

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 4, 2014

+ + + + +

The Regular Public Meeting
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
STEPHEN VARGA, Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on
February 4, 2014.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

9:51 a.m.

BZA CHAIR JORDAN: Okay. Let's go ahead and begin. I'm sorry for the little delay. We had some technical difficulties.

The hearing and meeting please come to order.

Good morning, ladies and gentlemen. We're here at 441 4th Street, N.W. at the Jerrily R. Kress Memorial Hearing Room, and we're here for the meeting of the Board of Zoning Adjustment of the District of Columbia.

Today is February 4th, 2014 and my name is Lloyd Jordan, Chairperson. To my left is Michael Turnbull, a member of the Zoning Commission, sitting in on the Board today. To the right of me is S. Kathryn Allen, Vice-Chair of the Board. And to her right, Jeffrey Hinkle, Board Member.

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Please be advised that today's proceedings are being Web cast live and also being recorded by a court reporter, so therefore I'm going to ask you to refrain from any disruptive noises here in the hearing room today. This would be a good time to turn off telephones. Again, a good time to turn off telephones.

The Board's hearing procedures and method of processing is contained in a document to the back door to my left, so if you're not familiar with how the Board operates, please feel free to get the document, read it and learn how we operate here at the Board.

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If you're going to provide any testimony and/or statement to the Board today, I'm going to need you to do two things: So if you're going to provide any testimony or statement to the Board today, I'm going to need you to do two things: I'm going to need you first to complete two witness cards per person. Two witness cards per person. And give them to the court reporter prior to you testifying. The court reporter is sitting to my right. So that's two witness cards per person and give them to the court reporter prior to testifying or providing your statement to the Board.

The second thing I'm going to need you to do, I'm going to need you to stand now and take the oath of affirmation which is going to be given by the Board's secretary, Mr. Moy. So if you're going to provide any testimony and/or statement to the Board, please rise and --

MR. MOY: Thank you, Mr.
Chairman.
Good morning.

BZA CHAIR JORDAN: Counsel
doesn't have to.

(Whereupon, the witnesses were
sworn.)

MR. MOY: Ladies and gentlemen,
you may consider yourselves under oath.

BZA CHAIR JORDAN: All right. We
have an interesting full day today. And
let's handle some preliminary matters.

Mr. Moy, are there matters that
we need to announce that are off the docket
before I go through --

MR. MOY: Yes, we do, Mr.
Chairman. This is very quick this morning
on this docket.

For the record, Application No.
18699 is the application JK Enterprises.
This application has been postponed for a
hearing on March 18th, 2014.

My only other announcement for
the Board is that, Mr. Chairman, Application
No. 18702 of View 14 Investments, that there
is a party status in that case.

BZA CHAIR JORDAN: On the 18702?

MR. MOY: That's correct.

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BZA CHAIR JORDAN: I am going to ask for a representative on Case 18702 of the Applicant, a representative of the Applicant, and a representative of the potential party status come forward.

First of all, we've got your briefs and your memoranda regarding party status, but let me have you identify yourselves, please, for the record.

MR. SULLIVAN: Good morning, Mr. Chairman, and members of the Board. My name is Marty Sullivan of the law firm of Sullivan & Barrows here on behalf of the party status upon an applicant.

MS. BATTIES: Leila Batties with the law firm of Holland and Knight here on part of View 14 Investments, LCC, the applicant.

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BZA CHAIR JORDAN: As you two know, I normally have the applicant and parties in opposition meet and have a conference to see if they can resolve any issues prior to the Board calling for a hearing. So I'm going to request that. But I also want to deal with -- there's a motion for party status provided by the concerned citizens as it's made up of 11 persons. And late yesterday, we received an opposition statement from the applicant to the party status.

I'm inclined at this point to deny the -- to allow the concerned citizens as parties in this matter and to deny any opposition which will rule in opposition to that. So based upon what's been filed, is the Board okay with that? Any issues? Then we'll do that by consent.

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We will grant the party status to the concerned citizens and I'm going to ask the representatives or the parties to meet, as you know how we process, and come back by the time your case is called and really have some serious discussion. As you know, especially the two of you have been here many times, you know we actually get things done this way. And for those in attendance who are not familiar with the process, it's been very successful for us having parties and applicants having conversations. And sometimes we've had what was it, 12 different party status and you wouldn't believe that it actually got worked out in the hallway. So I'm going to ask you to do it, have that conversation. Have serious conversation. Thank you. Appreciate.

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Okay. There's one other announcement we have regarding 18031, the appeal of the West End Citizens Association on remand. Board is going to hold its decision until next Tuesday, so we put it on the docket for next Tuesday. 18031, the appeal of West End Citizens Association. So that will be on the docket for the Board's meeting next Tuesday.

