

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 6, 2015

+ + + + +

The Regular Public Meeting Hearing 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 9:59 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

The transcript constitutes the minutes from the Public Meeting held on January 6, 2015.

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR  
MEGAN RAPPOLT  
MATT JESICK  
BRANDICE ELLIOT

DDOT STAFF PRESENT:

RYAN WESTROM

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

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

(9:58 a.m.)

CHAIR JORDAN: Good morning. Happy New Year to all, if we can please come to order. We're here this morning for the Board of Zoning Adjustments Meeting.

We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW. Today's date is January 6, 2015. My name is Lloyd Jordan, Chairperson of the Board.

To my left is Marnique Heath, a member of the Board. To her left is Michael Turnbull, member of the Zoning Commission sitting in as a member of the Board of Zoning Adjustment today.

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 ask you to refrain from any disruptive noises here in the hearing room.

That's always our signal to you to please silence anything that may ring, buzz or et cetera at this time. The Board's hearing

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1 procedures are contained in a document to my, to  
2 the door to the left in the back if you're not  
3 familiar with how we proceed at the Board.

4 If you're going to testify or provide  
5 any statements to the Board today, I'm going to need  
6 you to do two things. So there's two things I need  
7 you to do before you testify or provide statement  
8 to the board.

9 The first of which is to complete two  
10 witness cards per person and give them to the court  
11 reporter who's seated to my right. So that's two  
12 witness cards per person.

13 And I was also reminded that when you  
14 fill out the card, be sure to look in the upper right  
15 hand corner and put the case number down. Put the  
16 case number on each card.

17 We're getting cards without case  
18 numbers. So that's two witness cards with the case  
19 number at the right hand side per person and prior  
20 to testifying and give those cards to the court  
21 reporter.

22 And the second thing I need you to do

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1 is now rise and take the oath, to be given by Mr.  
2 Moy. So if you're going to testify or provide any  
3 statement, please now rise.

4 MR. MOY: Good morning. Happy New  
5 Year.

6 (Witnesses sworn)

7 MR. MOY: Ladies and gentlemen, you may  
8 consider yourselves under oath.

9 CHAIR JORDAN: Very good. Thank you.  
10 Before we begin, I'm going to call, what case is  
11 that? I'm going to, I'm sorry. Mr. Moy, why don't  
12 you handle those preliminary matters, and then  
13 we'll come back? Are there any preliminary  
14 announcements that you need, any announcements you  
15 --

16 (Simultaneous speaking)

17 MR. MOY: Yes, I'm sorry. For the  
18 record, on the docket I just want to announce that  
19 Application Number 18934 of Michael Welch, which  
20 was originally on the public meeting session has  
21 been rescheduled to January 27, 2015.

22 Second, Application 18890 of Rock Creek

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1       650, LLC has been rescheduled, postponed to  
2       February 10, 2015. And finally, Application  
3       Number 18889 of Daz, D-A-Z, LLC has been postponed,  
4       rescheduled to February 24, 2015. And I believe  
5       that complete's the staff's briefing, Mr.  
6       Chairman.

7               CHAIR JORDAN: All right, thank you,  
8       Mr. Moy. I'm going to ask that although we're not  
9       calling this case at this point for hearing that  
10      a representative in case, of the Applicant of 18884  
11      come to the witness table as well as the two persons  
12      or two parties, I guess, requesting party status  
13      in that case, 18884.

14             To the witness table, please. And if  
15      you please be sure you've completed your witness  
16      cards and give them to the court reporter. We're  
17      going to discuss some preliminary matters and not  
18      go through presentations.

19             So I just need a representative for the  
20      applicant and then the two groups seeking party  
21      status in that matter. Okay. All right, okay  
22      let's, are you doing witness cards?

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1 All right, we'll proceed on. Let's go  
2 ahead and let me have the introductions, please,  
3 starting to my right. Just make sure your  
4 microphone is on.

5 It's there in front of you. It's got  
6 to be a bright, glowing green light, bright  
7 glowing. No, it's not on. Push the button.

8 MR. BELL: Oh, now it's bright.

9 CHAIR JORDAN: Right, there we go.

10 MR. BELL: My name's Robert Bell. I'm  
11 the owner and architect of this project, and I'll  
12 be presenting.

13 CHAIR JORDAN: Okay, bright, glowing  
14 green light.

15 MR. MULDER: I'm Christian Mulder.  
16 I'm the spokesman for the group, this party  
17 opposing the exception and the variance that's  
18 being proposed.

