

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL MEETING

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Tuesday,
March 12, 2002

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The Public Hearing convened in Room 220, South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice at
9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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| Geoffrey H. Griffis | Chairperson |
| Anne Mohnkern Renshaw | Vice Chairperson |
| David Levy | Board Member (NCPC) |
| Curtis Etherly, Jr. | Board Member |

ZONING COMMISSION MEMBER PRESENT:

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| Anthony J. Hood | Commissioner |
|-----------------|--------------|

COMMISSION STAFF PRESENT:

| | |
|------------------|------------------|
| Beverly Bailey | Office of Zoning |
| Paul O. Hart | Office of Zoning |
| John K.A. Nyarku | Office of Zoning |
| Richard Nero | Office of Zoning |
| Jerrily Kress | Office of Zoning |

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

D.C. OFFICE OF PLANNING:

Steve Cochran
Karen Thomas
Robert Jackson
John Moore

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

(9:11 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I call the special meeting of March 12th, 2002 to order and Mr. Hart, if you would call the first case, which would be application 16840.

MR. HART: That would be the application of Athena Wisconsin, LLC, pursuant to 11 DCMR 3104.1 for a special exception to allow motor scooter sales in an existing building under Section 727, as provided for in Section 1533, which is special exceptions in the Naval Observatory Precinct District in the NOPD/C-2-A District at premises 2233 Wisconsin Avenue N.W., that's Square 1299, Lot 1006.

The case was heard on February 26th of 2002. The Board heard the facts of the case; however, postponed making a decision until this March 12th, 2002 special public meeting. The Board indicated that the decision will be made after a report is received from the National Capital Planning Commission because the subject site was located in the Naval Observatory Precinct District. The case was on the Commission's calendar for March 7th, 2002. The required report should be forwarded to the Board prior to the March 12th decision meeting.

The Board requested that the applicant try the portion of the lease agreement that deals with the onsite parking arrangements. The Special Board members are Mr. Griffis, Mr.

1 Levy, Mr. Etherly, Ms. Renshaw and Mr. John Parsons. That
2 application is now before the Board for a decision.

3 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
4 Hart. Gentlemen, we appreciate you being here this morning, but
5 of course you know, this is a decision making so we won't have
6 new testimony and hopefully won't need to address you in any way.

7 Let me just first stall for time. I want to make it absolutely
8 clear that the report was here on time and was ready and raring
9 to go and Mr. Hood is with us today.

10 However, not sitting on this case, Mr. Parson, I
11 believe may have sat in a proxy. Mr. Etherly is with us. Ms.
12 Renshaw, the Vice-Chair of the Board is also here, and Mr. Levy,
13 representing National Planning Commission. Okay, gentlemen, I
14 appreciate, as I say, you being here this morning.

15 This is Board members fairly clear. We have not
16 moved on a decision with this at the hearing date because we had
17 anticipated the NCPC report which has come in and was in the
18 affirmative. It is -- but was put in the file March 11th. I
19 also have, I'm sure you're all aware and have read further
20 submissions from the applicant which included the lease which was
21 one of the pieces that we looked at. There was a quick
22 clarification, I don't think it's really of great import but
23 indicating that there was some testimony that there might be test
24 driving in the parking lot and that has come to clear
25 clarification that only persons with motorcycle operating

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1 licenses would be permitted to operate a scooter and they will
2 obviously, do that in a safe and humane manner.

3 Without undue delay here, I would move that we
4 approve application 16840, the Athena Wisconsin LLC, that is
5 pursuant to 3104.1 for special exception which is to allow a
6 motor scooter sales in an existing building under Section 727 as
7 provided for in Section 1533, which is the Naval Observatory
8 Precinct District at the premises 2233 Wisconsin Avenue, NW.

9 This was an interesting case to hear in that
10 Section 727, of course, deals with motorcycle sales and repair.
11 Clearly the applicant has put together their case and has
12 complied completely with 727 regarding for instance the distance
13 from residential areas and districts, from not servicing
14 motorcycles and what's interesting about this that the Vespas
15 that in fact, will be retailed there are actually asked to come
16 to a higher standard, I think for motorcycles under 727 because
17 we do not have any specific section for Vespas.

