

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 8, 2013

+ + + + +

The Special 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 9:40 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on
January 8, 2013.

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

2 9:40 a.m.

3 CHAIRPERSON JORDAN: Good morning.

4 Would the meeting please come to order. Good
5 morning, ladies and gentlemen. We are located
6 at the Jerrily R. Kress Memorial Hearing Room
7 at 441 4th Street, N.W. Today's date is
8 January 8, 2013.

9 We are here for the public meeting
10 of the Board of Zoning Adjustment in the
11 District of Columbia. My name is Lloyd
12 Jordan, Chairperson. To my right is Jeffrey
13 Hinkle, Board Member. To my left, Nicole
14 Sorg, Vice Chair. To her left Robert Miller,
15 a member of the Zoning Commission.

16 Please be advised that this
17 morning's proceeding is being recorded by a
18 court reporter and is also being webcast live.
19 Accordingly, I must ask you to refrain from
20 any disruptive noises or actions in the
21 hearing room.

22 Today's agenda has been posted.

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1 We are meeting today to render decisions on
2 two cases which have been heard before the
3 Board.

4 Mr. Moy, are there any preliminary
5 matters we need to discuss?

6 MR. MOY: There is one on the
7 second case but the Board -- the staff would
8 suggest the Board address that when I call the
9 case.

10 CHAIRPERSON JORDAN: Then if you
11 will call the docket, Mr. Moy.

12 MR. MOY: Yes. Good morning, Mr.
13 Chairman, members of the Board. The first
14 application for decision as originally noticed
15 for the public record is Application No. 18398
16 of Kenneth and Ellen J. Marks pursuant to 11
17 DCMR 3103.2.

18 This is for a variance from the
19 lot occupancy (Section 403), rear yard
20 (Section 404), and nonconforming structure
21 (Subsection 2001.3) requirements to allow the
22 construction of an addition to an existing

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1 one-family row dwelling in the R-3 District at
2 premises 2130 Bancroft Place, N.W. Property
3 located in Square 2532, Lot 802.

4 As the Board is aware, the
5 Applicant amended the application for special
6 exception relief under Section 223 not meeting
7 the lot occupancy, rear yard, and
8 nonconforming structure provisions.

9 On November 7, 2012, the Board
10 completed public testimony and closed the
11 record and scheduled its decision on January
12 8, 2013. The Board requested additional
13 information to supplement the record. Those
14 filings are in your case folders, Mr.
15 Chairman, and they were all timely.

16 The first two filings are proposed
17 findings of fact and conclusions of law from
18 the Applicant and the party opposition -- the
19 consolidated party opposition under Exhibit 61
20 and 60 respectively. Finally, there is a
21 filing from ANC-2D under Exhibit 59.

22 With that, the Board is to act on

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1 the merits of the special exception relief
2 under Section 223. That completes the staff's
3 briefing, Mr. Chairman.

4 CHAIRPERSON JORDAN: Thank you,
5 Mr. Moy.

6 Is the Board ready to deliberate
7 on this matter that we've previously heard?
8 I take it that we are. All right. Does
9 anybody want to lead the discussion or have
10 something they want to say about this
11 particular matter?

12 I believe this is one, again,
13 where we have a situation of close confines
14 but one which this Board has kind of been
15 confronted with before. We have a request in
16 this matter from ANC-2D to pass this decision
17 to another date.

18 I don't know if the Board has a
19 feeling one way or the other about that but
20 it's my thought this is not our usual process
21 for rolling back after we've had the hearing
22 and processed to hold off a hearing on this

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1 matter for another decision date. Unless
2 there is a motion or need of the Board, then
3 I would just say that we move on.

4 VICE CHAIRMAN SORG: Mr. Chairman,
5 I agree with you in that regard. In my view
6 it's similar to the way that the Board treats
7 applicants who require relief from HPRB. It's
8 really up to the applicant how they want to
9 put their ducks in a row. I also believe that
10 we can go forward today.

11 CHAIRPERSON JORDAN: Any other
12 thoughts on that matter? Does anybody have
13 anything they want to say about this case
14 before we enter into deliberation? Any
15 thoughts?

16 I believe this is always a close
17 matter when we have so many people involved
18 and residents in the neighborhoods because
19 it's our thought to certainly protect the
20 neighborhood.

21 But also to recognize the needs of
22 the applicants and what are the Zoning

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1 Regulations that have been put in place and
2 the basis for what this Board is here for is
3 to try to balance and mitigate the affect upon
4 changes in the neighborhood so that there is
5 no real detriment, to reduce any detriment or
6 to protect against detriment to the neighbors.