19 CHAIR JORDAN: And that's --

20 MR. MULDER: I'm a neighbor.

21 CHAIR JORDAN: I understand. Next?

22 MR. GALLAGHER: I'm Bill Gallagher.

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1 I'm also a neighbor to the project. I'm also an  
2 architect.

3 CHAIR JORDAN: That's good. Put the  
4 brakes on that. Next?

5 MR. JUNKER: My name is Caesar Junker.  
6 I'm a neighbor at 3146 O Street and a witness to  
7 the meetings at ANC and OGB.

8 CHAIR JORDAN: I got you. And, sir, I  
9 didn't get your, just make sure, yes, there you go.

10 MR. ADAMS: My name's Thomas L. Adams,  
11 Jr. I live on Dumbarton Street.

12 CHAIR JORDAN: Mr. Adams, I don't have  
13 anything from you in this matter for party status.

14 MR. JUNKER: Party status --

15 CHAIR JORDAN: Yes.

16 MR. JUNKER: -- was submitted.

17 CHAIR JORDAN: I have on the, oh,  
18 Thomas Adams. I'm sorry. I apologize. Yes, I do  
19 have you. All right, so and is there a Douglas  
20 Stephens?

21 MR. JUNKER: I have not seen him here  
22 today.

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1 CHAIR JORDAN: Okay. Well, at this  
2 point then we're going to deny Douglas Stephen's  
3 party status request. Regarding the group that's  
4 seated at the table, Mr. Mulder, Gallagher, Adams  
5 and Junker, we're going to consolidate that as to  
6 one part status.

7 Mr. Bell, do you have any issues with  
8 me granting party status to this group?

9 MR. BELL: No, I don't.

10 CHAIR JORDAN: Okay. Then there's a  
11 couple of things that we need to have, that I need  
12 to talk to you about.

13 First, it's a board practice to have the  
14 applicant and those we've granted party status to,  
15 to have conversation and try to resolve any  
16 outstanding issues prior to your case being heard.

17 So when I release you from the table  
18 pretty soon, I'm going to ask that you step out into  
19 the hall and have conversations about trying to  
20 resolve these issues.

21 We have found this to be very beneficial  
22 to all in regards to having these conversations.

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1 And when we say have the conversations, we mean have  
2 serious conversations, not drive by conversations  
3 but really try to hit the issues.

4 One thing that we try to tell you here  
5 at the Board is that it's better if you can decide  
6 among yourselves how to resolve your issues,  
7 especially since you're going to be neighbors and  
8 are living together, it's better that you do it as  
9 opposed to the Board making the decision that  
10 someone's not going to be happy with.

11 The second thing that comes up, Mr.  
12 Bell, and I want to put you on notice. We received  
13 from the pleadings from the party status that is  
14 a claim that you don't own all the property in which  
15 you're seeking relief from. Do I have that  
16 correct?

17 MR. BELL: Yes.

18 CHAIR JORDAN: I think, Mr. Mulder, you  
19 say that you own part of it. And then there's  
20 another issue about DC government owning part. Is  
21 that what your contention is?

22 MR. MULDER: No, Mr. Adams bought in a

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1 tax sale part of the property.

2 CHAIR JORDAN: Okay. So Mr. Adams  
3 bought the tax sale property, alleged purchase of  
4 the tax sale or part of the property. And Mr.  
5 Mulder, you're --

6 MR. MULDER: I own, I claim to own --

7 CHAIR JORDAN: I understand. So Mr.  
8 Bell, one of the issues that are rising in this  
9 matter is the ownership issue.

10 And I don't know if you're ready to  
11 confront that or if you're going to need more time  
12 to present to the Board documentation that you own  
13 all of the property in which you're seeking relief  
14 from.

15 MR. BELL: Yes, would you like me to  
16 present that now?

17 CHAIR JORDAN: No, I just want to let,  
18 put you on notice, and if you needed more time I  
19 was going to --

20 MR. BELL: I'm aware of that, and I have  
21 the documentation to that issue.

22 CHAIR JORDAN: Okay. Very good.

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1       Okay. And so I'm going to also ask when you go out  
2       in the hall and have your conversation that you  
3       share the documentation with the party opponents.

