

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 9, 2015

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:34 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
MARNIQUE Y. HEATH, Vice Chairperson
JEFFREY HINKLE, Board Member
ROBERT MILLER, Zoning Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
BRANDICE ELLIOTT
STEPHEN MORDFIN
ANNE FOTHERGILL
ELISA VITALE

D.C. DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

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The transcript constitutes the minutes from the
Public Meeting held on June 9, 2015

AGENDA ITEM

PAGE

CALL TO ORDER 4

PRELIMINARY MATTERS 7

APPLICATION NO. 18787 OF 143 REAR W STREET
LLC (Motion for Reconsideration 7
VOTE 9

APPLICATION NO. 18881 of NANDO'S OF
WOODLEY PARK, LLC (Motion for Reconsideration) 10
VOTE 14

P R O C E E D I N G S

(9:34 a.m.)

CHAIRPERSON JORDAN: Will we please come to order. Good morning, ladies and gentlemen.

We're at 441 Fourth Street, N.W., in the Jerrily R. Kress Memorial Hearing Room, and we're here for the public meeting and public hearing of the Board of Zoning Adjustment.

My name is Lloyd Jordan, Chairperson.

To my right is Jeffrey Hinkle, a member of the Board. To my left is Vice-Chair Marnique Heath. To her left is Rob Miller, a member of the Zoning Commission, sitting in as a member of the Board of Zoning Adjustment.

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. It's a good time now to make sure that you have no device that's going to ring and disrupt us today.

The Board's hearing procedures are contained in a document through the door to my left, in the back. Please feel free to get one of those documents, so that you can understand how we proceed and process things here at the Board.

If you're going to provide any testimony, read any statement, read a letter, or address the Board in any manner, we're going to need you to do two things.

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1 If you're going to address the Board in any manner, read
2 a letter, provide testimony, we're going to need you to do two
3 things, the first of which is to complete two witness cards
4 per person. That's two witness cards per person, and that's
5 prior to testifying --- that's prior, it means before
6 testifying, give those cards to the court reporter seated to
7 my right. The second thing I'm going to need you to do is to
8 now stand and take the oath, which will be given to you by Mr.
9 Moy, secretary to the Board.

10 MR. MOY: Good morning. Do you solemnly swear or affirm
11 that the testimony you're about to present in this proceeding
12 is the truth, the whole truth, and nothing but the truth?

13 (Witnesses sworn)

14 MR. MOY: Ladies and gentlemen, you may consider
15 yourselves under oath.

16 CHAIRMAN JORDAN: And talking to the court reporter: Are
17 we okay with sound? Thank you.

18 Mr. Moy, any announcements?

19 MR. MOY: Yes, I do, Mr. Chairman. Good morning. Good
20 morning to members of the Board. For the record, three cases
21 that were scheduled or originally scheduled for today's docket
22 have been deferred at the Applicant's request and rescheduled
23 for the following.

24 The first is Application No. 19011. This is the
25 Application of Gabriel, LLC. That has been rescheduled to June

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1 16, 2015.

2 The second application, Application No. 18983, of
3 Carrie and Phong Trieu, T-r-i-e-u, has been rescheduled to July
4 21st, 2015.

5 And finally, Application No. 19004 of 1933 Montana
6 Avenue LLC, has been rescheduled to September 15th, 2015.
7 Thank you, Mr. Chairman.

8 CHAIRMAN JORDAN: And regarding 18114, it's been removed
9 from decision today to next week's docket, Mr. Moy.

10 MR. MOY: Right. Thank you, Mr. Chairman.

11 CHAIRMAN JORDAN: Then let's call the first meeting case,
12 please.

13 MR. MOY: Okay. That decision by the Board for
14 Application No. 18787 of 143 Rear W Street LLC. This is a, as
15 you recall, a motion for reconsideration from the party in
16 opposition, and there are also other motions in response in
17 the case folder, Mr. Chairman.

18 CHAIRMAN JORDAN: Is the Board ready to deliberate on
19 18787? Again, this is a matter --- we have a couple of matters
20 on for reconsideration. In this case, I would recommend that
21 the Board not approve the reconsideration, deny the request
22 for reconsideration. There's not been a citing of any errors
23 raised in a matter of law, or any other distinction in regard
24 to the case.

25 This is an argument to re-argue the case, and I think

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1 it sets a bad precedent with this type of request. That's my
2 thought.