18 Maybe that's to come and we'll get that to the
19 Zoning Commission for their thought and question on that. Again,
20 special exception, there has been an objection from the NCPD
21 which I think also addressed the 1533 and I'd ask for a second on
22 that.

23 VICE-CHAIRPERSON RENSHAW: Second.

24 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw. Any
25 other discussions? This could be trouble. Well, then I would

1 ask for all those in favor signify by saying "Aye".

2 (Aye)

3 CHAIRPERSON GRIFFIS: And Mr. Hart, is there a
4 proxy?

5 MR. HART: Yes, I'll call the vote now.

6 CHAIRPERSON GRIFFIS: Oh, very good, thank you.

7 MR. HART: The vote is five to zero to approve.
8 Mr. Griffis made the motion, Ms. Renshaw seconded. Mr. Etherly
9 and Mr. Levy voted affirmative and Mr. John Parsons by proxy
10 voted to approve the application.

11 CHAIRPERSON GRIFFIS: Very good. Gentlemen, thank
12 you very much.

13 MR. KUDER: We thank you very much.

14 CHAIRPERSON GRIFFIS: Sure.

15 MR. KUDER: Thank you.

16 VICE-CHAIRPERSON RENSHAW: Congratulations and good
17 luck.

18 MR. KUDER: May we talk to the staff about picking
19 up an order as soon as possible?

20 CHAIRPERSON GRIFFIS: Absolutely. You can talk to
21 them. I imagine they'll give you an indication of when it might
22 come out and then I would ask you not, obviously, to bother them
23 further unless we go past that deadline and I'm sure they'll work
24 very quickly.

25 MR. KUDER: Thank you very much.

1 CHAIRPERSON GRIFFIS: Sure. Our pleasure and
2 absolutely good luck. Okay, Mr. Hart, whenever you are ready.

3 MR. HART: The next case of the morning is
4 application number 16803 of JFC Builders of DC pursuant to 11
5 DCMR 3103.2 for a variance from the lot area requirements under
6 subsection 401.3 and a variance from the off-street parking
7 requirement under section 2101 to allow the conversion of a flat
8 into a three-unit condominium in an R-4 District at premises 1358
9 Girard Street, N.W., that's in Square 2860, Lot 56.

10 The hearing was continued for December 11th, 2001.

11 The hearing -- the last hearing date was February 19th, 2002.
12 The Board indicated that Exhibit 2 -- Exhibit Number 23G, H and I
13 should be stricken from the record. The Board heard the facts of
14 the case. Dorothy Brazil, a resident of the Columbia Heights
15 Neighborhood, presented testimony in opposition to the
16 application. The Board determined that prior to making its
17 decision, additional information would be needed .

18 The following was requested; a copy of the document
19 that the applicant and the Rawlins, who are the next door
20 neighbors, signed concerning construction damage to the adjoining
21 property. Dorothy Brazil is to file a statement outlining how
22 the project would be of detriment to the public good and of
23 substantial harm to the neighborhood. Ms. Brazil should fax or
24 hand-deliver her statement to the applicant's attorney, advise
25 the neighborhood commission, 1B, to provide a written submission

1 explaining in greater detail the rationale for the NC vote.

2 Additionally the NC chairperson, Glenn J. Metcher,
3 should indicate whether a meeting was held with the single member
4 district commissioner of one D-08 Calvin Woodland and
5 neighborhood residents. The submissions for that as requested by
6 the Board should have come in on March 5th with responses due on
7 March 8th and with a decision scheduled for this meeting.

8 The participating Board members are Mr. Griffis,
9 Mr. Levy, Mr. Etherly and Mr. Hood. The application is now
10 before the Board for a decision.

11 VICE-CHAIRPERSON RENSHAW: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes.

13 VICE-CHAIRPERSON RENSHAW: As I was not present for
14 the February 19th, 2002 public hearing, I will not be voting on
15 this case.

16 CHAIRPERSON GRIFFIS: Good, thank you for that
17 clarification. Okay, Board members that were, in fact, here and
18 are participating in this, we did get several of the submissions
19 that we asked for. I have a big concern though. I thought it was
20 and, in fact, have stated here it was fairly plainly and directly
21 stated that we were looking for some sort of clarification from
22 the ANC and specifically the Single Member District Commissioner
23 Calvin Woodland, Jr.