4               And that's one of the issues I'm going  
5       to ask you guys to work out and resolve. Okay?

6               MR. BELL: Okay.

7               CHAIR JORDAN: So we will call this  
8       case back again, and please step out and have  
9       conversation. If you need a room, Mr. Moy, we can  
10      make one available?

11              MR. MOY: Yes, I believe the Green  
12      Conference Room across the hall is open, but check  
13      in with the receptionist.

14              CHAIR JORDAN: Okay. All right, very  
15      good. So thank you. We will then call this case  
16      back again.

17              ZC MEMBER TURNBULL: Mr. Chair?

18              CHAIR JORDAN: Yes.

19              ZC MEMBER TURNBULL: Setting, well if  
20      nothing is reached and we do have the hearing, the  
21      party in opposition would have just one person as  
22      their leader.

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1 CHAIR JORDAN: Oh, thank you. Well,  
2 it's a consolidated request. They did a request  
3 collectively.

4 ZC MEMBER TURNBULL: But I assume  
5 they'd have one point person.

6 CHAIR JORDAN: Yes, Mr. Mulder  
7 indicated he's the spokesperson for the group.

8 ZC MEMBER TURNBULL: So if the others  
9 have questions, they would direct them to you --

10 CHAIR JORDAN: Mr. Mulder.

11 ZC MEMBER TURNBULL: -- and you ask --

12 CHAIR JORDAN: Correct.

13 ZC MEMBER TURNBULL: -- the applicant.

14 MR. MULDER: My intention is to call  
15 Mr. Bell to cross examine him, to ask Bill as an  
16 expert witness when it comes to the impact of the  
17 neighbors ask specific questions.

18 CHAIR JORDAN: You can use who you want  
19 as witnesses.

20 ZC MEMBER TURNBULL: Okay.

21 CHAIR JORDAN: Okay. Very good.  
22 Thank you, Mr. Turnbull. All right, thank you.

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1 So please go out now and --

2 MR. ADAMS: Mr. Chairman, we have had  
3 a number of discussions. Do we still do it again?

4 CHAIR JORDAN: That doesn't count for  
5 anything at all.

6 MR. ADAMS: Okay.

7 CHAIR JORDAN: We've had, was it 12 Mr.  
8 Moy, a group of 12 different party status requests.  
9 And they had been meeting for probably a year. But  
10 when they got here and were told to go out and have  
11 this conversation, the issue got resolved.

12 MR. ADAMS: Okay.

13 CHAIR JORDAN: So work with me.

14 MR. ADAMS: Okay.

15 CHAIR JORDAN: Please have fruitful  
16 discussion, and I don't mean to walk out the door,  
17 come back in in one minute and pretend as though  
18 it happened. We've had groups do that. It  
19 doesn't make us very happy. Plus, we watch what  
20 goes on in there.

21 MR. ADAMS: Okay.

22 CHAIR JORDAN: Thank you, but I mean

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1 it's really, really important that people try to  
2 extend hands and reach out and to reach some aspect  
3 of compromise. This is one I think could be  
4 compromised.

5 You need to really do it, and I say it  
6 to the applicant like I say to the people in party  
7 status. You don't necessarily want the Board to  
8 resolve an issue that you could've resolved  
9 yourselves. Thank you.

10 All right, so let's move to our decision  
11 cases, Mr. Moy. And let me make another  
12 announcement. Mr. Hinkle is going to join us in  
13 progress. He had some building issues and some  
14 other things as well as we apologize for starting  
15 off late.

16 As you know, the weather just caught up  
17 on everybody. But we are here, and we're moving  
18 forward. So if you would call the first decision  
19 case, please?

20 MR. MOY: Yes, sir. That I believe  
21 would be Application Number 18909 of Kevin White.  
22 As the Board will recall or rather not this one,

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1       this is an application, Special Exception 223  
2       that's on the expedited review calendar, sir.

3               CHAIR JORDAN:    Okay.    Is the Board  
4       ready to deliberate in this case?   Okay?   I get the  
5       thumbs up.   It means we're ready to go.   Just  
6       prior, I'm going to make a motion that we grant the  
7       relief based upon what's been submitted.

8               But I want to an addition to that, to  
9       my motion, that we grant 2001.3 relief for the  
10      non-conforming.   They didn't request it, but this  
11      is an expedited self-application.   I just want to  
12      give them a lift on that.   So with that, that would  
13      be my motion.

