

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 14, 2008

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:54 a.m., RUTHANNE G. MILLER, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)
GREGORY JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON

MAXINE BROWN-ROBERTS

The transcript constitutes the minutes
from the Public Hearing held on October 14,
2008.

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

2 (10:54 a.m.)

3 CHAIRPERSON MILLER: This hearing
4 will come to order. Good morning, ladies and
5 gentlemen.

6 This is the October 14th, 2008
7 public hearing of the Board of Zoning
8 Adjustment of the District of Columbia. My
9 name is Ruthanne Miller. I'm the Chair of
10 BZA.

11 To my right is our Vice Chair, Mr.
12 Marc Loud. And next to Mr. Loud is Mr.
13 Michael Turnbull from the Zoning Commission.

14 And to my left is Mr. Shane
15 Dettman, Board member. Next to him is Cliff
16 Moy from the Office of Zoning, Ms. Lori Monroe
17 from the Office of Attorney General, and Ms.
18 Beverley Bailey from the Office of Zoning.

19 Copies of today's hearing agenda
20 are available to you and are located to my
21 left in the wall bin near the door.

22 Please be advised that this

1 proceeding is being recorded by a court
2 reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

6 When presenting information to the
7 Board, please turn on and speak into the
8 microphone, first stating your name and home
9 address.

10 When you are finished speaking,
11 please turn your microphone off so that your
12 microphone is no longer picking up sound or
13 background noise.

14 All persons planning to testify
15 either in favor or in opposition are to fill
16 out two witness cards. These cards are
17 located to my left on the table near the door
18 and on the witness tables.

19 Upon coming forward to speak to
20 the Board, please give both cards to the
21 reporter sitting to my right.

22 The order of procedure for special

1 exceptions and variances is one, statement and
2 witnesses of the applicant; two, government
3 reports, including Office of Planning,
4 Department of Public Works, DDOT, et cetera;
5 three, report of the Advisory Neighborhood
6 Commission; four, parties or persons in
7 support; five, parties or persons in
8 opposition; six, closing remarks by the
9 applicant.

10 Pursuant to section 3117.4 and
11 3117.5, the following time constraints will be
12 maintained. The applicant, persons, and
13 parties except an ANC in support, including
14 witnesses, 60 minutes collectively; persons
15 and parties except an ANC in opposition,
16 including witnesses, 60 minutes collectively;
17 individuals, three minutes.

18 These time restraints do not
19 include cross examination and/or questions
20 from the Board. Cross examination of
21 witnesses is permitted by the applicant or
22 parties.

1 The ANC within which the property
2 is located is automatically a party in a
3 special exception or variance case.

4 Nothing prohibits the Board from
5 placing reasonable restrictions on cross
6 examination including limits and limitations
7 on the scope of cross examination.

8 The record will be closed at the
9 conclusion of each case except for any
10 materials specifically requested by the Board.
11 The Board and the staff will specify at the
12 end of the hearing exactly what is expected
13 and the date when the persons must submit the
14 evidence to the Office of Zoning.

15 After the record is closed, no
16 other information will be accepted by the
17 Board.

18 The Sunshine Act requires that the
19 public hearing on each case be held in the
20 open before the public. The Board may,
21 consistent with its rules of procedure and the
22 Sunshine Act, enter Executive Session during

1 or after the public hearings on a case for
2 purposes of reviewing the record or
3 deliberating on the case.

4 The decision of the Board in these
5 contested cases must be based exclusively on
6 the public record. To avoid any appearance to
7 the contrary, the Board requests the persons
8 present not engage the members of the Board in
9 conversation.

10 Please turn off all beepers and
11 cell phones at this time so as not to disrupt
12 these proceedings.

13 The Board will now consider any
14 preliminary matters. Preliminary matters are
15 those which relate to whether a case will or
16 should be heard today such as requests for
17 postponement, continuance, or withdrawal, or
18 whether proper and adequate notice of the
19 hearing has been given.

20 If you are not prepared to go
21 forward with a case today or if you believe
22 that the Board should not proceed, now is the

1 time to raise such a matter.

2 Does the staff have any
3 preliminary matters?

4 MS. BAILEY: Madam Chair, members
5 of the Board, and to everyone, good morning.

6 There are three cases on the
7 docket for this morning, Madam Chair. And
8 each has a preliminary matter associated with
9 them. Did you want to take those up at this
10 time?

11 CHAIRPERSON MILLER: I think we
12 might as well just call each case
13 individually. And deal with their preliminary
14 matter. It is almost the same difference.
15 Correct? Yes.

16 Okay, yes, I think since they all
17 do have that, we might as well just call the
18 cases. But I understand that there might be
19 a time constraint on 17825. So could we call
20 that one first?

21 PRELIMINARY MATTER:

22 1400 MD AVE LTD EMPIRE LEASING INC.

1 APPLICATION NO. 17825 - ANC-6A

2 MS. BAILEY: Okay. There is a
3 request for postponement of this. And I
4 believe the applicant is requesting
5 postponement until January of 2009.
6 Application No. 17825, 1400 Maryland Avenue
7 Ltd. Empire Leasing, Inc.

8 CHAIRPERSON MILLER: Good morning.

9 MR. AGUGLIA: Good morning.
10 Richard Aguglia for the applicant.

11 MR. RONNEBERG: Drew Ronneberg
12 with the ANC.

13 REQUEST FOR POSTPONEMENT

14 APPLICATION NO. 17825

15 MR. SCHULTHEISS: Bill Schultheiss
16 with the ANC.

17 To cut to the chase, the ANC has
18 requested a continuance pending our hearing
19 before the Public Space Committee. We at
20 first objected but now we consent.

21 The public space -- we intend to
22 file our amended application next week. They

1 will put us on the docket for December 18th
2 before the Public Space Committee. We would,
3 therefore, request that this hearing be
4 continued to sometime in January.

5 CHAIRPERSON MILLER: Do you have
6 any idea when a decision would be happen?

7 MR. AGUGLIA: We would anticipate
8 them making a decision there at the hearing as
9 is their usual practice.

10 CHAIRPERSON MILLER: Okay.

11 The ANC?

12 MR. RONNEBERG: The ANC concurs
13 with that.

14 CHAIRPERSON MILLER: Okay. So we
15 just need to look at our calendar then? Okay.

16 Okay. I mean we are calendared
17 all the way through -- past March. I mean we
18 are calendared -- let's see how this goes --
19 yes, but it looks like we could put you in
20 February 24th in the afternoon. Will that
21 work?

22 MR. AGUGLIA: That is the earliest

1 -- earliest date?

2 CHAIRPERSON MILLER: That is
3 looking like the earliest date. If there is
4 a time crunch that we should be aware of, then
5 we start to look at other options. That's the
6 best as of now. Is that problem?

7 MR. AGUGLIA: I will discuss it
8 with the client. And then perhaps what I will
9 do is send in a response agreeing to that date
10 but asking that if the Board has an earlier
11 date in January that they would consider
12 moving it, you know, moving it up.

13 Again, you know, I've got a threat
14 of condemnation.

15 CHAIRPERSON MILLER: You see
16 that's the kind of information we need to know
17 because it --

18 MR. AGUGLIA: I have a threat of
19 condemnation and we keep postponing the
20 hearing. The next hearing is October 22nd on
21 the condemnation because the property has not
22 been developed and it has been fenced off.

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1 And there are squatters and homeless people
2 there. That's number one.

3 Number two, the property is
4 vacant. The city has changed the tax rate to
5 ten dollars a hundred for vacant property.
6 The commercial tax rate is \$1.85 to put it in
7 perspective.

8 The penalty for being vacant used
9 to be five dollars a hundred. Now it is ten
10 dollars a hundred. So we will be paying more
11 than six times the taxes that we would
12 ordinarily pay while this remains vacant.

13 And, of course, we had a Public
14 Space Committee hearing scheduled for
15 September 24th which the ANC was successful in
16 getting us booted off. So in the scheme of
17 things, we would have already had the Public
18 Space Committee hearing before this hearing.

19 And if they had said no, we
20 wouldn't be here. And if they had said yes,
21 we would have just moved on in the course of
22 business.

1 And that's all explained in my
2 October 6th opposition, my original opposition
3 the the Board where it shows that the ANC was
4 successful in postponing the hearing.

