

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 22, 2010

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Meredith Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MEREDITH MOLDENHAUER, Chairperson
SHANE DETTMAN, Vice Chairman,
Board Member
NICOLE SORG, Board Member

OFFICE OF ZONING STAFF PRESENT:

BEVERLEY BAILEY, Sr. Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

The transcript constitutes the minutes from the Public Meeting held on June 22, 2010.

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

2 9:52 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will please come to order. Good
5 morning, ladies and gentlemen. This is the
6 June 22nd, 2010 public meeting of the Board of
7 Zoning Adjustment for the District of
8 Columbia.

9 My name is Meredith Moldenhauer,
10 Chairperson. Joining me today is Vice Chair
11 Shane Dettman representing the National
12 Capital Planning Commission and Nicole Sorg,
13 Mayoral Appointee.

14 Copies of today's meeting agenda
15 are available to you and are located to my
16 left in a wall bin near the door.

17 We do not take any public testimony
18 at our meetings unless the Board asks someone
19 to come forward.

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

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1 Accordingly, I must ask you to refrain from
2 any disturbing noise or actions in the hearing
3 room. Please turn off all beepers and cell
4 phones.

5 Do we have any preliminary matters?

6 MS. ROSE: Good morning, Madam
7 Chair, Members of the Board.

8 The first preliminary matter this
9 morning relates to the motion for
10 reconsideration and rehearing filed in Appeal
11 Number 179668 of Stephen Bruce.

12 Staff requests additional time to
13 allow the Board to read the record in this
14 matter. Staff would recommend that a decision
15 in the motion be postponed until the Board's
16 public meeting of July 13, 2010 at 9:30 a.m.

17 CHAIRPERSON MOLDENHAUER: Thank you
18 very much. We will then postpone based on
19 staff's recommendation until June --

20 MS. ROSE: July 13.

21 CHAIRPERSON MOLDENHAUER: -- July
22 13th. Okay. July 13th.

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1 MS. ROSE: The remaining
2 preliminary matter relates to the first case
3 for decision. Would you like for me to call
4 the case and then address it?

5 CHAIRPERSON MOLDENHAUER: Yes.
6 Thank you. We'll call the first case.

7 MS. ROSE: The first matter to be
8 decided is a motion to extend the validity of
9 the order in Application Number 17679-A of
10 Jemal's TP Land, LLC pursuant to Section 3130
11 of the Zoning Regulations.

12 The original application was
13 Applicant Number 17679 of Jemal's TP Land, LLC
14 pursuant to 11 DCMR 3104.1 for special
15 exceptions under Sections 353 and 2516 and
16 under Section 411 regarding roof structures to
17 permit the construction of a new residential
18 development, two multiple dwellings, each
19 containing 38 dwelling units in the R-5-A
20 District at premises 6923-6953 Maple Street,
21 N.W. and 6916-6926 Willow Street, N.W., Square
22 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814,

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1 815, 818, 819, 820, 824, 825, 840 and 843.

2 The original application was heard
3 on November 13, 2007. Decision meetings were
4 held on January 8th, 2008 and February 5th,
5 2008. The original application was approved
6 on February 5th, 2008 and the final order was
7 issued on April 23rd, 2008.

8 The Applicant first filed it's
9 request for extension of the order on April 6,
10 2010 approximately three weeks prior to the
11 expiration of Order Number 17679 on April
12 23rd, 2010.

13 The Applicant provided an
14 explanation as to why the motion was filed
15 less than 30 days prior to expiration of the
16 order.

17 At the special public meeting on
18 May 11, 2010, the Board decided to allow the
19 Applicant to file a request for a waiver of
20 the time requirement of Section 3130.9 and to
21 allow the Applicant file supplemental
22 information to address the waiver by May 18th,

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1 2010.

2 On May 17th, the Applicant filed a
3 letter to request a waiver of Subsection
4 3130.9 of the Zoning Regulations to accept its
5 time extension request filed less than 30 days
6 prior to the expiration of the order and to
7 toll the order's expiration. This is at
8 Exhibit 50.

