

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENTS**  
**SPECIAL PUBLIC MEETING**  
**Wednesday**  
**October 15, 1997**

The Special Public Meeting was held in the Second Floor Hearing Room at 441 4th Street, N.W., Washington, D.C., at 9:00 a.m., Susan Morgan Hinton, Chairperson, presiding.

PRESENT:

SUSAN MORGAN HINTON, Chairperson  
LAURA RICHARDS, Vice Chairperson  
MAYBELLE TAYLOR BENNETT, Zoning Commission Rep.

BETTY KING, Board Member  
SHEILA CROSS REID, Board Member

STAFF PRESENT:

MADALIENE DOBBINS  
TRACY ROSE  
BEVERLY BAILEY

**AGENDA**

- I. MINUTES  
Special Public Hearing - 1/29/97
- II. OTHER MATTERS
  - A. D.C. Court of Appeals
    - 1. 15136 4

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

2 9:28 a.m.

3 CHAIRPERSON HINTON: Good morning. I call the meeting to  
4 order. Ms. Dobbins, could you lead us through our agenda?

5 MS. DOBBINS: Good morning, Madam Chairman and members  
6 of the Board. This is the special public meeting of Wednesday, October 15, 1997.  
7 The first item on your agenda would be the special public hearing minutes of  
8 January 29, 1997. They are before you for action this morning and we do have an  
9 absentee vote from Ms. Kress.

10 CHAIRPERSON HINTON: I move approval.

11 VICE CHAIR RICHARDS: Second.

12 CHAIRPERSON HINTON: Ms. Richards, I  
13 don't --

14 MS. DOBBINS: No, Ms. Richards didn't participate. January 29,  
15 1997.

16 MS. REID: I think that in the last paragraph there is a word  
17 missing.

18 CHAIRPERSON HINTON: Okay. Well, why don't you second  
19 and then we will --

20 MS. REID: Second.

21 CHAIRPERSON HINTON: Okay.

22 MS. DOBBINS: We can't hear you, Ms. Reid, on those  
23 corrections.

24 MS. REID: I am sorry. I said that in the last paragraph there is  
25 just a small word that was missing. It should read, I think, "The Government  
26 withdrew the notice to revoke building permit No. Z-400221.

27 MS. DOBBINS: That is correct. We have that correction.

1 CHAIRPERSON HINTON: Okay. With that correction, all those  
2 in favor?

3 MS. DOBBINS: Ms. Kress would pass her absentee vote in  
4 support of the motion to adopt.

5 MS. ROSE: Staff would record the vote as 3 to 0 with Ms.  
6 Hinton and Ms. Reid to approve and Ms. Kress to approve by absentee vote.

7 MS. DOBBINS: Okay. The next item on the agenda would be  
8 under other matters, II. This is 15136. This is a remand from the D.C. Court of  
9 Appeals for further administrative proceedings in Case DCCA No. 92-AA-619. This  
10 is Phil Mendelson, et al, Petitioner vs. the DC BZA as the Respondent, and  
11 Woodland Limited Partnership as intervener regarding BZA appeal of Phil  
12 Mendelson on behalf of the Advisory Neighborhood Commission 3C, pursuant to  
13 3200.2 and 3105.1 from the decision of the Zoning Administrator, Joseph Bottner,  
14 and the Department of Consumer and Regulatory Affairs made on June 17, 1988,  
15 and subsequently to the effect that the subdivision and development of former Lots  
16 33 into 7 new lots complies with the zoning regulations for the construction of single  
17 family dwellings in an R-1-A district at premises 2805 and 2815 Normanstone Drive,  
18 2804 and 2808 Woodland Drive, and 2600, 2610, and 2620 Rock Creek Drive, N.W.  
19 This is Square 2140, Lots 37, 38, 41, 42, 43, 45, and 46. It was heard September  
20 27 and October 4, 1989. Decided December 6, 1989. The Board dismissed in part  
21 and denied the remainder of the appeal by a vote of 5 to 0. Mr. Norris, Ms. Bennett,  
22 Ms. Jewell, Mr. McIntosh and Ms. Thornhill to deny and dismiss. Ms. Hinton, Ms.  
23 Richards, and Ms. Reid have read the record in this case. The final date of the  
24 order is April 24, 1992. This remand is before you for action this morning.

