

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY
JULY 31, 2012

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The Regular Public Meeting
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 1:14 p.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
RASHIDA MacMURRAY, Board Member
JEFF HINKLE, Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

STEPHEN GYOR

The transcript constitutes the
minutes from the Public Meeting held on July
31, 2012.

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1:14 p.m.

CHAIRPERSON JORDAN: Good

afternoon, ladies and gentlemen. We are located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is July 31st. We are here for the public meeting of the Board of Zoning Adjustment for the District of Columbia.

My name is Lloyd Jordan, Chairperson of the Board. To my right is Rashida MacMurray, Board Member. To her right Jeffrey Hinkle, Board Member.

Please be advised this proceeding is being recorded by a court reporter and is also being webcast live. Therefore, I must ask you to refrain from any disruptive noises or actions in the hearing room.

Today's agenda is for the Board to render decisions on cases that under the regulations do not require a hearing. We'll handle any preliminary matters when the case

1 is called.

2 Mr. Secretary, are there any
3 preliminary matters that we need to address?

4 MR. MOY: There are, Mr. Chairman,
5 but staff would suggest that the Board address
6 those after I call the case.

7 CHAIRPERSON JORDAN: For the
8 record, would you indicate what happened to
9 Case 18423 and 424, please?

10 MR. MOY: With pleasure, Mr.
11 Chairman. These two cases, as Chairman has
12 cited, Application No. 18423 of Linda M. Fobes
13 and Application No. 18424 of Kent Street
14 properties LLP, both of these cases were on
15 the expedited review calendar and the
16 Applicants for each cases have withdrawn their
17 application, Mr. Chairman

18 CHAIRPERSON JORDAN: Thank you.
19 With that, would you proceed to call our first
20 case?

21 MR. MOY: Yes, sir. Good
22 afternoon, Mr. Chairman, members of the Board.

1 The first of two cases for decision, the first
2 being Application No. 18064 of HAI Real Estate
3 Holdings, LLC.

4 This is a request by the Applicant
5 for a two-year time extension pursuant to
6 Section 3130 as well as a Waiver of Section
7 3130.9 which, as the Board will recall, is the
8 30-day filing of application prior to
9 expiration of order.

10 The original application for the
11 record was approved on May 18, 2010 pursuant
12 to 11 DCMR 3104.1 for a special exception from
13 the rear yard requirements under subsection
14 774.5, and a special exceptio
15 n from the parking requirements under
16 subsection 2120.6, to allow an addition to an
17 existing office building in the DC/C-3-C
18 District at premises 1820-1822 Jefferson
19 Place, N.W. Property located in Square 139,
20 Lot 75.

21 The Applicant made its filing for
22 the request for extension under Application

1 No. -- under Exhibit No., rather, 36. This
2 was filed on Thursday, July 26, 2012. There
3 are no other filings. The Board should recall
4 that this was originally before the Board on
5 July 10, 2012 and the Board requested
6 additional supplemental information. It's
7 under this Exhibit No. 36.

8 With that, the Board is to act on
9 the merits of the request to extend pursuant
10 to Subsection 3130, specifically Subsection
11 3130.6, sub A through C. That completes the
12 staff's briefing, Mr. Chairman.

13 CHAIRPERSON JORDAN: I do believe
14 that the record reflects that the Board waived
15 the 30-day filing requirement initially on
16 this matter at the last setting for failure to
17 file the application timely.

18 I've reviewed the record in this
19 matter and I believe that this file is still
20 deficient in many ways. We have some
21 statements about -- we have some marketing
22 material that we just simply received.

1 However, there is an indication in
2 the application itself that due to financial
3 matters and some other hardships that the
4 Applicant could not within the time frame
5 required by law entertain the development,
6 begin the development.

7 I think what we ought to do with
8 this is extend time again and have the
9 Applicant understand that we have to have
10 backup support for the allegations made,
11 something that's going to support financial
12 hardship or financial issue.

13 What we have required before is
14 something that will support the financial
15 issue with letters from financial
16 institutions, support from maybe financial
17 brokers indicating that they tried to at least
18 attempt to seek financing and then were denied
19 based upon the conditions.

20 That's just my initial thought.
21 Anybody else on the Board?

22 Mr. Hinkle.

1 MEMBER HINKLE: Thank you, Mr.
2 Chair. I tend to agree with you. It's
3 something that we requested from other
4 applicants that have been seeking similar time
5 extensions. I think it would be helpful for
6 us to make -- help inform us to make a final
7 decision.

8 CHAIRPERSON JORDAN: So I would
9 offer on the Board's own motion, Mr.
10 Secretary, that we continue this to another
11 date. If you would notice -- is the Applicant
12 here for this matter? -- would notice the
13 Applicant of the information that we need and
14 put this on another calendar date.