5 So every month that goes by, my
6 clients pay an enormous amount of taxes and
7 have this threat of condemnation over their
8 head.

9 CHAIRPERSON MILLER: Okay.

10 MR. RONNEBERG: Madam Chair, the
11 ANC has no objection to that date. And
12 Commissioner Schultheiiss would like to
13 address one of the points Mr. Aguglia --

14 MR. SCHULTHEISS: I would like to
15 acknowledge the ANC asked for a delay in the
16 public space hearing. And I would like to
17 clarify a statement on that. The reason we
18 asked for a delay is that our primary
19 consideration is not -- is the fact that they
20 have asked to permanently pave with asphalt a
21 large portion of the public space.

22 The applicant at the September

1 public space hearing only asked permission in
2 their application to construct and erect a
3 sign on public space. They did not
4 acknowledge or ask for permission to pave the
5 public space or to install a curb cut.

6 So it is our position that they
7 had submitted an incomplete application. This
8 was backed up by the Office of Planning report
9 and the DDOT, Department of Transportation
10 letter.

11 The applicant had an opportunity
12 in July to submit a complete application which
13 would have kept this hearing on track. So I
14 think it was an error on their part to not
15 submit a complete application to the public
16 space hearing because had they done that, we
17 would have had the public space hearing in
18 September. And today we would have been
19 discussing this case.

20 CHAIRPERSON MILLER: Okay. Let me
21 just ask you, have you any idea if this case
22 goes forward how many hours it would be? Do

1 you have a clue? How many witnesses?

2 Anything like that?

3 MR. AGUGLIA: I have a clue.

4 CHAIRPERSON MILLER: Okay.

5 MR. AGUGLIA: We will take our
6 full hour. We will have a traffic expert.

7 CHAIRPERSON MILLER: Okay.

8 MR. AGUGLIA: We will have a
9 representative from Dade Petroleum. They
10 operate 21 gas stations, 15 of which are in
11 the District, a short statement from them.

12 And we will have our architect,
13 Bill Baden, show the proposed -- the existing
14 site plans with the proposed suggestions for
15 the Board's review, which will include
16 landscaping, repaving -- the property is
17 already paved -- repaving to make it look
18 nicer, green roof over the canopy and a green
19 roof over the station. So we will have --

20 CHAIRPERSON MILLER: Okay. I'm
21 just trying to see if there is another place
22 to squeeze it. But I don't want to, you know,

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1 have us here until midnight or something
2 because we underestimated how long, you know.

3 So --

4 MR. RONNEBERG: Madam Chair?

5 CHAIRPERSON MILLER: Yes?

6 MR. RONNEBERG: We also expect to
7 have a traffic expert testify. ANC also
8 expects to cross examine witnesses and submit
9 exhibits.

10 We think we may be able to get it
11 in our one hour but maybe one or one and a
12 half hour would be necessary.

13 CHAIRPERSON MILLER: Plus this
14 cross, right? Okay.

15 Okay, well we are thinking of
16 putting you in on the 13th in the afternoon.
17 But it could go late. We're not sure. There
18 is one case that is kind of iffy there. It
19 could fall off the calendar. If it falls off
20 the calendar, it is going to be fine. If it
21 doesn't fall off the calendar, it could be a
22 later evening. Okay?

1 So if time is of the essence, we
2 will take that chance. Does the ANC have a
3 concern with that?

4 MR. RONNEBERG: What month are you
5 --

6 CHAIRPERSON MILLER: January --

7 MR. RONNEBERG: January?

8 CHAIRPERSON MILLER: -- 13th.

9 MR. AGUGLIA: I appreciate that.
10 Thank you.

11 CHAIRPERSON MILLER: Okay. Any
12 other questions? So we'll keep our fingers
13 crossed on that.

14 MR. AGUGLIA: Thank you.

15 CHAIRPERSON MILLER: Okay.

16 Ms. Bailey, I guess we are ready
17 for the next case. Would that be 17822?

18 KEVIN GUTFLEISH

19 APPLICATION NO. 17821 - ANC-6C

20 MS. BAILEY: Madam Chair, prior to
21 that, I just wanted to put on the record that
22 17821, Kevin Gutfleish, that application was

1 withdrawn. And no additional action is
2 required by the Board.

3 CHAIRPERSON MILLER: Okay. Great.
4 Thank you.

5 MATTHEW S. PICKNER

6 APPLICATION NO. 17822 - ANC-6C

7 MS. BAILEY: And with 17822, Madam
8 Chair, I will call the case. But that
9 property was not posted. I'll go ahead and
10 call that case at this time.

11 Application number 17822 of
12 Matthew S. Pickner, pursuant to 11 DCMR 3104.1
13 for a special exception to construct a two-
14 story addition to an existing one-family row
15 dwelling under section 223, not meeting the
16 lot occupancy and rear yard requirements,
17 that's section 43 and section 44.

18 The property is located in the R-4
19 District at premises 1165 3rd Street, N.E.,
20 Square 773, Lot 270.

21 CHAIRPERSON MILLER: Good morning.
22 And could you introduce yourself for the

1 record please?

2 So, Mr. Pickner, it wasn't posted?

3 COURT REPORTER: Sir, would you
4 mind turning your mic on please?

5 MR. PICKNER: I was out of town
6 for eight weeks and just got back into town
7 this weekend and realized that I had gotten
8 the sign as required.

9 All the other paperwork has been
10 fulfilled. All the letters have been sent out
11 within the required radius. And I have
12 letters from both of my adjacent neighbors.
13 And ANC approval.

14 CHAIRPERSON MILLER: Okay. The
15 posting is somewhat of a basic. The rules
16 provide various ways to provide notice to the
17 community and neighbors. So what you are
18 saying is everything else was done but not
19 that one.

20 MR. PICKNER: Yes. I was advised
21 this morning to request that that requirement
22 be waived seeing that everything else has been

1 adhered to. And seeing that there is no
2 opposition to the project.

3 CHAIRPERSON MILLER: We are just
4 reviewing the file. I mean we've all read the
5 file and it is a, you know, very well put
6 together application. But I think there may
7 be a letter of opposition? Let's see. Do you
8 have it Mr. Loud?

9 There is a letter from a Carolyn
10 Preston. Have you seen this?

11 MR. PICKNER: No.

12 CHAIRPERSON MILLER: Property
13 owner 1158 Abbey Place, N.E. Do you know
14 where that it?

15 MR. PICKNER: They must be -- they
16 are down the block. They are behind me and
17 they are down the block.

18 CHAIRPERSON MILLER: Oh, so she
19 must be within the 200 feet and got the
20 letter.

21 MR. PICKNER: Yes.

22 CHAIRPERSON MILLER: Okay.

1 MR. PICKNER: There should be
2 virtually no impact on that person.

3 CHAIRPERSON MILLER: She was
4 concerned about the height.

5 MR. PICKNER: Well, there seems to
6 be some -- I received a call from Beverley
7 last week.

8 CHAIRPERSON MILLER: Ms. Bailey?

9 MR. PICKNER: Yes. There seemed
10 to be some misunderstanding which this person
11 might also have the same misunderstanding
12 which is this is a rear yard addition.

13 It is an existing two-story house.
14 It is a proposed two-story addition to the
15 rear yard. And Beverley's misunderstanding
16 was that I was going up and not out behind the
17 building.

18 CHAIRPERSON MILLER: Whose -- I
19 mean whose misunderstanding? Ms. Bailey?

20 MR. PICKNER: Beverley Bailey.

21 CHAIRPERSON MILLER: Oh.

22 MS. BAILEY: Madam Chair, if I can

1 clarify. There seems to be an addition on top
2 of the second floor.

3 CHAIRPERSON MILLER: Right.

4 MS. BAILEY: And I wasn't clear if
5 that was a third story or some other -- what
6 exactly that was because the photograph is
7 showing some structure on top of the
8 buildings.

9 COMMISSIONER TURNBULL: It is in
10 exhibit 5.

11 MR. PICKNER: There is a roof
12 deck.

13 MS. BAILEY: And that was the
14 nature of the call.

15 CHAIRPERSON MILLER: Okay. Hold
16 on.

17 COMMISSIONER TURNBULL: Is that
18 coming off?

19 MR. PICKNER: No, that is an
20 existing roof deck. So that has nothing to do
21 with the special exception. The special
22 exception was requesting a two-story rear yard

1 addition to an existing two-story single-
2 family residence with a roof deck on top.