24 I think we have two choices here. We can continue
25 -- we can go ahead with this, if Board members are prepared, or,

1 let me add this suggestion, that we just postpone this decision
2 until Tuesday, give till Friday to have a written statement from
3 the Chair or frankly, the Single Member District Commissioner
4 giving some clarification of the impact that that ANC member
5 believes this might have positive or negative.

6 I think that will, in fact, fill out the file for
7 us. I think that is kind of the missing link. It certainly is
8 not, by any means, the weight that will throw this for
9 decisioning. I think the Advisory Commission 1-B has already
10 indicated and will be given the great weight and title, that it
11 voted to approve this. However, that it was part of our
12 discussion in the public hearing and one Board member felt fairly
13 strongly and I think convinced -- well, convinced me that this is
14 important documentation that we're needing.

15 I'd take comments on that.

16 COMMISSIONER HOOD: Mr. Chair.

17 CHAIRPERSON GRIFFIS: Yes.

18 COMMISSIONER HOOD: I would agree with you on
19 latter comments. I believe that to have a complete record, I'm
20 still looking for that from the ANC and the Single Member
21 District what the issues were so I can evaluate my decision and
22 my thought process. While I know we have some submissions, which
23 I find some of them very disturbing, nevertheless, I still would
24 allow at least another week, as your comments, for the Advisory
25 Neighborhood Commission Single Member District Person to weigh in

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1 so we can have a clean record. I feel the record then will be
2 sufficient and clean.

3 CHAIRPERSON GRIFFIS: Thank you, Mr. Hood. Others?
4

5 MEMBER LEVY: Mr. Chair?

6 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

7 MEMBER LEVY: I think that's a wise course of
8 action as well.

9 CHAIRPERSON GRIFFIS: Okay, thank you.

10 COMMISSIONER HOOD: And also, Mr. Chair, because of
11 the even number, if it's not too late for Ms. Renshaw to
12 participate, I always think it's good for the best interests of
13 the city that we have a full Commission on every issue we
14 possibly can if she's willing to --

15 CHAIRPERSON GRIFFIS: Right.

16 VICE-CHAIRPERSON RENSHAW: Mr. Chairman, that
17 depends when you are scheduling this for a decision.

18 CHAIRPERSON GRIFFIS: I think it's next Tuesday.

19 VICE-CHAIRPERSON RENSHAW: And I have a medical
20 appointment that day, so I won't be here.

21 CHAIRPERSON GRIFFIS: I see. Well, and let's see
22 rather the transcripts are actually available. Once that's done,
23 if the transcripts are available, we could conceivably get you
24 the file and you could vote by proxy if appropriate. But, Mr. --
25 that's an excellent suggestion to have the full Board look at

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1 this.

2 MEMBER ETHERLY: Mr. Chair?

3 CHAIRPERSON GRIFFIS: Yeah.

4 MEMBER ETHERLY: I agree with my colleague's
5 recommendation that perhaps, we should give some pause for
6 further clarification. As we noted in our first hearing on this
7 matter, we did have a submission from ANC Commission 1B dated
8 February 14th, which noted a vote of the Commission taken on
9 February which I recall Mr. Hood and a number of my colleagues
10 noting the closeness thereof, three in favor, two opposed and two
11 abstentions and reading from what is Exhibit 30 in the file.

12 Would it be helpful to get some clarification,
13 perhaps, Mr. Hood, as to what we would be interested in having in
14 the way of comment from Mr. Woodland, meaning just highlighting
15 some of the issues that were on the table before the ANC that led
16 to such a close vote is exactly what we're looking for.

17 COMMISSIONER HOOD: Right, Mr. Etherly, we -- if
18 you will recall, if we had not asked a number of questions, the
19 assumption was given, I think, to this Board that the Single
20 Member District, which represents the people who are most
21 effected, who are right within that surrounding area, voted in
22 the affirmative. But, obviously, as time went on here apparently
23 changed his vote. So I want to know what the issues were.

24 I don't know whether he abstained or whether he
25 voted against but I wanted to be clarified of what the issues

1 were before we proceed, you know, before final decision.

