

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY  
JULY 29, 2014

+ + + + +

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 9:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
MARNIQUE Y. HEATH, Board Member  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Member

OFFICE OF ZONING STAFF PRESENT:

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.  
MARY NAGELHOUT, ESQ.

The transcript constitutes the  
minutes from the Public Meeting held on July 29,  
2014.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER, Lloyd L. Jordan .....	4
BOARD ACTIONS/MOTIONS	
Application No. 18738 Siamak Aryanpour Kashani pursuant to 11 DCMR 3104.1, special exception to construct a new five unit apartment house under Section 353 .....	8
Reschedule the Board's decision to October 21st, 2014 .....	8
Application No. 18804 of FBL Holdings, LLC. ....	8
Rescheduled to October 7th .....	8
Application Number 18784 of Observatory Land Trust pursuant to 11 DCMR 3104.1 and 3103.2 for variance from lot occupancy requirements under Section 403 and special exception under Section 353 .....	9
Application No. 18765 of Fulton Land Trust pursuant to 11 DCMR 3104.1 and 3013.2 for special exception under Section 353 and variance from lot occupancy requirements under Section 403 .....	9

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

2 (9:18 a.m.)

3 CHAIRPERSON JORDAN: Good morning.  
4 Would this hearing and meeting of the Board of  
5 Zoning Adjustment please come to order. We're  
6 located at the Jerrily R. Kress Memorial  
7 Hearing Room at 441 4th Street, N.W. Today's  
8 date is July 29th, 2014.

9 My name is Lloyd Jordan,  
10 Chairperson. To my right is Jeffrey Hinkle,  
11 Member of the Board, to my left is Marnique  
12 Heath, a Member of the Board, to her left is  
13 Robert Miller, Member of the Zoning Commission  
14 sitting in as a Member of the Board of Zoning  
15 Adjustment today.

16 Please be advised that these  
17 proceedings are being webcast live and also  
18 being recorded by a court reporter, who is  
19 seated to my right. Therefore, I'm going to  
20 ask you to refrain from any disruptive noises  
21 here in the hearing room today.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           That's the signal now, to take a  
2           look at your cell phones and other things that  
3           ring and buzz and make sure that they're in a  
4           mode, a silent mode.

5           The Board hearing procedures are  
6           contained in a document to the door, to the back  
7           to my left. If you're not familiar how we  
8           process applications, or other matters here at  
9           the Board, feel free to get the document and to  
10          read it.

11          If you're going to provide any  
12          statements or testimony to the Board today, if  
13          you're going to make any statement to the Board,  
14          read any letter, or anything other thing  
15          addressed to Board, I'm going to need you to do  
16          two things.

17          The first of which, I'm going to  
18          need you to complete two witness cards per  
19          person. That's two witness cards per person  
20          and prior to testifying, prior to testifying,  
21          give those two cards to the court reporter, who

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 is seated to my right.

2 And the second thing I'm going to  
3 need you to do, if you're going to provide any  
4 statement, or address the Board in any manner,  
5 I'm going to need you to now stand and take the  
6 oath, which will be given by Mr. Moy, the Board  
7 Secretary.

8 MR. MOY: Good morning.

9 (Parties sworn.)

10 MR. MOY: Ladies and gentlemen, you  
11 may consider yourself under oath.

12 CHAIRPERSON JORDAN: Okay. Thank  
13 you. Let's do this, can we have the  
14 representative of the applicant on 18784 and  
15 those who are seeking party status in 18787, so  
16 the applicant representative in 18787 and those  
17 who are seeking party status in that case,  
18 please come forward.

19 Okay. Do we have anyone that's  
20 seeking party status in 18787? Going once,  
21 going twice, going for third time. Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Collins, do we know if there's been withdrawal  
2 of their party status request, is that --

3 MR. COLLINS: No, I do not. I'm  
4 not aware of any withdrawal of party status.

5 CHAIRPERSON JORDAN: Okay, then.

6 All right, they're not here, Mr.  
7 Collins, and you know how we normally proceed  
8 and ask to get together beforehand. So we will  
9 call this on the docket, if they're not here,  
10 then we will not accept their party status.  
11 Thank you.

12 Okay, Mr. Moy, we'll go ahead and  
13 call our meeting. I think that's all our party  
14 status for today?

15 MR. MOY: That's correct, sir.  
16 But I would like to make a quick announcement  
17 for the record, if I may?

18 CHAIRPERSON JORDAN: Yes, please.

19 MR. MOY: For two cases on the  
20 docket.

21 CHAIRPERSON JORDAN: Yes.

1                   MR. MOY: The first application,  
2                   which is actually an application for a  
3                   decision, 18738, that has been on the  
4                   applicant's request and granted by the Board to  
5                   reschedule the Board's decision to October  
6                   21st, 2014.

