

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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EXCERPT OF CASE 16699

APPLICATION OF JOAN SUTTON FOR HOPE VILLAGE

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TUESDAY,
MAY 1, 2001

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
SUSAN MORGAN HINTON	Board Member
CAROL J. MITTEN	Board Member
ANTHONY HOOD	Board Member

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K.A. Nyarku, Office of Zoning
Andrew Altman, Director, Office of Planning
John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(10:30 a.m.)

MR. HART: The next case is Application 16699 of Joan Sutton for Hope Village, pursuant to 11 DCMR 3104.1 for a special exception under Section 358 and from Subsections 358.2, 358.7, 358.8, to establish a Community-Based Residential Facility in a square that has another CBRF with seven or more persons, to establish a CBRF in a square with more than one CBRF, or within 500 feet of another, and to establish facilities with more than 20 persons at premises 2844, 2920, and 2912 Langston Place, S.E., at Square 5741, Lots 132, 851, and 866); and to continue a CBRF and increase the number of beds by one per room at premises 2908, 2840, and 2850 Langston Place, S.E., Square 5741, Lots 130, 131, 850, in an R-5-A District.

The Board heard the facts of this case and scheduled a decision for today and the receipt of all outside information by April 24th.

The following were requested. The applicant is to provide information linking all of the previously-issued certificates of occupancy with the BZA orders that have been issued for this site. The applicant should submit a zoning history of the site. The information should include all previously-issued orders,

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1 the addresses of the buildings, square and lot numbers,
2 dates when all zoning actions take place -- took place,
3 and the Board's decision on each case.

4 The Office of Corporation Counsel should
5 provide court cases that are associated with hybrid
6 variances.

7 Board members participating were Sheila
8 Cross Reid, Susan Hinton, and Anthony Hood.

9 The case is before you, Madam Chair.

10 CHAIRPERSON REID: Okay. Board members,
11 this was the case reverting, if you recall, the Hope
12 Village over in Southeast, and they were asking to
13 increase the number of persons per unit at the facility
14 now.

15 The Office of Planning was -- had given
16 conditional approval of the application, and the ANC also
17 was in favor of the application, as well as Council Member
18 Sandi Allen, previous Council Member Eddie Whittington,
19 Mr. Lockridge from the -- I think the Board of Education,
20 and there was some discussion from one of -- a
21 single-member ANC member representative -- single-member
22 ANC representative who talked about his concern regarding
23 the increase.

24 He did not have a problem with the existing
25 facility, and given the fact that there was a history

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1 on this particular application, that there had
2 been -- that had been in existence for some time. And
3 reading back through the record I determined that
4 initially the ANC was opposed to it.

5 They felt that it would not be something good
6 for the community. But after having been there and
7 experienced how the facility operated, they now come and
8 support it.

9 Mrs. Hinton, however, did have some requests
10 regarding the history of the certificates of occupancy,
11 I believe, and the -- we are going to ask -- Mrs. Hinton,
12 I think they did submit it. And have you looked at it,
13 and is it satisfactory? Do you have any other questions?

14 BOARD MEMBER HINTON: I had asked for the
15 zoning history to explain what zoning actions had taken
16 place on the properties that were included in this current
17 application. And they have submitted it, and I do
18 appreciate it.

19 There is one part that's unclear to me, and
20 so I wanted to see if any of the other Board members
21 understood. It seems to me that all of the previous Board
22 orders covered three of the property addresses. That's
23 2840 Langston Place, 2908 Langston Place, and 2850
24 Langston Place. And there were a number of orders that
25 permitted the use as it is existing today on that site.

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1 And then there is one page that talks -- that
2 says the other three addresses -- 2844, 2912, and
3 2920 -- and they have the heading over that "Permanently
4 Zoned Locations," and that was unclear to me. Did anyone
5 else understand what that was a reference to?