3 CHAIRPERSON MILLER: Okay. We
4 have to make the initial decision whether
5 we're going to go forward with this case today
6 or postpone it based on the posting.

7 I think what we want to do is just
8 take a short break and take a quick look at
9 the file. And then come back and let you know
10 that. Or, you know, and then discuss it out
11 here.

12 But I think that is what we will
13 do. So if you'll be patient, we will be back
14 in a short -- okay.

15 (Whereupon, the foregoing matter
16 went off the record at 11:20 a.m.
17 and went back on the record at
18 11:40 a.m.)

19 CHAIRPERSON MILLER: Back on the
20 record.

21 Mr. Pickner, do you want to come
22 forward again? Where we left off was whether

1 the Board would waive the requirement under
2 3113.14 which states that the applicant shall
3 give additional notice of the public hearing
4 by posting the property with notice of the
5 hearing at least 15 days in advance of the
6 hearing.

7 And in this case, it wasn't posted
8 at all. Under 3113.13, the other methods of
9 notice to the public were made, as far as we
10 know, notice in the DC Register, mailing of
11 notices to property owners within 200 feet of
12 the property, notice to the ANC, posting of
13 calendared cases by the Board and the Office
14 of Zoning.

15 Anyway, I have a question for you.
16 We do waive this when we feel that there won't
17 be prejudice to a party. And when there is
18 good cause. And you had said that you were
19 out of the country. And that was your good
20 cause --

21 MR. PICKNER: Out of town.

22 CHAIRPERSON MILLER: Out of town -

1 - for eight weeks or something?

2 MR. PICKNER: Eight weeks.

3 CHAIRPERSON MILLER: And did you
4 say that the adjacent neighbors had written a
5 letter each?

6 MR. PICKNER: I have a letter from
7 my neighbors on both sides.

8 CHAIRPERSON MILLER: Ms. Bailey,
9 do you want to pick up that? Do you have that
10 for us? Okay. Okay.

11 Because that is very important
12 because most often in these kinds of special
13 exception applications, it is the neighbors
14 that would be most directly impacted. So --

15 MR. PICKNER: Can I say one thing?

16 CHAIRPERSON MILLER: Sure.
17 Absolutely.

18 MR. PICKNER: And I reviewed the
19 letter of the neighbor in opposition and as
20 far as I can tell, I think they did
21 misunderstand because they said I expect the
22 height restriction to be enforced in this

1 matter, which is, again, I am applying for
2 four additional feet, extending the rear yard
3 to ten feet.

4 And the other thing is there are
5 concerned about nonconformity and there is, as
6 I have one sheet that is included that talks
7 about precedent for the additions on the
8 block, which identical in size to the
9 footprint proposed at my address, 1165, at
10 these addresses: 1175, 1169, 1161, and 1143
11 3rd Street. They are all the identical
12 footprints to what I am proposing.

13 CHAIRPERSON MILLER: We have now
14 the letters from two neighbors of yours in
15 support. One at 1163 3rd Street and one at
16 1167 3rd Street. Are there any other
17 neighbors directly near you?

18 MR. PICKNER: I have no other
19 letters.

20 CHAIRPERSON MILLER: Okay.

21 MR. PICKNER: Those are my direct
22 adjacent neighbors.

1 CHAIRPERSON MILLER: Okay. All
2 right. So we have then in considering whether
3 others got notice, we have -- we certainly
4 have the letters from the two neighbors.

5 We have the letter from Ms.
6 Preston, who you did not solicit in any way
7 who I can assume that, I guess, she had notice
8 some way either by the 200-foot mailing or by
9 the notice to the ANC or some other way.

10 We have the ANC that is in
11 unanimous support.

12 So I would be inclined to waive
13 the posting requirement. It is one of the
14 rules that we are allowed to waive.

15 MR. PICKNER: If I can say one
16 more thing, too --

17 CHAIRPERSON MILLER: Yes.

18 MR. PICKNER: -- in support, the
19 neighbor in opposition is -- I'm almost -- I'm
20 north to them so I don't impact sun at all.

21 CHAIRPERSON MILLER: Now which
22 neighbor is this?

1 MR. PICKNER: The neighbor of
2 opposition.

3 CHAIRPERSON MILLER: Oh, okay.
4 Okay. And I just want to read our waiving
5 rule, which is 3100.5. It says except for
6 sections 3100 through 3105, 3121.5, and
7 3125.4, the Board may, for good cause shown,
8 waive any of the provisions of this chapter
9 if, in the judgment of the Board the waiver
10 will not prejudice the rights of any party and
11 it is not otherwise prohibited by law.

12 So I think that any other party in
13 this case, the ANC would be a party. And they
14 are on notice. They got the notice
15 individually. So I don't see any party whose
16 rights are being prejudiced.

17 And then I think that the spirit
18 of the notice is met because we have the
19 adjacent neighbors having notice plus another
20 one who was in opposition. And the ANC.

21 How do others feel? Is there any
22 objection on the Board to waiving this notice?

1 Okay. Then I understand that the
2 applicant has made a motion that we consider
3 to waive it. And it is the consensus of the
4 Board to waive it in this instance, finding
5 that the other forms of notice were made. And
6 there seems to be adequate notice and no
7 parties' rights have been prejudiced. And it
8 is not prohibited by law.

9 Okay. So now we can get into the
10 merits of the case.

11 MR. PICKNER: Thank you.

12 CHAIRPERSON MILLER: Just from the
13 pictures that we have in exhibit 5, there was
14 a comment before we went to our break about
15 the railing on the top. And that is not a
16 part of this application.

17 But could that be something that
18 Ms. Preston was concerned about with respect
19 to height? Is that something new? Or is that
20 something that has been there for a while?

21 MR. PICKNER: It is something that
22 was there before I purchased the residence.

1 CHAIRPERSON MILLER: And when was
2 that?

3 MR. PICKNER: In 2003.

4 CHAIRPERSON MILLER: Okay. So I
5 think that your application is pretty
6 straightforward. You are doing a rear
7 addition here. Do you want to just summarize
8 it briefly? Or highlight anything you want
9 to?

10 MR. PICKNER: No, again, I'm
11 requesting ten feet versus six feet. With the
12 six feet, it severely compromises my ability
13 to create rooms, a kitchen on the ground
14 floor, and a bedroom above.

15 And, again, the ten-foot addition,
16 there is a neighbor two doors down that has a
17 ten-foot addition and it would be virtually
18 identical in size and volume.

19 CHAIRPERSON MILLER: You are
20 saying if you did -- what would the six feet
21 represent?

22 MR. PICKNER: The six feet would

1 represent the standard size without the
2 special exception. With the special
3 exception, which allows me to go -- I'm
4 requesting to go 69 percent lot coverage and
5 the special exception allows me to go up to
6 70.

7 CHAIRPERSON MILLER: Are you
8 saying if it was six foot deep you wouldn't
9 need a special exception?

10 MR. PICKNER: Correct.

11 CHAIRPERSON MILLER: Okay.

12 MR. PICKNER: But the room sizes
13 wouldn't be adequate. These are very tiny
14 lots. So they are very tiny houses.

15 CHAIRPERSON MILLER: And are there
16 questions from Board members?

17 COMMISSIONER TURNBULL: Madam
18 Chair, in exhibit 5, the pictures that show
19 the rear of the house, in the top right
20 picture, you show a neighbor's two-story
21 addition.

22 MR. PICKNER: Correct.

1 COMMISSIONER TURNBULL: Which
2 house are you?

3 MR. PICKNER: I'm the house -- I'm
4 --

5 COMMISSIONER TURNBULL: You are
6 not on the top picture?

7 MR. PICKNER: I'm two -- if it is
8 the picture I think you are speaking about,
9 I'm the house in the -- next to the red house.
10 So I'm two doors down from the addition that's
11 -- the ten-foot addition.

12 COMMISSIONER TURNBULL: So the red
13 house will be sort of sandwiched in between
14 the two --

15 MR. PICKNER: Correct.

16 COMMISSIONER TURNBULL: --
17 extensions? Okay.

18 CHAIRPERSON MILLER: And the red
19 house is which address? Which person -- do we
20 have a letter from them?

21 MR. PICKNER: Oh, 1167, yes, you
22 have a letter from Mary O'Neal.

1 CHAIRPERSON MILLER: Just looking
2 at that picture, one might think that the red
3 house might have an objection to being
4 enclosed in like that. But do you know why
5 they don't?

