

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

MAY 5, 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 9:41 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 5, 2015.

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

(9:40 a.m.)

BZA CHAIR JORDAN: Good morning. Can we please come to order? Today's date is what, oh, May 5th, 2013 and we're here at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest and we're here for the meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. To my right is Jeffrey Hinkle, Member of the Board. To my left is Vice Chair Marnique Heath and to her left is the Chairman of the Zoning Commission, Anthony Hood sitting in as a member of the Board of Zoning Adjustment today.

Please be advised that today's proceedings are being webcast live and, oh there he is. All right. And being recorded by a court reporter who moved on me from his normal position down there to down here. So therefore, I'm going to ask you to refrain from any disruptive noises here in the hearing room today.

Please be sure at this time that your cell phones and other devices that my ring and buzz loudly are turned off or muted or et cetera. If you're going to provide testimony to the Board, that means if you're going to read a statement, sit at the witness table and say anything to the Board today, I'm going to need you to do two things.

That's two things I'm going to need you to do, the first

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1 of which is to complete two witness cards per person. That's  
2 two witness cards per person. And prior to taking a seat at  
3 this table, please give those two cards to the court reporter  
4 who's down to my right. Okay, so prior to, two cards, give  
5 them to the court reporter.

6 The second thing I'm going to need you to do is to now  
7 stand and be sworn in my Mr. Moy, the Secretary to the Board.

8 (Multiple witnesses sworn)

9 BZA CHAIR JORDAN: Okay, are there any announcements,  
10 Mr. Moy?

11 MR. MOY: Yes, thank you, Mr. Chairman. Good morning,  
12 good morning, Members of the Board. I believe today is Cinco  
13 de Mayo as a matter of fact. One announcement actually for  
14 the case record. There are two cases on today's docket that  
15 have been postponed and rescheduled.

16 The first is application number 18897 of Laudi. And that  
17 has been rescheduled to June 16th, 2015. Also 18967, this is  
18 the application of the Buddhist Congregational Church of  
19 America. And that has been postponed and rescheduled to June  
20 9th. That completes the Staff's introduction, Mr. Chairman.

21 (Off microphone comments)

22 BZA CHAIR JORDAN: Okay. Then let's take our first  
23 meeting case, please.

24 MR. MOY: Okay. All right, there are two applications  
25 on the expedited review calendar. The first of the two is

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1 Application number 18988 of David and Grace Steckler.

2 BZA CHAIR JORDAN: Is the Board ready to deliberate on  
3 18988? I think the record indicates the need for the relief,  
4 it's substantiated in the record, except I think we need to  
5 add has been recommended by counsel and also by the Office of  
6 Planning that it requires relief from 2001.3 for expansion of  
7 a non-conforming use.

8 So with that, I would move that we grant the relief on  
9 18988 with the additional relief of 2001.3.

10 MEMBER HINKLE: I'll second.

11 BZA CHAIR JORDAN: Motion made and second. Any  
12 additional discussion? All those in -- additional  
13 discussion? All those in favor of the motion, aye?

14 (Chorus of ayes)

15 BZA CHAIR JORDAN: Those opposed, nay.

16 (No response)

17 BZA CHAIR JORDAN: The motion carries. Mr. Moy?

18 MR. MOY: Staff would record the vote as four to zero.  
19 This is on the motion of Chairman Jordan to approve the  
20 application for the relief requested, special exception 223  
21 plus amended to add 2001.3. Second the motion, Mr. Hinkle.  
22 Also support, Vice Chairperson Heath and Mr. Hood. We have a  
23 Board seat vacant. The motion carries four zero, sir.

24 BZA CHAIR JORDAN: Summary, please?

25 MR. MOY: Thank you.

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1 BZA CHAIR JORDAN: Our next one?

2 MR. MOY: Yes. The second of two cases on the expedited  
3 calendar is Application number 18958. This is of Patrick  
4 Scott.

5 BZA CHAIR JORDAN: All right, now there's no Affidavit  
6 of Posting in this case, and there's not a completed  
7 self-certification form also in this case. I think we've  
8 carried this case once before. And I understand, Mr. Moy,  
9 you've had conversation or your office has had conversation  
10 with this applicant?

