

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JULY 8, 2014

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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 9:36 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
ALLISON MYERS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT

The transcript constitutes the minutes from the Public Meeting held on July 8, 2014.

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

9:36 a.m.

CHAIRPERSON JORDAN: Good morning.

Will you please come to order. We're here for the meeting and the hearings of the Board of Zoning Adjustment of the District of Columbia. We're located at 441 4th Street, N.W. in the Jerrily R. Kress Memorial Hearing Room.

Today's proceedings are being recorded by a Court Reporter and also being webcast live. Therefore I'm going to ask you to refrain from any disruptive noises here in the hearing room today.

That told, check your telephone and anything else that might buzz or ring, this is a good time for that. Because when what we do, we do demerits if it goes off. But anyway, please take the time to make sure we silence any technology that you have that may ring.

The Board's hearing procedures are contained in a pamphlet or a handout that's in to the door to my left. If you're not familiar

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with how the Board operates, please feel free to take time to get the document.

If you're going to provide any testimony or provide any statement to the Board, if you're coming -- bottom line, if you're coming to this witness table and sit down and talk to the Board for any reason, I'm going to need you to do two things.

If you're going to provide any statement or testimony to the Board, I'm going to need you to do two things. The first of which I'm going to need each person to complete two witness cards per person.

That's two witness cards per person, and prior to testifying or providing a statement to the Board, I'm going to ask you to give it to the Court Report who is seated to my right. So that's two cards per person, give to the Court Reporter prior to making a statement to the Board.

The second thing I'm going to need you to do is to now stand and take the oath which

will be given to you by Mr. Moy the Secretary to the Board. So if you're going to provide any statement or be a witness, I need you to now stand and take the oath which will be given by Mr. Moy.

MR. MOY: Thank you Mr. Chairman. Good morning. Do you solemnly swear or affirm that the testimony you are about to present in this proceeding is the truth, the whole truth and nothing but the truth?

(Chorus of ayes.)

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

CHAIRPERSON JORDAN: Okay are there any announcements Mr. Moy?

MR. MOY: Yes sir. Staff would like to announce for the record that three of the cases that's on the docket today have been postponed and rescheduled to future dates. These are Application of 18790, Jefferson LLC. This is rescheduled to July 22, 2014.

The second application is Number

18792 of Preparatory School of DC has been rescheduled to September 23, 2014. And finally Application Number 18708 of Motlagh, I think that's how you pronounce that name. But anyways, that application's been postponed to September 30. And that completes the staff's briefing Mr. Chairman.

CHAIRPERSON JORDAN: Thank you. Okay let's call our first public meeting case please.

MR. MOY: Okay I believe that would be Application Number 18741 of BB&H Joint Venture. As the Board will recall, this Application was heard on April 29 and the Board closed the record after hearing -- after completing public testimony and scheduled it's decision for today.

The -- let's see. Okay the Board requested additional information for the record. These are in your case folders. The first is from the Applicant.

CHAIRPERSON JORDAN: I think we're

okay as to what's been filed. I think the Board knows what's in the record.

MR. MOY: Okay, that's good.
That's good.

CHAIRPERSON JORDAN: And subsequent documents have been posted by the Applicant and et cetera, what their response is back from others. Is the Board ready to deliberate on 18741? I take it that we are.

It's just me and Marnique? And do we have an absentee by Mr. Hood?

MR. MOY: Yes I was going to mention that for some reason I don't have one, unless you have one?

CHAIRPERSON JORDAN: No, I don't. We're not calling a case for you to come to the table. I'm sorry. That's -- this is just a decision for that session. Thank you, sorry.

MR. MOY: But what I would recommend Mr. Chairman is I'll get in touch with this and we'll come back to that maybe later during the hearing.

CHAIRPERSON JORDAN: Thank you I appreciate that. On decision cases, when the Board -- when a matter is up on our public meeting and for decision, just so you'll know in the future, there's no testimony being given. It's just for the Board to deliberate and make it's decision.