14              MEMBER HEATH:   I'll second.

15              CHAIR JORDAN:   Motion made and second  
16      to grant the relief requested with the addition of  
17      the non-conforming aspect on 2001.3 relief.   Any  
18      other discussion?   Those in favor of the motion,  
19      aye.

20              (Chorus of ayes)

21              CHAIR JORDAN:   Those opposed, nay?  
22      The motion carries.

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1 MR. MOY: Staff would record the vote  
2 as 3-0 this on motion that Chairman Jordan to  
3 approve the application for the relief requested  
4 as well as 2001.3 non-conforming requirements.

5 Second the motion, Ms. Heath. Also in  
6 support, Mr. Turnbull. We have two members not  
7 present at the moment, Mr. Chairman. Motion  
8 carries.

9 CHAIR JORDAN: Okay. Thank you,  
10 18815.

11 MR. MOY: Is that a --

12 CHAIR JORDAN: Summary, please.

13 MR. MOY: Summary, thank you, sir.

14 CHAIR JORDAN: Oh, that's, I'm sorry.  
15 Mr. Moy, we had an absentee on 18909.

16 MR. MOY: That's right. Thank you,  
17 sir.

18 CHAIR JORDAN: Thanks, Missy.

19 MR. MOY: So that's right. I have an  
20 absentee ballot from Mr. Hinkle, so that would  
21 raise the vote to 4-0 with his absentee vote. So  
22 that's a correction to the vote count. Thanks for

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1 the reminder.

2 CHAIR JORDAN: All right, very good.  
3 Thank you. 18815?

4 MR. MOY: All right, that would be  
5 Application 18815 of Amanda Bennett and Donald  
6 Graham. As the Board will recall, there have been  
7 delays in decisions from the past two, or rather  
8 the past session on November 18th.

9 CHAIR JORDAN: Yes, this is one that's  
10 been around. It goes to one of the things, Mr.  
11 Turnbull, where, one of those cases where we say  
12 that there should be something that just allows  
13 some homeowners to do some very simple things  
14 without jumping through all the hoops.

15 This is one where the Board really  
16 wanted to grant the relief, and we had to send the  
17 applicant back to look at their situation kind of  
18 over and over again.

19 And they finally got it. So with that  
20 one, with the supplemental report and additional  
21 data submitted to the Board, I would move that we  
22 grant the relief on 18815.

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1                   ZC MEMBER TURNBULL: Did we get a  
2 supplemental report from OP? I guess I didn't --

3                   (Simultaneous speaking)

4                   CHAIR JORDAN: I didn't see one from  
5 OP. We did not get one from OP.

6                   ZC MEMBER TURNBULL: I mean OP, they  
7 could not recommend approval on that.

8                   CHAIR JORDAN: Yes, and we couldn't  
9 either. But OP was here the time we had the  
10 hearing, had the discussion, and they very much  
11 supported them going back to try to find a way to  
12 get there. And they subsequently did that.

13                  ZC MEMBER TURNBULL: Yes, I guess my  
14 concern is it's a large deck with a lot of lighting  
15 on it. And I want to make, I think it ought to be  
16 written in the order that the lighting ought to be  
17 down lighting --

18                  CHAIR JORDAN: Certainly.

19                  ZC MEMBER TURNBULL: -- and not of a  
20 nature that would be offensive to the neighbors.

21                  CHAIR JORDAN: Okay.

22                  ZC MEMBER TURNBULL: So I think it

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1       ought to be very carefully done and down lighting  
2       so that it's concentrated on the deck and not just  
3       open lighting that would --

4               CHAIR JORDAN:       Certainly.       Okay.  
5       We'll make that part of the condition.

6               ZC MEMBER TURNBULL:   Okay.

7               CHAIR JORDAN:   We'll make that part of  
8       18815.   And I would put that as part of my motion.

9               ZC MEMBER TURNBULL:   Okay.

10              CHAIR JORDAN:   We have a second?

11              MEMBER HEATH:   I'll second.   Oh, go  
12       ahead.

13              ZC MEMBER TURNBULL:   I'll second.

14              CHAIR JORDAN:   All right, any further  
15       discussion?   All those in favor of the motion, aye.

16                       (Chorus of ayes)

17              CHAIR JORDAN:   Those opposed, nay?  
18       The motion carries.   Mr. Moy?

19              MR. MOY:   Before I give the vote count,  
20       we have an absentee ballot for this case as well  
21       from Mr. Hinkle, and his vote is approve the  
22       application with any conditions that may be imposed

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1 by the board.