9 The waiver request is a preliminary
10 matter for the Board's decision today.

11 CHAIRPERSON MOLDENHAUER: Thank you
12 very much for the summary. Then what we'll do
13 is we'll first address the issue of the
14 preliminary matter and based on our Exhibit
15 Number 50 which specifically requests the
16 waiver and provides good cause shown, I would
17 recommend to the other Board Members to grant
18 a waiver under Section 3130.9 and 3100.5 to
19 admit this application which was filed less
20 than 30 days prior to the expiration of the
21 order.

22 Do all Board Members agree? By a

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1 nodding of the heads, we will then waive that
2 requirement.

3 Let's move on to the merits of the
4 application for a two-year extension.

5 MS. ROSE: We're going to move on
6 to the substantive motion at this point?

7 CHAIRPERSON MOLDENHAUER: Yes.

8 MS. ROSE: Okay. The Applicant
9 submitted the motion for extension in a
10 statement that parties have been served, a
11 copy of the final order and an affidavit from
12 the Applicant addressing the standards for the
13 motion to extend.

14 This request for extension is made
15 pursuant to Subsection 3130.6 of the Zoning
16 Regulations which permits the Board to grant a
17 two-year extension of the time period set
18 forth in Subsection 3130.1 for good cause
19 shown.

20 The request for extension was
21 served on all parties in the case. There were
22 no responses from parties to the Applicant's

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1 request for extension pursuant to Subsection
2 3130.6(a).

3 The Board Members participating in
4 this decision are Ms. Moldenhauer, Mr. Dettman
5 and Ms. Sorg and Mr. Turnbull.

6 The motion to extend is before the
7 Board for a decision.

8 CHAIRPERSON MOLDENHAUER: Thank you
9 very much. I'll turn to Mr. Dettman to start
10 us off.

11 VICE CHAIRMAN DETTMAN: Thank you,
12 Madam Chair. I won't go into the details of
13 the case. I think Ms. Rose did an excellent
14 job of just basically setting up the
15 parameters of our discussion today and I can
16 do this very quickly.

17 The application is for a two-year
18 extension of a Board order for Application
19 Number 17679. The provision as Ms. Rose
20 stated is -- the standard that needs to be met
21 is under Section 3130 of the Zoning
22 Regulations and this particular section of the

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1 Zoning Regulations was recently modified to
2 essentially increase the standard that needs
3 to be met. Previously, it was essentially
4 they needed to provide a request, but now, the
5 Applicants are required to provide substantial
6 evidence.

7 I think that by way of a sworn
8 affidavit in our Exhibit Number 48 at Exhibit
9 B is a sworn affidavit from the Vice President
10 of Douglas Development Paul Millstein
11 discussing the financial constraints that the
12 Applicant has been faced with give the poor
13 economic climate that's out there. So, I
14 think the standard under 3130 has been met.

15 All parties have been served and
16 given 30 days to weigh in which I believe was
17 the ANC as well as a Mr. Warner to the
18 original case. That's right. Mr. Warner.

19 So, I think the standards again
20 have pretty much already been met and I'm
21 inclined to support this application.

22 CHAIRPERSON MOLDENHAUER: Thank you

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1 very much, Mr. Dettman. I concur and I don't
2 believe there's any additional information I
3 would need to add.

4 Do we have anything else from any
5 Board Members? Being none, hear a motion?

6 VICE CHAIRMAN DETTMAN: I move for
7 approval of Application Number 17679 to permit
8 an extension of the approval for an order for
9 a period of two years.

10 CHAIRPERSON MOLDENHAUER: The
11 motion has been made. I will second. The
12 motion's been made and seconded. All those in
13 favor say aye?

14 (Ayes.)

15 CHAIRPERSON MOLDENHAUER: Ms. Rose,
16 will you please read back the vote?

17 MS. ROSE: Yes, staff will record
18 the vote as 4 to 0 to 1 to grant the motion
19 for an extension of the order with the motion
20 by Mr. Dettman and seconded by Ms. Moldenhauer
21 with Ms. Sorg in support of the motion and Mr.
22 Turnbull has submitted an absentee ballot in

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1 support of the motion.

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much.

4 Ms. Rose, if you're ready, we can
5 read them the next case for decision for this
6 morning.

7 MS. ROSE: Yes, the next case is a
8 motion to extend the validity of the order in
9 Application Number 17831-A of Georgetown
10 Strategic Capital pursuant to Section 3130 of
11 the Zoning Regulations.