6 CHAIRPERSON REID: Which page are you
7 referring to?

8 BOARD MEMBER HINTON: Well, it doesn't have
9 page numbers.

10 CHAIRPERSON REID: It doesn't?

11 BOARD MEMBER HINTON: The submission from
12 Hope Village.

13 CHAIRPERSON REID: There are page numbers
14 at the bottom, aren't there?

15 BOARD MEMBER HINTON: No.

16 CHAIRPERSON REID: Let me see what you have.
17 That page does not have a page number -- the page just
18 before the orders. Are you asking what does that mean?

19 BOARD MEMBER HINTON: Yes. Did you have an
20 understanding of what this meant? That all of the other
21 Board orders and actions deal with the other three
22 addresses, but the -- this CBRF is currently at all six
23 addresses. So that's what -- do you understand what this
24 means? is my question.

25 CHAIRPERSON REID: I guess I assumed that

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1 it was -- that these were matter of right. I wasn't -- I
2 didn't have a question, but I guess I just made that
3 assumption that -- since they were not a part of this
4 particular case.

5 Ms. Sansone, would you be able to --

6 BOARD MEMBER HINTON: Well, but you
7 understand they are covered in this case.

8 CHAIRPERSON REID: I do. But they were
9 never -- they did not ask for any zoning relief for these
10 particular properties. And I just -- I just didn't
11 consider them because they weren't before us.

12 MS. SANSONE: Madam Chair, I thought they
13 were before us in this particular case to add one --

14 CHAIRPERSON REID: No, I'm sorry. The
15 report -- but that they did not need the relief.

16 BOARD MEMBER HINTON: You know what? I
17 believe they need the relief to add the additional bed
18 to each room -- I think was the plan. And in looking
19 back over OP's April 11th report for the three properties
20 that don't -- they don't seem to have prior zoning
21 orders -- OP has found certificates of occupancy that
22 go back to the '80s for 2912, and they -- I guess they
23 found a certificate of occupancy for 2844 going back to
24 1982. And OP did not indicate whether there was one for
25 2920.

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1 But we don't have the previous -- if these
2 were subject to Zoning Board approvals, we don't have
3 the previous orders in this case. But the request in
4 this case would be to add the additional -- I believe
5 it was one bedroom per -- or one bed per bedroom.

6 CHAIRPERSON REID: Wait a minute. Let's
7 see what it says here. I thought I saw it referred to
8 in this.

9 BOARD MEMBER HINTON: And that -- I think
10 this is why our notice was written the way it is. And
11 that is for the three addresses that there's no prior
12 zoning history on, the relief requested is to establish
13 the CBRF. For the other three addresses that have prior
14 history, the relief requested is to continue a CBRF.

15 CHAIRPERSON REID: Repeat that again. Say
16 that again.

17 BOARD MEMBER HINTON: In our public notice,
18 and now on our agenda, the way this project was written,
19 they made a distinction -- or we made a distinction -- for
20 the three properties that did not have a prior zoning
21 history. The relief requested is to establish a CBRF.

22 CHAIRPERSON REID: Okay.

23 BOARD MEMBER HINTON: For the other three
24 properties that do have prior zoning approvals, the relief
25 requested is to continue the CBRF. So that would be

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1 consistent with what we've found here in the record, that
2 there is -- appears to be no prior zoning review or
3 approval of the three properties. And so what this
4 Board's action would do is actually establish the CBRF --

5 CHAIRPERSON REID: There.

6 BOARD MEMBER HINTON: Even though it's
7 already there, we would be establishing it under --

8 CHAIRPERSON REID: Formally.

9 BOARD MEMBER HINTON: Formally.

10 CHAIRPERSON REID: Okay.

11 BOARD MEMBER HOOD: So if I'm -- I want to
12 make sure I understand. So apparently, Ms. Hinton, what
13 you're saying is that the three that were left out were
14 not established up under the -- they were not established
15 as CBRFs, but they existed.

