

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 6, 2015

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:59 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
MARNIQUE HEATH, Board Member  
JEFF HINKLE, Board Member (NCPC)

The transcript constitutes the minutes from the Public Meeting held on January 6, 2015.

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ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR  
MEGAN RAPPOLT  
MATT JESICK  
BRANDICE ELLIOT

DDOT STAFF PRESENT:

RYAN WESTROM

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P-R-O-C-E-E-D-I-N-G-S

(9:58 a.m.)

1  
2  
3 CHAIR JORDAN: Good morning. Happy New Year to  
4 all, if we can please come to order. We're here this morning  
5 for the Board of Zoning Adjustments Meeting.

6 We're located at the Jerrily R. Kress Memorial  
7 Hearing Room at 441 4th Street NW. Today's date is January  
8 6, 2015. My name is Lloyd Jordan, Chairperson of the Board.

9 To my left is Marnique Heath, a member of the  
10 Board. To her left is Michael Turnbull, member of the Zoning  
11 Commission sitting in as a member of the Board of Zoning  
12 Adjustment today.

13 Please be advised that today's proceedings are  
14 being webcast live and also being recorded by a court reporter,  
15 so therefore I'm going to ask you to refrain from any disruptive  
16 noises here in the hearing room.

17 That's always our signal to you to please silence  
18 anything that may ring, buzz or et cetera at this time. The  
19 Board's hearing procedures are contained in a document to my,  
20 to the door to the left in the back if you're not familiar with  
21 how we proceed at the Board.

22 If you're going to testify or provide any  
23 statements to the Board today, I'm going to need you to do two  
24 things. So there's two things I need you to do before you  
25 testify or provide statement to the board.

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1           The first of which is to complete two witness  
2 cards per person and give them to the court reporter who's  
3 seated to my right. So that's two witness cards per person.

4           And I was also reminded that when you fill out  
5 the card, be sure to look in the upper right hand corner and  
6 put the case number down. Put the case number on each card.

7           We're getting cards without case numbers. So  
8 that's two witness cards with the case number at the right hand  
9 side per person and prior to testifying and give those cards  
10 to the court reporter.

11           And the second thing I need you to do is now rise  
12 and take the oath, to be given by Mr. Moy. So if you're going  
13 to testify or provide any statement, please now rise.

14           MR. MOY: Good morning. Happy New Year.

15           (Witnesses sworn)

16           MR. MOY: Ladies and gentlemen, you may consider  
17 yourselves under oath.

18           CHAIR JORDAN: Very good. Thank you. Before  
19 we begin, I'm going to call, what case is that? I'm going to,  
20 I'm sorry. Mr. Moy, why don't you handle those preliminary  
21 matters, and then we'll come back? Are there any preliminary  
22 announcements that you need, any announcements you --

23           (Simultaneous speaking)

24           MR. MOY: Yes, I'm sorry. For the record, on the  
25 docket I just want to announce that Application Number 18934

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1 of Michael Welch, which was originally on the public meeting  
2 session has been rescheduled to January 27, 2015.

3 Second, Application 18890 of Rock Creek 650, LLC  
4 has been rescheduled, postponed to February 10, 2015. And  
5 finally, Application Number 18889 of Daz, D-A-Z, LLC has been  
6 postponed, rescheduled to February 24, 2015. And I believe  
7 that complete's the staff's briefing, Mr. Chairman.

8 CHAIR JORDAN: All right, thank you, Mr. Moy.  
9 I'm going to ask that although we're not calling this case at  
10 this point for hearing that a representative in case, of the  
11 Applicant of 18884 come to the witness table as well as the  
12 two persons or two parties, I guess, requesting party status  
13 in that case, 18884.

14 To the witness table, please. And if you please  
15 be sure you've completed your witness cards and give them to  
16 the court reporter. We're going to discuss some preliminary  
17 matters and not go through presentations.

18 So I just need a representative for the applicant  
19 and then the two groups seeking party status in that matter.  
20 Okay. All right, okay let's, are you doing witness cards?

21 All right, we'll proceed on. Let's go ahead and  
22 let me have the introductions, please, starting to my right.  
23 Just make sure your microphone is on.

24 It's there in front of you. It's got to be a  
25 bright, glowing green light, bright glowing. No, it's not on.

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1 Push the button.