6 MR. PICKNER: I can't speak for
7 the neighbor.

8 CHAIRPERSON MILLER: Okay.

9 MR. PICKNER: I can speculate.
10 One of the problems with that alley is that
11 there is too much exposure, that everybody
12 looks on to everyone else. So I think -- I do
13 know -- again, I can't speak for anyone else
14 but I do know the neighbor on the other side
15 that also have a support letter has said that
16 they like the idea of the addition because it
17 gives them more privacy. So perhaps that is
18 what Mary's -- Mary supports the project also.

19 CHAIRPERSON MILLER: Okay. And
20 how about sun-wise, is their sun effected at
21 all?

22 MR. PICKNER: Sun, not on the 1163

1 side. On 1167, there is a little bit of
2 morning light but she actually benefits from
3 the neighbor's addition. She gets a lot of
4 reflected light currently from her neighbor's
5 side facade.

6 CHAIRPERSON MILLER: And what is
7 your side facade going to be like?

8 MR. PICKNER: It will be almost
9 identical to the neighbor's ten-foot addition.

10 CHAIRPERSON MILLER: And are you
11 still going to have room for parking?

12 MR. PICKNER: No, there's not --
13 what I also see as one of the problems on that
14 alley is that -- that because the lots are so
15 small, you are virtually parking your car in
16 your entire backyard.

17 So I propose a landscaped rear
18 yard brick patio with a planted tree in the
19 middle with landscaping on the perimeter. So
20 I see that far more amenable.

21 Also, the metro is a half a block
22 away so street parking is fine for me for --

1 I would take mass transit generally anyway.

2 CHAIRPERSON MILLER: Okay. Now
3 that we have opened that door, do you have a
4 car?

5 MR. PICKNER: I do but there is
6 not a lot of cars that park on my side of the
7 block. The houses across the alley are
8 slightly different. They have a semi-
9 basement. So there is a certain amount of
10 people that park their cars in their back --
11 in a concrete area.

12 But on our side of the block,
13 there is not actually a lot of people that
14 park because our houses are smaller and there
15 is a premium for outdoor space.

16 There is also a grade change. And
17 based on my yard -- my rear yard is higher
18 than the alley level. So I would have to do
19 some excavation anyway.

20 CHAIRPERSON MILLER: So do you
21 have parking now?

22 MR. PICKNER: We just have street

1 parking.

2 CHAIRPERSON MILLER: You don't
3 have a parking space now?

4 MR. PICKNER: No.

5 CHAIRPERSON MILLER: Oh, so you
6 are not making any change with respect to
7 that.

8 MR. PICKNER: Correct.

9 CHAIRPERSON MILLER: Okay.

10 COMMISSIONER TURNBULL: I was
11 noticing in the pictures, and you confirmed it
12 by just saying that your yard is higher,
13 because on these rear pictures on exhibit 5,
14 it shows like there is either a block wall or
15 a concrete wall --

16 MR. PICKNER: Correct.

17 COMMISSIONER TURNBULL: -- with a
18 fence on top of it. And then I guess there is
19 a step or two as you go through that gate --

20 MR. PICKNER: Correct.

21 COMMISSIONER TURNBULL: -- to get
22 up? So all of the -- you've got this -- on

1 your rear elevations, you've got kind of an
2 interesting roof line where you go up in one
3 corner. And it comes back down. And you are
4 sort of diverting the water toward the red
5 brick house side. And the gutter is coming --
6 you have a down spout coming right down there.

7 Any chance that this water --
8 since you are higher, escaping down into their
9 property?

10 MR. PICKNER: No, there is -- the
11 standard condition for those houses is to have
12 the down spout on one corner -- or one of the
13 two rear corners of the house. So I have it
14 on the red house side, which it would go down
15 the down spout and then have a plastic culvert
16 that would direct it to the alley.

17 COMMISSIONER TURNBULL: Does the
18 block wall or the concrete wall along that
19 side extend up above the grade there?

20 MR. PICKNER: No. It's level.
21 The top of the concrete wall is at grade.

22 COMMISSIONER TURNBULL: It is. So

1 you will need to make some kind of an effort
2 to make sure it is diverted inward to your
3 property.

4 MR. PICKNER: Yes.

5 COMMISSIONER TURNBULL: Okay. Are
6 you putting any lighting back here on this?
7 I don't see any lights shown.

8 MR. PICKNER: There will be a rear
9 yard light, yes.

10 COMMISSIONER TURNBULL: Do you
11 know where -- whereabouts?

12 MR. PICKNER: Probably near the
13 back door.

14 COMMISSIONER TURNBULL: So in that
15 little niche that you've created for the back
16 door? Somewhere in there? Or on the side?

17 MR. PICKNER: It will be on the
18 rear face of the building.

19 COMMISSIONER TURNBULL: Focused
20 downward?

21 MR. PICKNER: Yes.

22 COMMISSIONER TURNBULL: Okay.

1 CHAIRPERSON MILLER: Can you tell
2 me when the house was built?

3 MR. PICKNER: I believe it was
4 1923.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Any other Board questions? Okay. Why
7 don't we go to the Office of Planning. And
8 let me ask you, Mr. Pickner, do you have a
9 copy of the Office of Planning's report?

10 MR. PICKNER: Yes, I do.

11 CHAIRPERSON MILLER: Okay.

12 MS. JACKSON: Good morning, Chair,
13 and members of the Board. For the record, my
14 name is Arlova Jackson. I'm a development
15 review specialist with the D.C. Office of
16 Planning.

17 The Office of Planning has
18 recommended support of the proposed 223
19 special exception and finds that the applicant
20 meets the criteria for approval.

21 I'm actually filling in for staff
22 member Steve Mordfin. But I'd be happy to

1 stand on the record and answer any questions
2 that you have.

3 CHAIRPERSON MILLER: I don't hear
4 any questions. I think it was a very good
5 report. It addresses all the elements pretty
6 thoroughly. I don't know -- I've explored
7 some of my questions with the applicant. And
8 don't have different ones for you.

9 Does the applicant have any
10 questions of the Office of Planning?

11 MR. PICKNER: No, thank you.

12 COMMISSIONER TURNBULL: Madam
13 Chair, there was only one issue. And I think
14 it is a fine point. The Office of Planning
15 report says that there are no windows on
16 either side of the addition on either side of
17 the property.

18 But there is one in the niche by
19 the kitchen. But it is recessed in. And I
20 don't think you can actually -- there is a
21 two-foot cabinet, base cabinet there so I
22 don't know if anybody -- it's not like you

1 could look out and be seeing anything.

2 So I think it is a minor point.
3 But it is -- I don't think it is invading the
4 privacy of the neighbor in any way.

5 CHAIRPERSON MILLER: So what was
6 there -- what is there before and there now,
7 is just pavement? Is that it? A rough
8 pavement?

9 MR. PICKNER: Just dirt.

10 CHAIRPERSON MILLER: Dirt, okay.

11 MR. PICKNER: With a small
12 sidewalk.

13 CHAIRPERSON MILLER: Okay. Okay.
14 I don't see anybody else here in the audience
15 to testify either in support or opposition of
16 the application, including the ANC.

17 But I want to reference for the
18 record that the ANC submitted a report, which
19 we have marked as exhibit 20, dated July 14th,
20 2008, which said that they had a duly noticed,
21 regularly scheduled monthly meeting on July
22 9th, 2008, with a quorum of nine out of nine

1 Commissioners and the public present.

2 And they heard a presentation by
3 the applicant with opportunity for
4 Commissioners and the public to ask questions.

5 And the Commissioners heard no
6 opposition and voted nine to zero to zero to
7 support the application.

8 And this letter meets the great
9 weight requirements so we will move forward
10 with that. They don't raise any issues for us
11 to address. They just support it.

12 And then we mentioned earlier,
13 just for the record again, we have two letters
14 in support from adjacent neighbors. And then
15 we had one letter in opposition from a
16 property owner at 1158 Abbey Place.

17 And the applicant had a chance to
18 look at that letter today in the hearing. She
19 was concerned with the height and I was
20 wondering if, as one point, whether the
21 height, she may have been looking at the
22 railing, which had nothing to do with the

1 application.