7 This is a case where I think the
8 Applicant had previously offered a more
9 expansive program, expansion of the property,
10 and has reduced that initial thought down in
11 order to try to accommodate the needs and the
12 request of those around them.

13 This property where it's situation
14 in Ward 2 is an interesting area. This
15 property being the shape of it in comparison
16 to the other properties around it, it also
17 gives me some pause and issue on how close
18 these people are upon each other for this type
19 of expansion.

20 I do think that the Applicant has
21 met the burden that's necessary in order to
22 get the relief necessary. I think there's

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1 some things that the Board can do to help
2 mitigate what is perceived as a negative
3 impact on particularly one neighbor.

4 I think that neighbor at 2128
5 would have the greatest issue. I know there
6 are others across the street and down the
7 street that have some issues with this but
8 that issue is more about a matter that is not
9 before this Board or that this Board has
10 jurisdiction to hear. That is my initial
11 thought on it. Anyone else?

12 Mr. Hinkle.

13 MEMBER HINKLE: Thank you, Mr.
14 Chair. I just wanted to state my agreement
15 with your analysis here. The test here really
16 is a special exception. Really it's whether
17 what is being proposed has some substantial
18 adverse effects to the use and enjoyment to
19 the adjacent properties.

20 What I'm looking at is a proposal
21 to increase the lot occupancy by a relatively
22 small amount. I think it's 62 percent to 70

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1 percent. To me in just looking at the site
2 plan, the house isn't necessarily being
3 enlarged too much.

4 The garage is not necessarily
5 being enlarged too much. The increase in that
6 lot occupancy is simply that breezeway that
7 connects the two. I find that somewhat
8 minimal.

9 Then we are also looking at kind
10 of an almost existing condition in terms of
11 the request for the rear yard setback. For me
12 I can support this because I think the
13 Applicant has shown that while there could be
14 some adverse effects, these adverse effects
15 are not substantial in terms of what's being
16 proposed.

17 CHAIRPERSON JORDAN: Anyone else?

18 COMMISSIONER MILLER: Mr.
19 Chairman, while I appreciate the Applicant's
20 efforts to -- genuine efforts to mitigate the
21 adverse impacts on adjacent properties by
22 reducing the height of that wall of the

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1 bridge.

2 If it were a breezeway, I think
3 that would actually be open to the light. I
4 think there is an adverse impact upon the
5 light and air of the adjacent neighbor at
6 2128. I have no problem with the addition to
7 the front house or to the garage in the back.

8 I think that is really not a
9 problem. The connection -- I have no problem
10 with connecting the two structures but where
11 they have chosen to -- I understand why they
12 have chosen to place it where they have on the
13 eastern side because there were structural
14 issues on the western side.

15 It was the eastern side that had
16 the windows and those pictures are pretty
17 compelling, I thought, from the adjacent
18 neighbors of the light and air that was coming
19 in and that won't be coming in when there's a
20 wall right there. I really think the
21 connection could have been at grade, below
22 grade, or on the other side. For that reason

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1 I cannot support this application today.

2 CHAIRPERSON JORDAN: Do you have
3 any comments?

4 VICE CHAIRMAN SORG: Thank you,
5 Mr. Chairman. I'll just briefly add this is
6 a tough one for me to parse. I think it's a
7 very close bar. I certainly agree with the
8 concerns that Mr. Miller raises.

9 I think -- I mean, that was
10 something that we brought up in the first
11 hearing was why can't this thing be on the
12 other side. It immediately seemed to solve
13 some of the issues that were potentially
14 present in placing the breezeway on this side
15 of the property.

16 Certainly I think there are
17 existing conditions which will mean that the
18 construction of the proposed breezeway will
19 have more of an effect on the neighboring
20 property at 2128 based upon the sloping grade
21 of the block in general.

22 That being said, I think that --

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1 you know, I also agree with Mr. Hinkle's
2 comments in the sense that this is a special
3 exception. It's not a variance test.

4 I certainly think that this case
5 would not meet the variance test in my eyes
6 given the reductions and then further
7 reduction in the mass and height of the
8 breezeway that the Applicant has proposed in
9 subsequent design iterations.

10 Also the design, as it's in
11 keeping with the development of the
12 neighborhood and in keeping with the character
13 of the neighborhood, I think I can also be in
14 support of the application.

15 CHAIRPERSON JORDAN: And I would
16 offer to the Board in this matter that we
17 would have a finding that the property is
18 located in Kalorama Heights neighborhood in
19 Ward 2. The property, although regular shape,
20 is about 2,300 square feet of land.

21 The property presently includes a
22 separate accessory garage with a 15-foot

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1 alley. What is projected is a third story
2 will be added to the existing house. A second
3 story will be added to the garage level.