15 MR. MOY: Mr. Chairman, for the
16 Board to consider, as you are well aware,
17 August is our recess period. The next --

18 CHAIRPERSON JORDAN: We can sneak
19 it in somewhere.

20 MR. MOY: I was going to say the
21 next decision meeting is not until the
22 afternoon of September 25th unless the Board

1 wants to take this up as a special public
2 meeting on September 11th.

3 CHAIRPERSON JORDAN: The 25th is
4 fine. For the record, we've kind of carried
5 this a couple of times and this should be our
6 last time doing it.

7 Hopefully the Applicant will
8 contact this office, the Office of Zoning, and
9 find out what's necessary for what is almost
10 a ministerial function in granting an
11 extension. However, the record has to be
12 sufficient in this regard and it's not.

13 With that, do we take that by
14 consent? The motion is by consent.

15 MR. MOY: Okay. Very good. Thank
16 you, Mr. Chairman.

17 The next and last application for
18 decision, or rather a motion, before the Board
19 is to Application No. 18294 of Paul and Emily
20 Thornell. This is a party opposition's
21 request (Matthew and Susan Finston) for
22 reconsideration and rehearing pursuant to

1 Section 3126 of the Zoning Regulation.

2 The original application was
3 approved on February 7, 2012, and issued on
4 July 5, 2012, pursuant to 11 DCMR 3104.1 for
5 a special exception to allow the construction
6 of an addition to an existing one-family semi-
7 detached dwelling under section 223 of the
8 Zoning Regulations, not meeting the lot
9 occupancy requirements under section 403, in
10 the R-2 District at premises 3011 Ordway
11 Street, N.W. Property located in Square 2067,
12 Lot 76.

13 The party opposition filed their
14 request on July 13, 2012 under Exhibit 43 in
15 your case folders. In response, Mr. Chairman,
16 the Applicant filed on Thursday, July 26,
17 2012. That's under Exhibits 44 and 45.

18 In the Applicant's filing there is
19 also a request for a waiver of their required
20 seven-day requirement to file an answer in
21 opposition or in support of the motion.

22 Finally, the last filing in your

1 case folder, Mr. Chairman, the party
2 opposition filed on July 27th essentially
3 citing the lot objection to the Applicant's
4 time to response requirement. That is under
5 Exhibit 46.

6 With that, what is before the
7 Board is the Applicant's request to waive a
8 seven-day requirement time under 3126.5. If
9 so, then to act on the merits of the party
10 opposition to request a reconsideration or
11 rehearing. That completes the staff's
12 briefing, Mr. Chairman.

13 CHAIRPERSON JORDAN: Thank you,
14 Mr. Moy.

15 What we have before us initially
16 is the motion by the Applicant to waive the
17 10-day filing requirement. I would tend to
18 think that we would do that, that there's no
19 harm shown to anyone in regards to that
20 filing. It would be my intent to honor that.

21 Anybody else on the Board?

22 MEMBER MacMURRAY: Mr. Chairman, I

1 would agree that there would be no bias in
2 granting that extension.

3 CHAIRPERSON JORDAN: So unless
4 there is anything contrary, I would offer by
5 consent of the Board of all members that we
6 would waive the 10-day filing.

7 That moves us to the motion
8 itself. The earlier party in opposition filed
9 a motion for rehearing or reconsideration of
10 the Board's decision. I believe our decision
11 was granted on -- what date was that? Was it
12 the 13th?

13 MR. MOY: February 7th was the
14 decision on this application.

15 CHAIRPERSON JORDAN: February 7th?

16 MR. MOY: 2012. The order wasn't
17 issued until July 5th.

18 CHAIRPERSON JORDAN: July 5th. On
19 the motion for rehearing, a rehearing should
20 be considered when there is new evidence
21 presented according to Section 3126 of the
22 District of Columbia regulations. More

1 specifically, the Board of Zoning Adjustment
2 is required to follow 3126.6 in this regard.

3 I've looked over the application
4 and request for rehearing and I did not see
5 any new evidence offered or any evidence which
6 could not have been offered at the time of
7 this hearing. This matter then duly noted as
8 we indicated in the record at that time.

9 I don't see anything that would
10 indicate why the subsequent letters submitted
11 by the Applicant -- excuse me, the opposition,
12 could not have been sent earlier as we had
13 other neighbors indicating one way or the
14 other their support or opposition to that
15 particular application. I would be inclined
16 not to grant a rehearing on this matter. I
17 offer that to the Board as my thoughts on the
18 issue.

19 Mr. Hinkle.

20 MEMBER HINKLE: Yes, Mr. Chairman.
21 I tend to agree with you. I didn't see any
22 additional evidence or new evidence that was

1 submitted in terms of this motion for a
2 rehearing. I'm in agreement with your
3 thoughts.