25 CHAIRPERSON HINTON: Okay. What I thought I would like to  
26 do is get some agreement on what it is we are doing before we try to do it. Let me  
27 maybe get started with that. I think that the first thing the Courts told us to do is to  
28 take a look at the rear yards -- the depth of the rear yards and whether they met the

1 zoning requirements. Because the Courts determined that that was timely filed.

2 MS. BENNETT: That is right.

3 CHAIRPERSON HINTON: The second thing we need to do is  
4 make a determination as to whether the other issues were timely filed, and those are  
5 side yard, lot width, use, and height.

6 MS. DOBBINS: That is right.

7 CHAIRPERSON HINTON: And if they are timely, then we need  
8 to --

9 MS. BENNETT: To determine whether or not they meet the  
10 regs.

11 CHAIRPERSON HINTON: Exactly.

12 VICE CHAIR RICHARDS: And that is respect to Lots 37 and 38  
13 only?

14 MS. BENNETT: That is right.

15 CHAIRPERSON HINTON: Now has anyone -- does anyone  
16 have a clear picture of what the plans show as far as the rear yards?

17 MS. BENNETT: Not anymore. And so I was hoping that we did  
18 have the 1989 revised plan for the rear yard.

19 CHAIRPERSON HINTON: Well, we do. I am going to pass  
20 these down to you. Why don't we figure out what lot numbers these are. That would  
21 be houses 1 and 2 according to that plan.

22 MS. BENNETT: And this is an R-1-B district?

23 VICE CHAIR RICHARDS: R-1-A.

24 MS. BENNETT: R-1-A.

25 CHAIRPERSON HINTON: Okay.

26 VICE CHAIR RICHARDS: The rear yard issue applies only to  
27 Lot 38. I couldn't find any testimony in the record about the rear yard issue for Lot  
28 37, and the full set of plans didn't go up to the Court. The record that went to the

1 Court that we examined seemed to show an adequate rear yard for 37.

2 CHAIRPERSON HINTON: Could you show me where that is --  
3 where you found that? Because this plan doesn't even show a house on Lot 37.

4 MS. BENNETT: Is that the same plan? What date is that?

5 CHAIRPERSON HINTON: This is September 13, 1989. And  
6 this is the revised plan?

7 VICE CHAIR RICHARDS: This is the one that they were dealing  
8 with at the hearing and that should be the latest one. Although there is a chance --  
9 the reference indicates that there might have been further revisions for at least one  
10 rear yard.

11 CHAIRPERSON HINTON: I think that you are right. Even from  
12 this other plan that we have, there seems to be no rear yard issue.

13 MS. BENNETT: What is the - no, not for 37.

14 CHAIRPERSON HINTON: If this is 24 feet -- I believe that is  
15 mentioned -- and this is with the 25 feet. So for 37, there is no rear yard issue.

16 MS. BENNETT: So we need a 25-foot rear yard in R-1-A?

17 CHAIRPERSON HINTON: Well, all we need to do is read the  
18 dimension here. On Lot 38, the plan shows a concrete porch with balcony above  
19 that is 24.4 feet from the property line.

20 MS. REID: This is -- do we have another commission like this --  
21 a revised --

22 MS. DOBBINS: We can't hear you. You are not being recorded.

23 MS. REID: I was saying that we need to get the revised permit  
24 plans for the rear yard. This says side yard. We are dealing with the rear yard first,  
25 are we not?

26 MS. BENNETT: The rear yard first, yes.

27 VICE CHAIR RICHARDS: Right, just the rear yard.

28 MS. REID: This says side. Do you have one there that says

1 rear?

