

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 7, 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 9:38 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
JEFFREY L. HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT E. MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MEGAN RAPPOLT

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

AGENDA ITEM

CALL TO ORDER, Lloyd L. Jordan 4

BOARD ACTIONS/MOTIONS:

Appeal No. 18827 of Kinland..... 7

Rescheduled to of course, 28, 2014... 8

Motion for Special Exception of Application No. 18843 of Christopher Pashby, to allow a rear addition to an existing one-family detached dwelling under Section 233, not meeting the side yard requirements Under R-2..... 9

Rescheduled to October 28, 2014..... 10

Motion of Application No. 18787 of 143 Rear W Street, LLC, as amended, pursuant to 11 DCMR Section 3103.2 for a use variance from subsection 2407.2..... 10

Vote to approve (With two conditions)..... 25

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

2 (9:43 a.m.)

3 CHAIRPERSON JORDAN: Good morning.

4 If we could please come to order. Today is
5 October 7, 2014, and we're hearing for the
6 meeting of the Board of Zoning Adjustment.
7 We're located at 441 4th Street, N.W., at the
8 Jerrily R. Kress Memorial Hearing Room.

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

15 Today's proceedings being Webcast
16 live, and also being recorded as a court
17 reporter, so therefore, I'm going to ask you to
18 refrain from any disruptive noises here in the
19 room. So it's a good time for you to, please,
20 silence any devices that may ring, or vibrate
21 loudly, or any of that.

22 If you're going to provide any

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1 testimony to the Board today, and by testimony,
2 I mean, read any statement, address the Board
3 in any manner, I'm going to need you to do two
4 things, prior to addressing the Board.

5 The first thing I'm going to need
6 you to do is to complete two witness cards, per
7 person. That's to complete two witness cards,
8 per person, and prior to the testimony, give
9 those witness cards to the court reporter,
10 who's to my right.

11 So prior to testifying, please
12 complete two witness cards, per person, and
13 give them to the court reporter, prior to you
14 addressing the Board.

15 The second thing I'm going to need
16 you to do is to now stand and take the oath,
17 which will be administered by Mr. Moy,
18 Secretary to the Board.

19 So if you're going to address the
20 Board, in any manner, I'm going to need you to
21 take the oath. And stand, at this minute, and
22 have Mr. Moy swear you in.

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1 MR. MOY: Morning.

2 (Parties sworn.)

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

5 CHAIRPERSON JORDAN: Okay.

6 MR. MOY: Okay.

7 CHAIRPERSON JORDAN: Mr. Moy, any
8 preliminary matters and announcements we need
9 to make?

10 MR. MOY: Yes, sir. Good morning,
11 Mr. Chairman, Members of the Board. The
12 announcement, for the record, first is on the
13 docket Application Number 18804 of FBL
14 Holdings, has been withdrawn by the Applicant.

15 Second, Appeal Number 18827 of
16 Kinland, has been rescheduled to November the
17 18th.

18 And finally, Mr. Chairman, we have
19 the last preliminary matter, a request to
20 change a scheduled hearing date, which is
21 scheduled for December 9th, and that is
22 Application Number 18873 and the letter with

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1 the request is in your case folders, Mr.
2 Chairman. That completes my briefing.

3 CHAIRPERSON JORDAN: Thank you.
4 Got it. I've looked at the letter and the
5 reasons there, I would support changing that
6 hearing date to, what's the date, you're
7 proposing October 28th?

8 MR. MOY: We can do the 28th, or the
9 21st, although, the 21st is pretty close,
10 because --

11 CHAIRPERSON JORDAN: 28th.

12 MR. MOY: Okay, the 28th?

13 CHAIRPERSON JORDAN: Is that the
14 date that you've had discussion about?

15 MR. MOY: Well, I think the
16 Applicant was trying to pursue a date as early
17 as possible, and I think the 28th will certainly
18 meet the posting requirement of 15 days.

19 CHAIRPERSON JORDAN: So what's the
20 day, if they started posting, well, the good
21 thing about this, all the letters are in from
22 everybody. I mean, the ANC has, there's

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1 letters of support in his file from everyone and
2 all the neighbors, so everybody has notice.

3 So let's do for the 28th, just to be
4 certain, for posting. And so I would grant
5 that. Does the Board, any issues with the
6 Board? Okay. Then we'll do that consent.

7 MR. MOY: Okay. Granted by
8 consensus. Thank you, Mr. Chairman. October
9 28th.

10 CHAIRPERSON JORDAN: All right.
11 All right, so we have two matters on our, is
12 that, I'm sorry, is that all your announcements
13 this morning?

