

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MAY 20, 2014

The Regular 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 R. Jordan, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- LLOYD J. JORDAN Chairman
- S. KATHRYN ALLEN Vice Chair
- MARNIQUE HEATH Member
- JEFFREY HINKLE Member
- PETER MAY Member (Zoning Commission)
- SHANE DETTMAN (Alternate for Mr. Hinkle)

OFFICE OF THE ATTORNEY GENERAL:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

CLIFFORD MOY, Secretary to the Board
STEPHEN VARGA, Zoning Specialist
ALLISON MYERS
JOHN NYARKU

OFFICE OF PLANNING STAFF PRESENT:

ARANDICE ELLIOTT
PAUL GOLDSTEIN
ARTHUR JACKSON
KAREN THOMAS

The transcript constitutes the
minutes from the Regular Public Meeting held on
May 20, 2014

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

2 (9:39 a.m.)

3 CHAIRMAN JORDAN: Would this
4 meeting and hearing please come to order.

5 Good morning. We=re located in the
6 Jerrily R. Kress Memorial Hearing Room at 441
7 4th Street, N.W.

8 Today=s date is May 20th, 2014, and
9 we=re here for the meeting and hearing of the
10 Board of Zoning Adjustment in the District of
11 Columbia.

12 My name is Lloyd Jordan,
13 Chairperson. Immediately to my right--I can=t
14 remember who this person is now--S. Kathryn
15 Allen, a member of the Board, and to her right,
16 Jeffrey Hinkle, a member of the Board.

17 To my- left is Marnique Heath, a
18 member of the Board, and to her left is Peter
19 May, a member of the Zoning Commission.

20 Oh, I=m so sorry. She is
21 actually--S. Kathryn Allen is actually the Vice
22 Chair. When she=s here. No, she had to do some

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1 training, she had some extended work-related
2 training, that we missed her, and we=re so glad
3 you=re back.

4 Please be advised that today=s
5 proceedings are being Webcast live, and also
6 being recorded by a court reporter who is seated
7 to my right. So therefore I=m going t ask you
8 to refrain from any disruptive noises here in
9 the hearing room.

10 So it=s a good time, at this point,
11 to silence all the different devices. Some of
12 you have five or six devices that will ring. You
13 know, make sure you get them off, and so then
14 we can proceed.

15 Now if you=re going to provide any
16 testimony, or a statement to the Board today,
17 I=m going to need you to do two things.

18 I=m going to need you to do two
19 things, one of which is to prepare two witness
20 cards per person, and give them to the court
21 reporter prior to your testimony or your
22 statement. That=s two witness cards per person

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1 prior to you testifying or providing a
2 statement. And the second thing I'm going to
3 need you to do is if you would now stand and take
4 the oath, which will be given by the Board's
5 secretary, Mr. Moy.

6 [Witnesses sworn, en masse]

7 CHAIRMAN JORDAN: Okay. Thank you,
8 Mr. Moy. I know we have some housekeeping
9 things that we have to do today. So let's handle
10 the housekeeping, and we're going to--well,
11 just a moment. Just before we do that, is the
12 Applicant here for 18759? Okay. All right.

13 So we will, based upon the request
14 for postponement, and the reasons that they
15 submitted, I suggest we go ahead and grant that
16 postponement, that they have had conversations
17 with the ANC, and that they need to have further
18 meetings with the ANC, which we encourage
19 everyone to be in communications with the
20 relevant ANC, and have that discussion.

21 So unless the Board has any
22 objection, then we'll postpone this and move

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1 this to another date. Yes?

2 AUDIENCE MEMBER: I just had a
3 question. I brought a letter from one of the--my
4 neighbors, in opposition to--

5 CHAIRMAN JORDAN: What you can very
6 easily do is take it across the hall and file
7 it.

8 AUDIENCE MEMBER: Okay.

9 CHAIRMAN JORDAN: And then it will
10 be put in the record. And then we'll go over it.
11 We'll see it. Okay? Appreciate it. Thank you.

12 MR. MOY: Before we move to that,
13 Mr. Chairman, in terms of a future date for the
14 convenience of the Board, if the allowance is
15 for the Applicant to meet with the ANC, not
16 knowing their docket for the month of June, I'm
17 looking at, for the Board, either towards the
18 tail-end of June or early part of July. Those
19 last two dates in June, you have a very full
20 docket. Staff would recommend--

21 CHAIRMAN JORDAN: We're not
22 pressing on these dockets any more.

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1 MR. MOY: I understand.