MR. MOY: All right. Thank you, sir.

BZA CHAIR JORDAN: We are meeting next Tuesday, not Wednesday, right?

MR. MOY: That's correct.

BZA CHAIR JORDAN: All right. On the 9:30 docket. So is there any other announcements that we have to make?

MR. MOY: If there's anything else, we can do that on a case-by-case basis I believe.

BZA CHAIR JORDAN: Okay. Mr. Moy, would you call 696, please?

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MR. MOY: Yes, the case for a decision applies to Order No. 17696. This is a motion by the applicant for a third time extension, but for one year. This is of Liberty Property Trust, formerly Hines VAFII 2100 M Street, LP.

The applicant filed and their request is identified under Exhibit 44. There is one other filing and it's from the Office of Planning under Exhibit 45. And I believe that completes what I have to say, Mr. Chairman.

BZA CHAIR JORDAN: All right.
Thank you, Mr. Moy.

Is the Board ready to deliberate on 17696-B? Yes, I believe so. Okay. As indicated, this is a matter for an additional extension of time request. Does anyone have anything they want to say about this particular matter? Anyone? Mr. Turnbull?

COMMISSIONER TURNBULL: Mr.

Chair, yes, I guess I'll start us off and maybe it will bring up some things that just struck me. I mean usually I'm not too concerned about an extension, especially for a year, although this is the third time.

What is troubling a little bit on this one is that there's been a change in ownership. And in reading through Exhibit No. 44, the applicant's submission, I'm a little concerned that although it talks about continuing the building's use an office complex with ground floor retail, they -- kind of a left-handed compliment to themselves to say the project has the potential to greatly improve the aesthetics of a prominent parcel.

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They argue that they've satisfied all the requirements needed for this. They talk about how the previous owner did the construction drawings and plan for the project leading up to the second extension. They talk about economic conditions. They go on to talk about, you know, the new owner. They talk about that the new owner - - the applicant who's got this before us, talks about that the owner's contract for engineering and architectural services for this. They're doing a study now on this, in Exhibit J of this. So they're going to demonstrate to see if what's done is viable. And they want to extend this.

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And if I go to Exhibit J and I look at the architectural contract, the study and their -- the project consists of an existing office building which will either be torn down or rebuilt or renovated and enlarged with additional floors. And I'm like this sounds like it could be a totally different project. And I'm like, so the previous owner got a BZA order with certain relief granted to it, but this applicant is coming forward and saying, well, we might not do that. We could be doing something totally different. And the relief granted in the previous order for this property was based upon certain drawings that the Board reviewed, and with OP's report at the time, said, yes, there is a hardship. There's a difficulty. We're going to grant the relief.

If this was going to be the same project, I might not have an issue. But I'm concerned that we're granting relief for an extension for something that could end up being something totally different. So those are my concerns right now.

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BZA CHAIR JORDAN: Yes, and I agree with you. This is one that's certainly on the borderline for me. Let me say this for the record: In 2012 the Zoning Commission due to the kind of activity and the need, what the economic level was in the country and the real estate aspect in the country and the financing, we were receiving a lot of requests for additional extension beyond what the Section 3130 of the regs allowed for the one-time extension. So we were getting a lot of them. So it kind of became ministerial in some extent and people for good cause were showing why that getting one extension -- why they should be allowed to get a second extension. So the Zoning Commission kind of removed the -- they actually removed the one-time extension.

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That being said, maybe exactly what Case 1211. That being said, it doesn't mean that people can have, an applicant can have unlimited time and multiple requests for extensions. This is one which becomes borderline for me also, Mr. Turnbull, because it could be a whole new project. We're still holding a placeholder. Is this just an attempt to raise value for the property when some applicants come in and they don't get the project done and they ask for an extension? Now they've gotten an increase in zoning relief and now does it become a new marketable aspect for them to raise revenue and sell the property? So I'm with you on that and I'm still just kind of pondering.

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I do believe that we do give deference to Office of Planning, and Office of Planning has made a recommendation that they believe this should be granted this one time. And it's just for one year. It's not going to be a two-year extension. And based upon the recommendation of the Office of Planning and the fact that this is a one-year extension; and trust me, we're not going to do this again, that -- because I think I should be allowed a year, that we would go ahead and grant this based upon the fact there's a change of ownership. They're still looking at the financial arrangement. There has been some previous work and activity done by the prior owner trying to seek financing. Had some difficulties and actually had some plans that were drawn and then there was some other bureaucratic things that went on. So I'm inclined to grant the one year extension, but just not happy in doing so.

Anybody else?

