

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

OCTOBER 23, 2019

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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 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Board Member  
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on October 23, 2019.

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

(9:46 a.m.)

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2  
3 CHAIRPERSON HILL: All right. The hearing will  
4 please come to order. Good morning ladies and gentlemen.  
5 We're located in the Jerrily R. Kress Memorial Hearing Room  
6 at 441 4th Street, N.W. This is the October 23<sup>rd</sup>, 2019  
7 public hearing of the Board of Zoning Adjustment District of  
8 Columbia.

9 My name is Fred Hill, Chairperson. Joining me  
10 today is Carlton Hart, Vice Chair, Lorna John, Board Member,  
11 and representing the Zoning Commission is Mike Turnbull.  
12 Copies of today's hearing agenda are available to you and  
13 located in the wall bin near the door.

14 Please be advised that this proceeding is being  
15 recorded by a court reporter, and is also web cast live.  
16 Accordingly, we must ask you to refrain from any disruptive  
17 noises or action in the hearing room. When presenting  
18 information to the Board, please turn on and speak into the  
19 microphone, first stating your name and home address. When  
20 you're finished speaking, please turn your microphone off so  
21 that your microphone is no longer picking up sound or  
22 background noise.

23 All persons planning to testify either in favor  
24 or in opposition must have raised their hand and been sworn  
25 in by the secretary. Also each witness must fill out two

1 witness cards. These cards are located on the table near the  
2 door and on the witness table. Upon coming forward to the  
3 Board, please give both cards to the reporter sitting to the  
4 table at my right.

5           If you wish to file written testimony, or  
6 additional supporting documents today, please submit one  
7 original and 12 copies to the secretary for distribution.  
8 If you do not have the requisite number of copies you can  
9 reproduce copies on office printer in the Office of Zoning  
10 located across the hall. Please remember to collate your  
11 copies.

12           The order for procedures, special exceptions, and  
13 variances and appeals are all also in the bin as you walk  
14 through the door. The record shall be closed at the  
15 conclusion of each case, except for any material specifically  
16 requested by the Board. The Board and the staff will specify  
17 at the end of the hearing exactly what is expected and the  
18 date when the persons must submit the evidence to the Office  
19 of Zoning.

20           After the record is closed, no other information  
21 shall be accepted by the Board. The Board's agenda include  
22 cases set for decision. After the Board adjourns the Office  
23 of Zoning in consultation with myself will determine whether  
24 a full or summary order may be issued. A full order is  
25 required when the decision it contains is adverse to a party,

1 including an affected ANC. A full order may also be needed  
2 if the Board's decision differs from the Office of Planning's  
3 recommendation.

4           Although the Board favors the use of summary  
5 orders whenever possible, an applicant may not request the  
6 Board to issue such an order. The District of Columbia  
7 Administrative Procedures Act requires that the public  
8 hearing on each case be held in the open before the public  
9 pursuant to Section 405B and 406 of that act. The Board may,  
10 consistent with its rule of procedures and the act, enter  
11 into a closed meeting on a case for purposes of seeking legal  
12 counsel on a case pursuant to D.C. Official Code Section 2-  
13 575B4, and/or deliberated case pursuant to D.C. Official Code  
14 Section 2-575B13, but only after providing the necessary  
15 public notice and in the case of emergency closed meeting  
16 after taking a roll call vote. The decision of the Board is  
17 based on case that must be exclusively on the public record  
18 to avoid any appearance to the contrary the Board request  
19 that persons present not engage the members of the Board in  
20 conversation.

21           Please turn off all beepers and cell phones at  
22 this time so as not to disrupt the proceeding. Preliminary  
23 matters are those which relate to whether a case will or  
24 should be heard today, such as request for a postponement  
25 continuance or withdrawal, or whether proper and adequate

1 notice of the hearing has been given. If you're not prepared  
2 to go forward with the case today, or if you believe that the  
3 Board should not proceed, now is the time to raise such a  
4 matter.