2 And then she was concerned about
3 nonconformity and depreciation of property
4 value. And I think that the applicant
5 addressed this with respect to other
6 nonconforming properties doing similar
7 additions.

8 But if you want to make any other
9 further comments, feel free.

10 MR. PICKNER: Thank you.

11 CHAIRPERSON MILLER: And then, of
12 course, we have the Office of Planning report
13 which fully addresses all of the elements of
14 section 223 with respect to this application
15 and recommends approval of the application.

16 Any further questions Board
17 members?

18 Any closing remarks?

19 MR. PICKNER: No, thank you.

20 CHAIRPERSON MILLER: Okay. Okay.

21 Further comments from Board
22 members?

1 Then at this time, I would move
2 approval of application number 17822 of
3 Matthew S. Pickner, pursuant to 11 DCMR
4 section 3104.1 for a special exception to
5 construct a two-story addition to an existing
6 one-family row dwelling under section 223, not
7 meeting the lot occupancy, section 403, and
8 rear yard, section 404, requirements of
9 premises 1165 3rd Street, N.E.

10 Do I have a second?

11 COMMISSIONER TURNBULL: Second.

12 CHAIRPERSON MILLER: Okay. I
13 think that the Office of Planning very
14 systematically goes through this application,
15 finding that it meets all the elements. And
16 I will just highlight some of them.

17 An addition to this type of
18 property is allowed provided that it meets the
19 requirements of section 223. And 223.2 says
20 that the addition or accessory structure shall
21 not have a substantially adverse effect on the
22 use or enjoyment of any abutting or adjacent

1 dwelling or property, in particular on the
2 light and air of neighboring properties.

3 We explored this at the hearing
4 and that one of the neighbors seemed to be,
5 you know, sandwiched in, as Commissioner
6 Turnbull stated it. And we explored that and
7 determined that the applicant stated that the
8 neighbor actually was getting privacy that
9 way.

10 And that the light isn't being
11 unduly effected because she has light being
12 reflected off the facade of the side of the
13 addition on her other side. And that he
14 stated to his facade would be similar.

15 And Office of Planning found that
16 the light would not be unduly effected. And
17 the neighbor supports the application. So I
18 don't think that we have a concern with that.

19 B goes to privacy and we talked
20 about the privacy of the neighbors actually
21 being increased. And the building is not
22 going to have any additions on the side except

1 for one small little area in the kitchen,
2 which does not seem to effect privacy.

3 The addition or accessory
4 structure, together with the original
5 building, as viewed from the street, alley,
6 and other public ways shall not substantially
7 visually intrude upon the character, scale,
8 and pattern of houses along the subject street
9 frontage.

10 It is in the rear so it is not
11 effecting the front. And it is similar to
12 other additions that have been made in the
13 rear of that block. And, therefore, it is
14 within the character, scale, and pattern of
15 those houses.

16 You submitted photos and drawings
17 to demonstrate what was going to be done. The
18 lot occupancy is 69 percent, which comes in
19 under the maximum 70 percent permitted.

20 Office of Planning makes no
21 recommendations for special treatment.

22 And the applications for the use

1 of a subject property, it is rear dwelling and
2 doesn't result in the introduction or
3 expansion of a nonconforming use. The use is
4 staying the same.

5 And the ANC has supported the
6 application.

7 So I think that that covers it for
8 me. Do others want to add anything to the
9 deliberations?

10 Okay. Not hearing from anyone,
11 then I would call the vote. All those in
12 favor say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining?

16 And would you call the vote
17 please?

18 MS. BAILEY: Madam Chair, the vote
19 is recorded as four - zero - one to grant the
20 application. Ms. Miller made the motion. Mr.
21 Turnbull seconded it. Mr. Dettman and Mr.
22 Loud supported the motion. Ms. Walker is not

1 present today.

2 CHAIRPERSON MILLER: Okay. And
3 this will be a summary order because there is
4 no party in opposition. So you should be
5 getting a copy of that fairly soon.

6 MR. PICKNER: Thank you very much.

7 CHAIRPERSON MILLER: Okay. Good
8 luck. Okay.

9 Ms. Bailey, do we have anything
10 else on the agenda?

11 MS. BAILEY: not for this morning,
12 Madam Chair.

13 CHAIRPERSON MILLER: Okay. Then
14 this hearing is adjourned.

15 (Whereupon, the foregoing matter
16 went off the record at 12:08 p.m.
17 to be reconvened in the
18 afternoon.)

19

20

21

22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (1:32 p.m.)

3 CHAIRPERSON MILLER: Good

4 afternoon, ladies and gentlemen.

5 This is the October 14th afternoon
6 public hearing of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Ruthanne Miller. I'm the Chair of the
9 BZA.

10 To my right is Mr. Marc Loud, our
11 Vice Chair. To my left is Mr. Shane Dettman,
12 Board member. And next to Mr. Dettman is
13 Clifford Moy from the Office of Zoning, Ms.
14 Lori Monroe from the Office of Attorney
15 General, and Ms. Beverley Bailey from the
16 Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door.

20 Please be aware that this
21 proceeding is being recorded by a court
22 reporter and is also webcast live.

1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please turn on and speak into the
6 microphone, first stating your name and home
7 address. When you are finished speaking,
8 please turn your microphone off so that your
9 microphone is no longer picking up sound or
10 background noise.

11 All persons planning to testify
12 either in support or in opposition are to fill
13 out two witness cards. These cards are
14 located to my left on the table near the door
15 and on the witness tables.

16 Upon coming forward to speak to
17 the Board, please give both cards to the
18 reporter sitting to my right.

19 The order of procedure for special
20 exceptions and variances is as follows: one,
21 statement and witnesses of the applicant; two,
22 government reports, including Office of

1 Planning, Department of Public Works, DDOT, et
2 cetera; three, report of the Advisory
3 Neighborhood Commission; four, parties or
4 persons in support; five, parties or persons
5 in opposition; six, closing remarks by the
6 applicant.

7 Pursuant to sections 3117.4 and
8 3117.5, the following time constraints will be
9 maintained. The applicant, persons, and
10 parties except an ANC in support, including
11 witnesses, 60 minutes collectively; persons
12 and parties except an ANC in opposition,
13 including witnesses, 60 minutes collectively;
14 individuals, three minutes.

15 These time restraints do not
16 include cross examination and/or questions
17 from the Board. Cross examination of
18 witnesses is permitted by the applicant or
19 parties.

20 The ANC within which the property
21 is located is automatically a party in a
22 special exception or variance case.

1 Nothing prohibits the Board from
2 placing reasonable restrictions on cross
3 examination including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case except for any
7 materials specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning.

12 After the record is closed, no
13 other information will be accepted by the
14 Board.

15 The Sunshine Act requires that the
16 public hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with its rules of procedure and the
19 Sunshine Act, enter Executive Session during
20 or after the public hearing on a case for
21 purposes of reviewing the record or
22 deliberating on the case.

1 The decision of the Board in these
2 contested cases must be based exclusively on
3 the public record. To avoid any appearance to
4 the contrary, the Board requests the persons
5 present not engage the members of the Board in
6 conversation.

7 Please turn off all beepers and
8 cell phones at this time so as not to disrupt
9 these proceedings.

10 The Board will make every effort
11 to conclude the public hearing as near as
12 possible to six o'clock p.m. If the afternoon
13 cases are not completed as six, the Board will
14 assess whether it can complete the pending
15 cases remaining on the agenda.

16 That this time, the Board will
17 consider any preliminary matters. Preliminary
18 matters are those which relate to whether a
19 case will or should be heard today such as
20 requests for postponement, continuance, or
21 withdrawal, or whether proper and adequate
22 notice of the hearing has been given.

1 If you are not prepared to go
2 forward with a case today or if you believe
3 that the Board should not proceed, now is the
4 time to raise such a matter.

5 Does the staff have any
6 preliminary matters?

7 MS. BAILEY: Madam Chair, good
8 afternoon. Yes, we do. There are two cases
9 that were withdrawn. And there is one request
10 for a postponement.

11 CHAIRPERSON MILLER: Okay. Why
12 don't we have those rise to take the oath who
13 are going to testify today. And then begin
14 with the preliminary matters.