16 BOARD MEMBER HINTON: That's true. That's
17 the way I'm looking at it, that there is no zoning action
18 that sort of permits them to be established, although
19 they are already there, and they had C of O's.

20 BOARD MEMBER HOOD: Right.

21 BOARD MEMBER HINTON: So the question, you
22 know, I don't know whether the C of Os should or should
23 not have been granted. They do have C of Os, and they
24 were operating legally with a C of O. But there
25 isn't -- doesn't appear to be a zoning history of any

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1 variance or special exemption granted. I mean, it may
2 be that at the time that they were established none was
3 needed, because these seem to be pretty old.

4 BOARD MEMBER HOOD: Well, it looks as though
5 the applicant is trying to straighten out something.

6 BOARD MEMBER HINTON: Right.

7 BOARD MEMBER HOOD: And I think that's a good
8 course of action.

9 BOARD MEMBER HINTON: Right.

10 CHAIRPERSON REID: Okay. Where I was a
11 little confused is that it said that -- the letter from
12 the attorney, Mrs. Jennette Henry, was that of the six
13 buildings, three have permanent certificates of
14 occupancy, and the other three have a certificate that's
15 valid through 2013.

16 Now, are you saying that the three that don't
17 have the CBRF is what we need to -- in other words, the
18 action taken today would establish it for three of the
19 properties and continue it for the other three?

20 BOARD MEMBER HINTON: That's correct.

21 CHAIRPERSON REID: Okay. All right. Now,
22 so what else was requested? Zoning history. Okay. And
23 then, we asked that Corp. Counsel provide us with court
24 cases germane to hybrid variances. And, basically, in
25 pertinent part, what has been submitted by Corp. Counsel

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1 is -- in their cases, there is one that they cited that
2 was issued in 1989, Case Number 14876, 14877, 14878.
3 Oh, no, wait a minute.

4 In this one they talked about the hybrid --

5 MS. SANSONE: Madam Chair, we --

6 CHAIRPERSON REID: Oh, I'm sorry. Go
7 ahead.

8 MS. SANSONE: We provided the Board with a
9 memorandum dated April 24th. There should be a cover
10 memorandum from the Office of Corporation Counsel.

11 CHAIRPERSON REID: Yes.

12 MS. SANSONE: And then attaching the cases
13 that Mr. Hood had indicated his interest in -- the
14 background to the concept of a hybrid variance, and what
15 that might be. I don't --

16 CHAIRPERSON REID: That's correct, Mrs.
17 Sansone. I was looking at a document -- I was saying
18 that it came from you, but actually it was in a previous
19 order.

20 MS. SANSONE: Yes. That is how --

21 CHAIRPERSON REID: And they referenced the
22 same thing in regards to hybrid variance -- the order
23 that was issued on the January 4, 1989.

24 And in pertinent part it says that, "As to
25 the variance relief, the Board concludes that there are

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1 use variances, but have significant characteristics of
2 non-use variances. The requested relief would not change
3 the identity of the use which may be conducted at the
4 site. Through approval by the Board, rather, they would
5 change the extent to which the use may be conducted."

6 Now, that kind of had us treading on some
7 kind of perilous ground because of the fact that there
8 was some question as to hybrid -- a hybrid variance, and
9 that's where -- that's where your submission was helpful
10 to us. If I can just find it here.

11 BOARD MEMBER HINTON: I think during the
12 hearing there was a discussion of what the relief actually
13 is.

14 CHAIRPERSON REID: Right. But then we
15 talked about a hybrid variance.

16 BOARD MEMBER HINTON: Right. I was
17 wondering if we could just review the actual relief that
18 we're looking at.

19 MS. SANSONE: Yes. I think that might be
20 helpful because the hybrid -- the whole discussion about
21 hybrid variance had kind of come up in the context of
22 a discussion that had taken place the previous day at
23 the Zoning Commission when they were asked to look at --

24 BOARD MEMBER HINTON: Right.

25 MS. SANSONE: -- something called a hybrid

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1 PUD, which is a non-existent -- there is no such thing,
2 but in the variance law there is.

