GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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CASE NO. 16702 (ANC-2E)
APPLICATION OF MILLENNIUM GEORGETOWN PARTNERS, LLC

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TUESDAY

JUNE 26, 2001

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The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 8:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(9:20 a.m.)

CHAIRPERSON REID: Good morning. The June 26th Public Meeting of the Board of Zoning Adjustment -- special meeting -- will now come to order. Mr. Hart?

MR. HART: Good morning, Madam Chair, members of the Board. The item on our agenda this morning is the application of 16702, Millennium Georgetown Partners, L.L.C., pursuant to 11 DCMR 3103.2, for a variance from the height requirements of subsection 930.1, and from the floor area ratio limitation of subsection 931.1 to construct mixed-use building/structures of residential, hotel, and commercial uses in a W-1 District at premises 3100 South Street, N.W. That's in Square 1189, Lot 88.

The hearing was on April 17, 2001. Decisions were on May 1 and 15, 2001. The case was reopened on June 19 with a decision anticipated today.

CHAIRPERSON REID: Thank you. Board members, as you recall, last week we, at our meeting to determine -- to deliberate on this particular case, we were given -- we requested that the Applicant provide us with site lines showing various setbacks with the addition at the top of the building.

And at that time, one of our Board members, Mrs. Hinton, was not with us, and she was the one who was instrumental in requesting those particular -- the pictures of

the effect the setbacks would have. In addition, there was a film that we were shown that showed the animated view as one came down -- pedestrian view coming down 31st Street and Wisconsin Avenue.

So this morning, I'll open the floor for discussion on that particular aspect of this case.

MEMBER HINTON: Before we start the discussion, Madam Chair, I would like to say that I have read the record. I've read everything that was submitted since the last time that I was here. I also want to explain was in the hospital, and I was there with her, and that's why I couldn't be here last week.

CHAIRPERSON REID: Thank you very much, Ms. Hinton. And I'd also like to apologize for a delay this morning. It was, in part, because of the fact the Board members felt that it would be instructed to review some of the film that was given to us and that that was displayed last week and to have further discussion.

All right. Let's see, Ms. Hinton, would you like to begin with your take on -- your evaluation, your analysis of the pictures as well as the film?

MEMBER HINTON: Sure. I want to just sum to remind myself and everyone where we were. I think when we were looking at the portion of this project that dealt with the additional story on the building, the Board had already

determined that the first two prongs of the variance test had been met. The first prong being the unique condition of the site lies in the fact that the preservation of the historic buildings that are there and the requirement to provide an adequate open space around those buildings to protect their context and their character. And the preservation of those facilities causes the practical difficulty in constructing a mixed-use project on the site that is viable.

And the Board was left to determine the third prong, which is whether the proposal of the additional story would impair the intent of the zone plan or cause a substantial detriment to the public good. And after having reviewed the video and the colored drawings, the eight and a half by 11s of all the different stills that we were given, it's clear to me that the additional story will not impair the intent of the zone plan and will not create a substantial detriment to the public good.

There was a lot of discussion about the W-2 zone and the waterfront zones, and the intention of the Zoning Commission to keep the heights of buildings low in those zones in order to preserve the views to the river and to the waterfront, and when we look at the stills that were created with, I guess, the matter-of-right building and the building that would be permitted if the variance is approved, there is very little difference -- actually, there's no difference in

what you can see of the river or the waterfront or things that are across the river. It's actually the matter-of-right building mass that is blocking certain views, and that is actually defining that view corridor along the public streets.

The additional height at the top of the building, the ten feet, because it's set back, it does not protrude into that view corridor at all, and I think there was a statement from the architect that what you see is a little bit less sky. And I agree with that, that what you see is a little bit less sky.

But that doesn't mean that there is less light or air available, because that upper level is substantially set back from the other edges of the building, it's not going to have any effect on the lighter air that's getting to other properties, because you have to look at it from the edges of that level to the edge of the building and then out onto the public street. Other properties in the area are not going to be affected at all from that extra level.

And so that's what I'm seeing when I look at those visuals, and I'd be interested to hear what other Board members have concluded.

CHAIRPERSON REID: Board members? I think -- did you want to -- okay. I think that I agree with Ms. Hinton to the extent that in evaluating this case it started off being a very complex and very complicated case. And what we had to do

was dissect it and to determine what we needed to utilize in order to be able to perform our duty and that was to see if in fact the requested relief before us was within the scope of the zoning regulations.

