

DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

Tuesday,

September 11, 2001

+ + + + +

The meeting commenced at 9:00 a.m., in Room 210, 441 4th Street, N.W., Washington, D.C. 2001, Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson
ANNE MOHNKERN RENSHAW, Vice Chairperson
GEOFFREY GRIFFIS, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER G. MAY, Commissioner

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

D.C. OFFICE OF CORPORATION COUNSEL:

MARIE SANSONE, ESQ.

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

9:48 a.m.

CHAIRPERSON REID: Good morning.

Staff, are we ready?

MR. HART: Yes, Madam Chair.

CHAIRPERSON REID: Okay, good morning.

Ladies and gentlemen, this is the September 11th public meeting, special public meeting, of the Board of Zoning Adjustment. Staff will call the meeting agenda for this morning, and I do offer apologies for our delay today. However, we did enter into engaged in an executive session, which entailed reading a voluminous amount of material that was submitted to us at the last minute so that we would be prepared for this case this morning. So, we do ask your indulgence.

Thank you very much.

MR. HART: Good morning, Madam Chair.

We start this session, a special public meeting, application of McKendree-Simms-Brookland United Methodist Church, pursuant to 11 DCMR 3104.1, for special exceptions to allow a private school of 400 students, 1st through 7th grades, and seven staff, under Section 206, a child development center with 200 children, nursery through kindergarten, and four staff under Section 205, and a variance from the off-street parking requirements

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1 under Subsection 2101.1, in an R-1-B District at premises
2 2420 Rhode Island Avenue, N.E. That [redacted] in Square 4290,
3 Lot 3 through 7.

4 The case is before you, Madam Chair.

5 CHAIRPERSON REID: All right, thanks very
6 much, Mr. Hart.

7 Let [redacted] see, Board members, in regards to this
8 case my understanding is that we had requested several
9 items from the applicant to assist us with our
10 deliberation of the case, and it is my understanding that
11 those things have been submitted and they were due to
12 be in by September the 5th, and I understand that they
13 were in in a timely fashion. Is that not correct, Mr.
14 Hart?

15 MR. HART: That is correct, Madam Chair.

16 CHAIRPERSON REID: Okay.

17 And also, there was a request for us to reopen
18 the record from the ANC regarding the fact that they
19 contend that have not yet had an opportunity to look at
20 the materials that were submitted to us, and we have to
21 make a decision as to whether or not we feel it would
22 be necessary for us to delay our decision to allow the
23 ANC to have a meeting to discuss the items that were
24 submitted to us.

25 Now, things that we had asked for were things

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1 that were items to mitigate some of the concerns that
2 were raised regarding the community, and I guess we have
3 to decide whether or not we feel that it would be
4 necessary, given the ANC report that we have which was
5 in favor to delay it further to allow them to have a meeting
6 on September 28th, and for us to hear from them again and
7 then make our decision.

8 So, I open the floor for discussion on that
9 matter.

10 MR. GRIFFIS: Madam Chair, I would also just
11 make a comment that in the report that we received timely
12 from the applicant, it indicates that there was, in fact,
13 a community meeting held on September 4th, and there \$
14 an attendance a sign-in sheet. There was no action
15 taken regarding positive or negative or any sort of votes.

16 But, I think it speaks to bringing the
17 information to the community, and as you have said there
18 is the items that were requested have been provided
19 and we have reviewed them.

20 I would urge the Board to move ahead on this
21 case, so that we don't postpone and delay based on the
22 schedule that the school needs, of course, in getting
23 its resources and facility together if it \$ approved and
24 they move ahead, or otherwise giving the community
25 resolution either way.

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1 MR. LEVY: Madam Chair, I would agree with
2 Mr. Griffis. We have a report from the ANC with a
3 favorable vote, a vote in favor of the project, and I
4 would agree that the information that [] been provided
5 by the applicant answers the concerns that were raised
6 by the community during the hearing. So, I would also
7 be in favor of moving forward at this point.

8 CHAIRPERSON REID: I [] sorry, was that a
9 motion and a second, is that what I [] hearing?

10 MR. LEVY: No, I don [] believe it was a motion,
11 just a discussion.

12 CHAIRPERSON REID: Okay, well []

13 VICE CHAIRPERSON RENSHAW: Madam Chair, I
14 want to note for the record that the letter from the ANC
15 regarding the vote and their community meeting on July
16 25th, the letter is dated August 31 and it [] signed by
17 Ruth Goodwin, the Commissioner for ANC 5A-10, this is
18 not [] this letter clarifying the vote opposing the school
19 project versus supporting the school project, is not
20 signed by the chair, and that is a necessity.