4 CHAIRPERSON JORDAN: Is there a
5 will of the Board in this? Anyone want to
6 make a motion?

7 MEMBER MacMURRAY: Mr. Chairman, I
8 make a motion that we deny the reconsideration
9 of the hearing --

10 CHAIRPERSON JORDAN: Rehearing.

11 MEMBER MacMURRAY: -- on July 5th.
12 Can I get a second?

13 MEMBER HINKLE: I'll second.

14 CHAIRPERSON JORDAN: And the
15 motion will be to deny the rehearing for
16 reconsideration. All those in favor of
17 denying the rehearing as requested by the
18 party in opposition, signify by saying aye.

19 BOARD MEMBERS: Aye.

20 CHAIRPERSON JORDAN: Those opposed
21 nay.

22 Mr. Secretary.

1 MR. MOY: Yes. Staff would record
2 the vote as three to zero to two, this on the
3 motion of Ms. MacMurray to deny the request
4 for a rehearing. Seconding the motion Mr.
5 Hinkle. Also in support of the motion
6 Chairman Jordan. Two other members not
7 present with us today. Again, the final vote
8 is three to zero to two. The motion carries.

9 CHAIRPERSON JORDAN: I think we
10 may have an absentee ballot.

11 MR. MOY: Yes. Thank you. I
12 stand corrected here. We do have one other
13 member who participated, Ms. Marcie Cohen and
14 her absentee ballot is to deny request for a
15 rehearing. That will change the numbers to
16 four to zero to one.

17 CHAIRPERSON JORDAN: On the
18 absentee ballot she has indicated that she has
19 reviewed the record and all the documents in
20 the file.

21 MR. MOY: Absolutely, sir. Let me
22 correct the vote count then. That would be

1 four to zero to one. Again, for the record,
2 this is on the motion of Ms. MacMurray.

3 Seconding the motion was Mr.
4 Hinkle. Also in support of the motion
5 Chairman Jordan and Ms. Cohen by absentee
6 ballot. No other members participating. So,
7 again, the vote is four to zero to one.

8 CHAIRPERSON JORDAN: We move now
9 since it was a joint motion for rehearing and
10 one for reconsideration to look at the
11 opposition's motion for reconsideration.

12 There was a number of alleged
13 facts offered by the opposition, particularly
14 I think it was cited over and over again that
15 the alley was 15 feet wide, although there was
16 nothing there to support it other than the
17 general statement by the Applicant -- excuse
18 me, by the opposition -- the Applicant moving
19 the motion in that regard that this alley was
20 15 feet.

21 There was no other evidence that
22 was provided to show it was 15 feet. I don't

1 really think the alley width is important. I
2 can talk about that a little bit later. I
3 just want to go over what the facts were that
4 the Applicant indicated. The I use the word
5 Applicant at this point, I'm speaking about
6 the movement of the motion to reconsider.

7 Then there was a lot of discussion
8 in the documents basically addressing or
9 concern about the Board's findings and some
10 subjective allegations that the proposed
11 addition would overpower the house and retain
12 elements of the house materials, etc.

13 And it's, again, statements solely
14 with no backup documentation to support other
15 than the subjective rendering of the
16 opposition party. There is nothing there that
17 we can look at that was impactful as well as
18 evidence other than just hearing the narrative
19 by the opposition argue that particular point.

20 They also argued about the scale
21 and incompatibility with the community. I
22 think -- well, we'll talk about those

1 allegations in regards to what the Board's
2 consideration was when it made its decision.

3 There was also conflicting
4 evidence if you look at that so that is
5 something certainly within the purview of the
6 Board. There were people in the community who
7 supported this development and thought that it
8 would not be contrary to the community and the
9 scale was not imposing.

10 Then they raised the issue about
11 the photos and documents and other things that
12 have been submitted by the Applicant that
13 were, in their view, arguably distorted or
14 didn't properly -- or were misleading. I
15 think that is the word they used was
16 misleading.

17 Therefore, the Board should not
18 have properly relied on those things in its
19 decision. Again, it did not have anything
20 that necessarily refuted that by any concrete
21 evidence other than just opinion.

22 As I mentioned before, there were

1 other neighbors in this motion for
2 reconsideration that submitted their letters
3 which could have been presented before but was
4 presented again -- was presented upon this
5 motion for reconsideration which, again, as I
6 said before, there were neighbors to the
7 contrary that said it would not harm their use
8 and enjoyment of their particular homes. The
9 Board relied, again, on improper facts about
10 the alley. The alley really was not any major
11 impact in our decision.

12 There was other things raised that
13 addressed the Board's finding that the
14 property, its character, would intrude upon
15 the scale and pattern of the neighborhood
16 homes. There was nothing that supported that
17 other than just the opinion of the Applicant,
18 the Applicant to the motion.