12 The application was originally
13 approved on November 5th, 2008 as follows:

14 Application 17831 of Georgetown
15 Strategic Capital, as amended, pursuant to 11
16 DCMR 3103.2 for a variance from the lot
17 occupancy requirements under Section 772, a
18 variance from the rear yard requirements under
19 Section 774, a variance from the required
20 public space at ground level under Section 633
21 and a variance from the prohibition of
22 driveways that provide access from a

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1 pedestrian street to required parking spaces
2 or loading berths under Subsection 1903.2 or
3 in the alternative, a special exception under
4 Section 1906.1 from the prohibition of
5 driveways that provide access from a
6 pedestrian street to required parking spaces
7 or loading berths under Subsection 1903.2 to
8 construct a new multiple residence building
9 with ground level commercial uses in the ARTS
10 overlay/C-3-A and the ARTS/CR Districts on the
11 southwest corner of the intersection of 14th
12 and U Streets, N.W., Square 205, Lots 70, 71,
13 73, 830 and 831.

14 The original application was heard
15 and decided on November 5th, 2008. The
16 summary order was final on November 13, 2008.

17 The order expires on November 13th, 2010.

18 On May 13th, 2010, the Applicant
19 through counsel filed a timely motion to
20 extend the validity of the order for a two-
21 year period until November 13th, 2012.

22 This request for extension is made

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1 pursuant to Subsection 3130.6 of the Zoning
2 Regulations which permits the Board to grant a
3 two-year extension of the time period set form
4 in Subsection 3130.1 for good cause shown.

5 The request for extension was
6 served on all parties in the case. There were
7 no responses from parties to the Applicant's
8 request for extension pursuant to Subsection
9 3130.6.

10 The participating Board Members are
11 Ms. Moldenhauer, Mr. Dettman and Ms. Sorg.

12 This motion is before you for a
13 decision.

14 CHAIRPERSON MOLDENHAUER: Thank you
15 very much, Ms. Rose.

16 Then we will address the merits of
17 this case. Mr. Dettman, would you like to
18 start us off?

19 VICE CHAIRMAN DETTMAN: Certainly.
20 Similar to the previous case, it's a request
21 for an extension of the Board order. This is
22 Application Number 17831.

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1 The standard again is under 3130.
2 I think the standard has been met.

3 Essentially, the extension request
4 has been served on all parties which in this
5 case, I believe, has just been ANC.

6 There has been no substantial
7 change to the material facts that the Board
8 relied on to make its original decision and
9 the Applicant has demonstrated that there is
10 good cause for the extension and has submitted
11 substantial evidence as required under 3130.6
12 by way of a sworn affidavit which is in our
13 Exhibit Number 53 at Attachment B. Again, a
14 sworn affidavit from Robert Moore from
15 Georgetown Strategic Capital.

16 So, with that, Madam Chair, if it's
17 appropriate at this time, I can make a motion.

18 CHAIRPERSON MOLDENHAUER: I just
19 wanted to add --

20 VICE CHAIRMAN DETTMAN: Certainly.

21 CHAIRPERSON MOLDENHAUER: -- one
22 point, one thought. It seems like the

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1 Applicant actually also served Phyllis Kline
2 who was originally a party in opposition, but
3 then changed to a party in support while it
4 was a summary order. It seems like under an
5 abundance of caution they did serve him as
6 well which is very positive and I like to see
7 that. So, I just wanted to make sure that was
8 on the record.

9 And then I think a motion will be
10 appropriate.

11 VICE CHAIRMAN DETTMAN: Thank you.

12 I move for approval of Application Number
13 17831 to permit the extension of a Board order
14 for a period of two years.

15 CHAIRPERSON MOLDENHAUER: Motion's
16 been made. Is there a second?

17 MEMBER SORG: I second.

18 CHAIRPERSON MOLDENHAUER: A
19 motion's been made and seconded. All those in
20 favor say aye.

21 (Ayes.)

22 CHAIRPERSON MOLDENHAUER: Ms. Rose,

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1 will you please now read back the vote?

2 MS. ROSE: Yes, staff will record
3 the vote as 3 to 0 to 2 to grant the motion
4 for an extension of the order with a motion by
5 Mr. Dettman, a second by Ms. Sorg with Ms.
6 Moldenhauer in support of the motion and no
7 other Board Members participating.