21 And, I want to give great weight as a Board
22 member to the request of ANC 5A in a letter dated September
23 10th and signed by Norma Broadnax, the Chairperson,
24 requesting that the Board reopen the record in order for
25 them to review in a public meeting the material from the

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1 law offices of Arnold & Porter, as it states in the letter,
2 which purports to be in response to an order from the
3 BZA for more information, and the meeting at the ANC would
4 be held on September 26th, and the ANC would issue an
5 official report on September 28th.

6 And, I am firmly in support of that request.

7 MR. LEVY: Can I just ask a question?

8 VICE CHAIRPERSON RENSHAW: Yes.

9 MR. LEVY: The letter that Ms. Renshaw was
10 referring to, which clarifies the vote that was taken
11 on the 25th of July, it signed by one of the Commissioners
12 and it presented on ANC-5A letterhead. Would we not
13 normally accept that as the position of the ANC?

14 VICE CHAIRPERSON RENSHAW: No.

15 MR. LEVY: Because of the signature?

16 SECRETARY PRUITT: Excuse me, Madam Chair,
17 maybe for clarification, Exhibit No. 32 in your file,
18 your original file dated July 30th, is another letter from
19 the ANC that has two signatures on it. It Norma
20 Broadnax, it looks like I don't know if it a stamped
21 signature or signed signature, and Ruth Goodwin. There
22 are like three letters from the ANC, two of them, 32 and
23 35, are both the same letters referring to the same date.

24 VICE CHAIRPERSON RENSHAW: And, I was going
25 to point out that the July 30th letter that has the two

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1 signatures, the chairperson's signature is a stamped
2 signature.

3 SECRETARY PRUITT: I just wanted to indicate
4 that you did have one with something there.

5 MR. LEVY: There is also a letter in the file,
6 in the old file, dated July 9th, which is signed by Norma
7 Broadnax, who is identified as the chair of the ANC,
8 designating Ruth Goodwin to represent the ANC on this
9 matter before the BZA.

10 VICE CHAIRPERSON RENSHAW: But, that's the
11 testimony before the BZA.

12 CHAIRPERSON REID: I don't think that I
13 think that while this is a bit confusing, remember, Board
14 members, what we are charged with is making decisions
15 that within our judgment are in the best interests of
16 the District of Columbia and the communities.

17 Unfortunately, and this is in no way raising
18 any type of issue with any particular ANC, sometimes there
19 are issues or disagreements within the various ANCs, and
20 when it comes to us it's reflected as such, which then
21 kind of confuses us, you know.

22 And, what we want to do is to be able to,
23 in those instances, the only thing we can do in all
24 fairness is to take the information that's been given
25 us for what it's worth, and while we are supposed to give

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1 great weight to an ANC, which we always do, we give
2 deference to them, in instances where they submit the
3 correct report to us timely that does not mean that we
4 have to be governed by the ANC, and we have to use our
5 own discretion as to whether or not we feel that we can
6 accept or not accept, or to give great weight or not give
7 great weight, to a particular ANC.

8 And, we do that based upon what is before
9 us, and I think that in this particular instance we have
10 a report from the ANC that is in favor of this proposal,
11 this application, and then there was a question as to
12 some of the procedures or what have you. In those
13 instances, we can look to whether or not we feel that,
14 one, that what we have before us is adequate, and, two,
15 if, in fact, there had been community outreach in the
16 interim, which I think Mr. Griffis adequately reported
17 that.

18 We have in our packages a community meeting,
19 in which the issues that were presented to us were made
20 available, as well as the fact that the report, the
21 submissions that we had requested had also been served
22 on all parties. Is that not right, Ms. Pruitt?

23 SECRETARY PRUITT: I'm sorry?

24 CHAIRPERSON REID: That the materials that
25 had been submitted to us had been served on all parties,

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1 so it has been communicated to them, and then we as a
2 Board will then make our decision based on what we have
3 before us, the testimony, the case, the material
4 submitted, and just act accordingly, and to give our very
5 best effort to try to serve the citizens in the best way
6 we possibly can.