14 MR. MOY: Yes, sir.

15 CHAIRPERSON JORDAN: All right, we
16 have two cases for decision today. Do you want
17 to call the first one, please?

18 MR. MOY: Yes, sir. The first of
19 the two, we have an application that's on the
20 expedite review calendar, which is Application
21 Number 18843 of Christopher Pashby, and of
22 course, this is special exception under Section

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1 223, not meeting the side yard relief.

2 CHAIRPERSON JORDAN: Okay, thank
3 you. I think this one is proper for the relief
4 being requested. Any discussion, any issues
5 the Board needs to address?

6 MEMBER HINKLE: No.

7 CHAIRPERSON JORDAN: Okay. Then I
8 would move that we grant the relief being
9 requested in 18843.

10 MEMBER HINKLE: Second.

11 CHAIRPERSON JORDAN: Motion made
12 and seconded. Any further discussion?

13 (No Response.)

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

16 (Chorus of Ayes.)

17 CHAIRPERSON JORDAN: Those
18 opposed, nay.

19 (Vote Taken.)

20 CHAIRPERSON JORDAN: Motion
21 carries. Mr. Moy.

22 MR. MOY: Staff would record the

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1 vote as 3-0. This on the motion of Chairman
2 Jordan to approve the applicant for the relief,
3 as cited, second the motion, Mr. Hinkle, also
4 in support, Mr. Miller, and we have other Board
5 Members not present with us today. Motion
6 carries, sir.

7 CHAIRPERSON JORDAN: All right.
8 Next one, please.

9 MR. MOY: Summary order?

10 CHAIRPERSON JORDAN: Yes, please.

11 MR. MOY: Thank you. Application
12 Number 18787 of 143 Rear W Street, LLC. That's
13 amended relief, the variance relief, as
14 requested. The Board last heard this on
15 September 9th where the Board completed public
16 testimony and closed the record and scheduled
17 its decision to today, October the 7th.

18 The Board requested proposed
19 findings of fact and conclusions of law, that's
20 in your case folders, from the Applicant, under
21 Exhibit 80, and from no opposing parties, under
22 Exhibit 79.

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1 The only matter in this
2 application, Mr. Chairman, is that there was a
3 filing from the ANC late last night, although
4 the record is closed, and that's before the
5 Board.

6 CHAIRPERSON JORDAN: No, it's not
7 before the Board, we're not --

8 MR. MOY: Okay, it's not before the
9 Board.

10 CHAIRPERSON JORDAN: Okay, 18787,
11 is one which has given me great concern. I've
12 looked at the tape a couple of times, well
13 actually, I looked at the tape before we had the
14 follow-up hearing, and then after this, for
15 over the weekend, and this is one which has me
16 pretty undecided.

17 Because I'm not comfortable and,
18 certainly, I am going to have to rely on my other
19 Board Members to convince me one way or the
20 other, and so I'm not prepared to make a motion,
21 but it's certainly up for the other Members of
22 the Board on this.

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1 I'm concerned that there has not
2 been, the Applicant hasn't met his burden in
3 presenting to this Board credible evidence
4 about what is necessary, why they cannot meet
5 the difficulties and requests that they've
6 made?

7 Similarly, I think the opponents
8 have not shown us that there's something else
9 to the contrary. I think these cases have been
10 lacking in the presentation of evidence to this
11 Board.

12 I think, I've said, even during the
13 time of the hearing, I went back myself, several
14 times, what we had, we had, it became a parade
15 of experts on the Applicant's side of the case
16 that opined as to what they believed was, could,
17 or could not, happen with this property.

18 However, I've said over and over
19 again, their opinion was not based of any
20 evidence that was presented to this Board.

21 An expert needs to opine on evidence
22 that's been presented in the record, or

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1 evidence presented, and then make their
2 interpretation of that for the Board.

3 Well, there's been assumptions
4 after assumptions. We did not receive any
5 letters of intent from any construction
6 companies, or construction bids that have the
7 actual dollars.

8 We didn't have anything presented
9 in front of us from any bank that was either
10 letter of intent, letter of interest, which
11 said well, this is what the interest rates are
12 proposed, possibly would be.

13 I'm not asking for any commitment
14 letter, but we ask for more, get more, when we
15 look at doing extensions for orders that have
16 previously gone forth to show that the property
17 cannot be properly financed.

18 Also what I noticed in the
19 financials, the financials simply jump to a 12
20 percent bottom line return, and use those
21 numbers throughout the processing, as to make
22 a decision, as to whether or not this property

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1 was financially feasible.

2 Even went so far as to using that 12
3 percent return number, as well as in
4 conjunction with what a potential financing
5 cost would be, to then use those numbers, in my
6 opinion, to get what would be a net.

7 We asked, what was the square foot
8 cost per construction, and there was some
9 fumbling around, which I didn't find credible
10 at all, the number \$165 that was given, as \$165
11 per square foot, but there was nothing that we
12 had to put our teeth on.