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VICE CHAIR ALLEN: Thank you, Mr. Chairman. I would echo Mr. Turnbull's sentiments. I have been uncomfortable about this, having read through their docket. I would support your motion, if it is a motion, Mr. Chairman, however with the very clear caveat that this is based on what the Board has approved, period. And, you know, not this whole beyond the -- whatever it is that they had put in their submission. So we're extending it based on what was approved prior.

BZA CHAIR JORDAN: Yes.

VICE CHAIR ALLEN: And if they need to come back, they need to come back. But only on that basis would I be willing to support this.

BZA CHAIR JORDAN: Mr. Hinkle, anything?

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MEMBER HINKLE: No, I think I can support a motion for the one-year extension. You know, one of the factors that I'm thinking of is there's a new owner in this and with the purchase of the property they also purchased the Board's approval, so I would echo Ms. Allen's comments in terms of this being specific to what the Board has approved.

BZA CHAIR JORDAN: Yes, the extension only provides that which -- the relief we've given based upon the plans that's submitted. So if the plans are altered more than a minimum modification, then they still have to come back before this Board if they try to make any other changes, because the relief is the relief that's granted by this Board at that particular time. And if someone does something outside of that, then they're doing it at their own peril.

So I would move that we grant the one-year extension.

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COMMISSIONER TURNBULL: I don't mean to interrupt you, but then I could concur with the rest of you on this except I think it has to be very crystal clear in the order that it is based upon the previous architectural -- the drawings that were submitted. And again, if there is significant change; this is a major modification, it would have to come before the Board.

BZA CHAIR JORDAN: So I would move that we grant the one-year extension with those particular caveats as explained by the Board and that we actually make sure that our order and extension provide those conditions, that it's based upon this one-year extension and any changes to any plans certainly have to follow the Zoning Regulations, meaning that they have to come back to this Board with any change.

VICE CHAIR ALLEN: Second.

BZA CHAIR JORDAN: Motion made and seconded. Any additional unreadiness?

(No audible response.)

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BZA CHAIR JORDAN: All those in favor of the motion, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Those opposed, nay?

(No audible response.)

BZA CHAIR JORDAN: The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4-0. This is on the motion of Chairman Jordan to grant the request of the applicant for a one-year extension. Seconding the motion, Vice-Chairperson Allen. Also in support Mr. Michael Turnbull and Mr. Jeffrey Hinkle. We have a Board seat vacant. Motion carries on a vote of 4-0.

BZA CHAIR JORDAN: Great. Well, as long as the order maintains what we talked about.

MR. MOY: That will be taken care of, Mr. Chairman.

BZA CHAIR JORDAN: Very good. Thank you, Mr. Moy. Thank you, Board.

Let's call 18681.

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MR. MOY: Next application for a decision before the Board is a request for a motion for reconsideration and rehearing of Application No. 18681 of Shirley H. Cox. This also includes a waiver of time requirement for the filing for the request, Mr. Chairman. That's under your Exhibit No. 30 in your case folders. There is a response in opposition to that filing from the property owner, and that's under Exhibit 33. That completes the staff's briefing.

BZA CHAIR JORDAN: All right.

Thank you. Is the Board ready to deliberate on 18681?

(No audible response.)

BZA CHAIR JORDAN: All right.

This is one that troubles me. Yes, Kathryn?

VICE CHAIR ALLEN: I'm sorry, Mr. Chairman. I just wanted to state for the record that I did not sit on this original hearing, but I have reviewed the record.

BZA CHAIR JORDAN: Okay. Thank you.

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This is one where -- it's a motion to -- we already had this hearing, and this thing has been going through the whole process. We have a motion to file out of time, a motion for rehearing and reconsideration without any justification for why that motion was late. As they're filing for rehearing and reconsideration, it says, well, they couldn't attend the hearing, didn't file anything in regards to the matter because it was snowing and that they had some disorganization with the ANC.

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I want to give all deference we can to the ANCs because I believe as volunteers and people in the community, that they work hard and they might miss some deadlines, but the problem is we already had this hearing, rendered a decision in this matter and it sets a ugly precedent in my view. I do not believe that the motion to file out of time shows adequate -- that there's prejudice to the applicant and I don't believe there was a justifiable excuse in that. And going further, I do not -- in rehearing there was no issue properly raised that why the Board should rehear in accordance to the regulations. There was no errors cited in regards to the reconsideration. There was no new evidence presented regarding the rehearing. And so I would just overall deny -- it will be my intent to deny both motions requested.

Anyone?

VICE CHAIR ALLEN: Second.

BZA CHAIR JORDAN: All right.

Well, I'll make a motion that we deny it.

VICE CHAIR ALLEN: Second.

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BZA CHAIR JORDAN: All right.
It's seconded it again, so we're good.