15 MS. BAILEY: Thank you.

16 CHAIRPERSON MILLER: So whoever is
17 going to testify today, either in support or
18 in opposition to an application, please rise
19 now and Ms. Bailey will administer the oath.

20 MS. BAILEY: Would you please
21 raise your right hand? Do you solemnly swear
22 or affirm that the testimony that you will be

1 giving today will be the truth, the whole
2 truth, and nothing but the truth? Thank you.

3 Madam Chair?

4 CHAIRPERSON MILLER: Yes?

5 APPEAL OF MILTON E. HALL

6 APPLICATION NO. 17730 - ANC-5B

7 and

8 LT PROPCO LLC

9 APPLICATION NO. 17818 - ANC-3E

10 MS. BAILEY: The cases that were
11 withdrawn are application number 17730. This
12 is an appeal of Milton Hall.

13 And then the second case is 17818,
14 Popco LLC. Both of those cases were withdrawn
15 previously.

16 CHAIRPERSON MILLER: Thank you.
17 And there is no action required on the part of
18 the Board, correct?

19 MS. BAILEY: No, Madam Chair, none
20 is required.

21 CHAIRPERSON MILLER: Okay. Then
22 why don't you next call then the case that has

1 a preliminary matter in it.

2 PRELIMINARY MATTER:

3 JOBS PARTNERSHIP OF GREATER WASHINGTON

4 APPLICATION NO. 17827 - ANC-

5 MS. BAILEY: The case that has a
6 preliminary matter is number 17827 and it is
7 the application of Jobs Partnership of Greater
8 Washington. I think the applicant's attorney
9 is present at this time.

10 MR. KADLECEK: Good afternoon.

11 CHAIRPERSON MILLER: Good
12 afternoon.

13 MR. KADLECEK: My name is Cary
14 Kadlecek from the Law Firm of Pillsbury
15 Winthrop Shaw Pittman. I'm here on behalf of
16 the applicant.

17 You may remember from our
18 September 9th hearing I was here before to
19 request a postponement. And I'm here to
20 request another postponement.

21 We had requested the initial
22 postponement to try to reach an agreement to

1 purchase the adjacent property that we were
2 including in the application.

3 At this time, we have been unable
4 to reach an agreement with the adjacent owner,
5 largely due to the problems with the credit
6 market right now and being able to secure
7 financing in time.

8 Also we haven't quite reached an
9 agreement on a closing date yet largely due to
10 the financing.

11 We've resolved most of the other
12 issues but we really some time to work that
13 out. So what I'm requesting is a three-month
14 postponement of the hearing, which would put
15 us into January, I believe.

16 CHAIRPERSON MILLER: Okay. It
17 looks like it is going forward? It is just
18 going to take a while because of the financial
19 situation?

20 MR. KADLECEK: Yes, it has turned
21 out to be kind of a hairy situation to work
22 out the financing and come to terms with an

1 agreeable closing date between the two
2 parties.

3 CHAIRPERSON MILLER: Okay. We
4 were looking at the calendar this morning to
5 postpone another case. And one of the dates
6 I believe we came up with was in February,
7 like -- I think it was February 24th. Would
8 that be a problem?

9 MR. KADLECEK: No, I don't think
10 that would be a problem.

11 CHAIRPERSON MILLER: Okay. Okay,
12 I'm just taking a look to see whether -- try
13 to guesstimate whether there is more time
14 available in the morning or the afternoon.

15 MR. KADLECEK: Either one is
16 acceptable with us.

17 CHAIRPERSON MILLER: Okay.
18 Afternoon we're going to put you.

19 MR. KADLECEK: So the 24th in the
20 afternoon -- February 24th.

21 CHAIRPERSON MILLER: Did you talk
22 to the ANC with respect to the postponement or

1 anybody else?

2 MR. KADLECEK: No, we haven't
3 talked to them with respect to the
4 postponement.

5 CHAIRPERSON MILLER: Okay.

6 MR. KADLECEK: But because we did
7 post initially we thought that was sufficient
8 public notice. And, you know, we had talked
9 to them a long time ago, of course, and gotten
10 their support.

11 CHAIRPERSON MILLER: Okay. Yes.
12 So the ANC is -- oh, right. We have a letter
13 -- a resolution that just came in actually
14 from the ANC -- if I'm not mistaken -- in
15 support of your application. I don't know if
16 you've seen it.

17 MR. KADLECEK: Yes, it is probably
18 from when we spoke to them. I believe that
19 was back in July.

20 CHAIRPERSON MILLER: Right. Okay.
21 Yes, the cover letter is dated July 18th.

22 MR. KADLECEK: Yes, that seems

1 right.

2 CHAIRPERSON MILLER: We just got
3 it.

4 MR. KADLECEK: Oh, okay.

5 CHAIRPERSON MILLER: I don't know.
6 I'm sorry. Maybe it was brought to our
7 attention today. But anyway, it is in our
8 files.

9 MR. KADLECEK: Yes.

10 CHAIRPERSON MILLER: Okay. Any
11 other questions or comments?

12 MR. KADLECEK: Nothing else.
13 Thank you.

14 CHAIRPERSON MILLER: Okay. So
15 February 24th in the afternoon and then if
16 there is something new to file, you would file
17 it 14 days ahead of time.

18 MR. KADLECEK: Yes.

19 CHAIRPERSON MILLER: Okay. Good.

20 MR. KADLECEK: Great. Thank you.

21 CHAIRPERSON MILLER: All right.

22 Thank you.

1 So we're ready for the next case
2 when you are, Ms. Bailey.

3 KC ENTERPRISE C/O KEVIN B. MOODY
4 APPLICATION NO. 17823 - ANC-7C

5 MS. BAILEY: Madam Chair, the only
6 case this afternoon is application number
7 17823 of KC Enterprise c/o Kevin B. Moody,
8 pursuant to 11 DCMR 3103.2, for a variance
9 from the lot area and lot width requirements
10 under section 401, a variance from the side
11 yard requirements under subsection 405.9, to
12 construct a new detached one-family dwelling
13 in the R-2 District at premises 4938 Eads
14 Place, N.E., Square 5184, Lot 6.

15 CHAIRPERSON MILLER: Good
16 afternoon.

17 MR. MOODY: Good afternoon. For
18 the record, my name is Kevin Moody. I reside
19 at 6713 Burch Hill Road, Brandywine, Maryland
20 20613.

21 CHAIRPERSON MILLER: Okay. Why
22 don't you just -- perhaps just briefly

1 summarize why you are here.

2 MR. MOODY: Thank you. And good
3 afternoon to the rest of the Board members.

4 I'm here today as the contract
5 purchaser for property known as 4938 Eads
6 Place. The property is currently 25 feet wide
7 by 90 feet long. It also has an existing 15-
8 foot public alley in the rear of the property.

9 I'm here to propose to build a 17
10 foot by nine inch wide by 39 feet eight inch
11 house on this existing property. The property
12 is presently owned -- excuse me -- presently
13 zoned R-2.

14 On that block there is an array of
15 different properties, semi-detached, detached,
16 as well as some garden apartment units.

17 This property was zoned pre-1958
18 and on the one side of the property there is
19 a duplex. And on the other side of the
20 property there is an existing single-family
21 home.

22 Prior to putting in a contract on

1 this property, I met with both of the adjacent
2 property owners to be able to get their
3 feeling and take on if someone were ever to
4 come in to build on this vacant lot what would
5 they like.

6 With it being R-2 zoned and the
7 size, it would limit itself to be able to do
8 a semi-detached application. However, it
9 would never, ever be able to get attached on
10 an existing house because on one side, again,
11 there is a single-family home and on the other
12 side there is the duplex.

13 So the two adjacent owners as well
14 as myself thought that the best way, based
15 upon existing conditions, was to be able to
16 put the house dab smack in the middle of the
17 lot and provide a three-foot-seven and a half
18 inch side yard on either side, coupled with
19 the existing eight foot that they have on
20 their property would lend itself, if you will,
21 for almost 11-foot-eight setback between each
22 one of the existing units.

1 And based upon the size of the lot
2 without getting the area variance for the lot
3 area and the lot width requirements and the
4 side yard setback I, nor any other person in
5 the future, would be unable to build it. So
6 that is why I'm here in front of you today.

