

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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CASE NO. 16702 (ANC-2E)  
APPLICATION OF MILLENNIUM GEORGETOWN PARTNERS, LLC

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TUESDAY

JUNE 26, 2001

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The Public Meeting convened in Room 220 South,  
441 4th Street, N.W., Washington, D.C. 20001, pursuant to  
notice at 8:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
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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

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(9:20 a.m.)

CHAIRPERSON REID: Good morning. The June 26th Public Meeting of the Board of Zoning Adjustment -- special meeting -- will now come to order. Mr. Hart?

MR. HART: Good morning, Madam Chair, members of the Board. The item on our agenda this morning is the application of 16702, Millennium Georgetown Partners, L.L.C., pursuant to 11 DCMR 3103.2, for a variance from the height requirements of subsection 930.1, and from the floor area ratio limitation of subsection 931.1 to construct mixed-use building/structures of residential, hotel, and commercial uses in a W-1 District at premises 3100 South Street, N.W. That's in Square 1189, Lot 88.

The hearing was on April 17, 2001. Decisions were on May 1 and 15, 2001. The case was reopened on June 19 with a decision anticipated today.

CHAIRPERSON REID: Thank you. Board members, as you recall, last week we, at our meeting to determine -- to deliberate on this particular case, we were given -- we requested that the Applicant provide us with site lines showing various setbacks with the addition at the top of the building.

And at that time, one of our Board members, Mrs. Hinton, was not with us, and she was the one who was instrumental in requesting those particular -- the pictures of

1 the effect the setbacks would have. In addition, there was a  
2 film that we were shown that showed the animated view as one  
3 came down -- pedestrian view coming down 31st Street and  
4 Wisconsin Avenue.

5 So this morning, I'll open the floor for  
6 discussion on that particular aspect of this case.

7 MEMBER HINTON: Before we start the discussion,  
8 Madam Chair, I would like to say that I have read the record.  
9 I've read everything that was submitted since the last time  
10 that I was here. I also want to explain was in the hospital,  
11 and I was there with her, and that's why I couldn't be here  
12 last week.

13 CHAIRPERSON REID: Thank you very much, Ms.  
14 Hinton. And I'd also like to apologize for a delay this  
15 morning. It was, in part, because of the fact the Board  
16 members felt that it would be instructed to review some of the  
17 film that was given to us and that that was displayed last week  
18 and to have further discussion.

19 All right. Let's see, Ms. Hinton, would you like  
20 to begin with your take on -- your evaluation, your analysis of  
21 the pictures as well as the film?

22 MEMBER HINTON: Sure. I want to just sum to  
23 remind myself and everyone where we were. I think when we were  
24 looking at the portion of this project that dealt with the  
25 additional story on the building, the Board had already

1 determined that the first two prongs of the variance test had  
2 been met. The first prong being the unique condition of the  
3 site lies in the fact that the preservation of the historic  
4 buildings that are there and the requirement to provide an  
5 adequate open space around those buildings to protect their  
6 context and their character. And the preservation of those  
7 facilities causes the practical difficulty in constructing a  
8 mixed-use project on the site that is viable.

9 And the Board was left to determine the third  
10 prong, which is whether the proposal of the additional story  
11 would impair the intent of the zone plan or cause a substantial  
12 detriment to the public good. And after having reviewed the  
13 video and the colored drawings, the eight and a half by 11s of  
14 all the different stills that we were given, it's clear to me  
15 that the additional story will not impair the intent of the  
16 zone plan and will not create a substantial detriment to the  
17 public good.

18 There was a lot of discussion about the W-2 zone  
19 and the waterfront zones, and the intention of the Zoning  
20 Commission to keep the heights of buildings low in those zones  
21 in order to preserve the views to the river and to the  
22 waterfront, and when we look at the stills that were created  
23 with, I guess, the matter-of-right building and the building  
24 that would be permitted if the variance is approved, there is  
25 very little difference -- actually, there's no difference in

1 what you can see of the river or the waterfront or things that  
2 are across the river. It's actually the matter-of-right  
3 building mass that is blocking certain views, and that is  
4 actually defining that view corridor along the public streets.