2 CHAIRPERSON HINTON: No, we don't. And this set of plans  
3 that says revised plans, house 2 with the deck -- unfortunately, there is not site plan  
4 with it. So we can't get a measurement from here. But I think that this measurement  
5 is pretty clear. Are you not comfortable with this drawing? I think this is the clearest  
6 thing that we have.

7 MS. REID: No. What I wanted to see -- I thought we were trying  
8 to look at --

9 MS. BENNETT: Is your question is that what was revised and  
10 submitted? Is that the right plan that we are looking at?

11 MS. REID: Right.

12 MS. BENNETT: And I guess the thing that confuses me a little is  
13 that the date that this was printed was September 13, which is well after the March  
14 1989 date of the revised plans for the rear yard, against which the appeal was  
15 made.

16 MS. REID: And is it certified correct?

17 CHAIRPERSON HINTON: Now if you look at the title of it, this is  
18 actually location of improvements. This was done after it was built.  
19 So --

20 MS. BENNETT: So it was not the same plan that they --

21 CHAIRPERSON HINTON: It is not the plan that was submitted  
22 for the building permit.

23 MS. BENNETT: Right. And that is really what we need.

24 CHAIRPERSON HINTON: Well, we have information in the  
25 record that says the revised plans that were submitted were the ones that showed  
26 the construction that was actually occurring at the site.

27 MS. BENNETT: Okay, then well this shows the --

28 CHAIRPERSON HINTON: But we need the plans that went to

1 the Zoning Commission.

2 MS. BENNETT: That is what I was saying. So we are not  
3 guessing on this.

4 MS. REID: So we need to get a copy of the revised plan that  
5 was submitted to the Zoning Commission Office.

6 MS. BENNETT: I think you are right, Ms. Reid. If we are not  
7 able to find it here, there are several things that we can do. This case was returned  
8 to us on remand. Which means that there is further administrative processing and  
9 our chairperson outlined what those things are that we must decide. But we cannot  
10 decide them, I don't think, in the way that we would like in the absence of having the  
11 plans that were submitted to the Zoning Administrators Office in March of 1989, I  
12 believe, which will show us what the proposed rear yards -- and I am talking about  
13 rear yards right now -- were. Similarly, it seems to me that to do the balance of what  
14 the Court requires of us, we need to see the 1988 and the revised 1989 plans so  
15 that we can make the determination that the Court asks us to make as it regards  
16 side yards, lot width, use, and height. In the absence of those, we cannot do what  
17 the Court asks us to do.

18 CHAIRPERSON HINTON: Exactly.

19 MS. BENNETT: And right now, I am feeling a little frustrated, as  
20 I know all of us are, having gone back to our original case folder and not having  
21 those things that we need. So I would suggest, Madam Chair, that we request that  
22 those materials be made available or found, wherever they happen to be, and that  
23 we try to make the determinations we need to make when we have them in hand.

24 CHAIRPERSON HINTON: I would agree. There is nothing else  
25 we can do. I am wondering if those copies of those plans can be acquired within the  
26 next two weeks, and if we can reschedule this for our November meeting.

27 MS. DOBBINS: I can send someone down to the ZA's office to  
28 research the files and see what they have related to this case and what plans were

1 filed to pull the permits, and we can get back to you.

2 CHAIRPERSON HINTON: Okay.

3 VICE CHAIR RICHARDS: Madam Chairperson, May I also call  
4 your attention to page 328 of the transcript. On page 328 of the hearing transcript,  
5 which occurred well after the March 1989 plans had been sent to the Zoning  
6 Administrator, there is a reference to there may be perhaps having been a further  
7 revised set of plans to bring the rear yard into compliance. And that is not settled on  
8 the record as to whether there is or not. But it may be that in pulling the plans, there  
9 will be March 1989 and then some subsequent set also. So do we want to look at  
10 March 1989 and anything else that is existing thereafter?