2 CHAIRMAN JORDAN: Especially at
3 the request of the Applicants. They=re just
4 going to have to deal with the timeframes.

5 MR. MOY: I would suggest, then,
6 July 15.

7 CHAIRMAN JORDAN: Okay.

8 MR. MOY: That=s very good for the
9 Board.

10 CHAIRMAN JORDAN: All right. Then
11 it=s a good date.

12 MR. MOY: Thank you, sir.

13 CHAIRMAN JORDAN: Thank you.

14 MR. MOY: The only other notice for
15 the Board, and actually for the record, is that
16 on the docket, two cases, the Application No.
17 18731 has been withdrawn by the Applicant. The
18 second case, Application No. 18757 has been
19 postponed and rescheduled to June 3rd, 2014.
20 And that completes the staff=s briefing on
21 that, Mr. Chairman.

22 CHAIRMAN JORDAN: Okay. Then let=s

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1 roll in to our public meeting, and call the
2 first case, please.

3 MR. MOY: Okay. The first before
4 the Board will one application on the Expedited
5 Review Calendar, which is Application No. 18761
6 of Michael Knipe and Rosemary Harold. Again, as
7 the Board=s aware, the Expedited Review
8 Calendars are applications with requests for a
9 special exception under Section 223.

10 CHAIRMAN JORDAN: Thank you, Mr.
11 Moy. Did we get an ANC letter on this? I think
12 that=s the only thing that=s missing in his
13 file.

14 MR. MOY: No, sir.

15 CHAIRMAN JORDAN: Just the
16 application and the supporting documents, to
17 me, appear that it=s--qualifies this
18 application for the relief. I would recommend
19 to the Board that we approve this application.

20 Does the Board have any issues with
21 this one?

22 Mr. Hinkle?

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1 COMMISSIONER HEATH: No, Mr.
2 Chair. I think the proposed addition, you know,
3 essentially covers the same footprint as an
4 existing porch and laundry room, and so there=s
5 really, I don=t think, any impact to the
6 neighbors. But I wanted to state that I did
7 appreciate that the Applicant has worked with
8 the adjacent neighbors to gain their support.
9 And with that, I=ll second the motion.

10 CHAIRMAN JORDAN: Well, let me make
11 the motion. I move that we approve--it was my
12 error. I apologize. So we move it, and then
13 second. And I do also compliment the multiple
14 letters of support from the adjacent neighbors.

15 Any additional discussion?

16 [No response]

17 CHAIRMAN JORDAN: All those in
18 favor of the motion, signify by saying aye.

19 [Chorus of ayes]

20 CHAIRMAN JORDAN: Those opposed,
21 nay. The motion carries.

22 MR. MOY: Staff would record the

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1 vote--it=s five to zero. This is on the motion
2 of Chairman Jordan, second the motion, Mr.
3 Hinkle. Also in support, Mr. Peter May, Ms.
4 Health, Ms. Allen. And I think that gives me a
5 total of five. The motion carries, Mr.
6 Chairman.

7 CHAIRMAN JORDAN: Great. Thank
8 you.

9 Next case, please.

10 MR. MOY: The next application--I
11 don=t know, Mr. Chairman, if you want to deal
12 with these separately or not. But the first is
13 a decision on Appeal Application No. 18735 of
14 NH Street Holdings. The other appeal on the same
15 subject property is Appeal Application No.
16 18737 of Chadbourne & Park, LLP.

17 CHAIRMAN JORDAN: Yes. We
18 consolidated at the time of the hearing.

19 MR. MOY: Very good. Thank you.

20 CHAIRMAN JORDAN: Consolidated the
21 cases.

22 MR. MOY: The Board last

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1 heard--there=s an enclosed record--on April
2 15, 2014. The Board requested draft findings of
3 fact and conclusions of law, as well as
4 additional relevant documents by the property
5 owner.

6 So in your case folders, Mr.
7 Chairman, you have draft findings of fact,
8 conclusions of law, from the appellee, DCRA,
9 and the joint appellants, under Exhibits 38 and
10 39. And the property owner supplies their
11 relevant documents under Exhibit 37.

12 CHAIRMAN JORDAN: All right. Thank
13 you.

14 Is the Board ready to deliberate on
15 this case? I think--is there an issue that we
16 did not get something that we requested. Did we
17 get the other set of architectural plans? Is
18 this the one where we--did we get an additional
19 set, a new set? At the last setting, I do believe
20 Ms. Heath and Mr. May requested the set of
21 architectural plans.