2 MR. BELL: Oh, now it's bright.

3 CHAIR JORDAN: Right, there we go.

4 MR. BELL: My name's Robert Bell. I'm the owner  
5 and architect of this project, and I'll be presenting.

6 CHAIR JORDAN: Okay, bright, glowing green  
7 light.

8 MR. MULDER: I'm Christian Mulder. I'm the  
9 spokesman for the group, this party opposing the exception and  
10 the variance that's being proposed.

11 CHAIR JORDAN: And that's --

12 MR. MULDER: I'm a neighbor.

13 CHAIR JORDAN: I understand. Next?

14 MR. GALLAGHER: I'm Bill Gallagher. I'm also a  
15 neighbor to the project. I'm also an architect.

16 CHAIR JORDAN: That's good. Put the brakes on  
17 that. Next?

18 MR. JUNKER: My name is Caesar Junker. I'm a  
19 neighbor at 3146 O Street and a witness to the meetings at ANC  
20 and OGB.

21 CHAIR JORDAN: I got you. And, sir, I didn't get  
22 your, just make sure, yes, there you go.

23 MR. ADAMS: My name's Thomas L. Adams, Jr. I  
24 live on Dumbarton Street.

25 CHAIR JORDAN: Mr. Adams, I don't have anything

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1 from you in this matter for party status.

2 MR. JUNKER: Party status --

3 CHAIR JORDAN: Yes.

4 MR. JUNKER: -- was submitted.

5 CHAIR JORDAN: I have on the, oh, Thomas Adams.  
6 I'm sorry. I apologize. Yes, I do have you. All right, so  
7 and is there a Douglas Stephens?

8 MR. JUNKER: I have not seen him here today.

9 CHAIR JORDAN: Okay. Well, at this point then  
10 we're going to deny Douglas Stephen's party status request.  
11 Regarding the group that's seated at the table, Mr. Mulder,  
12 Gallagher, Adams and Junker, we're going to consolidate that  
13 as to one part status.

14 Mr. Bell, do you have any issues with me granting  
15 party status to this group?

16 MR. BELL: No, I don't.

17 CHAIR JORDAN: Okay. Then there's a couple of  
18 things that we need to have, that I need to talk to you about.

19 First, it's a board practice to have the  
20 applicant and those we've granted party status to, to have  
21 conversation and try to resolve any outstanding issues prior  
22 to your case being heard.

23 So when I release you from the table pretty soon,  
24 I'm going to ask that you step out into the hall and have  
25 conversations about trying to resolve these issues.

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1           We have found this to be very beneficial to all  
2 in regards to having these conversations. And when we say have  
3 the conversations, we mean have serious conversations, not  
4 drive by conversations but really try to hit the issues.

5           One thing that we try to tell you here at the Board  
6 is that it's better if you can decide among yourselves how to  
7 resolve your issues, especially since you're going to be  
8 neighbors and are living together, it's better that you do it  
9 as opposed to the Board making the decision that someone's not  
10 going to be happy with.

11           The second thing that comes up, Mr. Bell, and I  
12 want to put you on notice. We received from the pleadings from  
13 the party status that is a claim that you don't own all the  
14 property in which you're seeking relief from. Do I have that  
15 correct?

16           MR. BELL: Yes.

17           CHAIR JORDAN: I think, Mr. Mulder, you say that  
18 you own part of it. And then there's another issue about DC  
19 government owning part. Is that what your contention is?

20           MR. MULDER: No, Mr. Adams bought in a tax sale  
21 part of the property.

22           CHAIR JORDAN: Okay. So Mr. Adams bought the  
23 tax sale property, alleged purchase of the tax sale or part  
24 of the property. And Mr. Mulder, you're --

25           MR. MULDER: I own, I claim to own --

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1 CHAIR JORDAN: I understand. So Mr. Bell, one  
2 of the issues that are rising in this matter is the ownership  
3 issue.

4 And I don't know if you're ready to confront that  
5 or if you're going to need more time to present to the Board  
6 documentation that you own all of the property in which you're  
7 seeking relief from.

8 MR. BELL: Yes, would you like me to present that  
9 now?

10 CHAIR JORDAN: No, I just want to let, put you  
11 on notice, and if you needed more time I was going to --

12 MR. BELL: I'm aware of that, and I have the  
13 documentation to that issue.

14 CHAIR JORDAN: Okay. Very good. Okay. And so  
15 I'm going to also ask when you go out in the hall and have your  
16 conversation that you share the documentation with the party  
17 opponents.