5 Mr. Secretary, do we have any preliminary matters?

6 MR. MOY: Good morning, Mr. Chairman, members of  
7 the Board. I do have a brief announcement for the transcript  
8 with reference to today's docket. One, Case Application  
9 Number 20078 of Sig LLC has been postponed, rescheduled to  
10 November 13<sup>th</sup>, 2019, and Case 20111, which is the application  
11 of Trinity Episcopal Church also postponed and rescheduled,  
12 but to November 6<sup>th</sup>, 2019. Other than that, Mr. Chairman,  
13 there are a number of preliminary matters, but staff would  
14 suggest that the Board address those when I call the case.

15 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
16 Moy. All right. Good morning everyone. If you plan on  
17 testifying today if you wouldn't mind standing and taking the  
18 oath administered by the secretary to my left.

19 MR. MOY: Good morning. Do you solemnly swear or  
20 affirm that the testimony you're about to present in this  
21 proceeding is the truth, the whole truth, and nothing but the  
22 truth? Ladies and gentle you may consider yourselves under  
23 oath.

24 CHAIRPERSON HILL: Okay. All right. Good morning  
25 once again. I hope everyone enjoyed the Nationals game last

1 night. I know I did. And I was trying to figure out whether  
2 the world series would be over the next time we're here, and  
3 I can't figure that out. I think today would be game seven  
4 maybe, so I don't know. Not that you all care, but I'm just  
5 trying to figure it out. And then also this is the first  
6 time I've ever been signed, or translated into sign. This  
7 is new for me.

8           Okay, Mr. Moy, you can call our first decision  
9 case whenever you get a chance.

10           MR. MOY: Thank you, Mr. Chairman. The first and  
11 only case for decision making in the meeting session is case  
12 application number 17944-A of Lab School of Washington. Mr.  
13 Chairman, this a request for a modification of consequence  
14 to condition number one in BZA Order Number 17944. This  
15 would modify the time limit of the order from ten years to  
16 14 years in an existing school building R1B Zone. This is  
17 at 4470 Q Street Northwest, Square 1363, Lot 980.

18           CHAIRPERSON HILL: All right. Is the Board ready  
19 to deliberate? Okay, I can start. I suppose some of the  
20 discussion that we had with this when we were kind of having  
21 a conference call together with OAG was in terms of these  
22 time extensions. In terms of whether or not we thought --  
23 or whether or not the time extension would be something that  
24 should or could be done as a modification of consequence, or  
25 if it should be maybe a modification of significance.

1 Therefore, we can bring in the applicant and kind of talk to  
2 them a little bit more and ask questions of them, and since  
3 it kind of is getting a new order, right?

4           So I was able to go through the record and  
5 understand what was going on in terms of the modification in  
6 terms of this time extension. I suppose that just to kind  
7 of go through some of the items in the record that I was  
8 looking at, you know, we did get something from the ANC, and  
9 so they were in support as well as the analysis of the Office  
10 of Planning in terms of their analysis of the modification.  
11 The one thing that I thought, you know, there were still  
12 other conditions that came from the original order, so it's  
13 just the first condition that they were trying to modify.  
14 After discussions with the ANC, as well as the applicant, I  
15 guess the Office Planning, the ANC was interested in the  
16 extension running through the end of the school year, which  
17 was August 31<sup>st</sup>, 2023. Therefore, it wouldn't necessarily  
18 disrupt the school year there at the lab school.

19           And the other item that we needed but we now have  
20 gotten, was a letter of authorization from the District  
21 government which we have received now in Exhibit 6. In terms  
22 of the other conditions two through ten, I would think that  
23 if we were to agree to this modification that I would be in  
24 favor of changing just the one condition, and then talking  
25 through -- or I'm sorry, leaving two through ten still in

1 effect.

2 I think that from my standpoint, you know, these  
3 have now kind of -- this is kind of the third modification  
4 of consequence that we've received concerning time  
5 extensions. I don't think -- and we've been able to discuss  
6 those and deliberate those on the record, and they have gone  
7 through. Therefore, other applicants have come forward to  
8 modify the time extension. I would be comfortable modifying  
9 this condition, extending this time, you know, extending the  
10 time for this application, but then now having more of a  
11 discussion with us as to whether or not this is something  
12 that we would rather see in front of us and have more of an  
13 opportunity to ask the applicant questions.

