

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

JANUARY 13, 2015

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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 9:42 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
ALLISON MYERS, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on January 13,
2015.

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CONTENTS

| | |
|---------------------------|----|
| Preliminary Matters | 4 |
| Announcements | 6 |
| Application 18898 | 7 |
| Application 18893 | 15 |
| Application 18790 | 17 |
| Adjourn | |

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

2 9:42 a.m.

3 CHAIR JORDAN: Good morning. Can we
4 please come to order? We're here for the Board of
5 Zoning Adjustment meeting today. We're located at
6 the Jerrily R. Kress Memorial Hearing Room at 441
7 4th Street, N.W. Today's date is January 13th,
8 2015.

9 My name is Lloyd Jordan, Chairperson.
10 To my right is Vice Chair S. Kathryn Allen. To my
11 left is Board member Marnique Heath. To her left
12 is the Chairman of the Zoning Commission, Anthony
13 Hood, who will be sitting in today as a member of
14 the Board of Zoning Adjustment.

15 Please be advised that today's
16 proceedings are being recorded by a court reporter,
17 and also being webcast live. So therefore I'm
18 going to ask you to refrain from any disruptive
19 noises here in the hearing room today. That's the
20 signal that it's a good time to check your phones
21 and anything that's going to ring or buzz loudly,
22 to turn those off. The Board's hearing

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1 procedures are contained in a document to the back
2 door to my left. So please feel free to get the
3 document, so you can acquaint yourself with how we
4 operate here at the Board. If you're going to
5 provide testimony or read a statement or do
6 anything regarding the Board today, we're going to
7 need you to do two things.

8 So if you're going to present a
9 statement or read a statement or testify or
10 anything to be a witness, I'm going to need you to
11 do two things, the first of which is to complete
12 two witness cards per person. That's complete two
13 witness cards per person. Be sure to put the case
14 number on the witness cards, and give them to the
15 court reporter prior to testifying or presenting
16 a statement to the Board.

17 So that's to complete two witness cards
18 per person, include the case number and give those
19 cards to the court reporter prior to testifying.

20 The second thing I'm going to need you
21 to do today is to now stand. If you're going to
22 provide testimony, a statement or address the Board

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1 in any manner, I'm going to need you now to stand
2 and take the oath, which will be given by Mr. Moy.

3 MR. MOY: Good morning.

4 [WITNESSES SWORN.]

5 MR. MOY: Ladies and gentlemen, you
6 may consider yourselves under oath. What did you
7 say?

8 CHAIR JORDAN: It's not that type of
9 day today. It's just not.

10 (Pause.)

11 CHAIR JORDAN: Thank you, Anthony.
12 Okay. Mr. Moy, are there any announcements today?

13 MR. MOY: Yes sir, thank you Mr.
14 Chairman. First off, there are guests who are --
15 will be giving testimony, who are bringing, also
16 submitting written testimony. If you have only
17 have one copy, I'd appreciate it if you would just
18 go across the hall to our reception area and they
19 can assist you with Xeroxing extra copies for the
20 Board, for them to read.

21 For the record, Mr. Chairman, we have
22 three applications on the docket that have been

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1 postponed and rescheduled. The first is
2 Application No. 18897 of Hunt and Laudi, and that
3 has been rescheduled to February the 10th, 2015.

10 CHAIR JORDAN: All right, thank you.
11 Thank you, Mr. Moy. All right. Let's call -- I
12 need a representative on -- a representative for
13 the Applicant and a representative of the ANC in
14 Case No. 18898 to come forward to the witness table,
15 please. Additionally, is there a representative
16 of Carnegie Institute of Washington?

17 (No response.)

18 CHAIR JORDAN: Good morning.

19 MS. PRINCE: Good morning.

20 CHAIR JORDAN: Would you please
21 identify yourselves?

22 MS. PRINCE: Allison Prince with

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1 Goulston and Storrs, here on behalf of Ingleside.