13 This is just my opinion on it. I
14 just don't think that the Board has had enough
15 evidence here. And, certainly, I'm going to
16 defer to my other Members of the Board, to give
17 me whatever you think about, please. Yes, Mr.
18 Hinkle.

19 MEMBER HINKLE: Yes. Thank you,
20 Mr. Chairman, I'll go. I mean, I think we do
21 have quite a bit of evidence in our file, in
22 terms of supporting the undue hardship issue.

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1 But I just wanted to start out by saying that
2 I think we really need to look at what the relief
3 is that's being requested.

4 And it's use variance, but it's from
5 2507.2, which is to allow alley dwellings on an
6 alley lot where the allies are less than 30
7 feet. So for me, I think this is the main issue
8 that this Board needs to look at and, you know,
9 whether the allies in the square are
10 sufficiently sized to access the lot.

11 So with that thought, let me just
12 run through some of thoughts, in terms of the
13 variance. In terms of the first prong, I do
14 find that the site is unique. There's actually
15 two alley lots that we're looking at that are
16 the subject of this application, and they do
17 form an unusually large site.

18 And I think there was evidence in
19 the file, in terms of the Office of Planning's
20 Report, as well as some of the maps that really
21 show that this is actually one of the larger
22 vacant lots in the area that the Applicant has.

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1 The lot's surrounded on all four
2 sides by allies, which I think is somewhat
3 unique. And, really, the views from the lots
4 are the rear of other row houses, as well as some
5 adjacent apartment buildings. So I do think
6 there's some uniqueness to the site.

7 In terms of the second rung, as I
8 mentioned, I do think the Applicant has
9 provided sufficient evidence that a, really,
10 matter of right use isn't feasible on the site.

11 I mean, we've seen a number of
12 different approaches to providing parking on
13 the site. They've looked at some of the other
14 matter of right uses and, for me, those
15 documentation that were provided to us by the
16 Applicant, I think, were sufficient to show
17 that, really, there's quite a difficulty in
18 using this lot for matter of right uses.

19 You know, even though it's
20 currently being used as parking, that's a
21 short-term lease, is my understanding. And I
22 think some of the documents that the Applicant

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1 provided really did show that it would be
2 difficult from a long-term perspective to
3 provide parking on this lot and actually make
4 it a feasible use. That just doesn't seem to
5 be the demand in the area, and I can understand
6 that.

7 In terms of the third prong, which
8 is really how the project would related to the
9 detriment of the public good, or the intent of
10 the zoning code, I do believe the Applicant
11 designed a project that does fits well within
12 the character of the block.

13 They designed single family row
14 houses for the site, and the row houses
15 themselves somewhat mimic the row houses that
16 are in the majority of the block, in terms of
17 their massing and size.

18 And, really, it creates somewhat of
19 a condition that we see all across the city in
20 that, you know, you're having row houses
21 backing up to row houses, or row houses backing
22 up to the sides of row houses.

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1 So I don't think they're following
2 construction of what's being proposed, I don't
3 think that there's necessarily something out of
4 character with the neighborhood that's being
5 proposed.

6 I think if the Applicant was
7 proposing something different, a larger
8 apartment building, larger condo building that
9 needed additional relief, I think I would have
10 some issues with that, but I think what's being
11 proposed does fit the block, does fit the
12 neighborhood, and does not, necessarily,
13 impact the intent of the zoning code.

14 So just getting back to the specific
15 relief, what's getting me over the edge, and
16 getting me to support the project is that, while
17 there's a requirement for a 30-foot alley,
18 Exhibit 48, which we have, is a letter from the
19 Fire and EMS Department, and they state that
20 both, what is it, Second Street and Adams
21 Street, actually meet their requirement for
22 access to the lot. And for me, that's

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1 sufficient enough to say that allowing this
2 relief --

3 CHAIRPERSON JORDAN: It doesn't
4 cause harm.

5 MEMBER HINKLE: -- it doesn't cause
6 harm. Thank you. And so that's basically my
7 position.

8 CHAIRPERSON JORDAN: Okay. Thank
9 you. Mr. Miller, do you want to --

10 COMMISSIONER MILLER: Thank you,
11 Mr. Chairman. I think I'm pretty much in
12 agreement with what Mr. Hinkle has presented.
13 We did ask for them to come back with additional
14 information.

15 I particularly wanted to see if
16 there was a reduction in the units, if that
17 would be an economically viable use, because
18 then it would be, in order to reduce the impact
19 on the neighbors.

20 They did change their original
21 application from four plats, which were eight
22 units to five single-family dwellings, and I

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1 think reduced the height, or set back the top
2 floor, to try to not have as great an impact on
3 the nearby properties.