18 And that's one of the issues I'm going to ask you  
19 guys to work out and resolve. Okay?

20 MR. BELL: Okay.

21 CHAIR JORDAN: So we will call this case back  
22 again, and please step out and have conversation. If you need  
23 a room, Mr. Moy, we can make one available?

24 MR. MOY: Yes, I believe the Green Conference  
25 Room across the hall is open, but check in with the

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1 receptionist.

2 CHAIR JORDAN: Okay. All right, very good. So  
3 thank you. We will then call this case back again.

4 ZC MEMBER TURNBULL: Mr. Chair?

5 CHAIR JORDAN: Yes.

6 ZC MEMBER TURNBULL: Setting, well if nothing is  
7 reached and we do have the hearing, the party in opposition  
8 would have just one person as their leader.

9 CHAIR JORDAN: Oh, thank you. Well, it's a  
10 consolidated request. They did a request collectively.

11 ZC MEMBER TURNBULL: But I assume they'd have one  
12 point person.

13 CHAIR JORDAN: Yes, Mr. Mulder indicated he's  
14 the spokesperson for the group.

15 ZC MEMBER TURNBULL: So if the others have  
16 questions, they would direct them to you --

17 CHAIR JORDAN: Mr. Mulder.

18 ZC MEMBER TURNBULL: -- and you ask --

19 CHAIR JORDAN: Correct.

20 ZC MEMBER TURNBULL: -- the applicant.

21 MR. MULDER: My intention is to call Mr. Bell to  
22 cross examine him, to ask Bill as an expert witness when it  
23 comes to the impact of the neighbors ask specific questions.

24 CHAIR JORDAN: You can use who you want as  
25 witnesses.

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1 ZC MEMBER TURNBULL: Okay.

2 CHAIR JORDAN: Okay. Very good. Thank you,  
3 Mr. Turnbull. All right, thank you. So please go out now and

4 --

5 MR. ADAMS: Mr. Chairman, we have had a number  
6 of discussions. Do we still do it again?

7 CHAIR JORDAN: That doesn't count for anything  
8 at all.

9 MR. ADAMS: Okay.

10 CHAIR JORDAN: We've had, was it 12 Mr. Moy, a  
11 group of 12 different party status requests. And they had been  
12 meeting for probably a year. But when they got here and were  
13 told to go out and have this conversation, the issue got  
14 resolved.

15 MR. ADAMS: Okay.

16 CHAIR JORDAN: So work with me.

17 MR. ADAMS: Okay.

18 CHAIR JORDAN: Please have fruitful discussion,  
19 and I don't mean to walk out the door, come back in in one minute  
20 and pretend as though it happened. We've had groups do that.  
21 It doesn't make us very happy. Plus, we watch what goes on  
22 in there.

23 MR. ADAMS: Okay.

24 CHAIR JORDAN: Thank you, but I mean it's really,  
25 really important that people try to extend hands and reach out

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1 and to reach some aspect of compromise. This is one I think  
2 could be compromised.

3 You need to really do it, and I say it to the  
4 applicant like I say to the people in party status. You don't  
5 necessarily want the Board to resolve an issue that you  
6 could've resolved yourselves. Thank you.

7 All right, so let's move to our decision cases,  
8 Mr. Moy. And let me make another announcement. Mr. Hinkle  
9 is going to join us in progress. He had some building issues  
10 and some other things as well as we apologize for starting off  
11 late.

12 As you know, the weather just caught up on  
13 everybody. But we are here, and we're moving forward. So if  
14 you would call the first decision case, please?

15 MR. MOY: Yes, sir. That I believe would be  
16 Application Number 18909 of Kevin White. As the Board will  
17 recall or rather not this one, this is an application, Special  
18 Exception 223 that's on the expedited review calendar, sir.

19 CHAIR JORDAN: Okay. Is the Board ready to  
20 deliberate in this case? Okay? I get the thumbs up. It  
21 means we're ready to go. Just prior, I'm going to make a motion  
22 that we grant the relief based upon what's been submitted.

23 But I want to an addition to that, to my motion,  
24 that we grant 2001.3 relief for the non-conforming. They  
25 didn't request it, but this is an expedited self-application.