3 However, in this case, I think Mrs. Hinton's
4 idea is good, to go back and review what it is that -- or
5 what the basis of the request was. The applicant is
6 asking for relief to establish an adult rehabilitation
7 or substance abuser's home, and that relief is granted
8 pursuant to Section 357 of the zoning regulations.

9 Now, in Section 357, it incorporates all the
10 requirements applicable to a different type of CBRF, the
11 use residential care home and the community residents
12 facility, that's found in Section 358, with the exception
13 of paragraph -- or subsection 358.7, which would allow
14 the Board to grant -- to allow more than 25 persons in
15 a building.

16 So in order to have more than 25 persons,
17 the applicant requires a use variance for that portion
18 of the relief, for the number of residents. And then
19 the use variance in this case is truly a -- it more closely
20 resembles a use variance than an area variance.

21 In the Board's previous decision, it talks
22 a little bit about maybe it has some characteristics of
23 area because you're talking about the size of the facility
24 and all. However, the test really here is undue hardship.

25 And even in the hybrid variance cases the court requires

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1 the showing -- the higher showing of undue hardship.

2 Now, in my memo I tried to point out that
3 where you have an applicant that is providing a public
4 service, that is -- in this case they are providing a
5 service that is benefitting the Department of
6 Corrections, that can be -- the Board can take that into
7 account in weighing whether there is an undue hardship
8 in meeting the numerical limitation or in giving relief
9 from the numerical limitation.

10 And that was based on the case National Black
11 Child Development Institute, and decided in 1984. I also
12 provided you a copy of that.

13 But this case really is closer to the use
14 variance concept, and the Board should be applying the
15 undue hardship test.

16 CHAIRPERSON REID: Okay.

17 BOARD MEMBER HINTON: And the undue hardship
18 test would go specifically to establishing adult rehab
19 homes or substance abuser's homes in excess of the -- of
20 25 people per home, because the other things that we're
21 looking at we're looking at under special exception.
22 Is that right?

23 MS. SANSONE: That is correct. The use
24 variance only goes to the number of residents. The use
25 itself is permitted.

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1 CHAIRPERSON REID: Okay. In that regard,
2 I think that in testimony it was determined that the
3 requirements or the needs for that -- for additional beds
4 was one that could not be met.

5 Otherwise, there seemed to be such a need
6 for this type of facility to provide an apparatus by which
7 persons who are incarcerated or who have some type of
8 rehab requirement was able to -- would be able to go to
9 this facility to assist them with making a transition
10 from the rehab or the incarceration to regular society.
11

12 And that the owner -- the applicant had gone
13 to Ward 5 or Ward 7 to try to secure additional facilities
14 to be able to provide this kind of service, and the -- they
15 were not able to do so. So, then, they came back to this
16 facility to acquire the additional beds to meet that need
17 there.

18 And I would think that that would be in
19 keeping with Ms. Sansone's assertion that the District
20 has -- I mean, the Black Child Development Institute has
21 held that when there is a case that involves a public
22 service, that there is more flexibility in applying the
23 standard.

24 And I think that given the fact that this
25 is certainly a case wherein there is a need for this

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1 service, as well as the fact that there did not appear
2 to be any adverse impact, to the extent that they had
3 history that reflected that -- the fact that the facility
4 appeared to be well run, and that the community, as well
5 as the people who had been -- were benefitting from the
6 services, testified that it had -- it had great merit.

7 I don't think that -- I would like to -- was
8 a motion made? Was there a motion?

9 BOARD MEMBER HOOD: I think that's what you
10 were doing, Madam Chair, when I was --

11 CHAIRPERSON REID: Okay. I guess -- I would
12 like to move that we approve the application, with
13 conditions. I think that they have met the burden of
14 proof. I think that rather than -- as far as adverse
15 impact is concerned, I think that rather than targeting
16 adverse impact, it's just the inverse -- that they are
17 assisting in correcting some of the problems that they
18 have in that particular community in regards to persons
19 who are causing problems and helping these people to
20 become productive members of society. And I don't think
21 it impairs the integrity or intent of the zoning
22 regulations or map.