So that's why you're here and you don't have to come forward. Not don't have to come forward, don't come forward, okay. I know we do things a little different. But please just do that then, check on Mr. Hood.

Then let's go to number two.

MR. MOY: Number two. That would be a time extension case Mr. Chairman or?

CHAIRPERSON JORDAN: Yes, the time extension please.

MR. MOY: Okay, all right. That Application is -- this is a, Application's Motion for a second two year time extension of Order Number 18064 of HAI Real Estate Holdings. The Applicant requested this two year time

extension, and it's under Exhibit 41.

There are two other filings in the record subsequent to the request. One is a report from the Office of Planning under Exhibit 44. And also from ANC2B under Exhibit 43. That completes the staff's review Mr. Chairman.

CHAIRPERSON JORDAN: Okay. All right, this is one where the request is due to the inability initially to obtain financing. And then they obtained financing going through the DC Housing Finance Agency I believe, to obtain financing. And they -- is this the one where they -- yes, let me go and catch up with myself.

Or was that the other? No, that's not it. That's just a -- they can't get financing, yes sufficient financing. Okay. And they supported it with the affidavits and they have a closing -- they have a purchaser for the property. And they're trying to maintain.

I think this is one which we can

grant the extension. Does anybody have any issues with this?

(No response)

CHAIRPERSON JORDAN: Then I would move that we grant the relief requested in 18064.

VICE CHAIR ALLEN: Second.

CHAIRPERSON JORDAN: Any further discussion? All those in favor signify by saying aye.

(Chorus of ayes)

CHAIRPERSON JORDAN: Those opposed nay.

(No response)

CHAIRPERSON JORDAN: The motion carries. Mr. Moy you want to do roll call?

MR. MOY: Yes sir. As staff we recorded vote as five to zero. This on the motion of Chairman Jordan to approve the request for the second two year time extension. Second the motion Ms. Allen. Also support Mr. Peter May, Ms. Marnique Heath and Mr. Jeffrey

Hinkle.

And that gives us a five to zero vote. There's a consensus, a unanimous.

CHAIRPERSON JORDAN: Is there another word for that? Or you use them all. Let's do this, let's do the other extension case, which is 18372.

MR. MOY: Yes sir, thank you. This is another extension case where the Applicant filed a request. And I believe they actually asked for a one year extension. This is to 18372 of 2321 4th Street LLC.

That request is under Exhibit 44. Office of Planning Report under Exhibit 38. And there is no filing from ANC5B.

CHAIRPERSON JORDAN: Let me ask, is there a representative here from 18372? Anyone here from 18372? Please come forward.

Mr. Freeman this is like your docket today. Introduce yourself please.

MR. FREEMAN: Good morning. For the record my name is Kyrus Freeman. I'm an

attorney with the law firm of Holland & Knight, here on behalf of the Applicant.

MR. DRURY: And I am Kenton Drury with the 2321 4th Street, the developer.

CHAIRPERSON JORDAN: It's a simple question, we see there's a request for a one year extension as opposed to a two year extension. I just want to make certain that you're asking just for a one year extension.

MR. FREEMAN: Yes. Yes sir.

CHAIRPERSON JORDAN: You would have the transaction executed by that time you believe?

MR. FREEMAN: Yes sir.

CHAIRPERSON JORDAN: Because I don't like to cover up the docket if we don't have to. So then that, I just wanted to make sure that you didn't make a mistake.

MR. FREEMAN: Hopefully we'll need less then one year.

CHAIRPERSON JORDAN: See don't say hopefully. All right, let's make a note of

that.

ZONING COMMISSIONER MAY: He seems very, very confident, so I think we heard that.

CHAIRPERSON JORDAN: I know, let's make a note that we heard me ask him. When he comes back in here and he says we couldn't get it done in one year, say no right away.