2 So that would give a final vote of 4-0  
3 on the motion of Chairman Jordan to approve the  
4 relief request as well as the condition. Second  
5 the motion, Mr. Turnbull, also support Ms. Heath  
6 and of course Mr. Hinkle.

7 CHAIR JORDAN: Summary please?

8 MR. MOY: Yes, sir.

9 CHAIR JORDAN: And include the  
10 condition.

11 MR. MOY: Okay.

12 CHAIR JORDAN: Our next decision case,  
13 please.

14 MR. MOY: That would be Application  
15 18878 of Alba 12th Street, LLC. And this Board  
16 will recall the hearing testimony completed on  
17 December 9, 2014. The record was closed. And  
18 this had been advertised for variance relief from  
19 FAR, rear yard and parking.

20 CHAIR JORDAN: Is the Board ready to  
21 deliberate on this one? I guess I said Board, you  
22 and I? Yes, Mr. Turnbull was not part of that, but

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1 we do have sufficient --

2 ZC MEMBER TURNBULL: I'm here for your  
3 support.

4 CHAIR JORDAN: Thank you very much.  
5 And we appreciate that. Otherwise we wouldn't be  
6 having cases today. Thank you. So this is a case  
7 which we heard and has a lot of issues.

8 There were a lot of issues running back  
9 and forth on this case. We've gotten some  
10 supplemental pleadings from everybody on this  
11 matter. There's been some changes that there was  
12 the ability now to find some TDRs that was not  
13 available before.

14 And we'd gone back and forth. And then  
15 there's been some economics on this case, and there  
16 has been, the opposition had economics on the case.  
17 I don't think the opposition though really hit the  
18 point on the economic issues with this one.

19 They were very broad in their economic  
20 impact. They offered building code issues, and of  
21 course the building code is not before this Board.  
22 And I have not seen anything that offered that would

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1 substantially offset what the applicant discussed.

2 There's a lot of relief. There's a lot  
3 of issue, but I think certainly what persuades me  
4 is that this property is truly, I think no one can  
5 question how unique this particular property is.

6 And the other part that put me over the  
7 top is the core factors of this building. It's  
8 extremely high, and I could support the amended  
9 relief in this case with the various conditions  
10 that we talked about before.

11 The applicant shall install at least  
12 two bicycle parking racks. The applicant shall  
13 provide \$50 in SmartCard. The applicant shall  
14 provide reasonable amounts for transit use by its  
15 employees.

16 And they should enroll in the  
17 SmartBenefit Transfer Program and that they  
18 appointed a TDM leader. So that's just my thoughts  
19 on it. Any other thoughts about, we're on the  
20 Alba, yes.

21 Any other discussions about that? Mr.  
22 Hinkle and thank you for, you don't understand what

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1 he went through to be here today.

2 MR. HINKLE: My apologies for being  
3 late.

4 CHAIR JORDAN: No, not your apologies.

5 MR. HINKLE: I'm sorry I missed your  
6 discussion in terms of the project, but I do support  
7 the amended relief that's being requested.

8 CHAIR JORDAN: I just kind of laid the  
9 foundation how and why I would support it, and I'm  
10 just hoping for any discussions. So if there's  
11 nothing else in addition, then I would move that  
12 we grant the amended relief with the conditions as  
13 set.

14 MEMBER HEATH: I'll second.

15 CHAIR JORDAN: Motion made and second.  
16 Any further discussion? All those in favor, aye?

17 (Chorus of ayes)

18 CHAIR JORDAN: Those opposed, nay?  
19 The motion carries. Mr. Moy?

20 MR. MOY: Staff would record the vote  
21 as 3-0. This on the motion of Chairman Jordan to  
22 approve the amended relief as requested. Second

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1 the motion, Ms. Heath. In support, Mr. Hinkle.  
2 We have two members not present, not voting. So  
3 the motion carries.

4 CHAIR JORDAN: That's a full order.  
5 And if we can reach out and certainly ask counsel  
6 for that case to submit a proposed, a finding of  
7 fact and conclusions consistent with what the  
8 Board's decision and discussion has been here this  
9 morning.

10 MR. MOY: Yes, staff will follow up  
11 with that, sir.

12 CHAIR JORDAN: Okay. That would help  
13 expedite it. All right, so we can go to our hearing  
14 cases today.

15 (Whereupon, the above-entitled matter  
16 went off the record at 10:20 a.m.)  
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