4 Most of the buildings along both
5 sides of the block are single family three or
6 four-story row dwellings. Most are sitting on
7 nonconforming lots. The proposed lot
8 occupancy is only going to be increasing this
9 matter by 8 percent from the status quo as was
10 indicated earlier.

11 The proposed project would have a
12 minor impact on the light and air of adjoining
13 properties, particularly 2128 which if any of
14 the properties are affected, 2128 is the one
15 being affected but I don't find that to be
16 substantial.

17 The shadow studies provided by the
18 Applicant indicated that the light and air of
19 the neighbors should not be unduly affected by
20 the proposed additional garage. The proposed
21 addition would not significantly impact the
22 light and air on 2132 Bancroft.

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1 The subject property has an
2 existing privacy fence and vegetation above
3 the garage and it already kind of cast a
4 shadow on 2128 during the afternoon hours.
5 The shaded condition doesn't change
6 significantly in any other aspect for the day.

7 Also, 2128 Bancroft is set back
8 about six feet to the east. The breezeway is
9 situated in an area that already has a shadow
10 and there's been some reduction.

11 I think it has been certainly
12 modified so the breezeway can come down by two
13 feet and also eliminate the top portion
14 banister. That gives an overall reduction by
15 five feet. I think that would be fitting for
16 this.

17 The breezeway doesn't impact by
18 light available to 2132 Bancroft in any way.
19 In the green space there has been changes to
20 the use of the green space in the back yard,
21 as I said before, from what could be there,
22 what was initially proposed.

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1 OP has made a recommendation to
2 this Board for approval which we would give
3 great weight. ANC-2D has not actually weighed
4 in on the matter of the substance of the
5 special exception but did ask that we postpone
6 the decision as we have already discussed that
7 particular situation.

8 This is a special exception. As a
9 special exception our hands are not as free.
10 It's more tied to if these certain revisions
11 are hit in the law, then the relief should be
12 granted. We have not found that there has
13 been a substantial impact on light and air in
14 this matter and that the use and enjoyment of
15 neighboring properties are not being unduly
16 compromised.

17 The accessory structure together
18 with the original building view from the
19 street and alley does not substantially
20 visually intrude upon the character and style
21 of the neighborhood. In fact, I think it kind
22 of all fits together. Overall it fits the

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1 compatibility of the neighborhood.

2 The lot occupancy requirement with
3 the special exception relief will be fitting
4 for this. In order to further mitigate any
5 minor impact on the neighbor at 2128, I would
6 suggest -- I would want this order to say that
7 the wall gets reduced by the two feet and the
8 banister aspect has been offered to be
9 incorporated into our order in this matter.

10 And that the Applicant also work
11 with the owner at 2128 as was suggested in
12 this hearing. That the Applicant was willing
13 to do work with the owner at 2128 to provide
14 some reasonable decoration to the wall, that
15 breezeway wall side as requested by that owner
16 at 2128.

17 With that, it would be my motion
18 that we approve the application as described
19 in what I just got through saying.

20 VICE CHAIRMAN SORG: Second.

21 CHAIRPERSON JORDAN: Motion made
22 and seconded. Any additional unreadiness?

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1 Seeing none, all those in favor signify by
2 saying aye.

3 BOARD MEMBERS: Aye.

4 CHAIRPERSON JORDAN: Those
5 opposed?

6 COMMISSIONER MILLER: No.

7 CHAIRPERSON JORDAN: The motion
8 carries.

9 Mr. Moy.

10 MR. MOY: Staff would record the
11 vote as three to one on the motion of Chairman
12 Jordan to approve the application for special
13 exception relief. Seconding the motion is
14 Vice Chairperson Sorg. Also in support of the
15 motion are Mr. Hinkle. Opposed to the motion
16 Mr. Miller. We have a Board seat that's
17 vacant. Again, the motion carries, Mr.
18 Chairman.

19 CHAIRPERSON JORDAN: Thank you,
20 Mr. Moy.

21 MR. MOY: The next application for
22 Board decision is Application No. 18432 of

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1 John C. Hines. This is pursuant to 11 DCMR
2 3104.1 and 3103.2, for a variance from the
3 rear yard requirements under Section 404, and
4 a special exception under Subsection 2516.1,
5 to permit an addition to an existing flat
6 (two-family dwelling) where there are more
7 than one principal structure on a single lot
8 in the R-4 District at premises 1618 5th
9 Street, N.W. Property located in Square 477,
10 Lot 845.

11 On November 7, 2012, the Board
12 completed public testimony, closed the record,
13 and scheduled its decision on January 8, 2013.
14 The Board requested that the Applicant submit
15 further information to supplement the record.