7                   My second announcement is to  
8                   Application Number 18804, of FBL Holdings,  
9                   LLC., and this application has been rescheduled  
10                  to October 7th.

11                  CHAIRPERSON JORDAN: All right,  
12                  thank you.

13                  MR. MOY: So with that, the two  
14                  applications for Board decision, the first is  
15                  Application Number 18784, Observatory Land  
16                  Trust. The second is Application Number 18765  
17                  of Fulton Land Trust. Both of these cases were  
18                  heard together on June the 24th, 2014, where the  
19                  testimony was completed, record closed, the  
20                  Board requested additional information from  
21                  the, supplemental information from the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 Applicant. That's in your case folders, Mr.  
2 Chairman, under Exhibits 39.

3 There is a preliminary matter in  
4 that there are a dozen letters that followed the  
5 Applicant's filing. And that completes the  
6 staff's proofing, Mr. Chairman.

7 CHAIRPERSON JORDAN: Well, those  
8 letters weren't placed in the trash, at first,  
9 weren't they, didn't we save those?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON JORDAN: It's out of  
12 the ordinary to receive those without request  
13 for leave, but I believe we probably already  
14 reviewed those, so we accept them in the record.  
15 But make sure before we do that in the future  
16 that we get a ruling on it.

17 MR. MOY: Understood.

18 CHAIRPERSON JORDAN: Is the Board  
19 ready to deliberate on 18784 and 18765? This  
20 one has me puzzled and a little perplexed, in  
21 regards to really what to do with it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So is anyone else on the Board want  
2           to take a lead and provide their discussion  
3           about this matter, their thoughts?   Mr.  
4           Hinkle.

5           MEMBER HINKLE:   Yes, thank you, Mr.  
6           Chair.   I appreciate allowing the additional  
7           letters, I will say, from the public.

8           I know there's been a lot of  
9           involvement, it appears, between the public and  
10          the developer, regarding the design of the  
11          building and it appears from the  
12          pre-submission, I mean, the additional  
13          submission from the developer that there are  
14          some conditions being proffered.

15          And it appears that most of those  
16          conditions would be acceptable to the public,  
17          at least in terms of how I read the letters that  
18          we've received.   So I'm comfortable with the  
19          application, as it stands now, as long as those  
20          conditions are in place.

21          CHAIRPERSON JORDAN:   Anyone else?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 This is one where our review is under, by  
2 Regulation Section 353. There are a lot of  
3 people in the community that sought party  
4 status, they were consolidated, it's been a lot  
5 of activity.

6 It's one in which I had certainly  
7 encouraged that the applicant would work in  
8 good faith with the neighbor. And that's one  
9 of the things that we require, especially as a  
10 policy, since I've been Chair, that we try to  
11 have the applicants, at least, address the  
12 neighbors at being good neighbors beforehand.

13 This is one where I don't know where  
14 the thing was missing up front, but  
15 subsequently, we asked them to meet on this  
16 matter.

17 This is before us on a special  
18 exception under 353, so our hands are kind of  
19 tied, regarding special exception, we don't  
20 have the same level of discretion and 353,  
21 basically, just requires a referral to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 various government agencies to put their two  
2 cent in, regarding application, and all the  
3 government agencies supported this, if I'm not  
4 incorrect, this application.

5 However, there is a reference that  
6 you're required, under 353, to do a drive-by of  
7 3104, as special exception conditions, and our  
8 only aspect of that, from a board, where we have  
9 some discretions is whether or not the  
10 application's in harmony with the neighborhood  
11 and the intent of the zoning regulations and the  
12 zoning map and et cetera.

13 As I said, I'm still kind of  
14 bothered by this. I had initial concern about  
15 this design and project. I just thought that  
16 it was over the top for this neighborhood and  
17 it was not the best thing for this neighborhood.

18 During the hearing we had evidence  
19 for and against the property and, you know, it  
20 was so different between what had been there,  
21 what has not been there, between what people,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       who have lived there for a while, talked about,  
2       plus the new folks.

3               The reference to the Russian  
4       Embassy and the other surrounding properties  
5       helped move me toward getting closer to  
6       accepting this application, although the  
7       property sits on the side of the street, which  
8       is kind of different than the other side of the  
9       street and then around the corner.

10              The required yards and a number of  
11       parking spaces and building heights was  
12       conforming with the R-5-A Zone, so that helped.

13              But as I said, the properties on the  
14       North, South and West were Zone R-5-A, and you  
15       did have apartment houses in that same general  
16       area and you had some detached dwellings and row  
17       houses, it's just a mix of type of properties.

18              I believe the neighbors' concerns  
19       were very valid, as I indicated. I hope that  
20       the applicant would have worked closely with  
21       the neighbors.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And I understand there was a split  
2       even in the neighborhood group afterwards.  
3       There was some that worked with the neighbors  
4       and now the applicant made some changes in  
5       designs, which I think are for the positive.

