Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

October 10, 2001

Beverley A. Bakeir
2010 13th Street, N.W.
Washington, D.C. 20009

Re: BZA Application No. 16726 – Washington Metropolitan Area Transit Authority

Dear Ms. Bakeir:

On September 4, 2001, at its regularly scheduled public meeting, the Board of Zoning Adjustment considered your motion to reconsider or rehear the referenced decision submitted by letter dated August 7, 2001. As you were not in attendance at the meeting, and not wanting to paraphrase the Board's thoughtful deliberations on your motion, please find a copy of the transcript for your consideration. Please direct inquiries concerning compliance with construction hours to Juan Scott, Chief, Construction Engineer, Department of Consumer and Regulatory Affairs at (202) 442-4697.

Please call the Office of Zoning on (202) 727-6311, if you have any questions.

Sincerely,

JERRILY R. KRESS, FAIA
Director

Attachment

BZA
Case No. 16726
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO.16726
EXHIBIT NO.42

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

SEPTEMBER 4, 2001

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., pursuant to notice at 9:00 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY H. GRIFFIS	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

HERBERT M. FRANKLIN	Commissioner
ANTHONY J. HOOD	Commissioner

ORIGINAL

COMMISSION STAFF PRESENT:

Jerrily R. Kress, Director
Sheri M. Pruitt, Secretary, BZA
Paul O. Hart, Office of Zoning
John K.A. Kyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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Chair.

CHAIRPERSON CROSS REID: All right. I would move that we approve this application for the hours that have been requested, for seven o'clock in the morning until eight o'clock in the evening, and to extend from Monday until Sunday.

MEMBER GRIFFIS: Second.

CHAIRPERSON CROSS REID: All in favor?

VICE CHAIRPERSON RENSHAW: Against.

MR. HART: Staff would record the vote as four to one, motion made by Ms. Reid, seconded by Mr. Griffis, Mr. Parsons by proxy to approve, Ms. Renshaw opposed.

DIRECTOR KRESS: The last case for this morning's agenda is gong to be 16726 of WMATA.

MR. HART: Application No. 16726 of the Washington Metropolitan Area Transit Authority, pursuant to 11 DCMR 3104.1 for special exceptions to extend the provisions of a less restrictive district into a more restrictive district under subsection 2514.2 and to allow more than one roof structure and roof structures of unequal height under subsection 411.11 and pursuant to subsection 3103.2 for variances from the width of court requirements under subsections 406.1 and 638.1, residential recreation space

requirements under section 635, public space at ground level requirements under section 633, and 75% street wall requirements under subsection 1903.3 in the R-5-B, ARTS/CR and ARTS/C-2A Districts at the northwest corner of 13th and U Streets, N.W. That is Square 236, Lots 37-39, 800-804, 828 and 829 and 832.

On a motion made by John G. Parsons, seconded by Susan Morgan Hinton, the Board voted 5-0-0 to approve the application.

At the Board's request, the applicant submitted a construction agreement activity document prior to the issuance of the order.

A Summary Order dated July 24, 2001, was issued.

IN a letter dated August 7, 2000, a neighbor, Ms. Beverly Bakeir, filed a Motion for Reconsideration or Rehearing. In a letter dated August 13, 2001, the applicant filed a response to the Motion for Reconsideration or Rehearing.

These submissions are in your packages, and the case is now before the Board.

CHAIRPERSON CROSS REID: All right, Board members, this is in regard to the motion for rehearing that was proffered to the Board by Mrs. Beverly A. Bakeir in regard to some of the issues that gave her

some concern in regard to the meeting itself -- the hearing itself and the manner in which it was conducted, one, and also some concerns they had in regard to the construction hours that took place.

Now there are several things we have to address here. One is that, unfortunately, in order to be able to put a motion before the Board, you have to be a party, and there was an opportunity for her to have received party status. But apparently that was something that was not understood, and there was some confusion; because I think that staff had instructed her that she could put a motion before the Board.

As such, we have a situation that we have to deal with, given the standing of this particular neighbor in the community.

Could I ask Marie Sansone, Corp Counsel, to please give us a comment on that particular motion.

MS. SANSONE: Yes, Madam Chair. Our rules provide that only parties can file motions, the post-hearing motions for reconsideration or rehearing. As you pointed out, Ms. Bakeir did not request and was not granted party status under the Board's rules.

So, therefore, she lacks standing to bring the motion. This is a little bit similar to the situation we had this morning with the Wayne Place

where a person that was not a party filed a motion for reconsideration. However, in Wayne Place the issues really went directly to the Board's decision, and the Board's decision had reflected that it had given great weight in the Wayne Place case.

In this situation -- so that the very validity of the Board's order was questioned in Wayne Place -- this is not a similar situation. Not to diminish in any way Ms. Bakeir's concerns, the Board's decision did not turn on these issues.

Therefore, we would recommend that as a motion the Board not take it up, because Ms. Bakeir does not have standing. That doesn't mean that the Board couldn't consider, perhaps respond to it in the nature of correspondence.

I think some of the issues could be handled in that regard, the question of the construction hours perhaps, and I think everyone on the Board never intends -- and one of her concerns is that perhaps there was indifference to her issues. Certainly, no one on the Board or on the staff intends to be rude to any of the participants in the hearing or indifferent.