14 The reason why I wouldn't want to now deny this,  
15 because I feel -- I mean, just for me I feel comfortable in  
16 terms of what we had in the record in terms of providing the  
17 analysis and giving the time extension, is more -- I wouldn't  
18 want to now penalize the Applicant and have the Applicant  
19 have to go back and go through a more laborious process,  
20 which now this is something that we've approved before. And  
21 so I'm kind of opening up for discussion, I suppose, in terms  
22 of what my fellow board members think, you know, I would be  
23 in favor of approving this with the remaining two conditions  
24 and the one condition changing, but then now having more of  
25 a discussion as to whether or not we want to see time

1 extensions before us as opposed to a modification of  
2 consequence.

3 VICE CHAIR HART: Yeah, thank you, Mr. Chairman,  
4 for your thoughts. I think that I would be in alignment with  
5 those thoughts. I don't want to be in opposition to -- I  
6 would be in support of this application, but there are kind  
7 of some caveats with that. One of them is that -- and I  
8 think the biggest question, or the biggest problem when we  
9 were talking with the Office of Attorney General about this,  
10 it's really around how much public notice we have for these  
11 cases. If a case is like this, they're doing a modification  
12 of consequence, they don't -- it's not posted, there's no way  
13 for the public to know that this is actually happening  
14 outside of the ANC, which would be an affected party  
15 receiving notice that there was this modification of  
16 consequence on this property.

17 So I think that the way that maybe this is for the  
18 Zoning Commission and the Office of Planning to have some  
19 sort of conversation about regarding maybe these time  
20 extensions could be an expedited hearing. In that case,  
21 there would be posting, there would be notice for, you know,  
22 the community, we would be able to receive some, you know,  
23 understanding beyond just the ANC. Sometimes there are  
24 citizens or residents that live in close proximity to these  
25 properties that may not be as connected into the ANC process,

1 but they may be going by this, you know, school every day and  
2 saying, you know, there's a problem with X, or a problem with  
3 Y, whatever those things are and being able to be aware of  
4 it, of the change, and be able to, you know, make their  
5 comments, or make some comments on it I think would be the  
6 best way to be able to insert more public notice into this  
7 process.

8 I don't -- in this particular case I think that  
9 they've been around for quite a while now, almost 20 years,  
10 I guess. And so I'm more comfortable with that. If they had  
11 been here for, you know, this is the first five-year  
12 extension that we were looking at I might be more concerned  
13 about it. It sounds like -- well, it seems like what they're  
14 trying to do is to, as you said earlier, make the -- connect,  
15 or align the approval that they have before us with the lease  
16 that they have -- lease agreement that they have with the  
17 city.

18 So I kind of understood the lease terms, which I  
19 guess ends December 2023. So I'm understanding that they  
20 want to align this thing tonight. I think that that's a good  
21 thing to be able to do. I'm not exactly sure -- I understand  
22 that the ANC has the question about whether or not it should  
23 be August 31<sup>st</sup>, 2023 to be less of a disruption for the  
24 students. I'm not sure where -- I'm not sure if I -- while  
25 I understand it, I'm not sure if that's necessary to make

1 that change for us, but we can discuss that, I think, further  
2 if folks have a strong feeling one way or the other.

3           So I think that the big issue for me is really  
4 around just having the public be more aware -- made aware of  
5 this case and cases like this, because as you said, this is  
6 really granting the applicant a new -- basically as a new  
7 permit. We're allowing this relief now for them to be able  
8 to have this use at this site for another four years. So I'm  
9 supportive of it, I just have some questions around how much  
10 the public is aware of this particular project, and this  
11 modification that they're seeking beyond the ANC being aware  
12 of it. So those are my thoughts.

13           MEMBER JOHN: Mr. Chairman, I can support the  
14 application of, and I agree with the comments so far. In  
15 this particular case, condition number six requires the  
16 Applicant to meet with a liaison committee four times a year,  
17 and that committee is made up of the Fox Hall Community  
18 Citizens Association, the ANC 3D, and other interested  
19 community members. So while we're concerned about notice and  
20 an opportunity to participate and make comments, I think in  
21 this case there is -- that there should be some discussion  
22 going on, and the term extension is relatively short, four  
23 years, for a school. So I have no objection, and I would be  
24 prepared to support the application.