7 And, unfortunately, we cannot I don't think
8 that it is proper or appropriate for us to try to get
9 bogged down with issues that pertain to in squabbles,
10 or what have you, within various ANCs. You know, that
11 a very dangerous thing for us to do, or to get involved
12 in.

13 MR. GRIFFIS: Madam Chair, I would move that
14 we deny the request to reopen the record and ask for a
15 second, so that I might make a comment.

16 MR. LEVY: I will second that.

17 MR. GRIFFIS: The other thing that I think
18 on all that been said today is, there was a schedule
19 set when documents were to be responded to and submitted,
20 and that was set by this Board.

21 They have been met, and we were, in our
22 deliberations in the past case, ready to proceed if
23 information was submitted. I don't see anything changing
24 that at this point, and, therefore, I would think that
25 we move ahead.

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1 VICE CHAIRPERSON RENSHAW: We are in the
2 discussion phase?

3 I would like to recommend that we give just
4 a few weeks, it's not a long period of time, to allow
5 the ANC, which has a meeting scheduled for September the
6 26th, to review this material which has just been received
7 by this Board. In other words, the Arnold & Porter
8 package got to the Board members today, this morning,
9 and I feel very, very strongly, because there has been
10 community division, and because I am not going to step
11 in and adjudicate for the community, I would like to give
12 the opportunity for the ANC to hold a meeting, as the
13 applicant has had the opportunity to hold a September
14 4th meeting, and then come back to this Board and we make
15 a decision based on the community's response.

16 These are elected officials. They speak for
17 the community. I would like to have their input on this
18 new information.

19 MR. MAY: I would have to agree that at this
20 point, although we don't want to delay this matter any
21 further, we have a very clear request that we hold the
22 case open, and in order for the ANC to provide some clarity
23 on what the community position is on this, I mean, yes,
24 we have on paper a vote in favor. We also have a request
25 subsequent to that that the case be reopened. And, I

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1 don't see where an extra few weeks is going to create
2 a big problem for us. We are not being controlled by
3 the ANC. I just think we need to get clarity, and this
4 would help.

5 CHAIRPERSON REID: Okay, Mr. May, if I may,
6 this is the problem. We have to conduct ourselves
7 responsibly, and as such at the time, and I think that
8 many of these things were requested by Board member
9 Renshaw, at the time that we requested the items from
10 the applicant, that was the time that was available to
11 us to have requested that there be an opportunity for
12 the community to respond by a date certain. That request
13 was not made, and to come today and to say, oh, well,
14 now, after having delayed it to this point, and then come
15 today and say, oh, well, now I think we should delay it
16 even further, if, in fact, the information that was
17 requested was any Board member wanted that information
18 to be responded to then a time line would have been set
19 so that it could have all been in so that we could be
20 able to make our decision, but that was not done. And,
21 I feel very strongly that since it was not done, you know,
22 we have to be able to signal to the community and to the
23 citizens that if we when we request something, or if we
24 have a we put out any type of if there is additional
25 items that we want, that we ask for them and we ask for

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1 them in keeping with what is in the correct procedures
2 of the Board, being fair to everyone concerned, as opposed
3 to allowing or being swayed by other entities who may
4 come forth and then ask for additional things from this
5 Board.

6 The Board has made a decision, and if the
7 Board wanted a different type of outcome then the Board
8 had its authority to have done so at the appropriate time.

9 That was not done.

10 MR. LEVY: Madam Chair, just to emphasize your
11 points, I think I know that I would feel differently
12 had the ANC not if the ANC were not in support of the
13 project. Given that the ANC is in support of the project,
14 given that the information provided by the applicant
15 responds to all of the concerns raised by members of the
16 community who disagreed with the ANC, I feel strongly
17 that it would be inappropriate and unfair to the applicant
18 to reopen the record, and then for this Board to have
19 to address new issues that might be raised by members
20 of the community that were not brought up at the original
21 hearing.

22 VICE CHAIRPERSON RENSHAW: Madam Chair, we
23 are considering a request of the ANC to allow the ANC
24 to review and comment on the material that the law firm
25 of Arnold & Porter has submitted on behalf of the

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1 applicant. That is what it comes down to, and I believe
2 very strongly that the community has a right to, in a
3 public session, discuss what has been submitted, and maybe
4 the report by the ANC will support Ruth Goodwin's letter
5 of August 31st, where she lines up the vote opposed to
6 the school project versus support of the school project,
7 but I don't know.