4 So when they came back with the
5 alternative to show, you know, we have to, it's
6 hard to make a judgment based on the, you know,
7 the economics that are presented to us. I'm
8 not an expert on those economics, but we're
9 asked to look at that. And it seemed
10 reasonable, to me, the numbers that they
11 presented.

12 The Office of Planning has opined
13 that this does meet the variance test, and I
14 think Mr. Hinkle presented the reasons why, I
15 think, the 26-wide perpetual easement that goes
16 right to the street, I mean, and the fact that
17 it has the two allies that got to the street.

18 So I think it does meet the test. I
19 don't think it will have a substantial
20 impairment on the neighborhood, in fact, I
21 think it fits into the neighborhood and it's,
22 kind of, turning an eye sore into something of

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1 productive use of housing, which is desperately
2 needed in the city. So I would be comfortable
3 with moving forward today, but that's where I
4 am, right now.

5 CHAIRPERSON JORDAN: Certainly,
6 and I appreciate both of your comments. I
7 think this reason well-thought out. My issue
8 is that I can't get passed Step 2. I certainly
9 agree that this is a unique piece of property.

10 But my issue is probably more set on
11 the legal side of expert opinion. And,
12 certainly, you guys can make the motion
13 whichever way you feel to, plus we have an
14 absentee ballot, which is going to be counted
15 towards this.

16 Is that an expert has to base opine
17 on facts, generally, that's presented to this
18 Board, or facts, or let us know the basis of the
19 facts. And that's all I'm saying.

20 I can bring an expert in here that
21 just shoots off and says, you know, they think
22 the sky is falling, but what is the basis of

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1 saying the sky is falling? That's my issue.

2 And I try to warn throughout the
3 time of the testimony that asked the question,
4 where is this coming from, what's the factual
5 basis for which you are opining, what's the
6 foundation that your decision is being made of
7 that's in front of the Board, to help us
8 interpret those facts?

9 But that's just my thought, and I
10 don't want to beat a dead horse on that,
11 certainly, if there's a motion that's going to
12 be made by one of you, certainly, please do so.

13 MEMBER HINKLE: Yes, Mr. Chair, you
14 know, I typically support you in that, in terms
15 of getting some factual evidence from the
16 Applicants and, you know, we do beat people over
17 the head often with that.

18 But I think in this case, I think
19 there was sufficient evidence, at least from my
20 view. And, you know, I think they're there,
21 and so I'm having to make a motion to approve
22 the project, or --

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1 CHAIRPERSON JORDAN: To grant the
2 relief.

3 MEMBER HINKLE: -- grant the
4 relief, I'm sorry, for the variance, and I just
5 want to note that there were two conditions that
6 were offered by the Applicant, as well.

7 One was that landscaping should be
8 substantially in accordance with that shown at
9 Exhibit 47C, and the second condition was that
10 lighting for the project shall be designed to
11 minimize spillover light into nearby
12 properties. And so my motion would include
13 those conditions.

14 COMMISSIONER MILLER: I would
15 second that motion, Mr. Chairman.

16 CHAIRPERSON JORDAN: Motion made
17 and seconded that we approved the relief
18 requested with the two conditions, as defined
19 by Mr. Hinkle, and that's contained in Exhibit
20 43, is it? Well, that's been offered. That's
21 --

22 MEMBER HINKLE: I'm looking at the

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1 Applicant's draft order, but --

2 CHAIRPERSON JORDAN: Okay.

3 MEMBER HINKLE: -- yes, sir.

4 CHAIRPERSON JORDAN: Okay. Any
5 further discussion?

6 (No Response.)

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

9 (Chorus of Ayes.)

10 CHAIRPERSON JORDAN: Those
11 opposed, nay. And, nay. Mr. Moy, do we have
12 an outstanding absentee ballot? Would you
13 like to --

14 MR. MOY: Yes, sir.

15 CHAIRPERSON JORDAN: -- show the
16 Board the absentee ballot?

17 MR. MOY: Yes, sir. Before I give
18 a final vote, there is an absentee ballot from
19 Board Member Heath, who participated on this
20 application, and in her absentee ballot vote is
21 to approve the application for the relief being
22 requested.

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1 (Vote Taken.)

2 CHAIRPERSON JORDAN: Okay.

3 MR. MOY: So that would give a total
4 vote of 3-1, this is on the motion of Mr. Hinkle
5 to approve the application for the use variance
6 with two conditions, as he's cited. Seconded
7 the motion, Mr. Miller, and of course, Ms. Heath
8 would give a total vote of three votes in
9 approval, and then, Chairman Jordan opposed to
10 the motion, the motion, however, carries, Mr.
11 Chairman.

12 CHAIRPERSON JORDAN: Yes. The
13 motion would carry in full order, please.

14 MR. MOY: Okay.

15 (Whereupon, the Public Meeting went
16 off the record at 10:04 a.m.)

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