3 Anyone else? Yes, Mr. Miller?

4 MEMBER MILLER: Thank you, Mr. Chairman. Yes, I would
5 agree with you, and I would agree with the Applicant's response
6 to the motion for opposition, response to the motion for
7 reconsideration dated April 30th.

8 And including the statement that the Board put the
9 burden of proof squarely on the Applicant, stating the
10 conclusions of law on page nine, that the Applicant must
11 demonstrate the exceptional situation or condition. And
12 there are additional arguments that they made in response to
13 the Applicant --- to the motion for reconsideration. I could
14 go through those, if you want me to, but I agree with the
15 Applicant's response.

16 CHAIRMAN JORDAN: All right. Anybody else? Any other
17 thoughts? Mr. Hinkle.

18 BOARD MEMBER HINKLE: Yes. Thank you. I just want to state
19 that I'm also in agreement with both yourself and Mr. Miller
20 on this.

21 CHAIRMAN JORDAN: All right.

22 VICE CHAIRPERSON HEATH: Given that I'm also in
23 agreement, should I make a motion?

24 CHAIRMAN JORDAN: Yes, please.

25 VICE CHAIRPERSON HEATH: Okay. So I will make a motion

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1 to deny the request to reconsider the previous decision.

2 MEMBER MILLER: I would second that.

3 CHAIRMAN JORDAN: Motion made and seconded. Any further
4 discussion?

5 (No response)

6 CHAIRMAN JORDAN: All those in favor of the motion, aye.

7 (Chorus of ayes)

8 CHAIRMAN JORDAN: Those opposed, nay.

9 The motion carries.

10 (Whereupon, the motion was duly carried)

11 CHAIRMAN JORDAN: Mr. Moy.

12 MR. MOY: Yes. Staff would record the vote as four to
13 zero, this on the motion of Vice-Chair Heath to deny the request
14 for reconsideration. Second, the motion, Mr. Robert Miller
15 also in support, Chairman Jordan and Mr. Hinkle. We have a Board
16 seat vacant. The motion carries, four to zero, Mr. Chairman.

17 CHAIRMAN JORDAN: Okay. Summary, I guess? We don't do
18 summaries on reconsider --

19 Yes. We do summaries on them.

20 Okay. Next case, please.

21 MR. MOY: All right. The third and last case for decision
22 is Application No. 18881. This is also a request for
23 reconsideration, and it's a reconsideration of Condition No.
24 1.

25 CHAIRMAN JORDAN: Correct. All right. Is the Board ready

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1 to deliberate on 1881? Good. This is one which really "flies
2 in the face" of what a reconsideration is allowed for under
3 the rules, and I think it really sets a very bad precedent that
4 the Board relates its decisions, orders, especially at the
5 consideration of this particular matter, that the Board really
6 gave a lot of time and effort to, based upon the terms and
7 conditions, and I think it would be an improper consideration
8 for the Board to weigh its conditions about how a property's
9 going to affect the neighborhood, tied in to what the lease
10 is on the property.

11 I just have got real issue with that, and I would
12 certainly recommend that this Board doesn't approve this
13 reconsideration.

14 Any other thoughts? Anyone? Mr. Miller.

15 MEMBER MILLER: Thank you, Mr. Chairman. I guess I was
16 open to trying to find a path forward here that might satisfy
17 all the parties, and I would be open to adding the conditions
18 to the order, that the Applicant had suggested in their ---
19 I think they did it at the hearing, but they also, in their
20 May 1st letter to us, where they are trying to limit the type
21 of use to a fast-casual type of use, which would have less of
22 an impact than fast-food restaurant.

23 So they had conditions controlling that, the operations
24 of the spaces. Number one, food for on-premises consumption
25 shall be served only on nondisposable tableware and be served

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1 to patrons by staff as opposed to self-service. Two. Wait
2 staff will clear and clean the tables after guests finish their
3 meals, and three, carryout service shall be clearly
4 subordinate to principal on premises --- to the principal on
5 premises.

6 And regarding the term, again, I was trying to find a
7 way to address the Applicant's concern, but not set any
8 precedent here.

9 So I was going to suggest that we change the term from
10 five to ten year, and include the conditions that would limit
11 the type of use to a use that would have --- less likely to
12 have an adverse impact.

13 But I don't know if I --- if there's any other support
14 for that amongst my colleagues, but I'd interested if you or
15 my colleagues would be open to considering that change, which
16 might I think address all parties' concerns, and still not set
17 any bad precedent, I think.