8 And, I would like the ANC, in fairness to
9 that body, to allow it just a few weeks to meet with the
10 community and then deliver its report to us.

11 CHAIRPERSON REID: Well, Ms. Renshaw, you had
12 an opportunity to have requested that initially, and you
13 didn't.

14 VICE CHAIRPERSON RENSHAW: Again, it was an
15 oversight of this Board not to have allowed the ANC to
16 comment on what was going to be brought in. Perhaps,
17 I assumed that there would be enough time for the ANC
18 to do just that, but, obviously, there is not.

19 There was really not enough time for us to
20 review it.

21 CHAIRPERSON REID: I don't think that there
22 was an oversight. I think that we set forth what we
23 wanted, and that's what the applicant complied with.
24 It wasn't an oversight. I mean

25 VICE CHAIRPERSON RENSHAW: It was an

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1 oversight □ it was an oversight for us not to factor in
2 enough time for this material to get to the ANC and to
3 have the ANC bring it before the community in a regularly
4 scheduled session.

5 CHAIRPERSON REID: But, you can□t penalize
6 the applicant because there was an oversight.

7 VICE CHAIRPERSON RENSHAW: I am not
8 penalizing the applicant, but I don□t want to penalize
9 the community either. I am just asking for the
10 consideration of this Board to allow several weeks for
11 this material to be brought before the community in a
12 public session, and as the ANC, the Chair of the ANC has
13 written, it will get its report to us on the 28th of the
14 month, two days after its meeting.

15 MR. MAY: Madam Chair, I have to speak again
16 in support of what is being said in support of getting
17 the ANC feedback on the material that was recently
18 submitted. I do believe □ well, it certainly was □ I
19 believe that it was an oversight on the part of the Board
20 to not include time for reaction. I certainly didn□t
21 consider that question when we set the schedule, and
22 which, as you may recall, we worked very hard to try to
23 do it on an expedited basis. There wasn□t a lot of time
24 on the schedule. There were other cases that are, in
25 fact, today being pushed a little bit later.

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1 You know, we tried to move as quickly as
2 possible to be fair to the applicant, and in this case,
3 in the process, I'm not sure that we have ultimately
4 allowed sufficient time for the community to give its
5 input.

6 CHAIRPERSON REID: Well, I think that be
7 mindful of the fact that when we made the decision for
8 the materials that we requested, if, in fact I remember,
9 it's not something that we had to do, we did not I think
10 was not a requisite, it was not mandated that the Board
11 have the additional input. We could do it either way
12 we wanted to do it. We all sat here and we asked for
13 certain things from the applicant, and at that time if
14 we decided that we wanted additional comments from the
15 community, based on what they submitted to us, that was
16 the time to have done it.

17 I think that no one did it, because they
18 didn't think that it was necessary, and the only reason
19 why it's being raised today is because the ANC has
20 submitted this letter to us dated August 31st. So, that
21 kind of throws a monkey wrench into the whole proceeding.

22 Nonetheless, we have a motion on the floor,
23 it's been seconded, so all in favor?

24 MR. MAY: Can we repeat the motion?

25 CHAIRPERSON REID: All right.

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1 MR. GRIFFIS: The motion was to deny the
2 request to reopen the record.

3 MR. LEVY: And, I'll repeat my second.

4 CHAIRPERSON REID: All in favor?

5 CHAIRPERSON REID: Aye.

6 MR. GRIFFIS: Aye.

7 MR. LEVY: Aye.

8 VICE CHAIRPERSON RENSHAW: Against.

9 MR. MAY: Opposed.

10 CHAIRPERSON REID: Mr. Hart, are you
11 recording the vote?

12 MR. HART: Okay.

13 The motion, 3/2 to deny, was made by Mr.
14 Griffis and seconded by Mr. Levy.

15 CHAIRPERSON REID: Okay.

16 All right, before us now, Board members, is
17 the case regarding the deliberations on the case before
18 us, and in regard to the school, and also a special
19 exception for the private school, and also a variance
20 as to the parking. And, as you recall, we had an extensive
21 testimony as to the merits of opening the private school
22 at this particular site.

23 Just to kind of summarize, the applicant felt
24 very strongly that in providing this particular entity
25 the school at this site would provide services, education

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1 and training, for children from preschool up to the 6th
2 grade, grade seven, and we can now open the floor to
3 discuss some of the merits of the case as to the opening
4 of the school, the placement of the school, and adverse
5 impact more importantly.