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1 I just want to give them a lift on that. So with that, that  
2 would be my motion.

3 MEMBER HEATH: I'll second.

4 CHAIR JORDAN: Motion made and second to grant  
5 the relief requested with the addition of the non-conforming  
6 aspect on 2001.3 relief. Any other discussion? Those in  
7 favor of the motion, aye.

8 (Chorus of ayes)

9 CHAIR JORDAN: Those opposed, nay? The motion  
10 carries.

11 MR. MOY: Staff would record the vote as 3-0 this  
12 on motion that Chairman Jordan to approve the application for  
13 the relief requested as well as 2001.3 non-conforming  
14 requirements.

15 Second the motion, Ms. Heath. Also in support,  
16 Mr. Turnbull. We have two members not present at the moment,  
17 Mr. Chairman. Motion carries.

18 CHAIR JORDAN: Okay. Thank you, 18815.

19 MR. MOY: Is that a --

20 CHAIR JORDAN: Summary, please.

21 MR. MOY: Summary, thank you, sir.

22 CHAIR JORDAN: Oh, that's, I'm sorry. Mr. Moy,  
23 we had an absentee on 18909.

24 MR. MOY: That's right. Thank you, sir.

25 CHAIR JORDAN: Thanks, Missy.

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1 MR. MOY: So that's right. I have an absentee  
2 ballot from Mr. Hinkle, so that would raise the vote to 4-0  
3 with his absentee vote. So that's a correction to the vote  
4 count. Thanks for the reminder.

5 CHAIR JORDAN: All right, very good. Thank you.  
6 18815?

7 MR. MOY: All right, that would be Application  
8 18815 of Amanda Bennett and Donald Graham. As the Board will  
9 recall, there have been delays in decisions from the past two,  
10 or rather the past session on November 18th.

11 CHAIR JORDAN: Yes, this is one that's been  
12 around. It goes to one of the things, Mr. Turnbull, where,  
13 one of those cases where we say that there should be something  
14 that just allows some homeowners to do some very simple things  
15 without jumping through all the hoops.

16 This is one where the Board really wanted to grant  
17 the relief, and we had to send the applicant back to look at  
18 their situation kind of over and over again.

19 And they finally got it. So with that one, with  
20 the supplemental report and additional data submitted to the  
21 Board, I would move that we grant the relief on 18815.

22 ZC MEMBER TURNBULL: Did we get a supplemental  
23 report from OP? I guess I didn't --

24 (Simultaneous speaking)

25 CHAIR JORDAN: I didn't see one from OP. We did

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1 not get one from OP.

2 ZC MEMBER TURNBULL: I mean OP, they could not  
3 recommend approval on that.

4 CHAIR JORDAN: Yes, and we couldn't either. But  
5 OP was here the time we had the hearing, had the discussion,  
6 and they very much supported them going back to try to find  
7 a way to get there. And they subsequently did that.

8 ZC MEMBER TURNBULL: Yes, I guess my concern is  
9 it's a large deck with a lot of lighting on it. And I want  
10 to make, I think it ought to be written in the order that the  
11 lighting ought to be down lighting --

12 CHAIR JORDAN: Certainly.

13 ZC MEMBER TURNBULL: -- and not of a nature that  
14 would be offensive to the neighbors.

15 CHAIR JORDAN: Okay.

16 ZC MEMBER TURNBULL: So I think it ought to be  
17 very carefully done and down lighting so that it's concentrated  
18 on the deck and not just open lighting that would --

19 CHAIR JORDAN: Certainly. Okay. We'll make  
20 that part of the condition.

21 ZC MEMBER TURNBULL: Okay.

22 CHAIR JORDAN: We'll make that part of 18815.  
23 And I would put that as part of my motion.

24 ZC MEMBER TURNBULL: Okay.

25 CHAIR JORDAN: We have a second?

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1 MEMBER HEATH: I'll second. Oh, go ahead.

2 ZC MEMBER TURNBULL: I'll second.

3 CHAIR JORDAN: All right, any further  
4 discussion? All those in favor of the motion, aye.

5 (Chorus of ayes)

6 CHAIR JORDAN: Those opposed, nay? The motion  
7 carries. Mr. Moy?

8 MR. MOY: Before I give the vote count, we have  
9 an absentee ballot for this case as well from Mr. Hinkle, and  
10 his vote is approve the application with any conditions that  
11 may be imposed by the board.