5 The additional height at the top of the building,  
6 the ten feet, because it's set back, it does not protrude into  
7 that view corridor at all, and I think there was a statement  
8 from the architect that what you see is a little bit less sky.

9 And I agree with that, that what you see is a little bit less  
10 sky.

11 But that doesn't mean that there is less light or  
12 air available, because that upper level is substantially set  
13 back from the other edges of the building, it's not going to  
14 have any effect on the lighter air that's getting to other  
15 properties, because you have to look at it from the edges of  
16 that level to the edge of the building and then out onto the  
17 public street. Other properties in the area are not going to  
18 be affected at all from that extra level.

19 And so that's what I'm seeing when I look at  
20 those visuals, and I'd be interested to hear what other Board  
21 members have concluded.

22 CHAIRPERSON REID: Board members? I think -- did  
23 you want to -- okay. I think that I agree with Ms. Hinton to  
24 the extent that in evaluating this case it started off being a  
25 very complex and very complicated case. And what we had to do

1 was dissect it and to determine what we needed to utilize in  
2 order to be able to perform our duty and that was to see if in  
3 fact the requested relief before us was within the scope of the  
4 zoning regulations.

5 And as such, we determined that the first prong  
6 of the test had been met, predicated upon the fact that the  
7 property -- historic preservation aspect of it and the  
8 requirements to the property made the property unique, and the  
9 fact that in so doing, in complying with the zoning  
10 regulations, the historic preservation portion of it, that it  
11 caused a practical difficulty. And we ascertained that, and I  
12 think there was no dispute about that.

13 But what I grappled with was the aspect of the  
14 adverse impact in that we did hear testimony in opposition that  
15 spoke to there being an adverse impact as to light, air, and  
16 view with the addition of the building, of the site, as  
17 proposed by the Applicant. And so what we had to do was to  
18 ascertain whether or not there was substantial -- and I think  
19 that the operative word here is "substantial" adverse impact.  
20 Obviously, whenever there is any addition put on a building,  
21 then there has to be some type of impact or there has to be  
22 some type of influence or something that will change. And  
23 would that change cause a detriment to the point that it would  
24 cause the application to be turned down is what we had to  
25 determine. We looked very carefully at that, and I think that

1 Mrs. Hinton requesting the view lines with the various setbacks  
2 in ten- and 20-foot increments was very instrumental for us,  
3 because we could then get a garner of the impact visually as a  
4 pedestrian came down the street. And I didn't -- from that, it  
5 did not appear to me that there was a substantial impact,  
6 adversely, as far as this particular project was concerned.

7 The other thing that was very important to me was  
8 would granting this particular variance impair the intent of  
9 the zoning regulations, the zoning map? And that was very,  
10 very, very important, because the opposition was very clear on  
11 their feelings as to, as well as the letter we received from J.  
12 Carter Brown with the CFA, that the W-1 zone was put there for  
13 a reason. And the reason it was put there was to ensure that  
14 the height would be low and also diversified on that  
15 waterfront.

16 And so what we did was we looked at the map to  
17 determine given the W-1 zoning, how large that zone was and to  
18 look at that in comparison to the W-2 and the W-3 to see if in  
19 fact giving this variance would have enough of an impact on the  
20 zoning plan to completely -- in other words, would it impair  
21 the intent to the extent that we would actually be rezoning  
22 that particular site?

23 And when we looked at it, I was satisfied that  
24 given the expanse of the zone that it was large enough that  
25 granting a variance to this particular site would not

1 substantially impair or would not at all impair the intent of  
2 the zoning regulations or the map because of the fact it would  
3 still leave large enough expanse of that zone to be able to  
4 comply with the regulations as to making sure that there would  
5 be enough buildings that would be 40 feet and then that  
6 combined with the W-2 and the W-3 would give the diversity that  
7 I interpreted the intent of the zoning regulations and the map  
8 to mean.