Unfortunately, sometimes our schedule is such that perhaps the public perceives that their

concerns are not being given the attention they would wish. But certainly, there is no intent to treat anyone in that regard, and I think it is appropriate to convey that to Ms. Bakeir.

CHAIRPERSON CROSS REID: I'm sorry. Is Ms. Bakeir here today? I think that on behalf of the BZA and for the record that we -- the record we have today, I just wanted to say that, unfortunately, this particular hearing -- what happened was we had people who came who were not familiar with the proceedings and did not understand the process and, as such, were not able to -- be able to interact as they would have liked.

As a result of that occurring, then procedurally the way that the hearing was conducted, it appeared that perhaps there was an insensitivity or some indifference.

I also noted that myself, and I did -- I mentioned that to Board members as well as staff, that we have to be very careful in consideration of any case that we are mindful of the fact that these proceedings and these regulations are somewhat complicated and somewhat difficult for the common layman to understand, if they have never gone through it before.

That may have been part of the problem that day. We also had in the file a response to the applicant's motion from Mr. Glasgow in opposition to the motion, and he sets all the legal arguments as to why we should not take up the motion for reconsideration.

Obviously, it is well laid out, because this is what Mr. Glasgow does, but in regard to the person who -- the people who came here and were not aware, this was a large project. There was no opposition. There were no parties, and as such, it went forward.

I do think that perhaps it would have been good if they did have party status so that they could have put on record some of their concerns and issues. Nonetheless, given the fact that we do understand that there was a problem in regard to the proceedings, we feel that, in addition to our most heartfelt apology, we would like to perhaps proffer to Ms. Bakeir some type of relief that she could acquire in the regulatory process as well as within the submission, the application did also give a hotline number for instances wherein there would be a problem with the construction.

I think that the applicant is amenable to

making whatever proffer of apology or whatever -- I'm sorry, not the applicant apologize, but the applicant proffering to her some additional information as to what would be the best methods to be able to mitigate any concerns that she may have, and I would recommend that perhaps the applicant could contact her to allow her to air her concerns and to address them accordingly.

In the meantime, we will make our best efforts to forward a letter to Ms. Bakeir addressing her concerns and assuring her that in no instance would this Board act in a manner that would be inappropriate to any applicant who comes before it, and that we are very proud of the fact that we represent and serve all of the citizens of the District of Columbia.

MEMBER GRIFFIS: Madam Chair, I think those are excellent ideas. I think the applicant in its submission has, as you stated, given us a hotline phone number. Obviously, that will be passed on to Ms. Bakeir.

I would suggest in our correspondence that also you have indicated that it might be good that the applicant correspond with Ms. Bakeir, and that would be giving the DCRA compliance inspector person a

number so that she has some sort of contact outside of the hotline.

I also wanted to underscore what I think we have been saying now three times in this room before, that there are certain things under Title 11 zoning that this Zoning Board takes, and that is what we are concerned with. I would hope that it is not read as insensitivity, that when we go astray from those issues, we need to rein ourselves back in so that we are directed to what we actually have control over.

I think your words are well said, that we need to be able to educate and verbalize that fact, because we have long days and lots of cases to get through. We do not have time, nor should we take time, to go off any sort of issues not covered in Title 11. That would be my final comment.

VICE CHAIRPERSON RENSHAW: Madam Chair, I was moved to look back in my notes on this case because of Ms. Bakeir's letter. What concerned me and, of course, what concerns her was the -- are the hours of construction.

So I did have in my notes at least, and I've asked the staff to pull the transcript, that we did talk about the construction agreement, and we

asked if there was a construction agreement.

Madam Chair, you did go into this issue with the parties, and we expressed some -- At least we had some remarks about the hours and the truck idling and the staging area and the hotline and no construction workers parking on 13th Street. At least, those are in my notes.

So we spent sometime. The place for discussion of a construction agreement is really before the ANC when the applicant goes before the ANC en route to the BZA. So we hope that perhaps Ms. Bakeir -- in the letter that we intend to send, we will have some suggestion for her to also go to the ANC and perhaps there is additional dialogue that could be made through the ANC with the applicant.

CHAIRPERSON CROSS REID: Thank you very much. There is no action to be taken per se on this. Basically, for public knowledge and the record, and also to be followed up with a letter to Ms. Bakeir as well as the recommendation, hopefully, that the applicant -- which I don't feel that that would be a problem for them to also follow up with some communication with the applicant as well.

DIRECTOR KRESS: I was going to suggest perhaps your own words would speak --

CHAIRPERSON CROSS REID: I'm sorry, with Ms. Bakeir.

DIRECTOR KRESS: I was going to say, your own words speak best, and perhaps the best thing to do would be to copy this transcript and send it to her as well.

We did not decide before we broke for lunch, which is now only ten minutes long, but we do have the minutes that you had postponed and you asked to remind you about approval of the minutes.

CHAIRPERSON CROSS REID: All right.

DIRECTOR KRESS: Do you want to take those up, or do you want to have your whole ten-minute lunch?

VICE CHAIRPERSON RENSHAW: Ten-minute lunch.

CHAIRPERSON CROSS REID: Do lunch first, then take this when we come back?

VICE CHAIRPERSON RENSHAW: Yes.

DIRECTOR KRESS: And then take up the minutes after lunch?

CHAIRPERSON CROSS REID: All right. We will then recess for approximately 20-30 minutes.

DIRECTOR KRESS: I think you need more than ten, because you do have a little business to