2 CHAIRPERSON GRIFFIS: Well, I think, if I can
3 interrupt you quickly, Mr. Hood, that's clear. I mean, what we
4 need is the feedback from that member but also we need him to
5 speak specifically to the zoning issues which we ask all the ANCs
6 in their reports, that would help us in our own deliberation.

7 You know, superfluous opinions, if the ANC member
8 comes back and says he actually doesn't like the color blue on
9 townhouses, I'm not sure it will have great meaning or frankly
10 help us in our deliberations but that there is some question
11 here, I think it would be important to do.

12 So, I would think that direct from the single
13 member a letter just clarifying his position as he represents
14 that surrounding area would be important. I think if we gave it
15 till Friday, and that if we didn't receive it, then we'll just
16 proceed. As I indicated, I think we can proceed without it, but
17 it certainly fills out the record. I'm going to just turn to the
18 applicant and make sure that it's absolutely clear what we're
19 looking for.

20 MR. NUNLEY: I believe so, yes.

21 CHAIRPERSON GRIFFIS: And do you foresee any
22 problem?

23 MR. NUNLEY: No, none whatsoever.

24 CHAIRPERSON GRIFFIS: Actually, if you would just
25 turn on the mike. Okay, and you have contacts for the ANC

1 member?

2 MR. NUNLEY: Yes.

3 CHAIRPERSON GRIFFIS: Numbers and all that?

4 MR. NUNLEY: Yes, I have all of that.

5 CHAIRPERSON GRIFFIS: Okay, and let me take down
6 for staff, because I think we're going to have several modes of
7 attack here in notifying that that communication has to happen,
8 who would the contact person be for the JFC Builders?

9 MR. NUNLEY: It would be me.

10 CHAIRPERSON GRIFFIS: Mr. Nunley?

11 MR. NUNLEY: Yes.

12 CHAIRPERSON GRIFFIS: Okay, and your number?

13 MR. NUNLEY: 301-423-4968.

14 CHAIRPERSON GRIFFIS: Okay, great. Did you have
15 any questions of what is happening here now?

16 MR. NUNLEY: No, I think I understand very clearly.

17 CHAIRPERSON GRIFFIS: Okay, and again, I mean, I
18 think we are looking to satisfy the applicant, whether positive
19 or negative in terms of the outcome but it fills out the total
20 application and fulfill our deliberative process here and so in
21 order to do that, I -- you know, I never like to postpone or
22 continue things which delays our time and delays everybody else's
23 for another week, but I think it's important enough and easy
24 enough to facilitate this. So hopefully it won't be a big
25 problems.

1 Mr. Hart what kind of schedule -- or Ms. Bailey, I
2 don't know who has the schedule in front of them, but do we have
3 anything else 9:00 o'clock, next Tuesday?

4 MS. BAILEY: Mr. Chair?

5 SPECIAL AGENT WHITE: Yeah.

6 MS. BAILEY: Mr. Chairman, I don't see anything
7 prior to your regular scheduled public hearing.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. BAILEY: And that's March 19th.

10 CHAIRPERSON GRIFFIS: March 19th, okay, so it will
11 be March 19th at 9:00 a.m. and I will also indicate that the
12 record is entirely closed except for what has been requested
13 which is a letter from the SMD Commissioner of 1-B08. I'm sorry
14 to have to drag you down there this morning but there it is. Any
15 other questions?

16 PARTICIPANT: We can try to get Mr. Woodland but we
17 can't guarantee.

18 CHAIRPERSON GRIFFIS: No, no, no, absolutely and
19 that's why we have till Friday, if it comes in Friday. If not,
20 we're fully prepared to go forward. I just think it's important
21 for us to have it. So, it's happening next Tuesday, the 19th.
22 That's a guarantee.

23 PARTICIPANT: Thank you, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Sure. The gentlemen, right
25 before leaving and before I adjourn the public meeting, yes, did

1 you put in witness cards of everyone that was here. Okay, if you
2 would just do that so we have the record complete. And I thank
3 you very much.

4 This concludes the special public meeting of the --
5 as I was saying, this would end the public -- the Special public
6 meeting of the 12 March 2002. We will resume -- well, we will
7 call the public hearing I would anticipate in 20 minutes so on or
8 about 10 of 10:00. Thanks.

9 (Whereupon, at 9:30 a.m. the hearing in the above-
10 entitled matter was concluded.)

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