9 Ms. Renshaw?

10 VICE CHAIRPERSON RENSHAW: Thank you, Madam  
11 Chair. I reviewed the affidavit of developer, Anthony Laniae,  
12 dated 4-17-01. There is no exhibit number on that document.  
13 Along with the Commission on Fine Arts report, dated 4-19-01  
14 and then, of course, the Board reviewed the animated film,  
15 which clearly shows the sky over the water, but it also shows  
16 the top knot of -- the proposed top knot of Mr. Laniae's  
17 building.

18 We have heard and we have read in the material  
19 that has been provided for the Board that there is no hardship  
20 issue being discussed here. So I looked very closely at the  
21 Commission on Fine Arts, because Mr. Laniae and Mr. Nettler,  
22 his attorney, presented a very good case to the CFA arguing the  
23 need for an alternative source of revenue to make up for the  
24 failure of the theater partner.

25 But the CFA recommended a denial of the

1 additional height, as it would violate that 40-foot height  
2 limitation of the W-1 area of Georgetown. And one of the  
3 commissioners on the CFA had expressed a discomfort with taking  
4 the lead to break this height variance cycle, and Commissioner  
5 Robinson stated, and I concur, "The Georgetown Act in fact is  
6 about height and density. I'm just not aware of any exception  
7 to be made either of the Georgetown Act or to the Zoning  
8 Commission regulations for economic hardship." And that was on  
9 pages 4 and 5 of the April 19 hearing. Again, I concur. There  
10 is no hardship argued, just the need for additional revenue  
11 stream.

12 And Mr. Laniae who is a seasoned developer, knew  
13 the pitfalls of this incinerator project. He knew his  
14 partners, he knew the movie industry, he selected this historic  
15 site, complete with a covenant barring the removal of the  
16 incinerator and the brickyard hill house. He also knew the  
17 height limitation of that section of the Georgetown waterfront.

18 There is nothing unique -- and, again, unique is  
19 a much overused word -- there is nothing unique about this.  
20 There is no compelling practical difficulty, and therefore I  
21 would vote to keep the project at the 40-foot height permitted  
22 by the zoning regulations. And I feel very, very strongly that  
23 a change in the restriction would impair the zone plan, it  
24 would weaken the zone plan, and it would be one more slice off  
25 the W-1.

1 CHAIRPERSON REID: Thank you. I think that we  
2 should note that this Board has taken the position that we are  
3 not going to consider any economic hardship in deliberating  
4 this case, although the economic aspects are what brought the  
5 case to us. Nonetheless, that is not something that is  
6 typically what this Board would assess in making a  
7 determination as to whether or not a variance is going to be  
8 granted.

9 I think, unfortunately, the manner in which the  
10 case was presented was troublesome, and in order for us to do  
11 our work, we could only rely on what is typically the  
12 requirements of the regulations, and that is that the applicant  
13 has to demonstrate that, one, there is something unique and  
14 unusual regarding the property that would cause a practical  
15 difficulty and hurt in the land of the property or  
16 circumstance.

17 But in this instance, we looked at the historic  
18 preservation aspect of it that would cause a practical  
19 difficulty to comply with existing zoning regulations. And I  
20 think that that's very important, because there was a lot of  
21 discussion in that regard for the deliberations that we've had  
22 thus far. If you note, we have not in any way considered the  
23 economic hardship piece that was initially presented to us by  
24 the Applicant. That is not germane to this particular case.

25 VICE CHAIRPERSON RENSHAW: But as I stated, Madam

1 Chair, that I do not feel that the unique argument is  
2 compelling enough to change this zone plan to allow for an  
3 additional height.

4 CHAIRPERSON REID: Thank you very much, Ms.  
5 Renshaw.

6 VICE CHAIRPERSON RENSHAW: All right.

7 CHAIRPERSON REID: Mr. Griffis? Mr. Hood?

8 MEMBER GRIFFIS: Just following up on Ms.  
9 Renshaw's comments, I'm looking at Section 900.4 in terms of  
10 purpose and integrity of the zone plan, and I found great depth  
11 in the section saying that the purpose of the waterfront  
12 district shall be to encourage a diversity of commercial land  
13 uses in various densities. And as the Chair has stated, we did  
14 review the map and show how the W-1 actually encompasses the  
15 second tier, if I might, of the waterfront.