7 CHAIRPERSON MILLER: Okay.

8 MR. MOODY: Oh, and by the way, to
9 mention when I first met with the neighbors,
10 I had forwarded a letter to the ANC asking to
11 be able to get on the agenda, if they had any
12 questions or any problems. I have yet, to
13 date, to hear back from them inviting me to a
14 meeting.

15 And then approximately three weeks
16 ago, I also spoke to the person that answers
17 the telephone for the ANC. So I have reached
18 out to them on multiple occasions with no
19 success in being able to get on the agenda.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Am I correct that basically it's not --
22 the property is nonconforming as to area and

1 width?

2 MR. MOODY: You are absolutely
3 correct.

4 CHAIRPERSON MILLER: Okay. So
5 that is a variance someone would need no
6 matter what.

7 MR. MOODY: Absolutely.

8 CHAIRPERSON MILLER: Okay. So the
9 side yard variance you need because you are
10 putting the property in the middle between the
11 two houses.

12 MR. MOODY: Yes.

13 CHAIRPERSON MILLER: And neither
14 side meets the required side yard requirement.

15 MR. MOODY: Correct.

16 CHAIRPERSON MILLER: Okay. But --
17 and could you just clarify for me that you
18 could not -- you can not build without doing
19 -- putting it in the middle that way? You
20 cannot attach to either of the buildings on
21 the side of you?

22 MR. MOODY: That is a yes and a no

1 question.

2 CHAIRPERSON MILLER: Okay, yes.

3 MR. MOODY: I tried my best to be
4 able to -- assuming if I were unable to get a
5 variance for the lot area requirements, I
6 could, if I got that, I could put it on one of
7 the property lines. But then that would only
8 lend itself to a very, very narrow house that
9 the floor plan just wouldn't end up working.

10 So it made all sense then to not
11 only ask for the lot area but also the side.
12 Is that clear?

13 CHAIRPERSON MILLER: Yes. So that
14 does it. So you need the side yard in order
15 to have a wide enough house to live in.

16 MR. MOODY: Correct.

17 CHAIRPERSON MILLER: Okay. You
18 could put a building there but it wouldn't be
19 wide enough.

20 MR. MOODY: It wouldn't be much of
21 a building.

22 CHAIRPERSON MILLER: Okay. And

1 with respect to the pictures that are on
2 exhibit 7 --

3 MR. MOODY: Exhibit 7?

4 CHAIRPERSON MILLER: Well, it is
5 our exhibit 7, I believe.

6 MR. MOODY: Okay.

7 CHAIRPERSON MILLER: This is the
8 picture.

9 MR. MOODY: Yes.

10 CHAIRPERSON MILLER: Okay. If we
11 are looking at number one here --

12 MR. MOODY: Yes.

13 CHAIRPERSON MILLER: -- is your
14 property in between these two houses?

15 MR. MOODY: No, my property --

16 CHAIRPERSON MILLER: Okay.

17 MR. MOODY: -- is to -- if you
18 look at exhibit -- well, number three, if you
19 will, that is the lot where you see the Long
20 and Foster real estate sign on it.

21 CHAIRPERSON MILLER: So what was
22 number -- picture number one supposed to

1 depict?

2 MR. MOODY: Picture number one, I
3 tried my best to give you a pictorial view of
4 the adjacent properties, the lot that is in
5 question, and then the other adjacent
6 properties to the right of it.

7 So if you will, if you looked at
8 number one, that is the farthest-most left.
9 Then number two and then number three and then
10 number four. So if you kind of looked at them
11 one, two, three, four, if you would kind of
12 take a pictorial view of that side of the
13 block.

14 CHAIRPERSON MILLER: So number
15 four where the Long and Foster sign is is
16 where your lot is?

17 MR. MOODY: That is dead smack --
18 that is a front view of the vacant lot.

19 CHAIRPERSON MILLER: Okay.

20 Any other questions of Board
21 members?

22 MEMBER DETTMAN: One quick

1 question, Madam Chair.

2 CHAIRPERSON MILLER: Yes.

3 MEMBER DETTMAN: Good afternoon.

4 MR. MOODY: Good afternoon.

5 MEMBER DETTMAN: I'm looking at
6 the plans that you submitted into the record.

7 MR. MOODY: Yes?

8 MEMBER DETTMAN: And that would be
9 our exhibit number 12.

10 MR. MOODY: Okay.

11 MEMBER DETTMAN: The second page
12 on the elevations. Could you just explain
13 where the house is going to sit in terms of
14 the first floor? I know there was something
15 in the record that mentioned just uncertainty
16 on groundwater and underground conditions,
17 where that was going to sit.

18 MR. MOODY: Correct. Well, we
19 have since received the soils work and we are
20 anticipating that it will be a nine foot
21 basement with approximately four feet of that
22 nine-foot basement out of the ground.

1 MEMBER DETTMAN: Okay. So four
2 feet above grade?

3 MR. MOODY: Yes, sir.

4 MEMBER DETTMAN: Okay. And I
5 notice that you have an optional door. Are
6 you going to have a staircase that goes down
7 from grade into the basement?

8 MR. MOODY: Well, we were
9 originally intending that but, again, that was
10 based upon the soils conditions. But the way
11 that we are envisioning that now, that will
12 probably not have an optional door.

13 MEMBER DETTMAN: Okay.

14 MR. MOODY: But will probably be a
15 completely in-ground basement, if you will.

16 MEMBER DETTMAN: Okay.

17 MR. MOODY: And we will just have
18 windows that will be large enough there for
19 ingress/egress in case a fire were to ever to
20 occur.

21 MEMBER DETTMAN: Okay. So now
22 that you know where this is going to sit on

1 the lot, what is actually going to be the
2 height of the building? On your plans you
3 show 38 feet. But that is measured from the
4 basement floor.

5 MR. MOODY: Correct. So if you
6 have been looking at a nine-foot basement and
7 four feet is out of the ground --

8 MEMBER DETTMAN: Okay.

9 MR. MOODY: -- you basically take
10 five feet off of that so we are looking at
11 approximately 33 feet from finished grade to
12 the topmost portion of the roof ridge.

13 MEMBER DETTMAN: Great. Thank
14 you.

15 MR. MOODY: Yes.

16 CHAIRPERSON MILLER: Any other
17 questions at this time?

18 Do you have a copy of the Office
19 of Planning's report?

20 MR. MOODY: I do.

21 CHAIRPERSON MILLER: Okay. We are
22 going to go to Office of Planning next. And

1 I just wanted to make sure you had it for
2 reference.

3 MR. MOODY: Thank you.

4 CHAIRPERSON MILLER: Okay.

5 MS. BROWN-ROBERTS: Hello?

6 CHAIRPERSON MILLER: You got it.

7 MS. BROWN-ROBERTS: Okay, great.

8 Good afternoon, Madam Chairman and
9 members of the Board. I'm Maxine Brown-
10 Roberts from the Office of Planning.

11 I think we outlined -- fully
12 outlined the case in our report. And,
13 therefore, I will stand on the record that
14 recommends approval of the requested variances
15 from the lot area and lot width. And from the
16 side yard requirements. And I'm available for
17 any questions.

18 Thank you, Madam Chairman.

19 CHAIRPERSON MILLER: Thank you.

20 I have a very basic question for
21 you. Could you tell me how a duplex is
22 defined? It is just one of those words we

1 don't usually see. It's not in our zoning
2 regs or anything. So --

3 MS. BROWN-ROBERTS: It is usually
4 two units. It is usually like one building
5 but it has two units.

6 But they are independent lots.
7 They can create independent lots but they are
8 joined. So they only have one side yard.
9 Each building only has one side yard.

10 CHAIRPERSON MILLER: Okay. So
11 they can either be on one or two lots, is that
12 what you are saying?

13 MS. BROWN-ROBERTS: Yes, yes.

14 CHAIRPERSON MILLER: Okay.

15 MS. BROWN-ROBERTS: But actually
16 they can only be on one lot.

17 CHAIRPERSON MILLER: One lot? How
18 is it different from a flat then that has --

19 MS. BROWN-ROBERTS: Pardon me?

20 CHAIRPERSON MILLER: How is it
21 different from a flat?

22 MS. BROWN-ROBERTS: Well, usually

1 the flat has two units in one building. And
2 that is on one lot. For duplexes, each
3 building, although they have a common wall,
4 they are on independent lots.