19 Then there were some allegations
20 that our findings omitted some things and
21 didn't consider others. For instance, that
22 there would be an additional increase in

1 noise. This home addition would impair the
2 enjoyment of the neighbors, etc. Some of the
3 things kind of over and over again and those
4 things are just subjective kind of opinions.

5 Then there was an allegation that
6 the Board misapplied the relevant regulations,
7 rules, and standards in its conclusions of law
8 and that we misapplied the law in regards to
9 Section 223.1 on these type of changes for
10 special exceptions, special conditions, etc.

11 Then there was a factor that --
12 I'm trying to remember now. I think they said
13 -- they indicated that great weight should not
14 be given to the ANC, etc., in their document.
15 Again, they are wrong because the law requires
16 great weight to be given to the ANC. Our
17 reliance on the ANC and Office of Planning's
18 reports were erroneous and that we should not
19 rely on those reports. I'm trying to think of
20 my notes here.

21 Again, they reflect about the
22 letters. Oh, the rear yard, that there is an

1 issue with the rear yard in the alley and the
2 buffering issues. They indicated that what is
3 in the order was misstated and not correct.

4 Is there any other thing that was
5 raised in this motion that I might have left
6 out, anyone?

7 Well, for the reasons stated, for
8 instance, that there was no document
9 supporting the -- most of the things that were
10 raised, particularly overpowering the house in
11 size was one that was very subjective. There
12 is no factual basis that was submitted in the
13 opposition's argument.

14 The issue about the alley, whether
15 it was 15 feet, 13 feet, 12 feet or had no
16 impact upon the decision that the Board
17 rendered, whether or not that fact was correct
18 or not. Then, again, there was nothing there
19 to support their allegation of it
20 substantially or even a basis where we should
21 reconsider it. It was not a factor at all in
22 our decision.

1 Does the Board have anything else
2 in regards to this?

3 Yes, Ms. MacMurray.

4 MEMBER MacMURRAY: Mr. Chairman, I
5 think you provided an excellent overview and
6 summary of all of the issues that we
7 considered.

8 I think for the record we do want
9 to note upon the fact that because the Board
10 may not find in favor of one party does not
11 mean that the Board has not considered all of
12 the evidence presented before us as well as
13 relying on the ANC as required under D.C. law,
14 as well as the Office of Planning.

15 All the consideration and effort
16 that it takes to consider all of the different
17 facts is a very meticulous process. The
18 implication that the Board was very -- I guess
19 not very diligent in their preparation, I just
20 want to make note that is contrary to how we
21 proceed.

22 MEMBER HINKLE: Mr. Chairman, I'll

1 just jump in real quick. I agree completely
2 with Ms. MacMurray. She stated everything I
3 was going to state. We did have a very long
4 and contested hearing. I think the Board did
5 consider all the evidence that was provided by
6 all the parties to come up with our decision.

7 CHAIRPERSON JORDAN: And, again,
8 over all there was nothing that really
9 indicated facts that we had not considered.

10 Most of the things that were in
11 this particular request for reconsideration
12 were just subjective in nature or was within
13 the discretion of the Board to render the
14 facts based upon two different groups making
15 competing kind of -- presenting competing
16 evidence in regards to this matter.

17 It is certainly within the
18 prerogative of this Board to weigh and make
19 its decision as to what they believe was more
20 likely than not. I would then move that we
21 deny the reconsideration as requested by the
22 Applicant.

1 MEMBER HINKLE: I'll second it.

2 CHAIRPERSON JORDAN: Motion made
3 and seconded to deny the reconsideration
4 submitted by the opposition in this matter.
5 Any unreadiness? Seeing none, all those in
6 favor of the motion signify by saying aye.

7 BOARD MEMBERS: Aye.

8 CHAIRPERSON JORDAN: Those opposed
9 nay. The motion carries.

10 Mr. Moy.

11 MR. MOY: Mr. Chairman, before I
12 read back the final vote, we do have an
13 absentee ballot from Ms. Cohen and her
14 absentee ballot is to deny the request for
15 reconsideration. That would give a final vote
16 of four to zero to one. This is on the motion
17 of Chairman Jordan.

18 Seconding the motion Mr. Hinkle.
19 Also in support of the motion Ms. MacMurray
20 and, of course, Ms. Cohen. No other Board
21 member present or voting today. Again, the
22 final vote is four to zero to one to deny.

1 CHAIRPERSON JORDAN: Thank you. I
2 guess we now then -- is there any other
3 business to come before us for this public
4 meeting?

5 MR. MOY: No, sir.

6 CHAIRPERSON JORDAN: Okay. Then
7 what we are going to do is adjourn the public
8 meeting and move into our public hearing.

9 (Whereupon, at 1:39 p.m. the
10 meeting was adjourned.)

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 07-31-12

Place: Washington, DC

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