22 MR. MOY: From the staff, Mr.

1 Chairman, I don=t recall seeing, although we
2 did have a narrative from the property owner on
3 that.

4 CHAIRMAN JORDAN: You have the
5 narrative on--what do you mean?

6 MR. MOY: Addressing issues
7 related to the building permits.

8 CHAIRMAN JORDAN: I think it was
9 specific--Ms. Heath.

10 COMMISSIONER HEATH: The issue
11 previously was that we were provided a plan that
12 shows the Hyatt Place Hotel, and how that
13 connects to the corridor, but not a plan of the
14 Marriott Hotel. And so the request was for a
15 plan that showed the first floor of both hotel
16 buildings.

17 CHAIRMAN JORDAN: I do have my
18 notes. It says Aset of architectural plans.@
19 So--

20 COMMISSIONER MAY: Mr. Chairman,
21 if I may.

22 CHAIRMAN JORDAN: Yes.

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1 COMMISSIONER MAY: I=ll intervene
2 a bit. As I mentioned, when I went over the
3 filings that were submitted in to the record,
4 I believe I did mention that there was a filing
5 from DCRA, and that=s under Exhibit 36, Tabs 36A
6 through J. The drawings may be under those--one
7 of those tabs.

8 CHAIRMAN JORDAN: Which number? I
9 mean, we=re not doing a search at this point.
10 Where are they?

11 MR. MOY: I=ve been advised, Mr.
12 Chairman, it=s under Exhibit 36B. B as in Bravo.

13 CHAIRMAN JORDAN: And do you have a
14 hard copy in the file?

15 MR. MOY: I don=t have it with me on
16 the dias. I would have to search for it, Mr.
17 Chairman.

18 CHAIRMAN JORDAN: Okay.

19 MR. MOY: Cause, you know, as you
20 know, these appeal cases are online filings.

21 CHAIRMAN JORDAN: Right. Got it.

22 [Pause]

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1 CHAIRMAN JORDAN: Let me first ask:
2 Is the Board prepared to deliberate, or do you
3 need more time? Okay. Well, let=s go ahead and
4 have the discussion, and probably it would
5 help, if we have that discussion, if Mr. May or
6 Mr. Hinkle want to have the discussion.

7 But this is a property where there=s
8 an attempt to combine two buildings, and the
9 argument is that the relief, the additional
10 relief requested, or that may be necessary, as
11 submitted by the Applicant, is that these are
12 two buildings, that there=s not a, quote,
13 unquote, a meaningful connection between the
14 buildings, and therefore both buildings have to
15 stand on their own--well, the new building has
16 to stand on its own merit regarding the other
17 relief that the Appellant contends is
18 necessary.

19 So that being before us, and we had
20 a hearing, I guess a week or two ago, and we
21 actually asked for some supplemental
22 documentation. So with that, I=m going to open

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1 the discussion up.

2 Ms. Heath.

3 COMMISSIONER HEATH: I'm still
4 having a hard time with this one. I see a number
5 of submissions of plans, of the Hyatt Place
6 Hotel, where they're connecting there, but
7 because there's not any detail of the Marriott,
8 it's hard for me to understand whether this
9 really is truly a meaningful connection being
10 made between the hotels.

11 Part of my hesitation, initially,
12 was I saw one of the--it appears that one of the
13 connections that they're suggesting back to the
14 Hyatt Place Hotel, is actually to a fire control
15 room, which doesn't open to the hotel. It just
16 opens to the vestibule that leads to the
17 exterior. And I just want to make sure that that
18 sort of condition doesn't exist elsewhere at
19 the Marriott Hotel. It's just in trying to--I
20 want to be able to accept that this is a
21 meaningful connection. I just don't see the
22 detail to help me substantiate it.

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1 CHAIRMAN JORDAN: Anyone else? Mr.
2 May.

3 COMMISSIONER MAY: Yes. So I can
4 certainly appreciate that the--how the, quote,
5 meaningful connection has been interpreted in
6 the past by the Zoning Administrator, and by
7 this Board, has gotten, I think, a bit arcane,
8 and difficult for people to understand, and
9 just on a, you know, common sense level.

