

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

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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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AGENDA ITEM

CALL TO ORDER, Lloyd J. Jordan	4
BOARD ACTIONS/MOTIONS	
Application No. 18904 of Shannon Roche for special exception under section 223	6
<u>Withdrawn by Applicant</u>	6
Application No. 18877 of Jessica Crane for variances under section 403 and subsection 403 at 15 Brown Court, S.E.	6
<u>Rescheduled for February 24, 2015</u>	6
Application No. 18876 of Habitat for Humanity of Washington, D.C. at 46th Street, S.E.	6
<u>Rescheduled for February 10, 2015</u>	6
Application No. 18872 of Kami Quinn and Maurion Knight at 510 Independence Ave., S.W.	6
<u>Rescheduled for January 27, 2015</u>	6
Application No. 18878 - Request for party status	6
<u>Request for Party Status Denied</u>	7
Application No. 18901 of Thomas Reed for special exception section 223, 401.3, 406.1 and 2001.3 in R-4 at 131 Kentucky Avenue, S.E.	11
<u>Special Exception Relief Approved</u>	11

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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 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

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1 cards to the court reporter.

2 So that's two witness cards need to be completed per
3 person and give those to the court reporter prior to providing
4 a statement or addressing the Board.

5 The second thing I'm going to need you to do is to now
6 stand and take the oath which will be given by Mr. Moy, the
7 Board Secretary.

8 (WITNESSES SWORN)

9 CHAIRMAN JORDAN: We apologize for our delay but
10 we're still having technical difficulties. It appears that
11 the computer system for at least the government in this
12 building is down; certainly things on ISIS we can't get to and
13 Z-Docs which is our internal system where all our documents
14 are kind of organized for the Board. I guess it's great, you
15 know, we push this great technology issue as you know, as some
16 of you know, we used to come out with stacks of paper but had
17 some reliability as to paper.

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

20 SECRETARY MOY: Oh absolutely, sir.

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

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1 today.

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

6 SECRETARY MOY: Yes.

7 CHAIRMAN JORDAN: Okay. Right. So let me have the
8 representative in Case 18878 and the party or persons seeking
9 party status in 18878 come forward please.

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

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

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

18 18877 of Jessica Crane; that has been postponed and
19 rescheduled to February 24, 2015.

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

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

24 Kami Quinm, 18872, has been rescheduled to January 27,
25 2015, and Portofino, 18874, has been withdrawn by the applicant

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1 and that completes--

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

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

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

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

12 MS. MOLDENHAUER: We do. We would oppose the party
13 status request. They filed this just two business days before
14 the hearing; the requirements require that it be filed 15 days
15 before the hearing. In Tiber Island Cooperative v. the D.C.
16 Zoning Commission the Court of Appeals affirmed that a Zoning
17 Commission denied the request for party status due to its late
18 filing and found that the petitioner only had themselves to
19 blame for the request of out-of-timely filing and they also
20 indicated that they did not provide any reason for the late
21 filing.

22 In this situation, Rockefeller Group is a large
23 corporate group who we had actually contacted and we have email
24 exchange where we contacted their property manager who is named
25 on 1101 K Street's web site back on January 6, 2014, also

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1 informing them later on that same day of an ANC meeting that
2 was--

3 CHAIRMAN JORDAN: What was the date of your notice?

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

6 CHAIRMAN JORDAN: 2014?

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

10 CHAIRMAN JORDAN: Okay. Mr. Sullivan?

11 MR. SULLIVAN: Yes, thank you. We're not claiming
12 that we didn't know about the application. I was just retained
13 on Friday, it was just unfamiliarity with the process of my
14 client.

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

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

3 MS. MOLDENHAUER: We believe that our email exchange
4 that was never responded to, as well as obviously the Office
5 of Zoning subsequent notification on September 15th, pursuant
6 to the rules and requirements, as well as the posting on the
7 property that done timely, would have been sufficient for a
8 company of this magnitude, the Rockefeller Group, to be able
9 to respond timely and comply with the requirements.

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

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

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

20 CHAIRMAN JORDAN: All right. Unless the Board has any
21 opposition I'm going to deny the request for party status for
22 a couple of reasons. Well, I agree with everything the
23 applicant said; more importantly, when the party status
24 request was filed, there wasn't even a request for waiver of
25 late filing which whenever counsel got in he certainly is aware

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1 of the reason to file a request for waiver.

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

5 MR. SULLIVAN: --file a waiver?

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

11 MEMBER HINKLE: Second.

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

14 (VOTE TAKEN)

15 CHAIRMAN JORDAN: The motion carries. Mr. Moy?

16 SECRETARY MOY: Staff would record the vote as 5-0 on
17 the motion of Chairman Jordan to deny the party status request,
18 seconded by Mr. Hinkle. Ms. Cohen, Ms. Heath, Vice Chair Allen
19 are in agreement with the motion and the motion carries sir.

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

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

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1 So with that then, let's handle our meeting cases, Mr.
2 Moy, in order please. Mr. Moy, we did take off one of the
3 three-- did we take off 18877 also? Did we get the letter on
4 18877?

5 SECRETARY MOY: Just this--

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

7 SECRETARY MOY: Yes, we did.

8 CHAIRMAN JORDAN: Okay. Good. So the two applications
9 that are on the expedited calendar, the first is Application
10 No. 18901 of Thomas Reed request for a special exception relief
11 under 223. Is the Board ready to deliberate on this case?
12 I think the requisite information is contained in the
13 application on the expedited review so I can support it.

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

16 VICE CHAIR ALLEN: Second.

17 CHAIRMAN JORDAN: Second. Discussion? All those in
18 favor of the motion, aye; those opposed nay.

19 (VOTE TAKEN)

20 The motion carries. Mr. Moy?

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

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

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1 SECRETARY MOY: The motion carries sir.

2 CHAIRMAN JORDAN: Next please.

3 SECRETARY MOY: Summary order, sir?

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

6 (Whereupon, the Public Meeting went off the record at
7 9:54 a.m.)

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