first
9 question. Could you help us with that. And
10 if you can repeat it for him, maybe.

11 MR. MCGOVERN: I believe the
12 question was whether Office of Planning has
13 indicated that it would look kind on the extra
14 floor on M Street, considering the other
15 benefits that the neighbors seek, and did the
16 Office of Planning indicate its conditional
17 approval of the higher floor?

18 MR. JESICK: Yes. We met with the
19 Applicant and they showed us the revised
20 design, and we did indicate that that would be
21 acceptable.

22 VICE-CHAIRPERSON HOOD: Okay.

23 MR. MCGOVERN: Thank you very

1 much.

2 VICE-CHAIRPERSON HOOD: Thank you
3 all, and sorry, again, for the inconvenience.
4 But let me see. Okay, Mr. Quin, do you have
5 any closing remarks?

6 MR. QUIN: Very briefly.

7 We ask that the Zoning Commission
8 approve the PUD, as requested, as soon as
9 possible, and that the order be issued as soon
10 as possible because of time constraints.

11 We recognize that without the
12 quorum of voting members of the Zoning
13 Commission, that you cannot vote now, but we
14 want to put this on the record and we want to
15 emphasize the need for quick action, if
16 possible. We will order and are ordering the
17 transcript, so that you will have this,
18 hopefully, in a few days, for the other member
19 of the Zoning Commission to read and vote as
20 soon as possible, and other than that, we
21 appreciate your moving quickly and we hope
22 that you will approve this as soon as
23 possible.

1 VICE-CHAIRPERSON HOOD: Thank you,
2 Mr. Quin. I believe we're going to try to
3 schedule this for our October the 15th
4 meeting, and I don't think we need anything
5 else submitted.

6 Okay. I want to thank our Chair
7 for sitting in. This is one time that I
8 didn't hear her say too much. But anyway --
9 actually, that was a cheap one. I appreciate
10 her, what she's --

11 [Laughter]

12 COMMISSIONER MITTEN: You'll miss
13 me when I'm gone.

14 CHAIRPERSON HOOD: I sure will. I
15 will be truly honest about that. Okay. I
16 think that's it, and again I appreciate
17 everyone's time. We'll be trying to take this
18 up at our next meeting. Any part of this case
19 and all that I think is irrelevant at this
20 point.

21 The Commission will make a
22 decision in this case, which will be our next
23 meeting. If anything changes, you can check

1 with Ms. Schellin, and I thank everybody for
2 their time, and this abbreviated hearing is
3 adjourned.

4 [Whereupon, at 7:15 p.m., the
5 hearing was adjourned]
6