

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

JANUARY 7, 2014

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The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:40 a.m., Lloyd J. Jordan, Chairperson, presiding.

The transcript constitutes the minutes from the Public Meeting held on January 7, 2014.

Reported by Daniel Michon

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice-Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commission Member (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR  
STEPHEN MORDFIN  
MAXINE BROWN-ROBERTS  
MATT JESICK  
ARTHUR JACKSON

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

9:40 a.m.

CHAIRMAN JORDAN: All right,  
let's come to order, please.

Good morning, ladies and  
gentlemen. We're located at the Jerrily R.  
Kress Memorial Hearing Room at 441 4<sup>th</sup>  
Street, Northwest. Today's date is January  
7, 2014.

We're here for a Public Meeting  
and Public Hearing of the Board of Zoning  
Adjustment of the District of Columbia.

My name is Lloyd Jordan,  
Chairperson. To my right is S. Kathryn  
Allen Vice Chair and to her right is Jeffery  
Hinkle, Member of the Board.

To my left is also Peter May, a  
Member of the Zoning Commission, sitting  
with the Board today.

Please be advised that this  
meeting and hearing are being recorded by a  
Court Reporter, sitting to my right, and is  
also being web-cast live.

So, therefore, I'm going to ask

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you to refrain from any disruptive noises here in the hearing room today.

So, this will be a good time to silence cell phones and other things, if you would.

The Board's hearing procedures are contained in the document to the door, to my left in the back. If you need to familiarize yourself with how we operate here at the Board, please be sure to get that document.

Additionally, if you're going to provide any testimony or a statement or present any evidence to the Board today, I'm going to need you to do two things.

If you're going to present any testimony or a statement to the Board, I'm going to need you to do two things.

The first is, I'm going to need you to complete -- each person, I'm going to say it again, each person has to complete two witness cards. Each person has to complete two witness cards and prior to their testimony or giving a statement, please be sure to give that -- those two

witness cards to the Court Reporter sitting to my right.

The second thing I'm going to need you to do -- let me go back to the cards again, because we --

Prior to your testimony, please complete two witness cards and give them to the Court Reporter sitting to my right, each person who is going to testify or provide a statement.

The second thing I'm going to need you to do is to stand and take an oath or affirmation, which will be given by Mr. Moy, the Board Secretary.

So, if you plan to provide any statement or give any testimony here before the Board today, I'm going to ask you to stand now, and take the oath or affirmation being given by Mr. Moy.

(Whereupon, Witnesses were sworn en masse.)

CHAIRMAN JORDAN: Please be seated. Okay, we have some preliminary matters that we need to handle, which should just take a moment to do so.

Mr. Moy, is there any announcements that we need to make?

MR. MOY: Yes, sir. There are some announcements for the record.

With regards to the docket for today, the application for a decision, which is Application No. 18635 of Gary McNaughton, that application has been withdrawn by the Applicant, number one.

Number two, application for a Public Hearing 18685, this is the Polinger Shannon & Luchs case, that application has been, at the Applicant's request and granted by the Board, postponed to a public hearing for February 25<sup>th</sup>.

The third, finally the Application No. 18683 of Holy Name Parish for public hearing, that application -- request for a postponement and granted by the Board, is now scheduled for January 29<sup>th</sup>, which is a Wednesday hearing.

Finally, also Mr. Chairman, there are preliminary matters with two applications, where there are requests for a party status.

One is to Application No. 18638 of Rosebusch. The other is to 18686 of Toor.

CHAIRMAN JORDAN: Okay, let me have a representative on Case 18686 of the Applicant, 18686. If someone would just come forward on 18686, the Applicant or whoever is representing the Applicant in that matter.

Good morning. Make sure your microphone is turned on for me, please.

Would you please state your name for the record?

MR. MOBLEY: My name is Clarence Mobley, 1600 Monroe Street, Northeast.

CHAIRMAN JORDAN: And Mr. Mobley, do we have in the file, an authorization of representation? Do we have that?

MR. MOBLEY: Yes, I have it.

CHAIRMAN JORDAN: And the reason why I asked you to come forward, we have -- the Board is a bit confused, at least I'm a bit confused, speaking for the Board.

We received some type of letter from a Vid Gupta, who said that the

Applicant or the principal in the case is traveling and wanted to reschedule this. Are you aware of that?