Okay, thank you. So this one in which there's a request for an extension. The Applicant has provided sufficient information in my belief that warranted particularly that they have now obtained financing.

They are in the process of actually to close the financing that's been prepared. The fact that they had worked out with DC Community Development and also Housing Finance takes some time.

So I believe that this is one that we should grant that relief for one year. And if everybody's okay with that, I would move that. Motion made and second. Additional discussion?

(No response)

CHAIRPERSON JORDAN: All those in favor signify by saying aye.

(Chorus of ayes)

CHAIRPERSON JORDAN: Those opposed nay.

(No response)

CHAIRPERSON JORDAN: Mr. Moy the motion carries. Mr. Moy.

MR. MOY: Yes sir. That's the motion carried by a vote of five to zero. It was on your motion, Chairman Jordan, to approve. Second the motion by Mr. Peter May. Also in support Ms. Marnique Heath, Ms. Allen and Mr. Hinkle.

CHAIRPERSON JORDAN: Thank you. Let's do the remand, Kalorama.

MR. MOY: Okay, as the Board is aware, there is a second remand on Appeal Number 17109-B of Kalorama Citizens Association. The Board had scheduled it's decision for today, July 8 after request for drawings and plans to

the building permits.

CHAIRPERSON JORDAN: All right, this matter is before us for a meeting or discussion, and certainly not prepared to make a decision, I mean because the documentation received I believe is insufficient. Anybody want to weigh in?

(No response)

CHAIRPERSON JORDAN: And that we make a request to the -- to the initial Applicant, an additional request I understand was made to DCRA. But we at least make a request to -- we've made a request to the Applicant to provide their actual -- their record file that they presented to DCRA so we can look at the full set of plans and make a decision in this matter.

So I don't think we have to take any further action on that. Would that be correct?

MR. MOY: That's correct.

CHAIRPERSON JORDAN: All right. So then let's, we have another decision case

then? If we may call that one, that's the 18734.

MR. MOY: Yes sir. Thank you sir.

That would be Application Number 18734 of 1815 Rigg, LLC. The -- just for the record, the Applicant had amended the Application. Request for a variance will be from the FAR open court and non-conforming requirements.

Also the Applicant withdrew the relief under Section 2602.1. The Applicant's -- the record -- the Board closed the record and did not ask for any additional information. However the Applicant did submit a filing. And well that's in your case folders Mr. Chairman.

CHAIRPERSON JORDAN: Yes, we -- the Board would deny the request to waive additional filing and not accept that in the record. It's not a provision, Section 3121.5 is not waivable by the Board. And so that's out of order.

All right, moving to -- is the Board ready to deliberate on 18734?

(No response)

CHAIRPERSON JORDAN: Okay. This is one which we had before us and we had some challenges. And this case still remains a challenge regarding decisions. So let me defer to my colleagues to see if anyone wants to weigh in first on this one. Anyone? Mr. Hinkle? Oh, you say -- Mr. May, go ahead.

ZONING COMMISSIONER MAY: Well yes, I mean I'm just going to say, my position hasn't changed. I still don't believe the case has been made. You know I want to be able to make the case.

It seems like I wanted to be able to make the original case but we didn't have the leeway in the zoning regulations to do it. And I think that this thing is better off coming back later on and seeking a waiver from the -- under IZ for minimum number, you know, minimum size of -- or minimum number of units, the minimum size of the project. The original case that they had tried to make.

I think that's a better way to try to do it once the zoning regulations allow that. And I know that the Office of Planning is looking at that question. Because right now it's -- you know I just don't think the case has been made.

You know, the building probably needs some work. But I just don't see it based on what I've -- what's been presented so far, that they've made the case here.

CHAIRPERSON JORDAN: Mr. Hinkle?

MEMBER HINKLE: Yes, thank you Mr. Chair. I tend to agree. I know I was one of those that asked for some extra time to look at this case. And did spend some time really looking at this.

