

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,

DECEMBER 9, 2014

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 7th Street, N.W., Washington, D.C. 20009, pursuant to notice, at 9:40 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
S. KATHRYN ALLEN, Vice Chairperson
JEFFREY HINKLE, NCPC, Member
MARNIQUE Y. HEATH, Member
MARCIE COHEN, Member
ANTHONY HOOD, Commissioner

BZA STAFF PRESENT:

CLIFFORD MOY, Board Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
MATT JESSICK
STEPHEN MORDFIN
MEGAN RAPPORT

D.C. DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

RYAN WESTROM

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

(9:42 a.m.)

CHAIRMAN JORDAN: Good morning.

Could we please come to order. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. and we're here for the Meeting of the Board of Zoning Adjustment. Today's date is December 9, 2014.

My name is Lloyd Jordan, Chairperson. To my immediate left is Marnique Heath, member of the Board; to her left is Marcie Cohen, member of the Zoning Commission; to my right is Vice Chair S. Kathryn Allen and to her right Jeffrey Hinkle, members of the Board.

Please be advised that today's proceedings are being Webcast live and also being recorded by a court reporter, so therefore I'm going to need you to refrain from any disruptive noises here in the hearing room today. So please take a moment to silence any devices that might ring or vibrate loudly.

The Board's process and the procedure

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are contained in a document at the back door to my left so feel free to get those, take a look at them.

If you're going to provide any testimony by way of statement or oral testimony to the Board, I'm going to need you to do two things, the first of which is to complete two witness cards per person and prior to testifying give those cards to the court reporter.

So that's two witness cards need to be completed per person and give those to the court reporter prior to providing a statement or addressing 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 by Mr. Moy, the Board Secretary.

(WITNESSES SWORN)

CHAIRMAN JORDAN: We apologize for our delay but we're still having technical difficulties. It appears that the computer system for at least the government in this building is down; certainly things on ISIS we can't get to and Z-Docs which is our internal system where all our

documents are kind of organized for the Board. I guess it's great, you know, we push this great technology issue as you know, as some of you know, we used to come out with stacks of paper but had some reliability as to paper.

Now they're completely down. Are they going to let us know when we're up and running?

SECRETARY MOY: Oh absolutely, sir.

CHAIRMAN JORDAN: So for some of us we rely on the notes, we can actually keep notes on each case within the system on the server but that's not working. Some of us downloaded to the machine itself and some have handwritten notes about the review of the cases so we're going to do the best we can today.

I guess you can tell us we filed that yesterday and we'll go ah get you. No, that's not true. I looked this morning for recent filings so the system went down some time after 8 o'clock this morning.

SECRETARY MOY: Yes.

CHAIRMAN JORDAN: Okay. Right. So

let me have the representative in Case 18878 and the party or persons seeking party status in 18878 come forward please.

But before I go into that -- well, Mr. Moy, do you want to make your announcements please?

SECRETARY MOY: Yes sir. Thank you, Mr. Chairman and good morning Mr. Chairman and members of the Board.

This is a little lengthy if you can bear with me. For the record I have six cases that is off the docket today. First, one of the cases in the decision meeting session, 18904 of Shannon Roche, that has been withdrawn by the applicant.

18877 of Jessica Crane; that has been postponed and rescheduled to February 24, 2015.

Habitat Humanity, 18876, has been postponed and rescheduled to February 10, 2015.

Alexander Pitt, 18844, again has been postponed and rescheduled to February 3, 2015.

Kami Quinnm, 18872, has been rescheduled to January 27, 2015, and Portofino, 18874, has been withdrawn by the applicant and that

completes--

CHAIRMAN JORDAN: That sounds like the whole docket. Okay. All right. Well, please identify yourselves.

MS. MOLDENHAUER: Good morning. My name is Meredith Moldenhauer from the law firm of Griffin, Murphy, Moldenhauer & Wiggins and I'm here on behalf of the applicant.

MR. SULLIVAN: Good morning. My name is Marty Sullivan and I'm with the law firm of Sullivan & Barros, here on behalf of the neighboring property RG-1101 K.

CHAIRMAN JORDAN: Ms. Moldenhauer, do you have any issues with the party status request?

MS. MOLDENHAUER: We do. We would oppose the party status request. They filed this just two business days before the hearing; the requirements require that it be filed 15 days before the hearing. In Tiber Island Cooperative v. the D.C. Zoning Commission the Court of Appeals affirmed that a Zoning Commission denied the request for party status due to its late filing and

found that the petitioner only had themselves to blame for the request of out-of-timely filing and they also indicated that they did not provide any reason for the late filing.

In this situation, Rockefeller Group is a large corporate group who we had actually contacted and we have email exchange where we contacted their property manager who is named on 1101 K Street's web site back on January 6, 2014, also informing them later on that same day of an ANC meeting that was--

CHAIRMAN JORDAN: What was the date of your notice?