25           COMMISSIONER TURNBULL: Thank you, Mr. Chair. I

1 think for all of the reasons that you've all expressed, and  
2 the comments that you've made, in this particular case I  
3 would also be in support of approving this. But I would also  
4 agree that the vehicle that's being used is probably not the  
5 one that we ought to be looking at in the future, and I think  
6 -- I would -- and if you all agree, I will be sending a  
7 letter on to the Zoning Commission talking about changing  
8 this and respecting the whole idea of the term of public  
9 notice. And I think we need to go to a different kind of  
10 avenue on how to approve these rather than this modification  
11 of consequence. But for this particular case I'm in favor  
12 of it.

13 CHAIRPERSON HILL: Okay, so and just to kind of  
14 continue the discussion. So, Mr. Turnbull, as far as the  
15 Zoning Commission, and even OAG, if you want to kind of weigh  
16 in on this, or if you have a thought, you know, so that would  
17 be something like a text amendment, or something that -- and  
18 then -- I guess what I'm trying to understand, and I'm just  
19 kind of talking this through with us here, and this I guess  
20 is, again, either a Zoning Commission member here, or, again,  
21 if the Office of the Attorney General has any thoughts as to  
22 how this would, like, -- how would you notify people now  
23 moving forward if the Board were interested in this being a  
24 different way for time limits? You know, like, I mean, I  
25 don't know how many other applications are coming forward now

1 that are already in the queue for time limits, and that, you  
2 know, we now have -- we're having a public discussion as to,  
3 you know, we would like -- you know, time limits we don't  
4 necessarily think that the way that this is going about is  
5 correct, and we might want to have more public notice whether  
6 this expedited hearing thing is something that would happen,  
7 but even in terms of how that process goes through the Zoning  
8 Commission that takes time, right?

9           And so there might be other people that are coming  
10 forward right now in the queue for a time extension. And are  
11 we saying that we're now not going -- or we might -- I mean,  
12 I know that we can pull -- any Board member can pull  
13 something off of the expedited review calendar at any time.  
14 And so I guess we're just going to kind of leave this the way  
15 it is, I guess, is what I'm asking.

16           MS. NAGELHOUT: Yes, the Board has to apply the  
17 regulations as they exist at the time the Board makes its  
18 decision, so, yes. I mean, you have to apply the current  
19 regs. I don't know how many are in the pipeline either, but  
20 how to handle it in the future is something -- it would go  
21 through the text amendment process and have input from OP,  
22 and from the public, and anyone else, so.

23           CHAIRPERSON HILL: Right, and that takes time.

24           MS. NAGELHOUT: Yes.

25           CHAIRPERSON HILL: So I guess we'll just, as in

1 everything, it's just going to be a case-by-case basis as to  
2 whether or not we feel comfortable moving forward with these  
3 time extensions. I mean, to -- you know, what had happened  
4 in '99 when this was first -- when the private school first  
5 came forward it was subject to seven conditions, then they  
6 had to come back again because there wasn't an expedited  
7 review process. And then there were -- then it turned into  
8 ten conditions, you know. And so that seems like a better  
9 process for these time extensions as everyone has already  
10 mentioned. But in terms of -- I mean, and I'm comfortable  
11 with the August deadline, I mean, Mr. Hart was kind of on the  
12 fence about it. Did anyone else have any issues about the  
13 August deadline? No? Okay.

14 All right. Then I'm going to make a motion then  
15 to approve Application Number 17944A, changing the first  
16 condition to the term limit now being August 31<sup>st</sup>, 2023 with  
17 all additional conditions two through ten remaining in effect  
18 and ask for a second.

19 VICE CHAIR HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All  
21 those in favor say aye.

22 (chorus of ayes)

23 CHAIRPERSON HILL: All those opposed?

24 (No response.)

25 CHAIRPERSON HILL: Motion passes. Mr. Moy.

1           MR. MOY: Staff would record the vote as four to  
2 zero to one. This is on the motion of Chairman Hill to  
3 approve the request for modification of consequence and as  
4 to the changes and conditions as cited by the chair.  
5 Seconding the motion is Vice Chair Hart. Also in support Ms.  
6 John and Zoning Commissioner Michael Turnbull. With no other  
7 members present the motion carries, sir.

8           CHAIRPERSON HILL: Okay, thanks, Mr. Moy.

9           (Whereupon, the above-entitled matter went off the  
10 record at 10:05 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 10-23-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

**NEAL R. GROSS**

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