6 The Office of Planning has recommended
7 approval with conditions. We did have a letter from the
8 ANC in support of the application. There were some
9 concerns raised by the community as to noise, as to trash,
10 as to maintenance of the grounds maintenance and the
11 like, and it appears that and also community outreach
12 because from what I could garner the director of the school
13 had not spoken to many of the residents and the people
14 who were butters, who had problems with the facilities
15 that had been there before, I think there was a daycare
16 there before, and that daycare had some problems that
17 impacted the community. And, I think that, from what I
18 could understand, the persons who came to voice their
19 concerns were trying to make sure that this type of problem
20 did not persist, or that they did not have to be burdened
21 with any adverse impact in regards to this application.

22 Now, in the interim, it appears that the
23 applicant has hired counsel, in the form of Arnold &
24 Porter, Ms. Giardano, to address for them in a very
25 professional way the items that they heard, the concerns

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1 that were raised that day at the hearing, and if I'm not
2 mistaken I think that [] and Board members if you have
3 any disagreement you can correct me [] that the first time
4 [] it was heard for the first time that day concerns
5 regarding the drug paraphernalia and stuff that was in
6 the back alley, and some of the issues regarding
7 disrespecting the neighbors from some of the children,
8 and as a result of that they have now submitted, in
9 response to what we asked for, based upon the hearing
10 that was before us, items that we felt would help us make
11 a decision, and those came in the form of a report setting
12 forth all the items that we asked for. And, we have to
13 look at these materials to see if, in fact, we have any
14 questions about the materials, whether or not we feel
15 these materials are adequate, or to determine whether
16 or not the case could be moved forward with conditions
17 that would mitigate some of the concerns of the community,
18 so forth and so on.

19 So, I now open the floor for discussion.

20 MR. LEVY: Madam Chair, a couple of points.

21 I'm very pleased to see the report dated September 5th
22 that was submitted on behalf of the applicant by Arnold
23 & Porter, because during the hearing I had some very
24 serious concerns about whether the applicant was
25 adequately interacting with the community and keeping

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1 the community informed of its plans.

2 I think that, in general, the report answers
3 the concerns that we raised very clearly. There are some
4 minor discrepancies that we should discuss.

5 I would think that if we do move forward to
6 approve, that we would definitely want to look at some
7 conditions, perhaps, some from the Office of Planning
8 report, as well as some related to the Arnold & Porter
9 submission.

10 Also, I would point out that the concerns
11 that were raised by the community, although I consider
12 them to be very valid, serious concerns, the concerns
13 were brought about by a previous use of the site, by a
14 previous user of the site, not by the applicant. And
15 also, regarding the concerns of the property being used
16 for purposes that are not that are either illegal or
17 inappropriate in a residential community, I think that
18 having an active reuse of the site would tend to preclude
19 some of those inappropriate uses from happening, that
20 is, actually it would be better for the neighborhood for
21 an active responsible user of the property than to have
22 it remain vacant.

23 CHAIRPERSON REID: Is that a motion?

24 MR. LEVY: Just discussion.

25 CHAIRPERSON REID: All right.

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1 Further discussion?

2 MR. MAY: I would agree that what was
3 submitted is very encouraging. For the most part, what
4 was stated seems to imply a commitment on the part of
5 the school, and to the extent that the church is involved,
6 the church to maintain the property and maintain good
7 conditions for the school.

8 There is still a little bit of concern with
9 regard to the landscape plan and dealing with that, in
10 which the commitment is not as clearly stated, and I think
11 that one of the conditions that should continue through
12 this is that we should require that there be a very clear
13 commitment to clean up and maintain the property, so that
14 we can address that bit of softness in what was presented
15 in the materials with regard to the landscape plan.

16 CHAIRPERSON REID: I am awfully sorry I am
17 very sorry that we will now take a recess. My
18 understanding is that there is some activities that are
19 occurring here in the city today that are rather
20 disturbing. So, we will recess, and I don't want to
21 I don't want to announce it, because we are not sure
22 exactly, we just got word, we just a rumor of some of
23 these things, we are going to recess for about ten minutes,
24 and in the interim, perhaps, you can find out what's going
25 on.

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1 I just can't tell you, but it is very
2 disturbing.

3 (Whereupon, the meeting was recessed at
4 10:19 a.m.)

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