8 The next case is a motion to extend
9 the validity of the order in Application
10 Number 17792-A of Armenian Genocide Museum and
11 Memorial, Inc. pursuant to Section 3130 of the
12 Zoning Regulations. The original application
13 was approved on July 8, 2008 as follows:

14 Application Number 17792 of
15 Armenian Genocide Museum and Memorial, Inc.
16 pursuant to 11 DCMR 3104.1 for a special
17 exception from the rear yard requirement under
18 Subsection 774.2 to establish a museum and
19 memorial in the SHOP/C-4 District at 615 14th
20 Street, N.W., Square 253, Lot 67.

21 The application was heard and
22 decided on July 8, 2008. The final date of

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1 the summary date was also July 8, 2008.

2 On May 20th, 2010, the Applicant
3 filed a request for a two-year extension of
4 the validity of the order in Application
5 Number 17792 which will expire on July 8th,
6 2010, two years from the final date of the
7 order.

8 This request for extension is made
9 pursuant to Subsection 3130.6 of the Zoning
10 Regulations which permits the Board to grant a
11 two-year extension of the time period set
12 forth in Subsection 3130.1 for good cause
13 shown.

14 This request was timely filed
15 consistent with and pursuant to Subsection
16 3130.9.

17 The request for extension was
18 served on all the parties and ANC-2F which was
19 essentially the only party to the case did not
20 file a response.

21 However, the Office of Planning
22 filed a memorandum related to the Applicant's

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1 request. This is at Exhibit 34.

2 The Board Members participating in
3 this matter are Ms. Moldenhauer, Mr. Dettman,
4 Ms. Sorg and Mr. Turnbull.

5 The matter is before you for a
6 decision.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much. At this time, I'll turn again to
9 Mr. Dettman to start us off.

10 VICE CHAIRMAN DETTMAN: Even
11 quicker than the other two. I think the
12 standard of 3130 has been met. The Applicant
13 has submitted a request to extend the order
14 two years under 3130.6.

15 As Ms. Rose has indicated, the
16 request has been submitted to the ANC which is
17 the only party to the case.

18 There's been no substantial change
19 in the plans or the material facts that the
20 Board has relied upon and finally, under
21 3130.6(c), the Applicant has submitted
22 substantial evidence demonstrating that

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1 there's been cause for such extension.

2 Essentially, the inability to obtain
3 project financing probably because of the
4 economic climate, but also in part due to some
5 pending litigation that the Applicant is
6 tending to and a reluctance by major financial
7 donors to support the project while that
8 litigation is pending.

9 So, as noted, the Office of
10 Planning has submitted a nice summary of the
11 request. That's our Exhibit 34.

12 We do have a sworn affidavit from a
13 representative of the Armenian Genocide Museum
14 and Memorial, a Mr. Van Krikorian, which is at
15 Exhibit 33, Attachment E and I think that
16 supports the requirement under 3130.6(c).

17 So, with that, Madam Chair, I can
18 make a motion if there's nothing further.

19 CHAIRPERSON MOLDENHAUER: Yes, a
20 motion would be in order.

21 VICE CHAIRMAN DETTMAN: Move for
22 approval of Application 17792 to extend the

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1 order for a period of two years.

2 CHAIRPERSON MOLDENHAUER: The
3 motion's been made. Is there a second? I
4 will second.

5 CHAIRPERSON MOLDENHAUER: Motion is
6 made and seconded. All those in favor say
7 aye.

8 (Ayes.)

9 MS. ROSE: Staff will record the
10 vote as 4 to 0 to 1, let's see, to grant the
11 motion for extension of the order with the
12 motion by Mr. Dettman, second by Ms.
13 Moldenhauer with Ms. Sorg in support of the
14 motion. Mr. Turnbull will be voting to grant
15 the request by absentee vote and no other
16 Board Members participating.

17 The last matter is a motion for
18 modification of approved plans of Application
19 Number 17936-A of New York University pursuant
20 to Section 3129 of the Zoning Regulations.
21 The original application was pursuant to 11
22 DCMR 3103.2 for a variance from the lot

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1 occupancy requirements under Section 772, a
2 variance from the off-street parking
3 requirements under Subsection 2101.1 and a
4 variance from the loading requirements under
5 Subsection 2201, to allow the construction of
6 a nine-story dormitory/academic center
7 building in the DD/C-2-C District at premises
8 1307-1311 L Street, N.W., Square 247, Lot 103.