MR. MOBLEY: Yes, he's out of town, but he gave me permission before he left to go out of town, to speak on his behalf.

He is in India at this time, and he didn't know that the case would come up.

CHAIRMAN JORDAN: So, you're ready to proceed then?

MR. MOBLEY: But I'm ready to speak on his behalf.

CHAIRMAN JORDAN: So, you're ready to proceed?

MR. MOBLEY: Ready to proceed, yes, sir.

CHAIRMAN JORDAN: Okay, got it. Thank you. That's all we need to know, because we have a letter that is a request for postponement, and we know it didn't come from you or the Applicant, but we knew that you were representing the Applicant. So, we had to find out where we were on the matter. Appreciate it.

MR. MOBLEY: Thank you, sir.

CHAIRMAN JORDAN: We'll get to that. All right, now I'm going to ask for a representative on 18638, and the person requesting -- and the organization requesting party status on 18638, just a representative of each, to come forward.

All right, would you please identify yourselves?

MS. BROWN: Good morning, Mr. Chairman. Carolyn Brown with Holland & Knight on behalf of the Applicant.

MR. SULLIVAN: Good morning, Mr. Chairman. Marty Sullivan of Sullivan & Barros, on behalf of the Metropole Condominium Association.

MR. JETMUND: Jack Jetmund, Board Member of the Metropole.

CHAIRMAN JORDAN: Well, good morning. As your Counsel knows, or Counsel knows, we generally request that the parties or parties statuses are more likely to be granted and we're more likely to grant party status here, on the party status request that you've conferred and have conference

prior to your case being called, to see if you can work out some differences.

I know you may have had some preliminary conversations before, but some kind of way, this room becomes very magical when people who have even had discussions long before coming here, that it gets worked out.

As I always say, it's easier or better for people to work their own agreement out, instead of having us to mediate or make a decision that someone is not going to like.

But that's our job. We don't mind doing it, but at least we want you to take the opportunity while you're here, to have conversations.

So, I know Counsel is aware of that process that we've been invoking, and it's been working out pretty well.

So, we're going to ask you to do that and report back to us, all right?  
Thank you.

Okay, thank you. So, again, I'm going to need a representative on 18686 and

the party seeking party status on 18686 to come forward. I think that's kind of a joint group of Rodgers Brother's Service & Innovative Recycler's.

Just a representative, please come to the table, and the representative of the Applicant, Mr. Mobley.

Identify yourselves again, for the record, Mr. Mobley.

MR. MOBLEY: Clarence Mobley, for the record, representing Mr. Toor.

CHAIRMAN JORDAN: And you are?

MR. RODGERS: I'm George Rodgers.

CHAIRMAN JORDAN: Let's make sure your microphone is on, please. It's the long thing, and push the button and see if - - so it can go to green.

MR. RODGERS: Yes, thank you.

CHAIRMAN JORDAN: There you are. Thank you.

MR. RODGERS: George Rodgers, Junior, representing adjacent property owners Innovative Recycler's, Incorporated and the business operations of Rodgers Brothers Service, as well as Innovative.

CHAIRMAN JORDAN: Thank you. You may have heard our earlier discussion about party status and conversations with Applicants and so, I'm going to ask the two of you to meet.

It's more than likely that we would grant party status to Rodgers Brothers Service and the combined group, Rodgers Services -- Brothers Service and Innovative Recycler's, Mr. Mobley.

So, I'm going to ask both of you to have conference here in the hall, prior to your case being called, and see if you can work out any differences, if you can. If you can't, then, you know, we'll come back and have the hearing, okay?

MR. RODGERS: Yes.

CHAIRMAN JORDAN: Real good. Thank you. Mr. Moy, does that handle all of my party status?

MR. MOY: I believe so.

CHAIRMAN JORDAN: Okay, then you want to call our first public meeting case?

MR. MOY: Yes, sir. That would be the -- before the Board, a Motion for

Reconsideration and Rehearing of Appeal No.  
18429-A of Edward V. Hanlon.

The Appellant filed a timely Motion for Reconsideration on December 16, 2013 and that document is in your case folders, identified as Exhibit-53 and 54.

There are two responses to the motion, one from the Appellee DCRA and from the property owner, Exhibit-55 and 56 respectively.

Finally, Mr. Chairman, there is a preliminary matter in that the Appellant also filed addition Motion to Waive the time to submit additional information and that document is dated January 2<sup>nd</sup>, 2014.