And you know, I think the project's a good project. And aesthetically the expansion actually improves the look of the building in my opinion. But I don't think the Applicant has shown any specific uniqueness for the property that results in any practical

difficulty. Which is the argument, the second argument that they were making, which would allow this Board to grant relief for the FAR.

So I can't support the relief as requested at this time.

CHAIRPERSON JORDAN: Yes, anyone else? I do believe that this is a case that's very hard. And for me it's very difficult.

I disagree that they haven't made a showing that there's an exceptional condition. I believe if we talk about the position of the stair and the plumbing stack and aperture, and other things that provide exceptional condition to the property.

However, I do seriously question whether or not, and would be in agreement whether or not they have presented evidence that there is a practical difficulty based upon these issues. More importantly, they attempted to make the argument an economic argument.

And I think the economic argument

fails. Because most of the time in the argument they are trying to use a percent of having three units versus one unit as overall percentage of what the cost of doing the project.

Which you know, almost every project we get would meet that criteria. Whether or not you've got three units divided by a total cost, certainly -- or one unit divided by a total cost, the one unit is going to be a larger percentage of what the overall cost is. I mean it's just an argument that anybody can make.

Further, you know, I think we continue to erode the whole theory of zoning in a lot of our cases that come before us. And that's whether or not the laws, the zoning laws prohibit or restrict an owner from putting his property to use within the zoning regulations.

Well here we have a property that can be put to use within the zoning regulations. And in fact this is being put to use. And then

the other question that's been made in regards to the economic loss, or economic issue, is that it's really a question that we want to make more money then the money we're making.

I mean there -- it hasn't been shown that this project is operating at a loss based upon the fact of the zoning regulations. But it's saying we want to put three more units in there when they also have the opportunity to do another unit within the zoning regulations.

So I can agree with my colleagues. Anyone want to make a motion moving forward on this?

ZONING COMMISSIONER MAY: I would make a motion that we deny Application Number 18734 of 1815 Rigg, LLC for a variance for nonconforming structure provisions. And to allow an additional existing building for residential use in the Dupont Circle R5B district at 1815 Rigg Place, N.W.

MEMBER HINKLE: Second

CHAIRPERSON JORDAN: Motion made

and seconded. Any further question?

(No response)

CHAIRPERSON JORDAN: All those in favor of the motion signify by saying aye.

(Chorus of ayes)

CHAIRPERSON JORDAN: Those opposed nay.

(No response)

CHAIRPERSON JORDAN: The motion carries. I was an aye.

MR. MOY: On the aye side?

CHAIRPERSON JORDAN: Yes.

MR. MOY: Okay staff will record the vote as four to zero. Mr. Chairman this is on the motion of Peter May to deny the request for variance relief, zoning relief. Second the motion by Mr. Hinkle. All in support Ms. Heath, Chairman Jordan and we have no other member participating.

CHAIRPERSON JORDAN: With that being said and that action being taken, is this something Mr. May that you think that the Zoning

Commission could take up?

ZONING COMMISSIONER MAY: Not this case in particular, but the issue of flexibility on minimums for IZ is something that we have asked the Office of Planning to look into. And I believe they are looking into it.

CHAIRPERSON JORDAN: Okay, so there might be something that's going to go.

ZONING COMMISSIONER MAY: There might be a way that this project could proceed at some point in the future.

CHAIRPERSON JORDAN: I think it's a project that needs to keep happening. As Mr. Hinkle said, it's something that really fits, it looks nice. And I believe it would help the area. But we're just in that pickle for what we can do as a Board.

ZONING COMMISSIONER MAY: I think it actually, the greater importance of this case is that it raises the question of whether the minimums for IZ participation should be

more flexible. And I think that's a question that was asked and answered once before. But I think this is the reason why it should be asked again.

CHAIRPERSON JORDAN: Thank you. 18789. We're moving to our hearing cases. So when your case is called, please come to the witness table.

(Whereupon, the above-entitled matter went off the record at 9:56 a.m.)