MS. MOLDENHAUER: I sent an email on January 6th and I can provide a copy.

CHAIRMAN JORDAN: 2014?

MS. MOLDENHAUER: 2014. And so based on that we would find that the request for party status is untimely and is prejudicial.

CHAIRMAN JORDAN: Okay. Mr. Sullivan?

MR. SULLIVAN: Yes, thank you. We're

not claiming that we didn't know about the application. I was just retained on Friday, it was just unfamiliarity with the process of my client.

I don't have any information on that email from last January and my client didn't tell me so I don't know if that email ever made it to them but they're not claiming they didn't have knowledge of this, just that they weren't familiar with the process and they just retained counsel on Friday so we thought we'd make the request under the -- well for two reasons; one, we don't think it is prejudicial to the applicant and also because if the applicant's what they're calling extensive outreach is an email from almost a year ago, we don't think that rises to the level of extensive outreach that would have engaged my client sooner.

CHAIRMAN JORDAN: Ms. Moldenhauer, do you want to respond or reply?

MS. MOLDENHAUER: We believe that our email exchange that was never responded to, as well as obviously the Office of Zoning subsequent notification on September 15th, pursuant to the

rules and requirements, as well as the posting on the property that done timely, would have been sufficient for a company of this magnitude, the Rockefeller Group, to be able to respond timely and comply with the requirements.

If they wish to provide a 3-minute statement we believe that that would be sufficient but to provide them and grant them party status at this late time we believe would not be appropriate.

CHAIRMAN JORDAN: And was the property posted? And what was the date of posting?

MS. MOLDENHAUER: The date of posting was 11/24. That was when it was filed. Let me just double-check that that was the actual date it was posted or it could have been earlier. Yes, 11/24 at 1:12.

CHAIRMAN JORDAN: All right. Unless the Board has any opposition I'm going to deny the request for party status for a couple of reasons. Well, I agree with everything the applicant said; more importantly, when the party status request was filed, there wasn't even a request for waiver of

late filing which whenever counsel got in he certainly is aware of the reason to file a request for waiver.

So unless there's opposition from the Board or an exception by the Board I would rule that this is out of order, it's not timely.

MR. SULLIVAN: --file a waiver?

CHAIRMAN JORDAN: It's untimely so party status would not be granted. And I think it's within the authority of the Chair so although it's within the authority of the Chair but just so we make sure the record's clean, I would move that we deny the party status request for the reasons given.

MEMBER HINKLE: Second.

CHAIRMAN JORDAN: Motion made and second. All those in favor, aye? All those in favor, nay?

(VOTE TAKEN)

CHAIRMAN JORDAN: The motion carries.

Mr. Moy?

SECRETARY MOY: Staff would record the

vote as 5-0 on the motion of Chairman Jordan to deny the party status request, seconded by Mr. Hinkle. Ms. Cohen, Ms. Heath, Vice Chair Allen are in agreement with the motion and the motion carries sir.

CHAIRMAN JORDAN: But certainly, Mr. Sullivan, you know you can still participate in regards to opposition--

All right. You know, the next step, had we granted party status, was that I'd want you guys to talk but you should talk anyway. It just makes things better for all to live together.

So with that then, let's handle our meeting cases, Mr. Moy, in order please. Mr. Moy, we did take off one of the three-- did we take off 18877 also? Did we get the letter on 18877?

SECRETARY MOY: Just this--

CHAIRMAN JORDAN: We didn't get that? Okay.

SECRETARY MOY: Yes, we did.

CHAIRMAN JORDAN: Okay. Good. So the two applications that are on the expedited

calendar, the first is Application No. 18901 of Thomas Reed request for a special exception relief under 223. Is the Board ready to deliberate on this case? I think the requisite information is contained in the application on the expedited review so I can support it.

I would move that we support granting this special exception as requested here.

VICE CHAIR ALLEN: Second.

CHAIRMAN JORDAN: Second.

Discussion? All those in favor of the motion, aye; those opposed nay.

(VOTE TAKEN)

The motion carries. Mr. Moy?

SECRETARY MOY: Staff would record the vote as 5-0. This on the motion of Chairman Jordan to approve the request for special exception relief. Second the motion Vice Chair Allen. Also in support Ms. Cohen, Ms. Heath and Mr. Hinkle.

CHAIRMAN JORDAN: I think that's five, right?

SECRETARY MOY: The motion carries

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sir.

CHAIRMAN JORDAN: Next please.

SECRETARY MOY: Summary order, sir?

CHAIRMAN JORDAN: If you want. Yes, summary order is the desire of the Board.

(Whereupon, the Public Meeting went off the record at 9:54 a.m.)