5 MR. MOODY: If I could interject -
6 -

7 CHAIRPERSON MILLER: Sure.

8 MR. MOODY: -- I'm not exactly
9 sure what exhibit your number is but it is my
10 exhibit number D as in dog.

11 CHAIRPERSON MILLER: This one with
12 the photographs?

13 MR. MOODY: Yes.

14 CHAIRPERSON MILLER: Okay.

15 MR. MOODY: If you look to the
16 bottom right is my exhibit D. But if you look
17 at picture number 15, maybe that might bring
18 some clarity what that "duplex" that Maxine
19 was referring to.

20 And if you look, the entrance to
21 either one of those units is on the side. You
22 can see the steps to the left and the other

1 steps to the right. That is basically the
2 duplex.

3 And if you look where the middle
4 of those units would be, that would be the
5 common property line if that helps any.

6 CHAIRPERSON MILLER: Okay. I just
7 hadn't seen that.

8 MS. BROWN-ROBERTS: It is
9 basically what we -- I'm sorry -- what we call
10 a single-family attached house, yes.

11 CHAIRPERSON MILLER: Semi-
12 detached?

13 MS. BROWN-ROBERTS: Semi-detached,
14 I'm sorry.

15 CHAIRPERSON MILLER: Okay. Good.

16 And I just want to note that Mr.
17 Jeffries has joined us from the Zoning
18 Commission. Okay.

19 Semi-detached -- okay.

20 Any other questions of Board
21 members?

22 Does the applicant have any

1 questions for the Office of Planning?

2 MR. MOODY: No. I think their
3 report was very accurate.

4 CHAIRPERSON MILLER: I don't
5 believe there is anybody in the audience here
6 who is going to testify on this case. But for
7 the record, is there anybody here from the
8 ANC?

9 Not seeing anybody, anybody here
10 who wishes to testify in support or in
11 opposition to this application?

12 Not seeing anybody, at this point
13 then, we are ready for any final questions
14 from Board members.

15 COMMISSIONER JEFFRIES: No
16 questions. And given I have missed a few
17 minutes, I have reviewed the entire file. And
18 I'm fine with the case.

19 CHAIRPERSON MILLER: Okay. No
20 further questions from Board members.

21 So at this time, if the applicant
22 has any final closing remarks?

1 MR. MOODY: No further comments.

2 CHAIRPERSON MILLER: Okay, in
3 which case, if the Board is ready, we can
4 proceed with our deliberation on this case.
5 I just want to make sure that I reference some
6 of the filings we have in our record and we
7 don't have.

8 I think we don't have anything
9 from the ANC as far as I know. We have a
10 letter from a Ronnie Nelson who is an adjacent
11 property owner in support. And also from
12 Daisy Carr who also is an adjacent property
13 owner on the other side. So they are both in
14 support. And they are both happy that the --
15 especially with respect to the side yard, that
16 this house will be in the middle with a 3.5 --
17 is it a 3.5?

18 MR. MOODY: Three feet seven and a
19 half inches.

20 CHAIRPERSON MILLER: Three feet
21 seven inches?

22 MR. MOODY: Yes.

1 CHAIRPERSON MILLER: Side yards.

2 Thank you.

3 Okay, so we have those. And
4 Office of Planning is clearly in support. One
5 second.

6 I also found in our files another
7 letter from a Jennifer Thompson on 49th Place,
8 N.E., supporting the application. And she
9 lives in a house about 800 feet or 1.5 blocks
10 away and says that it should blend in well
11 with the houses in and around the community.

12 Okay. Anything else anyone wants
13 to add before we deliberate?

14 Okay then, I would move approval
15 of application number 17823 of KC Enterprise
16 c/o Kevin B. Moody pursuant to 11 DCMR section
17 3103.2, for a variance from the lot area and
18 lot width requirements under section 401, a
19 variance from the side yard requirements under
20 subsection 405.9, to construct a new detached
21 one-family dwelling at premises 4938 Eads.

22 VICE CHAIRMAN LOUD: Second, Madam

1 Chair.

2 CHAIRPERSON MILLER: Okay. As the
3 applicant is seeking variances, I just want to
4 state that the framework in which we analyze
5 this is a three-prong test.

6 We need to find that the property
7 has an exceptional, unique condition and
8 because of that, there is a practical
9 difficulty for the applicant to comply with
10 the zoning regulations. And that if we grant
11 the relief, there will not be an adverse
12 impact on adjacent neighbors.

13 I think this case is pretty
14 straightforward. And basically it is a lot
15 that was created before 1958. It is a
16 nonconforming lot with respect to area and
17 width. And, therefore, to build anything on
18 this property would require a variance.

19 That is exceptional in and of
20 itself because they couldn't comply with the
21 regulations because you can't change the size
22 of the lot. That is the way it is.

1 So there is, at least, a practical
2 difficulty in building a house that meets the
3 lot area. And the property cannot meet the
4 lot area and lot width.

5 It is also a very narrow house and
6 so, therefore, the applicant has also asked
7 for a variance for side yard relief. While,
8 as we discussed it, a building could be built
9 on that property without the side yard relief,
10 it would be too narrow to make it a liveable
11 home. It would be very long and narrow and
12 not a liveable home.

13 And basically, there is no adverse
14 impact on the neighboring properties. They
15 support the application. Office of Planning
16 found no adverse impacts. It is actually --
17 it is a good in-fill. So I think that kind of
18 touches the reasons why this meets the
19 variance test.

20 Do others want to add to that?

21 COMMISSIONER JEFFRIES: Well,
22 Madam Chair, I'm not going to add to that. I

1 just had a question, if you don't mind, to Mr.
2 Moody.

3 Is this -- I'm trying to pin down
4 the location of this. I know it is Lincoln
5 Heights. What is across the street? Is there
6 a --

7 MR. MOODY: I'm not exactly sure
8 where you are.

9 COMMISSIONER JEFFRIES: Do you
10 have your -- I'm looking at the Office of
11 Planning report.

12 MR. MOODY: It is the Kelly Miller
13 School.

14 COMMISSIONER JEFFRIES: Oh.

15 MR. MOODY: If you were to sit on
16 the front porch and you looked across Eads
17 Street, you would be looking towards the field
18 of Kelly Miller School.

19 COMMISSIONER JEFFRIES: Okay.

20 MR. MOODY: Does that help you?

21 COMMISSIONER JEFFRIES: Yes. Is
22 there -- are you close to the Maryland line?

1 Is there like a cemetery? Because I know --
2 this is Fotte Place?

3 MR. MOODY: Eads Place, I mean we
4 are close to the Maryland line but the
5 Maryland line, depending upon which direction
6 you went, would be several blocks away.

7 COMMISSIONER JEFFRIES: Oh, okay,
8 okay. I'm just trying to, you know, picture
9 the area because I'm familiar with -- I
10 believe that is Fotte -- F-O-T-T-E.

11 MR. MOODY: Well, that's one
12 street down.

13 COMMISSIONER JEFFRIES: Yes.

14 MR. MOODY: But you could call it
15 100 block.

16 COMMISSIONER JEFFRIES: Yes, okay.
17 Okay, great. Thank you.

18 CHAIRPERSON MILLER: Okay. And I
19 just would also add that the Office of
20 Planning found that the house that will be
21 built pursuant to these plans would be
22 consistent with others in the area.

1 Okay. Anything else?

2 Not hearing anything, all those in
3 favor say aye.

4 (Chorus of ayes.)

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining?

7 And would you call the vote
8 please?

9 MS. BAILEY: Madam Chair, the vote
10 is recorded as four, zero, one to go on the
11 application. Ms. Miller made the motion. Mr.
12 Loud seconded it. Mr. Dettman and Mr.
13 Jeffries support the motion. Ms. Walker is
14 not present today.

15 CHAIRPERSON MILLER: Thank you.

16 And as there is no party in
17 opposition, this can be a summary order.

18 MR. MOODY: Thank you all and have
19 a great day.

20 CHAIRPERSON MILLER: Thank you,
21 you, too.

22 Ms. Bailey, is there anything else

1 on the agenda for this afternoon?

2 MS. BAILEY: No, Madam Chair.

3 That's it.

4 CHAIRPERSON MILLER: Okay. Then
5 this hearing is adjourned.

6 (Whereupon, the above-entitled
7 hearing was concluded at 2:04 p.m.)

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