CHAIRMAN JORDAN: Let me see what was submitted, if I could, Mr. Moy.

I'm inclined to deny the request for leave to file additional matters.

I think my review of the documents kind of rehashes the same thing that's been previously filed in the Motion to Rehear, but I'm going to let the Board take a look at it, and see if they see any reason to grant that.

Okay, if there is no disagreement or an objection, I'm going to rule that that filing is out of time and not accepted into the record.

MR. MOY: Yes, sir. Thank you, sir.

CHAIRMAN JORDAN: We have before us, Board, a Motion to Reconsider and Rehearing filed in this matter. Is the Board ready to deliberate?

VICE CHAIRMAN ALLEN: Yes, Mr. Chairman.

CHAIRMAN JORDAN: Okay, in reviewing the Motion for Reconsideration, I don't see any reason or basis to grant the Motion to Reconsider.

There was no -- there was nothing highlighted as required by the regulation 3126.4, where the Board erred in its decision, its earlier decision.

Similarly, I would move that we would certainly also grant -- excuse me, deny the Motion to Rehear the case.

I understand what the Applicant has here and -- but it's now a position of

enforcement and it's not what the Board does on its own.

However, the remedy for the Applicant would be, at this point, to seek enforcement by DCRA regarding whether or not that's structured.

What we have here is a situation where the Applicant in the case, after the Board's hearing, completed construction and that the construction doesn't meet the construction plans or the guidelines, as alleged in the Zoning Regulations, which if it's true, is a problem, but it's not what the Board does.

It does not affect what we did on the hearing that granted the initial relief, but it goes to the enforcement, and so, that's why the Office of DCRA has the enforcement power to deal with this issue and they can -- there is a lot of remedies that they can do, and if the bodies come back on appeal of the decision of the Zoning Administrator, whether or not the Zoning Administrator accepts it as in violation of the Zoning Regulation or not, it's for the

Zoning Administrator to deal with.

But it doesn't arise out of our hearing, as the previous hearing on the matter for it.

So, that's why I would move that we deny the Motion for Rehearing and Reconsideration. Any other --

VICE CHAIRMAN ALLEN: Second.

CHAIRMAN JORDAN: Motion made and seconded. Discussion? Mr. Hinkle?

MEMBER HINKLE: Yes, thank you, Mr. Chair. I just tend to agree. In terms of the Motion for Rehearing, I didn't see any new evidence for us to consider in the documents that were submitted.

Likewise, you know, there was quite a lot of evidence that was submitted in the original appeal, in terms of -- for the Board to consider, and I think we made the correct decision at that point, in terms of, you know, the deck is not being covered and doesn't create the new interior space.

So, I support the Motion, too.

CHAIRMAN JORDAN: Okay, Sally?

VICE CHAIRMAN ALLEN: Mr.

Chairman, thank you. For the record, I have reviewed the case file and looked at all of the previous hearings prior to my being on the Board.

CHAIRMAN JORDAN: Very good.

Yes, I think if -- I think that -- you know, it's unfortunate that -- if that's what happened, that the property owner -- if the property owner did do some building outside of what the requirements were, and after we had granted authority, but I certainly then would encourage anybody that's grieved by that to certainly apply for enforcement at DCRA, and then if that decision is not right by DCRA, they're always welcome to come back here. Welcome, yes, always welcome to come back here.

So, with that, all those in favor of the motion signify by saying 'aye'.

ALL: Aye.

CHAIRMAN JORDAN: Those opposed, 'nay'. The motion -- well, we have an absentee ballot?

MR. MOY: Yes, sir. We do have an absentee ballot form a participant on

this application, on this motion, that is from Mr. Robert Miller, and his absentee ballot vote is to deny the motion, the request for reconsideration.

So, that would give a final vote, Mr. Chairman, of 4 to 0.

CHAIRMAN JORDAN: All right, so, the motion passes.

MR. MOY: Motion passes on the Motion of Chairman Jordan, seconded by Ms. Vice Chairperson Allen, also support Mr. Hinkle and of course, Mr. Miller and we have a fourth seat vacant.

CHAIRMAN JORDAN: All right, thank you. Then that would conclude that matter.

(Whereupon, the above-entitled meeting concluded at approximately 10:00 a.m.)