2 MR. SPECK: Hi. I'm Randy Speck,
3 Chair of ANC 3G, and I am here on behalf of the ANC.

4 MR. COLLINS: Chris Collins with
5 Holland and Knight, here on behalf of Carnegie
6 Institution of Washington.

7 MR. CARLSON: I'm Richard Carlson.
8 I'm Director of the Department of Terrestrial
9 Magnetism of the Carnegie Institution of
10 Washington, and I'm here representing Carnegie
11 Institution.

12 CHAIR JORDAN: There's a couple of
13 matters, why I wanted to call you up. There's been
14 -- first of all, Carnegie has asked for party
15 status, which I don't believe I'm inclined to grant
16 to Carnegie. I don't believe that the issues
17 raised by Carnegie affects the zoning requirements
18 here.

19 It's all about construction and the
20 vibrations of the ground, etcetera. However, that
21 does not stop you from making an agreement and
22 reaching things, reaching a situation.

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1 Additionally, there's been a request from Carnegie
2 to continue this matter beyond today, and unless
3 the Board sees inclined otherwise, I plan to move
4 forward on the hearing.

5 MS. PRINCE: Chairman Jordan?

6 CHAIR JORDAN: Yes.

7 MS. PRINCE: Sorry to interrupt.
8 There was a later filing from Carnegie consenting,
9 essentially going along with our proposed concept,
10 which was to proceed today, and leave the record
11 open for an agreement.

12 CHAIR JORDAN: I read those. I
13 understand.

14 MS. PRINCE: Oh, I'm sorry.

15 CHAIR JORDAN: I understand what the
16 words mean --

17 MS. PRINCE: Okay, I'm sorry. I
18 didn't know that you had received it.

19 CHAIR JORDAN: Yeah, and I don't think
20 that they qualify, unless the Board has something
21 different, that they would qualify for party
22 status. However, one of the reasons I'm going to

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1 call you up, so you can continue to talk about what
2 you need to do to protect Carnegie's interest as
3 you move forward.

4 So if that's okay, then that would be
5 the decision of the Chair regarding this, and the
6 Board, also by consent here.

7 Now the other issue, the reason why I
8 called you up Mr. Speck and Ms. Prince, is regarding
9 the 35, 36, 37, 39 conditions which, as you know,
10 are most of those, 99 percent of those are not
11 within the jurisdiction of the Board to implement.

12 But this is what I'm going to say.
13 There's four or five, which I've read them. I've
14 gone through them a couple of -- 50 times, and I've
15 pulled some of those out that we can put in the
16 order. But I called you up, as you know Ms. Price
17 and Mr. Speck, you probably know, I'm going to
18 recommend that prior to us calling this case, that
19 you just execute it as an agreement between the ANC
20 and the Applicant.

21 So therefore the ANC and the community
22 is protected per the document as, you know, we've

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1 done this numerously, and that document contains,
2 again, mostly about construction and some other
3 things like that.

4 But there are four or five which we can
5 put in the order. We can make reference that
6 there's been an executed agreement in regards to
7 some litigation of any impact.

12 MR. SPECK: Mr. Chairman, we actually
13 have done that. The Applicant has sent us a letter
14 agreeing to all of those conditions and accepting
15 all of those conditions. So I think we have an
16 agreement with them.

17 CHAIR JORDAN: Yeah, but not just by
18 letter. I'll make sure you have an enforceable
19 agreement, which I think you already have those
20 terms. You just need to probably sign off on it
21 and Ms. Prince certainly knows how to make it be
22 enforceable.

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1 MS. PRINCE: I do and --

2 CHAIR JORDAN: Yes.

3 MS. PRINCE: There have been instances
4 where this Board has incorporated
5 construction-related conditions into orders, as
6 I'm sure you're aware. I did want to win for us
7 and obviously this is solely in the Board's
8 discretion.

9 Number one, Ingleside's commitment to
10 each and every one of those conditions, whether or
11 not you believe they're within your jurisdiction.
12 But also we made a commitment to the Committee that
13 we would do our best, and that's what I'm doing.

14 CHAIR JORDAN: Oh, I understand.

15 MS. PRINCE: To try to ensure that
16 these conditions are in the order, and if they are
17 not, that we'll be fully bound by them.