10 Nonetheless, I think that the
11 Zoning Administrator=s action here is
12 consistent with past decisions regarding the
13 meaningful connection, and I do think it points
14 up an issue that the Zoning Commission should
15 take up and try to clarify in greater detail.

16 You know, the Zoning Commission
17 itself has decided some cases having to do with
18 meaningful connection, and my recollection of
19 those cases is that this is not very different
20 from that, in terms of the, quote, meaningful
21 connection.

22 The fact that there is a connection

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1 to the control room, I think, you know, that was
2 kind a silly, even pointing that out. I don=t
3 think that was--that passes as meaningful.

4 But that=s not the only one. There
5 are several other places. And it looks like this
6 is a common corridor that=s shared by at least
7 the retail services in both locations.

8 This case is very, very technical,
9 and essentially what it boils down to, frankly,
10 is an appeal on a technicality driven by a
11 desire to stop the loss of at-risk windows.
12 Otherwise, the project itself is not a bad
13 project. It is consistent with the city=s goals
14 for trying to gain meaningful intel
15 development, and there is no--I mean, very
16 often, when we see the meaningful connection
17 issue raised, it=s so that the developer can
18 gain some significant height advantage, you
19 know, being able to call their building a
20 little bit taller, or being able to take some
21 benefit from, you know, measuring from a
22 different spot, or some other aspect of the

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1 zoning regulations.

2 And I don=t really see this as one
3 of those cases. I think this, again, is a
4 fairly--I think it=s a reasonable development.
5 You know, there isn=t the issue that the ANC
6 raises having to do with signage, and I do hope
7 that that=s resolved, but I do not see that as
8 relevant to the actual development in this
9 case.

10 I think that=s something that has to
11 be resolved between the developers and the
12 neighbors, and I would encourage them to, you
13 know, no matter which way this goes, that they
14 continue to work with the ANC and the neighbors,
15 to try to resolve that issue, cause
16 it is a very important issue--how a building
17 faces on the street and what the signage is. God
18 knows, we have some really problematic examples
19 of that in other parts of the city.

20 But generally speaking, I=m
21 comfortable with denying the appeal in this
22 case because I think that the decision making

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1 is consistent with past decisions made by the
2 ZA, the BZA, and the Zoning Commission.

3 CHAIRMAN JORDAN: Thank you, Mr.
4 May. And I agree with you, and I'm glad you made
5 the note about the Zoning Commission maybe
6 wanting to take another look at this.

7 In fact, what I did, I did a search
8 and went through the various cases, and
9 certainly all the cases there were cited by the
10 Appellant and DCRA, and the Intervener, which
11 I think is not a Intervener but the real Party
12 In Interest in this matter, and really try to
13 then put them on the wall, and see what the
14 difference were.

15 And more importantly, the word, m
16 meaningful connection, and how that all came
17 about. Or significant connection. I think
18 people have kind a taken that and misconstrued
19 what it was supposed to be.

20 But the definition under building,
21 under 199, does not really move to the point
22 where we need to have it, and this Board has been

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1 confronted with what is, quote, unquote, a
2 meaningful connection or a connection, period.

3 With one of our most recent cases,
4 with 18664, where we talked about the
5 definition as provided in the regulations for
6 building, and then the connection required, and
7 it talks about connections have to be on the
8 first floor.

9 However, if the building=s on
10 multiple levels, then where is that? And so I
11 would agree with you, Mr. May, if you go back
12 through the Zoning Commission cases, it=s a
13 variety of ways that connections were made,
14 and, really, in my estimation, it came
15 down--can a person pass in between the two
16 buildings? Can they pass between the two
17 buildings? Is that real?

18 And there were cases where people
19 were trying to--you really couldn=t pass
20 between the buildings, or they really--most of
21 the cases where the Zoning Commission denied
22 were people trying to get a lift on the height

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1 elements.

2 But here, you have at least two
3 functional connections, and that would be the
4 shared service corridor, and then the
5 vestibule, in and out. And the third, as I say,
6 I agree with you, is this, and I don=t know where
7 that came from.

8 And then based upon the fact that I
9 cannot find any concrete evidence, I think
10 there=d be some difference of opinion, but I
11 don=t see where you can say that the Zoning
12 Administrator did something that was wrong.

13 And the Zoning Administrator does
14 have some discretion, and if you review these
15 cases, he certainly wasn=t outside of that, in
16 regards to this, and I would be in support of
17 denying the--or sustaining the decision of the
18 Zoning Commission on this one.

