

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 13, 2015

+ + + + +

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

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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9:42 a.m.

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

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

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

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

So if you're going to present a statement or read

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1 a statement or testify or anything to be a witness, I'm going
2 to need you to do two things, the first of which is to complete
3 two witness cards per person. That's complete two witness
4 cards per person. Be sure to put the case number on the witness
5 cards, and give them to the court reporter prior to testifying
6 or presenting a statement to the Board.

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

10 The second thing I'm going to need you to do today
11 is to now stand. If you're going to provide testimony, a
12 statement or address the Board in any manner, I'm going to need
13 you now to stand and take the oath, which will be given by Mr.
14 Moy.

15 MR. MOY: Good morning.

16 [WITNESSES SWORN.]

17 MR. MOY: Ladies and gentlemen, you may
18 consider yourselves under oath. What did you say?

19 CHAIR JORDAN: It's not that type of day today.
20 It's just not.

21 (Pause.)

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

24 MR. MOY: Yes sir, thank you Mr. Chairman.
25 First off, there are guests who are -- will be giving testimony,

1 who are bringing, also submitting written testimony. If you
2 have only have one copy, I'd appreciate it if you would just
3 go across the hall to our reception area and they can assist
4 you with Xeroxing extra copies for the Board, for them to read.

5 For the record, Mr. Chairman, we have three
6 applications on the docket that have been postponed and
7 rescheduled. The first is Application No. 18897 of Hunt and
8 Laudi, and that has been rescheduled to February the 10th,
9 2015.

10 The second case is 18900 of Academy Ideal
11 Education. That has been rescheduled to March 17th, 2015.
12 Finally, Application No. 18895 of James Walker, Jr. has been
13 rescheduled to January 27th, 2015. That completes the staff's
14 briefing, Mr. Chairman.

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

21 (No response.)

22 CHAIR JORDAN: Good morning.

23 MS. PRINCE: Good morning.

24 CHAIR JORDAN: Would you please identify
25 yourselves?

1 MS. PRINCE: Allison Prince with Goulston and
2 Storrs, here on behalf of Ingleside.

3 MR. SPECK: Hi. I'm Randy Speck, Chair of ANC
4 3G, and I am here on behalf of the ANC.

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

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

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

16 It's all about construction and the vibrations
17 of the ground, etcetera. However, that does not stop you from
18 making an agreement and reaching things, reaching a situation.
19 Additionally, there's been a request from Carnegie to continue
20 this matter beyond today, and unless the Board sees inclined
21 otherwise, I plan to move forward on the hearing.

22 MS. PRINCE: Chairman Jordan?

23 CHAIR JORDAN: Yes.

24 MS. PRINCE: Sorry to interrupt. There was a
25 later filing from Carnegie consenting, essentially going along

1 with our proposed concept, which was to proceed today, and
2 leave the record open for an agreement.

3 CHAIR JORDAN: I read those. I understand.

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

5 CHAIR JORDAN: I understand what the words mean

6 --

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

9 CHAIR JORDAN: Yeah, and I don't think that they
10 qualify, unless the Board has something different, that they
11 would qualify for party status. However, one of the reasons
12 I'm going to call you up, so you can continue to talk about
13 what you need to do to protect Carnegie's interest as you move
14 forward.

15 So if that's okay, then that would be the decision
16 of the Chair regarding this, and the Board, also by consent
17 here.

18 Now the other issue, the reason why I called you
19 up Mr. Speck and Ms. Prince, is regarding the 35, 36, 37, 39
20 conditions which, as you know, are most of those, 99 percent
21 of those are not within the jurisdiction of the Board to
22 implement.

23 But this is what I'm going to say. There's four
24 or five, which I've read them. I've gone through them a couple
25 of -- 50 times, and I've pulled some of those out that we can

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1 put in the order. But I called you up, as you know Ms. Price
2 and Mr. Speck, you probably know, I'm going to recommend that
3 prior to us calling this case, that you just execute it as an
4 agreement between the ANC and the Applicant.

5 So therefore the ANC and the community is
6 protected per the document as, you know, we've done this
7 numerously, and that document contains, again, mostly about
8 construction and some other things like that.

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

12 But generally, I would strongly recommend that
13 the ANC and the Applicant -- just take the document that you
14 had and just sign off on it, make an agreement for it.

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

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

24 MS. PRINCE: I do and --

25 CHAIR JORDAN: Yes.

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

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

10 CHAIR JORDAN: Oh, I understand.

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

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

16 MS. PRINCE: Assuming that we get to that.

17 CHAIR JORDAN: But I just wanted you to, you
18 know, handle this in preliminary, to give you a heads up, so
19 you talk about it in the interim. I don't -- I mean it's
20 something simple to resolve, and everybody can come out
21 winners.

22 Okay. So I think Ms. Price you have your
23 pre-warning cut out with you, so you can work with Carnegie
24 and you can work with the ANC in making sure things are where
25 it should be when we call this case up. I understand

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1 Carnegie's going to be ongoing that discussion. Mr. Collins,
2 did you want to say something?