11 MR. MOY: Yes, sir. Staff has reached out to this  
12 individual.

13 BZA CHAIR JORDAN: Let's put this on a show cause.

14 MR. MOY: Yes, sir. Thank you.

15 BZA CHAIR JORDAN: And we'll follow up. And in the  
16 notice to them that this is on show cause, let's be sure to  
17 let them know the procedural problems they have with this and  
18 that they have to be corrected within the show cause next  
19 hearing date. And when would that be scheduled?

20 MR. MOY: Staff would suggest putting this case out for  
21 another month, sir. So that would be June the 16th, sir.  
22 Done.

23 BZA CHAIR JORDAN: All right, then. Let's call our  
24 next one, please.

25 MR. MOY: All right. The next case for decision is

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1 Application number 18964. This is of 1220 Potomac Avenue  
2 Southeast, LLC. This was last heard on March 31st, 2015, Mr.  
3 Chairman. And I believe the record was closed. No post  
4 hearing documents requested.

5 BZA CHAIR JORDAN: All right. Is the Board ready to  
6 deliberate on this case? This is one where I would recommend  
7 to the Board that we grant the relief requested. I believe  
8 there's been a showing that this site, this one is unusually  
9 large for this particular square.

10 It's irregularly shaped, and in fact it's the largest  
11 lot, I believe, in that particular square, and that it has some  
12 unique physical characteristics as it being kind of in a  
13 hexagon kind of shaping. And there's a practical difficulty,  
14 particularly in being able to revive the needed parking due  
15 to historic preservation issues and the getting the curb cut.

16 I think there's been a proper showing that there is not  
17 being any substantial detriment to the public good. The  
18 Department of Transportation has signed off on this and there  
19 are some TDM measures which we would need to put in place.

20 But I believe that there's no substantial impact on the  
21 neighborhood and that this property would be RPP restricted,  
22 and we would require that the Applicant file the proper  
23 covenants to run with the land restricting any residential  
24 parking permitted.

25 They had first offered to have one, only allow one car

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1 per unit, but I believe that we just need to restrict the whole  
2 building from no residential parking permits and that we need  
3 to see whether or not this property is going to be an apartment,  
4 then in every lease it needs to make that a provision in every  
5 lease.

6 And if it's a condo, it also needs to be reflected in  
7 the proper condo docs. But overall, with the land it needs  
8 to be recorded with the Recorder of Deeds that there is a  
9 prohibition for this and that the Applicant provides  
10 Smartcards for every new resident in this building, and even  
11 if it's a condo, there's certainly new owners.

12 And that would include bike membership and/or car  
13 membership to one of the car services to relieve, if there's  
14 going to be any issue regarding traffic. But the studies all  
15 indicate that there's not going to be that type of impact. So  
16 that would be my recommendation. Anyone else?

17 Okay. Yes. Then I would move that, that we grant the  
18 relief requested in 18964 with the conditions as stated.

19 VICE CHAIRPERSON HEATH: Second.

20 BZA CHAIR JORDAN: Motion made and second. Further  
21 discussion? All those in favor, aye?

22 (Chorus of ayes)

23 BZA CHAIR JORDAN: Those opposed, nay?

24 (No response)

25 BZA CHAIR JORDAN: Motion carries. Mr. Moy?

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1 MR. MOY: Staff would record the vote as four to zero.  
2 This is on the motion of Chairman Jordan to approve the  
3 application for the relief requested with the conditions as  
4 cited. Seconded the motion, Vice Chairperson Heath. Also in  
5 support, Mr. Hood and Mr. Hinkle. We have a Board seat vacant.  
6 The motion carries four to zero, sir.

7 BZA CHAIR JORDAN: Okay. Then let's move to our next  
8 decision case.

9 MR. MOY: Are you waiving the requirements for a summary  
10 order?

11 BZA CHAIR JORDAN: No. We had a party in status, didn't  
12 we? We had a party in opposition in, I believe, in that case.  
13 Am I right or wrong?

14 MR. MOY: That was direct.

15 BZA CHAIR JORDAN: Then let's do summary. Okay, thank  
16 you.

17 MR. MOY: All right, thank you, sir. The next and last  
18 application for decision is 18886, Hoorazor. This was last  
19 heard, if you will recall Mr. Chairman, on March 31st, 2015.  
20 The record was closed except for three post-hearing  
21 supplemental information, and I believe that's in your case  
22 records which also includes draft findings of fact,  
23 conclusions of law. Okay, I'm going to leave it at that, Mr.  
24 Chairman.

25 BZA CHAIR JORDAN: What? I'm sorry.

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1 MR. MOY: I'm done.