6           But then there's another group of  
7       neighbors still out there that's not accepting  
8       the design, but I think the common denominator,  
9       as you said, Mr. Hinkle, was that they all  
10      agree, to some extent, even those who were still  
11      in opposition, on the conditions.

12           And I think the conditions becomes  
13      an aspect of flushing out the ability to  
14      mitigate any question about the property. I  
15      think that was the common denominator, both  
16      from the applicant standpoint and those who  
17      still oppose it, was that the conditions,  
18      everybody wanted those conditions in place.

19           And we've been in this situation  
20      before. You can't make everybody happy. I  
21      mean, it's just, and that's why we encourage

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 people to get together and have these  
2 discussions.

3 Actually, I'm tempted to put this  
4 back on for a hearing to flush out those other  
5 issues. Because, if what was reported by the  
6 neighbors and the community is true that the  
7 applicant came in with a hammer and was not  
8 working very friendly with the neighborhood, I  
9 don't know if that's true or not, then that  
10 gives me some concerns.

11 And I hope we wouldn't have that and  
12 I'm not accepting that to be true or not, but  
13 it just gives me another pause. But we do have  
14 a more acceptable design and the conditions, I  
15 think, help.

16 More importantly, Office of  
17 Planning has recommended the approval of this  
18 application, which we're required to give great  
19 weight.

20 On the contrary to that, we'd had no  
21 input, officially, from the ANC, who is a party

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to these proceedings and also to which we're to  
2 give great weight, so we have to take that  
3 opinion out, because they didn't express an  
4 opinion, I guess, they're also maybe torn, as  
5 we are, in regards to that neighborhood.

6 I think that the building actually  
7 should have been brick, or have a color that's  
8 more blended for brick to bring it in to more  
9 conformity to the immediate neighborhood, but  
10 if you look at the broader picture in that  
11 neighborhood, the building's color could blend  
12 in with it.

13 Since this is, as I said before,  
14 this is a 353 Special Exception, the law  
15 requires us to just look at the four corners of  
16 the application and does it fit, and so we lose  
17 a lot of our discretion.

18 So I would reluctantly support the  
19 modified application with the conditions. And  
20 those conditions would be imposed to, that the  
21 building would be subject to a condominium

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 regime under the District of Columbia  
2 Condominium Act, that that's required to be  
3 filed, prior to getting a C of O on this.

4 That the Declaration of Condominium  
5 Covenant will include language that no more  
6 than three of the six units in each building  
7 shall be rented at any one time, no more than  
8 50 percent requirement be part of the  
9 declaration and also to be recorded to run with  
10 the land.

11 The applicant will replace all the  
12 trees that are being removed, those being at  
13 least ten feet high, I cannot, the Board cannot  
14 put in place the requirements that they show a  
15 proof of funds, that does not go towards zoning  
16 requirements, so I'm going to reject, I would  
17 recommend that the Board reject that one.

18 That the Declaration of Condominium  
19 and also that there's a proper recording to run  
20 with the land and to place notice with the  
21 Department of Transportation and with the DMV

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       that there can only be one residential parking  
2       permit per unit on this property, to help  
3       mitigate the issues of parking on this block.

4               And that the applicant's required  
5       to regularly contact the Office of Department  
6       of Transportation and DMV to do the periodic  
7       checks to find out if additional RPP has been  
8       issued on this property.

9               That's the way I see it and I would  
10      move the Board to approve the application, with  
11      those conditions.

12              MEMBER HEATH: I would second the  
13      motion.

14              CHAIRPERSON JORDAN: Motion made  
15      and seconded. Additional discussion? All  
16      those in favor of the motion signify by saying  
17      aye.

18              (Chorus of ayes.)

19              CHAIRPERSON JORDAN: Those oppose,  
20      nay? Mr. Moy, do we have an absentee?

21              MR. MOY: Yes we do, Mr. Chairman.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 We have an absentee ballot from participating  
2 member, Marcie Cohen, and her ballot vote  
3 signed on the two applications are to approve  
4 with such conditions as the Board may impose,  
5 so that's her votes on both applications. So  
6 that would give a resulting vote, well, of four,  
7 one, two, three, yes, four to zero.

8 CHAIRPERSON JORDAN: All right.

9 MR. MOY: And the Zone motion of the  
10 Chairman Jordan to approve the request for a  
11 special exception under 353, seconded the  
12 motion, Ms. Heath. Also in support, Mr.  
13 Hinkle. And, of course, Ms. Cohen, the Board  
14 Member not participating. So the motion  
15 carries four to zero.

16 CHAIRPERSON JORDAN: A full order,  
17 please.

18 MR. MOY: A full order, yes, sir.

19 CHAIRPERSON JORDAN: Okay. We can  
20 move into our hearing cases.

21 (Whereupon, the above-entitled

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 matter went of the record at 10:00 a.m.)  
2  
3  
4  
5  
6  
7  
8  
9  
10