And as such, we determined that the first prong of the test had been met, predicated upon the fact that the property -- historic preservation aspect of it and the requirements to the property made the property unique, and the fact that in so doing, in complying with the zoning regulations, the historic preservation portion of it, that it caused a practical difficulty. And we ascertained that, and I think there was no dispute about that.

But what I grappled with was the aspect of the adverse impact in that we did hear testimony in opposition that spoke to there being an adverse impact as to light, air, and view with the addition of the building, of the site, as proposed by the Applicant. And so what we had to do was to ascertain whether or not there was substantial -- and I think that the operative word here is "substantial" adverse impact. Obviously, whenever there is any addition put on a building, then there has to be some type of impact or there has to be some type of influence or something that will change. And would that change cause a detriment to the point that it would cause the application to be turned down is what we had to determine. We looked very carefully at that, and I think that

Mrs. Hinton requesting the view lines with the various setbacks in ten- and 20-foot increments was very instrumental for us, because we could then get a garner of the impact visually as a pedestrian came down the street. And I didn't -- from that, it did not appear to me that there was a substantial impact, adversely, as far as this particular project was concerned.

The other thing that was very important to me was would granting this particular variance impair the intent of the zoning regulations, the zoning map? And that was very, very, very important, because the opposition was very clear on their feelings as to, as well as the letter we received from J. Carter Brown with the CFA, that the W-1 zone was put there for a reason. And the reason it was put there was to ensure that the height would be low and also diversified on that waterfront.

And so what we did was we looked at the map to determine given the W-1 zoning, how large that zone was and to look at that in comparison to the W-2 and the W-3 to see if in fact giving this variance would have enough of an impact on the zoning plan to completely -- in other words, would it impair the intent to the extent that we would actually be rezoning that particular site?

And when we looked at it, I was satisfied that given the expanse of the zone that it was large enough that granting a variance to this particular site would not

substantially impair or would not at all impair the intent of the zoning regulations or the map because of the fact it would still leave large enough expanse of that zone to be able to comply with the regulations as to making sure that there would be enough buildings that would be 40 feet and then that combined with the W-2 and the W-3 would give the diversity that I interpreted the intent of the zoning regulations and the map to mean.

Ms. Renshaw?

VICE CHAIRPERSON RENSHAW: Thank you, Madam Chair. I reviewed the affidavit of developer, Anthony Laniae, dated 4-17-01. There is no exhibit number on that document. Along with the Commission on Fine Arts report, dated 4-19-01 and then, of course, the Board reviewed the animated film, which clearly shows the sky over the water, but it also shows the top knot of -- the proposed top knot of Mr. Laniae's building.

We have heard and we have read in the material that has been provided for the Board that there is no hardship issue being discussed here. So I looked very closely at the Commission on Fine Arts, because Mr. Laniae and Mr. Nettler, his attorney, presented a very good case to the CFA arguing the need for an alternative source of revenue to make up for the failure of the theater partner.

But the CFA recommended a denial of the

additional height, as it would violate that 40-foot height limitation of the W-1 area of Georgetown. And one of the commissioners on the CFA had expressed a discomfort with taking the lead to break this height variance cycle, and Commissioner Robinson stated, and I concur, "The Georgetown Act in fact is about height and density. I'm just not aware of any exception to be made either of the Georgetown Act or to the Zoning Commission regulations for economic hardship." And that was on pages 4 and 5 of the April 19 hearing. Again, I concur. There is no hardship argued, just the need for additional revenue stream.

And Mr. Laniae who is a seasoned developer, knew the pitfalls of this incinerator project. He knew his partners, he knew the movie industry, he selected this historic site, complete with a covenant barring the removal of the incinerator and the brickyard hill house. He also knew the height limitation of that section of the Georgetown waterfront.

There is nothing unique -- and, again, unique is a much overused word -- there is nothing unique about this. There is no compelling practical difficulty, and therefore I would vote to keep the project at the 40-foot height permitted by the zoning regulations. And I feel very, very strongly that a change in the restriction would impair the zone plan, it would weaken the zone plan, and it would be one more slice off the W-1.

CHAIRPERSON REID: Thank you. I think that we should note that this Board has taken the position that we are not going to consider any economic hardship in deliberating this case, although the economic aspects are what brought the case to us. Nonetheless, that is not something that is typically what this Board would assess in making a determination as to whether or not a variance is going to be granted.

I think, unfortunately, the manner in which the case was presented was troublesome, and in order for us to do our work, we could only rely on what is typically the requirements of the regulations, and that is that the applicant has to demonstrate that, one, there is something unique and unusual regarding the property that would cause a practical difficulty and hurt in the land of the property or circumstance.