2 BZA CHAIR JORDAN: You're done. Okay, give me one  
3 second, please. All right, that makes sense. Okay. All  
4 right, got it. There are some, is there some preliminary  
5 issues in this case?

6 MR. MOY: Well, they're soft ones, Mr. Chairman.

7 BZA CHAIR JORDAN: Yes. Because I remember you --

8 MR. MOY: Yes, the opponent submitted a corrected sun  
9 study which was posed on Monday, yesterday May 4th. And  
10 although they had submitted an earlier version which was timely  
11 under Exhibit 71 and 72. But I believe this one is the correct  
12 one, a corrected copy.

13 BZA CHAIR JORDAN: Yes, there's a lot of things going  
14 on in this file which the Board's not happy with. When we've  
15 directed what additional documents could be placed in the  
16 record and we had other things.

17 For instance, the Applicant submitted an Exhibit 70 with  
18 argument which we did not request. And we asked for additional  
19 sun study and et cetera. So I believe that we will strike  
20 Exhibit 70 except for the screening recommendation that's  
21 there.

22 There's a request for -- and we have to be careful, Mr.  
23 Moy, what we have and what we accept and put in our record  
24 because once we started getting those numbers. The Opponent's  
25 Exhibit 74 is requesting lead to file alleging errors in the

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1 Applicant's sun study.

2 I didn't notice that there was any errors identified in  
3 that. We will accept the additional sun study. But for what  
4 it's worth, but I don't think it gives me any real difference  
5 in credence as to what's already been filed and what I'm  
6 thinking would be the ultimate result in this case.

7 This is a case that we've had a lot of testimony, a lot  
8 of documents, long hearing and given a lot of thought, frankly,  
9 probably three more hours which is longer than usual going  
10 through some of these cases, trying to review the documents.  
11 And I actually went back and looked at the hearing again like  
12 I didn't have anything else to do.

13 And are you okay? So is the Board ready to deliberate  
14 in this case? This is a request for special exception to allow  
15 a two story side and rear addition to a one family dwelling,  
16 not meeting the lot occupancy and side lot, and enlargement  
17 of non-conforming structure.

18 The real issue here is that this addition is just about  
19 being done as a matter of right. But what happened, there was  
20 some mis-measurements and after the property was actually  
21 constructed, the addition was constructed, the property was,  
22 the side yard was 6/10 of a foot short. That's 0.06 short and  
23 therefore had to be included in the lot occupancy numbers, and  
24 it increased the lot occupancy from 39 percent to 44 percent.

25 It was requested special exception under 223. And

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1 among other things, the important part of 223 is that you have  
2 to show that the light and air available to neighboring  
3 properties shall not be unduly affected, and that the privacy  
4 of the use and enjoyment of the neighboring properties shall  
5 not be unduly compromised.

6 The shadow studies, and there were several sets of  
7 shadow studies, and you needed a magnifying glass, to me, I  
8 did, to try to see if there was any differences in the study  
9 and the effect in the examining shadow studies. And I think  
10 that's generally been left.

11 If you look at what the existing property, the shadows  
12 being cast in the area, the shadows of the addition, and then  
13 I think the Applicant also provided a matter of right shadow  
14 study which we're allowed under the law to consider.

15 The shadow studies offered by the appellant and the  
16 opponent parties to me did not show any additional, any of the  
17 addition creating a substantial impact to the light of any of  
18 the joining properties.

19 Now there may be some minimal intrusion during the time  
20 of December 12th noon period and March around noon periods.  
21 Those seemed like they had some additional shadowing, but there  
22 wasn't substantial. I mean, you had to, you know, really nail  
23 down, in fact I did get my magnifying glass to take a look at  
24 it.

25 Except for the McKey property, the property provides

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1 more than required space in between the properties. The light  
2 and air available to the Cunningham property, the property to  
3 the south does not unduly affect the addition.

4 The side yard between the building and the Cunningham's  
5 property is, it ranges between eight feet, or a little more  
6 than eight feet, to eleven feet. This exceeds the eight feet  
7 minimum requirements that we have.

8 The Cunningham property additionally has 13 feet of  
9 vegetation on top of that, and therefore their privacy is, in  
10 my opinion is preserved. And I don't believe that this  
11 addition unduly affects their property.