18 CHAIR JORDAN: Yeah. I mean that's
19 assuming that we get to the point of --

20 MS. PRINCE: Assuming that we get to
21 that.

22 CHAIR JORDAN: But I just wanted you

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1 to, you know, handle this in preliminary, to give
2 you a heads up, so you talk about it in the interim.
3 I don't -- I mean it's something simple to resolve,
4 and everybody can come out winners.

5 Okay. So I think Ms. Price you have
6 your pre-warning cut out with you, so you can work
7 with Carnegie and you can work with the ANC in
8 making sure things are where it should be when we
9 call this case up. I understand Carnegie's going
10 to be ongoing that discussion. Mr. Collins, did
11 you want to say something?

12 MR. COLLINS: I just need a
13 clarification, Mr. Chairman. Will the record be
14 left open after the public hearing today, to allow
15 Carnegie and Ingleside to continue their
16 discussions? There's been significant progress
17 made. It all has boiled down to
18 construction-related issues, and that's kind of
19 where we are. One thing that has to happen is that
20 there has to be some vibration testing.

21 CHAIR JORDAN: Yeah, and I understand
22 that you need the Board to kind of stand over the

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1 shoulder, making sure it's done. Let's handle
2 that when I call this back up. But let me just try
3 to ponder that when we call this back up. I don't
4 think that's generally unreasonable, especially if
5 you have some time before the decisions are
6 actually put into writing, etcetera. All right.

7 Board, is that good with you? Everyone
8 on the Board acknowledge? Okay, thank you.

9 MS. PRINCE: Thank you.

10 (Off record discussion.)

11 CHAIR JORDAN: Is currently a
12 representative of the Applicant in 18893, and is
13 a Deering Kendrick present? Please introduce
14 yourselves.

15 MS. REATIG: Hello, thank you to the
16 Board. I'm Nooni Reatig from Suzane Reatig
17 Architecture.

18 MS. BARRINEAU: I'm Erin Barrineau
19 from Suzanne Reatig Architecture.

20 CHAIR JORDAN: All we need is a
21 representative of the Applicant. We're not doing
22 presentations. So who's speaking for the

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1 Applicant?

2 MS. BARRINEAU: I will. I'll speak.

3 MR. KENDRICK: I'm Deering Kendrick.

4 MS. NIGRO: Hi. I'm Rachelle Nigro.

5 I'm a commissioner for ANC 6E-04.

6 CHAIR JORDAN: Thank you. Mr.
7 Kendrick, it is my thought that we won't grant party
8 status in your request for party status. Your
9 request for party status application does not
10 change the situation or add anything more
11 substantively, or is there is no issues that you
12 can raise that the Board's not already considering
13 in a very, very direct way in this case.

14 The issue here is about parking, and the
15 Board will be drilling down in the whole discussion
16 about parking. So you're not being situated in any
17 greater uniqueness than what the Board is already
18 going to generate, to do -- protecting the general
19 public. That would be my thought, Board.

20 Unless somebody on the Board has
21 another issue, then that would be a ruling on it.
22 However, it never stops the Applicant from having

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1 the opportunity to talk to anybody who has any
2 opposition or issues with the matter, which we
3 always recommend prior to the case being called.

4 I would also give you, Mr. Kendrick, the
5 opportunity. If you want to speak during the time,
6 we ask for people in opposition to give an
7 additional -- give you five minutes instead of the
8 initial three minutes, so you can talk about any
9 issues that you feel that you need to talk about.
10 Okay?

11 MR. KENDRICK: Thank you.

12 CHAIR JORDAN: Okay, all right.
13 Anything else? Good. Thank you. Sir, we'll
14 call the case back up. I appreciate it. Thank
15 you.

16 Okay. Is there any other preliminary
17 thing I need to do today? That's enough, huh? Mr.
18 Moy, can we call our first decision case for today
19 please?

20 MR. MOY: Yes sir. Good morning Mr.
21 Chairman, members of the Board. The first
22 application for a decision, that's on a decision

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1 session or a public meeting session is Application
2 No. 18790, Jefferson 11th Street, LLC. As the
3 Board will recall, this application was heard in
4 testimony, the record was completed and closed on
5 November 18th, 2014.