But in this instance, we looked at the historic preservation aspect of it that would cause a practical difficulty to comply with existing zoning regulations. And I think that that's very important, because there was a lot of discussion in that regard for the deliberations that we've had thus far. If you note, we have not in any way considered the economic hardship piece that was initially presented to us by the Applicant. That is not germane to this particular case.

VICE CHAIRPERSON RENSHAW: But as I stated, Madam

Chair, that I do not feel that the unique argument is compelling enough to change this zone plan to allow for an additional height.

CHAIRPERSON REID: Thank you very much, Ms. Renshaw.

VICE CHAIRPERSON RENSHAW: All right.

CHAIRPERSON REID: Mr. Griffis? Mr. Hood?

MEMBER GRIFFIS: Just following up on Ms. Renshaw's comments, I'm looking at Section 900.4 in terms of purpose and integrity of the zone plan, and I found great depth in the section saying that the purpose of the waterfront district shall be to encourage a diversity of commercial land uses in various densities. And as the Chair has stated, we did review the map and show how the W-1 actually encompasses the second tier, if I might, of the waterfront.

The operative word for me in Section 900 is diversity, and I think that we don't want to see a waterfront that is a strict, straight line and somewhat of a static wall that defines the water edge and defines the entrance to Georgetown, but rather the diversity and frankly the undulation of roof heights and types and differences. I think inherent in the Ward 1 -- the W-1 District is the fact that the lot sizes vary incredibly, which will determine the size and densities of projects.

And, specifically, with this one, I believe that

it certainly does not impair the integrity or purpose of the zone plan, but may in fact enhance some of the site lines from the water and from the street level in terms of its roof line and in terms of its holding each of the street lines but also in reinforcing the site slope that goes down towards the waterfront.

CHAIRPERSON REID: Mr. Hood?

COMMISSIONER HOOD: I don't know how much more I can add; it's already been said. But I do believe that it would not substantially cause any detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. If you had talked to me last week, I probably would have voted against this project, this third prong. But after looking at the video and looking at the pictures, I don't see that much of a difference from the projections in which we were given. And then also the bottom line for me was what's in the best interest of the District of Columbia? So I will be voting in favor of this, and I don't see where it causes any detriment of impairing the intent and purpose of the zoning map.

CHAIRPERSON REID: Do we have a motion?

VICE CHAIRPERSON RENSHAW: Madam Chair, I just want to state, in response to Mr. Griffis' statement about it may enhance the site lines from the water, just to point out that we have no views from the water, so that should be in the

record. So that is perhaps his personal view. Had we had some pictures, some depiction of views from the water, then perhaps we would know for sure whether or not this project is going to be a detriment to the site lines, the view shed from the water.

COMMISSIONER HOOD: Madam Chair, I'll make a motion that we approve the additional ten-foot height setback and additional associated FAR.

MEMBER HINTON: I second.

CHAIRPERSON REID: All right. All in favor?

MEMBER GRIFFIS: Actually, a quick discussion. If we might -- well, actually, it may be a moot point, but I guess the Option B was the ten-foot setback and the additional four. That's what we're talking about.

CHAIRPERSON REID: Specify which option.

MEMBER GRIFFIS: Well, actually, I withdraw that comment. I think it would be clear that's what we'd be talking about.

CHAIRPERSON REID: Okay. I hope so.

COMMISSIONER HOOD: I think it's a great comment, and we might as well -- yes, let's put it in to be clear that it's Option B that we're looking at.

MEMBER GRIFFIS: Okay. And the height, did you say ten foot or ten foot eight?

COMMISSIONER HOOD: Oh, it's ten, eight; I'm sorry.

CHAIRPERSON REID: Okay. And this is just in regard to the second part of the -- remember, we already voted on the additional FAR, but this is just in regard to the height and the increase of the FAR by 0.23, the second part.

All in favor?

CHAIRPERSON REID: Aye.

MEMBER GRIFFIS: Aye.

MEMBER HINTON: Aye.

COMMISSIONER HOOD: Aye.

CHAIRPERSON REID: Opposed?

VICE CHAIRPERSON RENSHAW: Opposed.

MR. HART: The staff will record the vote as four to one to zero to approve the motion to approve an additional height of ten foot eight inches along with the additional FAR. The motion was made by Mr. Hood and seconded by Ms. Hinton.

CHAIRPERSON REID: Thank you very much, Mr. Hart. With that, then, we'll conclude this morning's special meeting regard to the Georgetown Millennium Application.

(Whereupon, at 9:44 a.m., the BZA Special Meeting was concluded.

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