16 The operative word for me in Section 900 is  
17 diversity, and I think that we don't want to see a waterfront  
18 that is a strict, straight line and somewhat of a static wall  
19 that defines the water edge and defines the entrance to  
20 Georgetown, but rather the diversity and frankly the undulation  
21 of roof heights and types and differences. I think inherent in  
22 the Ward 1 -- the W-1 District is the fact that the lot sizes  
23 vary incredibly, which will determine the size and densities of  
24 projects.

25 And, specifically, with this one, I believe that

1 it certainly does not impair the integrity or purpose of the  
2 zone plan, but may in fact enhance some of the site lines from  
3 the water and from the street level in terms of its roof line  
4 and in terms of its holding each of the street lines but also  
5 in reinforcing the site slope that goes down towards the  
6 waterfront.

7 CHAIRPERSON REID: Mr. Hood?

8 COMMISSIONER HOOD: I don't know how much more I  
9 can add; it's already been said. But I do believe that it  
10 would not substantially cause any detriment to the public good  
11 and without substantially impairing the intent, purpose, and  
12 integrity of the zone plan. If you had talked to me last week,  
13 I probably would have voted against this project, this third  
14 prong. But after looking at the video and looking at the  
15 pictures, I don't see that much of a difference from the  
16 projections in which we were given. And then also the bottom  
17 line for me was what's in the best interest of the District of  
18 Columbia? So I will be voting in favor of this, and I don't  
19 see where it causes any detriment of impairing the intent and  
20 purpose of the zoning map.

21 CHAIRPERSON REID: Do we have a motion?

22 VICE CHAIRPERSON RENSHAW: Madam Chair, I just  
23 want to state, in response to Mr. Griffis' statement about it  
24 may enhance the site lines from the water, just to point out  
25 that we have no views from the water, so that should be in the

1 record. So that is perhaps his personal view. Had we had some  
2 pictures, some depiction of views from the water, then perhaps  
3 we would know for sure whether or not this project is going to  
4 be a detriment to the site lines, the view shed from the water.

5 COMMISSIONER HOOD: Madam Chair, I'll make a  
6 motion that we approve the additional ten-foot height setback  
7 and additional associated FAR.

8 MEMBER HINTON: I second.

9 CHAIRPERSON REID: All right. All in favor?

10 MEMBER GRIFFIS: Actually, a quick discussion.  
11 If we might -- well, actually, it may be a moot point, but I  
12 guess the Option B was the ten-foot setback and the additional  
13 four. That's what we're talking about.

14 CHAIRPERSON REID: Specify which option.

15 MEMBER GRIFFIS: Well, actually, I withdraw that  
16 comment. I think it would be clear that's what we'd be talking  
17 about.

18 CHAIRPERSON REID: Okay. I hope so.

19 COMMISSIONER HOOD: I think it's a great comment,  
20 and we might as well -- yes, let's put it in to be clear that  
21 it's Option B that we're looking at.

22 MEMBER GRIFFIS: Okay. And the height, did you  
23 say ten foot or ten foot eight?

24 COMMISSIONER HOOD: Oh, it's ten, eight; I'm  
25 sorry.

1 CHAIRPERSON REID: Okay. And this is just in  
2 regard to the second part of the -- remember, we already voted  
3 on the additional FAR, but this is just in regard to the height  
4 and the increase of the FAR by 0.23, the second part.

5 All in favor?

6 CHAIRPERSON REID: Aye.

7 MEMBER GRIFFIS: Aye.

8 MEMBER HINTON: Aye.

9 COMMISSIONER HOOD: Aye.

10 CHAIRPERSON REID: Opposed?

11 VICE CHAIRPERSON RENSHAW: Opposed.

12 MR. HART: The staff will record the vote as four  
13 to one to zero to approve the motion to approve an additional  
14 height of ten foot eight inches along with the additional FAR.

15 The motion was made by Mr. Hood and seconded by Ms. Hinton.

16 CHAIRPERSON REID: Thank you very much, Mr. Hart.

17 With that, then, we'll conclude this morning's special meeting  
18 regard to the Georgetown Millennium Application.

19 (Whereupon, at 9:44 a.m., the BZA Special  
20 Meeting was concluded.

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