18 CHAIRMAN JORDAN: Here's a problem, one of the problems
19 I have with this, is that we --- this case didn't just come
20 up before us one time. It was up in front of us several times,
21 and was a major fight with the neighborhood. There was major
22 issues. We went back and forth in this case a lot. And I just
23 want to put it in a framework. And I'm not saying I disagree
24 where you are, Mr. Miller, but we have to be careful about what
25 we do here as a Board, as we set precedents, moving forward.

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1 One. This is not proper, in my eyes, for
2 reconsideration, ergo, the fact it hasn't cited any erroneous
3 ruling by this Board. It was an after-thought kind of
4 discussion, or one that disagreed with the Board, but the
5 standard is that it has to be an erroneous action of the Board.
6 That's not shown.

7 But I think if we start reshaping these things and
8 looking at the relief based upon what somebody's lease term
9 is, based upon versus what the impact, potential impact on the
10 community, I think it gets us in a very dangerous area. So
11 I just want to say that as we hear from other colleagues on
12 this matter.

13 VICE CHAIRPERSON HEATH: I also considered the
14 extension. I'm not sure that given the lease term, and the fact
15 that the lease doesn't begin until a certificate of occupancy
16 is granted, that ten years, even, would satisfy the Applicant,
17 because we're talking about a period of greater than ten years
18 from now for them to have to come back to the BZA for review.

19 So we're talking about a period of either five years or
20 ten years from the time of granting this term limit. I would
21 guess somewhere in the area of 12 years, probably, is more
22 beneficial for them, for the ten year lease term.

23 But the other thing that I'd like to talk about is the
24 issue, really, at hand, was that of trash, and the existing
25 rodent issues, and our request to have them come back in five

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1 years was really to make sure they were addressing those issues
2 properly, and I didn't think that, you know, if they were
3 addressing those issues, and there weren't, you know, the
4 issues hadn't been exacerbated by them operating on the
5 premises, that they would be able to continue to operate beyond
6 the five years.

7 So I didn't feel like we were jeopardizing them with
8 respect to their lease, if we had them come back before us in
9 five years. That was my feeling. I felt like it was still
10 appropriate for them to come back in five years, just to make
11 sure that they're adhering to the community's concerns.

12 CHAIRMAN JORDAN: Mr. Hinkle.

13 BOARD MEMBER HINKLE: Yes. Thank you. I tend to agree with
14 Board Member Heath. We did impose this condition based on some
15 of the concerns of the neighborhood, and I do have concerns,
16 now, about modifying the term limit based on a lease, and I
17 don't think that's necessarily what the Board is here to do
18 when we review these types of cases.

19 So no, I'm prepared to deny the motion for
20 reconsideration.

21 CHAIRMAN JORDAN: Yes. I thank you two for certainly
22 reminding me about the condition about the property. It doesn't
23 say that they cannot go beyond five years, and also, I don't
24 think there's any argument here, that there was a financial
25 impact other than their saying it needs to decide what the lease

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1 is.

2 So with that, I would move that we deny --- well, I'm
3 sorry. Let me go back to Mr. Miller, see if he wants to --

4 MEMBER MILLER: No. I said everything I wanted to say.
5 Thank you.

6 CHAIRMAN JORDAN: Okay. Just one second. All right.
7 Thank you. Appreciate that. Then I would move that we deny the
8 relief requested for reconsideration.

9 VICE CHAIRPERSON HEATH: Second.

10 CHAIRMAN JORDAN: Motion made and seconded. Additional
11 discussion?

12 (No response)

13 CHAIRMAN JORDAN: All those in favor, aye.

14 (Chorus of ayes)

15 CHAIRMAN JORDAN: Those opposed, nay.

16 MEMBER MILLER: No.

17 CHAIRMAN JORDAN: The motion carries. Mr. Moy.

18 MR. MOY: Staff would record the vote as three to one,
19 this on the motion of Chairman Jordan to deny the request for
20 reconsideration. Seconding the motion is Vice- Chair Heath.
21 Also in support, Mr. Hinkle. Opposed to the motion is Mr.
22 Miller. We have a Board seat vacant. The motion carries, three
23 to one, sir.

24 CHAIRMAN JORDAN: All right. Then let's summary that,
25 please.

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1 (Whereupon, at 9:44 a.m., the proceedings recessed to
2 resume as the Public Hearing.)
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