19 Mr. Hinkle, I know you wanted to--

20 COMMISSIONER HINKLE: Yes. Just
21 briefly. I think most things that I would say
22 have been said already, but I=m glad that Mr.

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1 May, you know, recommended that perhaps the
2 Zoning Commission could take another look at
3 this question of meaningful connections, we see
4 before the Board quite a lot, and oftentimes
5 we've identified meaningful connections as
6 significantly less than what we see here.

7 So I think I'm comfortable with
8 recognizing that the service corridor, which is
9 on the ground floor and is shared, or appears
10 to be shared by both hotels, as planned, is a
11 meaningful connection, and that there was not
12 an error by the Zoning Administrator in terms
13 of looking at this.

14 That's all I need to say at this
15 point.

16 CHAIRMAN JORDAN: All right. And
17 because of that, because we now have the
18 Marriott, in combination with the Hyatt, would
19 pick up the other challenges regarding what the
20 Appellant argued was necessary for additional,
21 relief for this building. That the parking
22 space requirement is now fulfilled, and the

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1 loading requirement, and etcetera, and a
2 setback, and the use of public space. That would
3 be my estimation.

4 Anybody contrary to that?

5 [No response]

6 CHAIRMAN JORDAN: With that then,
7 anybody want to make a motion, one way or
8 another? Mr. May.

9 COMMISSIONER MAY: I would like to
10 move that we deny the appeal of NH Street, and
11 NHST Holding, Case No. 18735, and the appeal of
12 18737, of Chadbourne & Park, appeal from the
13 Zoning Administrator=s decision to issue a
14 building permit to construct a nine story hotel
15 at 2121 M Street, N.W.

16 COMMISSIONER HINKLE: I=ll second.

17 CHAIRMAN JORDAN: Second. And just
18 for the record, we would be making a finding
19 that the connection was meaningful and
20 significant regarding this particular
21 building, and that it could be located in a
22 single record lot. Additionally, that the

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1 connected structure does not require that they
2 have a common ownership or purpose.

3 What else was there that was raised?
4 Then the requirements of 3202 has also been met
5 in regards to--and adds another discussion,
6 about 3202. That certain documentation had to
7 be in front f the Zoning Administrator before
8 he can make a decision, and I think 3202 speaks
9 relatively clearly about--it does not make some
10 of those things mandatory. In fact, said some
11 of these things--it=s basically at the
12 discretion of the Zoning Administrator, that he
13 has sufficient information to make a decision,
14 and that the list of items that are in 3202 were
15 not mandatory. So I just want to add that for
16 the record, because that was something that was
17 also challenged.

18 So with that, then, any further
19 discussions?

20 [No response]

21 CHAIRMAN JORDAN: All those in
22 favor of the motion, signify by saying aye.

1 [Chorus of ayes]

2 CHAIRMAN JORDAN: Those opposed,
3 nay.

4 The motion carries.

5 Mr. Moy.

6 MR. MOY: I=m going to need a little
7 help here, Mr. Chairman. The motion was made by
8 Peter May, second by Mr. Hinkle, and I didn=t
9 catch the other Board members who voted with
10 the--

11 CHAIRMAN JORDAN: Just go ahead,
12 and if you want to--

13 MR. MOY: Take a stab at it?

14 CHAIRMAN JORDAN: There was no
15 nays.

16 MR. MOY: There were no nays?

17 CHAIRMAN JORDAN: Yes.

18 MR. MOY: Okay.

19 CHAIRMAN JORDAN: There was one
20 abstention.

21 VICE CHAIR ALLEN: And I abstained.

22 CHAIRMAN JORDAN: There=s two

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1 abstentions. So it=s a three to zero to two.

2 MR. MOY: Oh, that=s what I
3 thought.

4 CHAIRMAN JORDAN: I thought I=d
5 help you there.

6 MR. MOY: Thank you very much.

7 CHAIRMAN JORDAN: Let me come down
8 there. Let me sit in your seat.

9 MR. MOY: I would appreciate it.

10 [Laughter]

11 MR. MOY: Okay. Once again, for the
12 record, the result is three to zero. This is on
13 the motion of Mr. Peter May, second by Mr.
14 Hinkle, in support, Mr. Jordan, and we have two
15 members who abstained--Ms. Heath and Ms. Allen,
16 or rather--is that correct? Yes. So it adds up
17 to five.

18 (Whereupon, the above-entitled
19 matter adjourned.)

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