12 So that would give a final vote of 4-0 on the  
13 motion of Chairman Jordan to approve the relief request as well  
14 as the condition. Second the motion, Mr. Turnbull, also  
15 support Ms. Heath and of course Mr. Hinkle.

16 CHAIR JORDAN: Summary please?

17 MR. MOY: Yes, sir.

18 CHAIR JORDAN: And include the condition.

19 MR. MOY: Okay.

20 CHAIR JORDAN: Our next decision case, please.

21 MR. MOY: That would be Application 18878 of Alba  
22 12th Street, LLC. And this Board will recall the hearing  
23 testimony completed on December 9, 2014. The record was  
24 closed. And this had been advertised for variance relief from  
25 FAR, rear yard and parking.

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1 CHAIR JORDAN: Is the Board ready to deliberate  
2 on this one? I guess I said Board, you and I? Yes, Mr.  
3 Turnbull was not part of that, but we do have sufficient --

4 ZC MEMBER TURNBULL: I'm here for your support.

5 CHAIR JORDAN: Thank you very much. And we  
6 appreciate that. Otherwise we wouldn't be having cases today.  
7 Thank you. So this is a case which we heard and has a lot of  
8 issues.

9 There were a lot of issues running back and forth  
10 on this case. We've gotten some supplemental pleadings from  
11 everybody on this matter. There's been some changes that  
12 there was the ability now to find some TDRs that was not  
13 available before.

14 And we'd gone back and forth. And then there's  
15 been some economics on this case, and there has been, the  
16 opposition had economics on the case. I don't think the  
17 opposition though really hit the point on the economic issues  
18 with this one.

19 They were very broad in their economic impact.  
20 They offered building code issues, and of course the building  
21 code is not before this Board. And I have not seen anything  
22 that offered that would substantially offset what the  
23 applicant discussed.

24 There's a lot of relief. There's a lot of issue,  
25 but I think certainly what persuades me is that this property

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1 is truly, I think no one can question how unique this particular  
2 property is.

3 And the other part that put me over the top is  
4 the core factors of this building. It's extremely high, and  
5 I could support the amended relief in this case with the various  
6 conditions that we talked about before.

7 The applicant shall install at least two bicycle  
8 parking racks. The applicant shall provide \$50 in SmartCard.  
9 The applicant shall provide reasonable amounts for transit use  
10 by its employees.

11 And they should enroll in the SmartBenefit  
12 Transfer Program and that they appointed a TDM leader. So  
13 that's just my thoughts on it. Any other thoughts about, we're  
14 on the Alba, yes.

15 Any other discussions about that? Mr. Hinkle  
16 and thank you for, you don't understand what he went through  
17 to be here today.

18 MR. HINKLE: My apologies for being late.

19 CHAIR JORDAN: No, not your apologies.

20 MR. HINKLE: I'm sorry I missed your discussion  
21 in terms of the project, but I do support the amended relief  
22 that's being requested.

23 CHAIR JORDAN: I just kind of laid the foundation  
24 how and why I would support it, and I'm just hoping for any  
25 discussions. So if there's nothing else in addition, then I

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1 would move that we grant the amended relief with the conditions  
2 as set.

3 MEMBER HEATH: I'll second.

4 CHAIR JORDAN: Motion made and second. Any  
5 further discussion? All those in favor, aye?

6 (Chorus of ayes)

7 CHAIR JORDAN: Those opposed, nay? The motion  
8 carries. Mr. Moy?

9 MR. MOY: Staff would record the vote as 3-0.  
10 This on the motion of Chairman Jordan to approve the amended  
11 relief as requested. Second the motion, Ms. Heath. In  
12 support, Mr. Hinkle. We have two members not present, not  
13 voting. So the motion carries.

14 CHAIR JORDAN: That's a full order. And if we  
15 can reach out and certainly ask counsel for that case to submit  
16 a proposed, a finding of fact and conclusions consistent with  
17 what the Board's decision and discussion has been here this  
18 morning.

19 MR. MOY: Yes, staff will follow up with that,  
20 sir.

21 CHAIR JORDAN: Okay. That would help expedite  
22 it. All right, so we can go to our hearing cases today.

23 (Whereupon, the above-entitled matter went off  
24 the record at 10:20 a.m.)

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