Any further discussion?

(No audible response.)

BZA CHAIR JORDAN: All those in
favor of the motion, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Those opposed,
nay?

(No audible response.)

BZA CHAIR JORDAN: The motion
carries. Mr. Moy?

MR. MOY: Staff would record the
vote as 4-0. This is on the motion of
Chairman Jordan to deny the two motions.
Seconding the motion, Vice-Chairperson
Allen. Also in support, Mr. Turnbull and
Mr. Hinkle. We have a Board seat vacant.
Motion carries 4-0.

BZA CHAIR JORDAN: Very good.
We're about to do a personnel shift, thank
you, before we start our hearing for the
day.

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As you know, one member of the Zoning Commission is required to be a member of the Board of Zoning for particular hearings besides holding their regular meetings. Like last night, they met and they'll be back Tuesday. But we really appreciate them taking their time and effort, although it's required by law, but it's a big burden on them.

And Mr. Turnbull was on those earlier hearings on another date, so he just came in for the decision in which he participated. And Mr. Hood, Anthony Hood, who's the Chairman of the Zoning Commission, has joined us for the new hearings for today. So just for those who are not familiar how the Zoning Commission and the Board of Zoning Adjustment operate, I wanted you to understand that.

So while Mr. Hood is getting ready, let's call 18697, please.

Oh, no, I'm sorry. No, no, I'm sorry, Cliff. Mr. Moy. We got to do 18664. Thank you, Ms. Allen.

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MR. MOY: Yes. Yes. Okay. This is the last --

BZA CHAIR JORDAN: That's the decision case.

MR. MOY: That's correct. This will be the last decision case for the Board before moving to the open hearing on new applications.

This is appeal No. 18664 of Charles Parsons. And this is the appeal of a decision by the Zoning Administrator to permit the construction of an addition at 117 C Street, S.E.

The Board completed public testimony, closed the record and scheduled its decision for today, February 4th, and that was on December 3rd. The Board did not request any additional information. The Board's is to act on the merits of the appeal.

BZA CHAIR JORDAN: Okay. All right. The Board ready to deliberate on this matter?

(No audible response.)

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BZA CHAIR JORDAN: This case is one where there's actually three issues arising out of -- well, there was a question about the timeliness of filing the appeal, whether or not the back door is actually -- or the main floor and whether or not there's a meaningful connection.

We held a hearing and there was a lot of back and forth on this matter. But regarding the timeliness issue, I believe that it was timely filed. The appeal was filed September 5th, 2013. And the first time that the appellant learned of this matter was the end of July, first of August 2013 when they saw the dumpster. So I would think that this clearly is within our 60-day time frame for filing an appeal.

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Additionally, communication to the first floor: The argument that was made by the appellant was that this is not the principal entrance and the principal entrance has to be on the front of the house. There's nothing in the Zoning Regulations that says that. It says the principal entrance. And looking at what -- as we're required, because that's not defined by the Zoning Regulations. And if you look under the develop *Merriam-Webster Dictionary*, "main" means the chief part, the essential point. And the applicant, or the appellee had argued that simply because the garage is in the back, all our in and outs in the area is in the back, we use the back door coming off of the garage or the car area as our main essential entrance into the house.

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There was nothing that opposed that viewpoint. It was just an argument that "principal" meant front door. There's nothing in the zoning regs that requires it. It actually becomes what is the real use? And the use was shown that it is the door that's in the back.

Regarding meaningful communication, the Zoning Commission has dealt with that issue a couple of times, but more importantly in their case 08-34 in which they said a meaningful connection is one that the communication must create -- so it can create a single building. I think there's no question about the communication and the connection in this building. It does provide the guidance that allows this to be considered one building. And so there's nothing actually to the contrary. There's nothing to say that the Zoning Administrator acted unreasonably or in error of the Zoning Regulations. And based upon that, I believe that the appeal should be denied.

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VICE CHAIR ALLEN: I would second that, Mr. Chairman.

BZA CHAIR JORDAN: I'll make that a motion then. Motion made and seconded that the Board deny the appeal in 18664. Any additional discussion?

(No audible response.)

BZA CHAIR JORDAN: All those in favor, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Those opposed, nay?

(No audible response.)

BZA CHAIR JORDAN: The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4-0. This is on the motion of Chairman Jordan to deny the appeal. Seconding the motion, Vice-Chairperson Allen. Also in support, Mr. Anthony Hood and Mr. Jeffrey Hinkle. We have a Board seat vacant. Again, the motion carries on a vote of 4-0.

BZA CHAIR JORDAN: Thank you, Mr. Moy.

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(Whereupon, the hearing was
concluded at 10:19 a.m.)