3 MR. COLLINS: I just need a clarification, Mr.
4 Chairman. Will the record be left open after the public
5 hearing today, to allow Carnegie and Ingleside to continue
6 their discussions? There's been significant progress made.
7 It all has boiled down to construction-related issues, and
8 that's kind of where we are. One thing that has to happen is
9 that there has to be some vibration testing.

10 CHAIR JORDAN: Yeah, and I understand that you
11 need the Board to kind of stand over the shoulder, making sure
12 it's done. Let's handle that when I call this back up. But
13 let me just try to ponder that when we call this back up. I
14 don't think that's generally unreasonable, especially if you
15 have some time before the decisions are actually put into
16 writing, etcetera. All right.

17 Board, is that good with you? Everyone on the
18 Board acknowledge? Okay, thank you.

19 MS. PRINCE: Thank you.

20 (Off record discussion.)

21 CHAIR JORDAN: Is currently a representative of
22 the Applicant in 18893, and is a Deering Kendrick present?
23 Please introduce yourselves.

24 MS. REATIG: Hello, thank you to the Board. I'm
25 Nooni Reatig from Suzane Reatig Architecture.

1 MS. BARRINEAU: I'm Erin Barrineau from Suzanne
2 Reatig Architecture.

3 CHAIR JORDAN: All we need is a representative
4 of the Applicant. We're not doing presentations. So who's
5 speaking for the Applicant?

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

7 MR. KENDRICK: I'm Deering Kendrick.

8 MS. NIGRO: Hi. I'm Rachelle Nigro. I'm a
9 commissioner for ANC 6E-04.

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

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

22 Unless somebody on the Board has another issue,
23 then that would be a ruling on it. However, it never stops
24 the Applicant from having the opportunity to talk to anybody
25 who has any opposition or issues with the matter, which we

1 always recommend prior to the case being called.

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

8 MR. KENDRICK: Thank you.

9 CHAIR JORDAN: Okay, all right. Anything else?
10 Good. Thank you. Sir, we'll call the case back up. I
11 appreciate it. Thank you.

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

15 MR. MOY: Yes sir. Good morning Mr. Chairman,
16 members of the Board. The first application for a decision,
17 that's on a decision session or a public meeting session is
18 Application No. 18790, Jefferson 11th Street, LLC. As the
19 Board will recall, this application was heard in testimony,
20 the record was completed and closed on November 18th, 2014.

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

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

8 Okay now. Now you threw off my train of thought.
9 Yeah, okay. Where the basis of the exceptional condition and
10 practical difficulty was based upon the financial issues and
11 the condition of the property, leading to practical
12 difficulties based upon the ability to finance this matter.

13 I recommend that the Board does not grant the
14 relief, that we don't grant the relief requested. I clearly
15 cannot find the financials submitted to this Board creditable.
16 We raised it during the time of the hearing. The subsequent
17 documentation did not make it any more creditable.

18 In fact, the financials are not in the customary
19 form. I feel we've mentioned that during the hearing. Even
20 during the hearing, the applicants talked in terms that they
21 realized that the financials weren't in the proper form.

22 There's carrying development cost within the
23 operational cost, which would make it certainly show like it's
24 going to operate in a loss. The terms of loan I was not
25 comfortable with. I'm just not comfortable myself with the

1 financials being credible to the Board, that would support it
2 being providing practical difficulty necessary for this
3 relief. So that's my thought. Anybody else?

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

10 CHAIR JORDAN: Well let me --

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

13 CHAIR JORDAN: So why don't you just make a
14 motion?

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

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

20 VICE CHAIR ALLEN: I do want to, I guess. I do
21 want to commend the current ownership for attempting to deal
22 with the issues in this building. I do think that from the
23 testimony that the current ownership hopefully still intends
24 to make good on their promises to the tenants.

25 So I do want to encourage that, and secondly, I

1 did find the opposition in this case, which was significant
2 compelling, and I respect very much the concerns of those folks
3 who came and took their time to testify in front of us, and
4 I just wanted to make those two statements for the record.

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

7 (Chorus of ayes.)

8 CHAIR JORDAN: Those opposed nay.

9 (No response.)

10 CHAIR JORDAN: Mr. Moy.

11 MR. MOY: Yes. The staff would record the vote
12 as 4 to 0. This is on a motion of Mr. Hood to deny the
13 application for the relief he requested. Second the motion,
14 Chairman Jordan. Also in support Vice Chairperson Allen and
15 Ms. Heath, and we have a Board member not participating on this
16 application. The motion carries.

17 CHAIR JORDAN: Thank you, Mr. Moy. The full.

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

19 CHAIR JORDAN: The full.

20 MR. MOY: Full? Thank you.

21 (Whereupon, the proceedings went off the record at 10:25 a.m.)

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