23 BOARD MEMBER HOOD: I'll second.

24 CHAIRPERSON REID: Okay. Now, as to the
25 conditions -- okay. All in favor, aye.

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1 (Chorus of ayes.)

2 Opposed?

3 (No response.)

4 Now, as regard to the conditions, I think
5 that Office of Planning --

6 BOARD MEMBER HOOD: I think Office of
7 Planning -- they had four conditions, I believe.

8 CHAIRPERSON REID: Oh, okay. The number of
9 beds may be increased by -- okay, by one per existing
10 residential unit. The new beds shall not exceed 128.
11 The number of beds shall not exceed 360 after the increase.

12 The increase shall be submitted for a period
13 of -- this says five years, but I think that the applicant
14 asked for 15 years, consistent with the previous order.

15 SECRETARY PRUITT: Actually, it's 13 years.

16 CHAIRPERSON REID: Thirteen years?
17 Thirteen years.

18 BOARD MEMBER HINTON: To be consistent with
19 the existing C of Os.

20 CHAIRPERSON REID: The existing C of Os,
21 which I would recommend the 13 years, because I think
22 that they have demonstrated -- and I know it has not been
23 easy for them to demonstrate that they are not posing
24 any kind of adverse impact to the community.

25 Were there any other conditions -- what about

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1 the previous order -- that we may have missed?

2 BOARD MEMBER HOOD: Madam Chair, can we just
3 say that all of the relevant conditions --

4 CHAIRPERSON REID: All of the relevant
5 conditions that --

6 BOARD MEMBER HOOD: -- that apply.

7 CHAIRPERSON REID: -- were in the previous
8 order would be germane to this order. And I'd like to
9 also commend the Hope Village on the great job they are
10 doing. I think that they certainly have demonstrated
11 that they serve -- that they serve the community good,
12 and that they are -- have contributed to offsetting some
13 of the negative forces that the community is faced with.

14 And I'd encourage them to continue their good work.
15 Thank you.

16 BOARD MEMBER HOOD: I, too, Madam Chair,
17 would like to echo. You hear a lot of times -- and I
18 thought this was -- the first time I've been here -- I
19 mean, you have some opposition. But the way they have
20 existed through the years and helping people -- one thing
21 I think we have to realize, which makes our job hard
22 sometimes, a lot of folks say, "We don't want it, or we
23 don't want it over here, or put it somewhere else."

24 But they have truly exemplified the example
25 of how these institutions can help our neighborhoods,

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1 because these are our folks. And I think they are doing
2 an excellent job. And continue the good work.

3 CHAIRPERSON REID: Thank you. Thank you
4 very much.

5 The next case?

6 MR. HART: May I call the case --

7 CHAIRPERSON REID: Oh, okay.

8 MR. HART: Staff will record the vote as four
9 to zero, Mrs. Reid, Mr. Hood, Mrs. Hinton, and Ms. Renshaw.

10 The conditions are to be adopted, those as given by the
11 Office of Planning, and other relevant conditions will
12 continue to apply. And the order lasts for 13 years.

13 BOARD MEMBER HINTON: Mr. Hart, I think Ms.
14 Renshaw was not voting, not having participated in the
15 case.

16 MS. SANSONE: Madam Chair, I just need to
17 correct the record. I think I misspoke when I said the
18 25-person limit was in 358.7. It's actually in 358.8.
19 So I just wanted to have that on the transcript.

20 CHAIRPERSON REID: Okay.

21 (Whereupon, at 11:00 a.m., the proceedings
22 in the foregoing case were concluded.)
23

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