11 CHAIRPERSON HINTON: I think the appeal is release of the  
12 permits of March of 1989. So anything that happened subsequent --

13 MS. BENNETT: Is not the subject of this action.

14 CHAIRPERSON HINTON: Is not the subject of this appeal.

15 VICE CHAIR RICHARDS: Well, are you sure? Because it may  
16 be that these plans were in existence at the time of the hearing and were actually  
17 considered by the prior Board at that time. I mean if the plans are on file and they  
18 occurred prior to the issuance of the Board's decision, we probably at least want to  
19 know that.

20 MS. DOBBINS: I don't think any plans were considered after it  
21 went to the Court of Appeals.

22 VICE CHAIR RICHARDS: I am not talking about that period of  
23 time. I am talking about the period of time between March and the time that the  
24 Board issued its decision. The transcript says --

25 CHAIRPERSON HINTON: But you know, as we always do  
26 when we hear appeals, once the decision is made, that concludes the record that we  
27 look at. We are reviewing -- in this case, what was in front of the Zoning  
28 Administrator when the decision was made to release the permits. So anything that

1 happens after that, it doesn't matter. The Zoning Administrator didn't know what  
2 was going to happen in the future. I just think it would be better if we stayed to what  
3 the task is, and that is what was on the plans that resulted in the building permit of  
4 March of 1989.

5 MS. DOBBINS: Madam Chair, we will review the Board's  
6 meeting agenda from March 1989 until the time that the decision came out to insure  
7 that it was never on the Board's agenda before. And that way, we will make sure  
8 that what plans are with the ZA are the plans that were March of 1989 and before.  
9 But we will make sure that nothing was submitted or considered by the Board  
10 between the time it made the decision and the time the order came out.

11 CHAIRPERSON HINTON: Okay. Thank you.

12 VICE CHAIR RICHARDS: I am not talking about that period of  
13 time. I am talking about what may have been in existence at the time of the hearing.  
14 The hearing testimony says -- well before the decision but well after March of 1989 -  
15 - that there is a problem with the deck. This is being addressed because a revision  
16 permit was taken out and the deck is supposed to be shortened to bring it into  
17 compliance. There may be a permit to do that that was in place before the Board  
18 rendered its decision. I don't know if it is. I am saying it may be.

19 CHAIRPERSON HINTON: How would that affect the Board's  
20 decision on whether the Zoning Administrator erred in releasing permits in March of  
21 1989?

22 VICE CHAIR RICHARDS: It might have been something that the  
23 Board considered in its consideration of the appeal. I would like to know what was  
24 before the prior Board when it decided this appeal in its entirety.

25 CHAIRPERSON HINTON: Well then what Ms. Dobbins said  
26 should suit you. She is going to look to see what was in front of the Board.

27 VICE CHAIR RICHARDS: She was addressing the period  
28 between the hearing -- the time hearing concluded and the time the Board issued its

1 decision.

2 MS. DOBBINS: Well, that is assuming that you already have  
3 everything else. But we could check to see what was in the Board's record and to  
4 look at the -- I mean, we can just review the entire record to make sure that you  
5 have everything in front of you that the Board members had when they decided the  
6 case, for those of you who had to read the record.

7 VICE CHAIR RICHARDS: Okay.

8 MS. DOBBINS: Is that okay?

9 VICE CHAIR RICHARDS: That will be fine.

10 MS. DOBBINS: All right.

11 CHAIRPERSON HINTON: Okay. Do we have any other  
12 business for the meeting?

13 MS. DOBBINS: Madam Chairman, the second item would be  
14 deferred. We still do not have the decision. You only have the order that remanded  
15 the case, but you don't have the decision to tell you what it was remanded for. So  
16 we will defer that one until we get some additional information.

17 And the third item on the agenda is only for your information. So  
18 there are no other items for the public meeting.

19 CHAIRPERSON HINTON: Okay. Very good. Let's adjourn.

20 (The public meeting portion of the agenda was adjourned at 9:49  
21 a.m.)

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