16 That filing is in your case
17 folders, Mr. Chairman. It is dated Friday,
18 January 4 under Exhibit 32. The deadline was
19 for Monday, December 31, 2012, so the filing
20 is untimely.

21 There is also in that exhibit a
22 request to waive the time requirement. With

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1 that then the Board is to act on the merits of
2 the request for the zoning relief. That
3 completes the staff's briefing, Mr. Chairman.

4 CHAIRPERSON JORDAN: I'm just
5 trying to understand where we are with this
6 matter. I think we got something last night.
7 I got a motion to waive the late filing which
8 deeply disturbs me by some of the language
9 that's contained in this motion. I don't know
10 how Ms. Sorg's name gets involved in this
11 motion to waive.

12 I guess for the record I would
13 state when this Board meets we meet as a Board
14 and applicants cannot contact or attempt to
15 contact any Board member outside of this
16 hearing. It's just improper across the board.

17 Conversations held by members of
18 this Board are not personal in any shape,
19 form, or fashion. The Board members are
20 saying in regards to what they believe the law
21 requires and what is required for us to move
22 these hearings further.

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1 I get concerned when we get
2 motions and representations and writings
3 highlighting and pointing out Board members
4 for particular matters. Especially when we
5 have a motion to request we waive our time
6 frame today for something that we asked for in
7 order to get this matter approved.

8 It gives me great concern. It's my
9 initial thought to go ahead and to accept the
10 waiver of the late time as being requested,
11 but it doesn't sit well with me.

12 Any other Board member have an
13 idea of what they want to do with the motion
14 to waive?

15 VICE CHAIRMAN SORG: Thank you,
16 Mr. Chairman. I just will weigh in here being
17 that I am Ms. Sorg. I just want to make clear
18 for the record that I was contacted by the
19 Applicant in this case but it was very clear
20 to me that it was simply due to a lack of
21 understanding of the process. I felt that
22 there was no other desire beyond just that.

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1 I would also agree with your acceptance of the
2 filing.

3 CHAIRPERSON JORDAN: Gee, you are
4 awfully nice.

5 Anyone else?

6 Mr. Miller.

7 COMMISSIONER MILLER: Yes. I
8 would share your concerns and comments, but
9 also agree to accept the late filing. I would
10 remind ourselves and the Applicant as you, the
11 Chair, suggested who exactly they should
12 contact which was the Office of Zoning or the
13 Office of Planning at the hearing and that
14 would have been appropriate officials to
15 contact about what form the site plans should
16 be in.

17 CHAIRPERSON JORDAN: Again, one
18 thing that we do is we place on our website an
19 understanding of how the Board operates and
20 how the zoning operates in the District. I
21 recommend that people really look at that and
22 review that and understand -- try to

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1 understand the process and make sure that all
2 the professionals that they hire understand
3 the process and to ask questions about the
4 process. That should happen long before it
5 comes to this Board.

6 With that, then we'll grant the
7 motion to waive the late filing of the plans.
8 The Board wanted to see the plans before it
9 went further and I wanted to make sure that
10 the Board members are comfortable now with the
11 site plan and floor plan that's been
12 submitted, although we did have some
13 difficulties trying to look through it because
14 after it got reduced it became an issue.

15 VICE CHAIRMAN SORG: I think that
16 the information that we were looking for is
17 contained in the plans that we received.

18 CHAIRPERSON JORDAN: Mr. Hinkle,
19 you're good?

20 MEMBER HINKLE: Yes.

21 CHAIRPERSON JORDAN: Mr. Miller,
22 you're good?

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1 COMMISSIONER MILLER: Yes.

2 CHAIRPERSON JORDAN: With that,
3 then I would move that we grant the relief
4 requested by the Applicant.

5 COMMISSIONER MILLER: I would
6 second that.

7 CHAIRPERSON JORDAN: Motion made
8 and seconded. Any unreadiness? All those in
9 favor signify by saying aye.

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON JORDAN: Those
12 opposed, nay. The motion carries.

13 Mr. Moy.

14 MR. MOY: Staff would record the
15 vote as four to zero. This is on the motion
16 of Chairman Jordan to approve the application
17 for the relief requested. Seconding the
18 motion Mr. Robert Miller. Also in support of
19 the motion Vice Chairperson Sorg and Mr.
20 Hinkle. We have a Board seat vacant. Again,
21 the motion carries, Mr. Chairman.

22 CHAIRPERSON JORDAN: Thank you.

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1 We can have a summary order.

2 MR. MOY: Yes, sir.

3 CHAIRPERSON JORDAN: Thank you
4 very much.

5 MEMBER HINKLE: Thank you.

6 (Whereupon, at 10:04 a.m. the
7 Special Public Meeting was adjourned.)

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