12 There was a claim that the rear of the addition intruded  
13 on the privacy of the neighbors across the alley. But at a  
14 minimum, and unlike any one of a few places in the District  
15 of Columbia, there's at least 45 feet of open space including  
16 the alley space and et cetera between the rear of this addition  
17 and the property across the alley.

18 And in fact, it appeared that the viewing was more so  
19 by the other property and not the Applicant's property. And  
20 so contrary. Regarding the McKey property, we have some  
21 discussion, particularly Mr. Hood had some discussion about  
22 concern about the privacy, possible privacy intrusion.

23 There's little light and air intrusion if you weigh it  
24 against the pre-existing light and air issues. Regarding  
25 privacy, since it's right generally abut to this property,

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1 there might be some minimum privacy issues. But I would  
2 suggest to the Board as Mr. Hood has suggested and discussed  
3 during the time of the hearing that that can be mitigated with  
4 some decorative screening.

5 I would offer that the Board give credit to the Office  
6 of Planning's report which was very thorough and actually  
7 looked at the other elements whether or not this met the, kept  
8 in tune with the zoning regulations and the neighborhood. And  
9 so I would give them, I would ask the Board to credit the Office  
10 of Planning's report.

11 Regarding the AMC report which at the Board we give great  
12 weight to and really appreciate the input from ANC and Dr. May,  
13 I think this was good input. However, I would suggest that  
14 the Board not accept the recommendation of the ANC.

15 The ANC's basically, and I understand their  
16 frustration, it's communication with neighbors, communication  
17 on development in these communities have to happen. I guess  
18 we say it all the time.

19 And we try to have conversation here, and I think there  
20 was conversation at least for two hours and I don't know what  
21 happened afterwards. But the ANC report generally centered  
22 on the fact that the Applicant, their recommendation was  
23 because the Applicant had disregarded established procedures  
24 in seeking a special exception prior to building their unit,  
25 which I understand that.

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1 But I hear there was some excusable kind of neglect or  
2 issues that arose after the fact that the building was there  
3 and they got down to, it became a 6/10 of a foot issue from  
4 instead of being five feet it was 4.96 I believe. It was 4.94  
5 in difference.

6 And so they thought they could do it within the  
7 regulations. So with that, and because of that, that  
8 recommendation of the ANC was really based upon that.

9 So for the reasons I've just stated, I would recommend  
10 that the Board grant the relief requested with the condition  
11 that the Applicant must provide some form of decorative  
12 screening for the McKey property, and that the screening should  
13 be selected in cooperation with the McKeys.

14 And if there's no reasonable agreement for that, then  
15 the Applicant be allowed to provide the good faith acceptable  
16 decorative screening. That would be what I look at the case.  
17 Any others, please?

18 ZC CHAIR HOOD: Mr. Chairman, I would agree. I was more  
19 concerned about that one particular window, I think it was  
20 floor level if my memory serves me correct. But if we're  
21 talking about the whole screening, I would agree. And if that  
22 was a motion, I'll second.

23 BZA CHAIR JORDAN: I didn't move it, but you can.

24 ZC CHAIR HOOD: No, you go ahead. I think your motion  
25 was succinct and there's no sense in me being redundant.

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1 BZA CHAIR JORDAN: Okay. Well I would --

2 ZC CHAIR HOOD: And I will note, I will note though that  
3 Office of Planning recommends that we not require a screen.  
4 But I think it's important that we do in this case.

5 BZA CHAIR JORDAN: Then I would move that the Board  
6 grant the relief requested in 8886 with the condition as I've  
7 provided.

8 ZC CHAIR HOOD: Second.

9 BZA CHAIR JORDAN: Motion made and second. Any  
10 additional discussion? All those in the favor of the motion,  
11 aye?

12 (Chorus of ayes)

13 BZA CHAIR JORDAN: Those opposed, nay?

14 (No response)

15 BZA CHAIR JORDAN: The motion carries. Mr. Moy?

16 MR. MOY: Yes, sir. Staff would record the vote as four  
17 to zero. This is on the motion of Chairman Jordan to approve  
18 the application for the relief requested with the one condition  
19 as cited by the Board. Second the motion, Mr. Hood. Also in  
20 support, Vice Chairperson Heath and Mr. Hinkle, board seat  
21 vacant. Motion carries, sir.

22 BZA CHAIR JORDAN: Thank you, Mr. Moy.

23 (Whereupon, the meeting in the above-entitled matter  
24 was concluded at 10:02 a.m.)

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