9 Staff notes that the Applicant also
10 requested processing under the expedited
11 review. However, Section 3118 only applies to
12 eligible applications for relief from Sections
13 223 and 209.1 pursuant to 3118.1.

14 The original application was heard
15 and decided on June 23rd, 2009 and the final
16 summary order was dated June 29th, 2009.

17 On May 18th, 2010, the Applicant
18 filed a motion for minor modification of
19 approved plans pursuant to Section 3129 of the
20 Zoning Regulations. This is Exhibit 33. This
21 motion was filed within the two-year period
22 after the final date of the order which was

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1 due to expire on June 29th, 2011.

2 The record indicates that the
3 motion was served on ANC-2F the only party to
4 the original application. There has been no
5 response to the motion from ANC-2F.

6 The Board Members participating in
7 this matter are Ms. Moldenhauer, Mr. Dettman
8 and Ms. Sorg.

9 And the motion is before you for a
10 decision.

11 CHAIRPERSON MOLDENHAUER: Thank you
12 very much, Ms. Rose. Mr. Dettman, would you
13 like to walk us through the merits of the
14 motion.

15 VICE CHAIRMAN DETTMAN: The request
16 for modification of approved plans comes to
17 the Board pursuant to Section 3129 of the
18 Zoning regulations.

19 The request is to modify the plans
20 so that the Applicant can construct a green
21 roof at the rear of the building at the ground
22 level above the loading area. I believe

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1 originally the loading area was open air along
2 the abutting alley, the 30-foot alley and now,
3 they want to cover that with a green roof and
4 according to the Applicant, it will permit the
5 Applicant NYU to achieve all its stormwater
6 management through green roof collection and
7 filtration and the modified plans are attached
8 to Exhibit Number 33 showing the green roof at
9 the north side of the property.

10 Under 3129, this request needs to
11 be submitted not later than two years after
12 the date of the final order approving the
13 application and it was. The Board issued its
14 decision on June 23rd, 2009 and this
15 application was received on May 18th by the
16 Office of Zoning.

17 Furthermore, I think modification
18 is minor. It does not give rise to any new or
19 extended areas of relief.

20 The Applicant does state that or
21 does include in their Exhibit Number 33
22 revised FAR calculations which show that they

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1 continue to fall within the allowable FAR
2 limits of the underlying zone and furthermore
3 states that according to the Zoning
4 Administrator, the building even with the
5 proposed green roof will conform to the rear
6 yard requirements because the building abuts
7 an alley and the underlying C-2-C zone permits
8 measure from the center line to the rear alley
9 for the first 20 feet in height.

10 So, with that, Madam Chair, I think
11 the standard on the 3129 has been met and I am
12 in support of the application.

13 CHAIRPERSON MOLDENHAUER: Thank
14 you, Mr. Dettman. I agree and I think that
15 the standard has been met. This is a very
16 minor modification plan.

17 I think if you are prepared for a
18 motion, please move forward.

19 VICE CHAIRMAN DETTMAN: Okay. I
20 would move for approval of Application Number
21 17936 for a minor modification to approved
22 plans submitted by the Applicant NYU for the

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1 construction of a dorm/office building located
2 at -- where are we here?

3 CHAIRPERSON MOLDENHAUER: Thirteen
4 Zero Seven to 1311 L Street, N.W.

5 VICE CHAIRMAN DETTMAN: Thank you,
6 Madam Chair.

7 CHAIRPERSON MOLDENHAUER: A motion
8 has been made. I will second. A motion's
9 been made and seconded. All those in favor
10 say aye.

11 (Ayes.)

12 CHAIRPERSON MOLDENHAUER: Ms. Rose,
13 will you read back the votes?

14 MS. ROSE: Yes, staff will record
15 the vote as 3 to 0 to 2 to grant the motion
16 for modification of the approved plans with
17 Mr. Dettman making the motion, Ms. Moldenhauer
18 seconding and Mr. Sorg in support of the
19 motion. No other Board Members participating.

20 CHAIRPERSON MOLDENHAUER: Thank you
21 very much.

22 I think that that concludes our

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1 public hearing and we will then enter into our
2 morning session.

3 (Whereupon, the meeting was
4 concluded at 10:14 a.m.)
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