6 The Board requested supplemental
7 information from the applicant, and that is in your
8 case folders under Exhibits 70A, B and C. The only
9 other thing I would like to mention is to remind
10 you that the application was amended to propose
11 eight apartment units instead of 11.

12 CHAIR JORDAN: Okay, thank you. All
13 right. This is a matter where the Board has heard
14 the testimony, and in fact I went back and reviewed
15 the hearing tape again. Is the Board ready to
16 deliberate on this? All right. This is one which
17 the basis for relief it is argued that -- I'm sorry?
18 Why are you standing? Could you? I think you can
19 hear. Please be seated. Thank you very much.

20 Okay now. Now you threw off my train
21 of thought. Yeah, okay. Where the basis of the
22 exceptional condition and practical difficulty was

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1 based upon the financial issues and the condition
2 of the property, leading to practical difficulties
3 based upon the ability to finance this matter.

4 I recommend that the Board does not
5 grant the relief, that we don't grant the relief
6 requested. I clearly cannot find the financials
7 submitted to this Board creditable. We raised it
8 during the time of the hearing. The subsequent
9 documentation did not make it any more creditable.

10 In fact, the financials are not in the
11 customary form. I feel we've mentioned that
12 during the hearing. Even during the hearing, the
13 applicants talked in terms that they realized that
14 the financials weren't in the proper form.

15 There's carrying development cost
16 within the operational cost, which would make it
17 certainly show like it's going to operate in a loss.
18 The terms of loan I was not comfortable with. I'm
19 just not comfortable myself with the financials
20 being credible to the Board, that would support it
21 being providing practical difficulty necessary for
22 this relief. So that's my thought. Anybody else?

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1 ZC CHAIR HOOD: If that's a motion, Mr.
2 Chairman, I would agree. When I looked at the pro
3 formas that were sent to us, I would agree with your
4 analysis and your comments. I do find what was
5 submitted to us troubling, and just kind of hard
6 to swallow and buy. So if that's a motion, I'll
7 send your motion.

8 CHAIR JORDAN: Well let me --

9 ZC CHAIR HOOD: Why don't you take that
10 as a motion, and then I'll second you?

11 CHAIR JORDAN: So why don't you just
12 make a motion?

13 ZC CHAIR HOOD: I would move that we
14 deny -- I've got it -- No. 18790, due to the
15 submissions of the financials that were submitted,
16 and I ask for a second.

17 CHAIR JORDAN: Second. The motion
18 made and seconded. Additional discussion? Oh
19 yes.

20 VICE CHAIR ALLEN: I do want to, I
21 guess. I do want to commend the current ownership
22 for attempting to deal with the issues in this

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1 building. I do think that from the testimony that
2 the current ownership hopefully still intends to
3 make good on their promises to the tenants.

4 So I do want to encourage that, and
5 secondly, I did find the opposition in this case,
6 which was significant compelling, and I respect
7 very much the concerns of those folks who came and
8 took their time to testify in front of us, and I
9 just wanted to make those two statements for the
10 record.

11 CHAIR JORDAN: Okay, thank you. All
12 those in favor of the motion, aye?

13 (Chorus of ayes.)

14 CHAIR JORDAN: Those opposed nay.

15 (No response.)

16 CHAIR JORDAN: Mr. Moy.

17 MR. MOY: Yes. The staff would
18 record the vote as 4 to 0. This is on a motion of
19 Mr. Hood to deny the application for the relief he
20 requested. Second the motion, Chairman Jordan.
21 Also in support Vice Chairperson Allen and Ms.
22 Heath, and we have a Board member not participating

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1 on this application. The motion carries.

2 CHAIR JORDAN: Thank you, Mr. Moy.

3 The full.

4 MR. MOY: How would you like the --

5 CHAIR JORDAN: The full.

6 MR. MOY: Full? Thank you.

7 (Whereupon, the proceedings went off

8 the record at 10:25 a.m.)

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