

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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TUESDAY

MARCH 26, 2002

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The Special Public Meeting came to order at 9:00 a.m. in Suite 220-5, 441 4th Street, N.W., Washington, D.C. 20001, Geoffrey H. Griffis, Chairperson, presiding.

PRESENT:

GEOFFREY GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Member
Paul Hart	Zoning Specialist
Beverley Bailey	Zoning Specialist
John Nyarku	Zoning Specialist

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

9:16 a.m.

CHAIRPERSON GRIFFIS: Okay. Good morning, ladies and gentlemen. I will call to order this Special Public Meeting of the 26th of March 2002 and Mr. Hart, when you are ready.

MR. HART: Yes, sir. Good morning, Board Members, Staff Members.

This morning on March 26th a Special Public Meeting Notice for Application 16843 of 800 8th Street, N.W. LLC, pursuant to 11 DCMR . 3103.2, for a variance for a modification of approved plans pursuant to BZA Order No. 16498, solely to allow for a reduction in the approved number of parking spaces under subsection 2101.1 (parking schedule) and 2117.4 (parking space access) in an under construction office building in the DD/C-3-C District at premises 800 8th Street, N.W. (Square 404, Lot 31).

After hearing the facts of the application on March 12th, 2002, the Board determined that a decision would made on March 26th, 2002 at 9:00 a.m. at this morning's Special Public Meeting.

The Board encouraged the Applicant to provide proposed Findings of Fact and Conclusions of Law by March 19th, 2002.

Participating Board Members are Mr. Geoffrey

1 Griffis, Ms. Anne Renshaw, Mr. David Levy, Mr. Curtis Etherly,
2 Jr., and Mr. Anthony Hood.

3 The case is now before the Board.

4 CHAIRPERSON GRIFFIS: Thank you very much, Mr. Hart
5 and let me skip the introductions this morning and just jump into
6 the public meeting because we're starting a little late and we
7 will get that when we call the public hearing together.

8 Board Members, as you remember, Mr. Hart has
9 eloquently outlined what we were looking at and I would -- we had
10 supplemental information also that I know all Board Members have
11 taken a look at. One was the resubmission of the -- let's call
12 it the parking matrix or the parking breakout of the area that
13 the Office of Planning put together.

14 As you recall, there was some discussion and the
15 Office of Planning was saying that this was a detriment to the
16 community and they have outlined conceivably available spaces in
17 the surrounding area. They also made, of course, the
18 point that some of those will be built and therefore, not
19 necessarily available for the very long term. That I see as a
20 smaller issue in terms of how that surrounding area will meet its
21 capacity for parking. There is quite a bit of potential
22 development down there that could, in fact, accommodate all sorts
23 of new parking and I would just indicate the one piece that
24 wasn't discussed on that is the largest square that's blocked out
25 there which would be the new -- the old Convention Center and the

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1 redevelopment of that. How that comes through obviously -- well,
2 I don't know obviously but conceivably will have some parking
3 which is in close proximity as is the Metro Station.

4 However, we are looking at a variance, a variance
5 for parking. The test of which is one of our highest standards
6 in terms of area variances. Although, of course, use is more
7 difficult.

8 This was somewhat problematic for me looking at
9 this in that the level of which the relief is asked for and what
10 the relief is, in fact, asked for in terms of parking, I have
11 absolutely no problem with and I think that trying to accommodate
12 the flexibility of a building one, being very small and two,
13 being in a downtown central business district area in proximity
14 to Metro seems to make an awful lot of sense.

15 However, I do believe that we have -- I don't
16 believe I know that we have certain criterium that need to be met
17 and what I would like to do is have some deliberation on that and
18 further discussion from the Board Members.

19 But, let me draw one's attention which I fell
20 across in my review of this is 2117.2 in the regulations which
21 points out the fact that required parking spaces shall not be
22 reduced in total extent after their provision except from the
23 BZA's approval and that approval would be and I'll read here
24 "Then only after proof that the parking spaces provided are no
25 longer needed by reason of a reduction of employees, seats, gross

1 floor area or dwelling units or any other standard applicable to
2 the use set forth in the regulations provided that the BZA may
3 impose any condition it shall deem necessary to assure the
4 additional parking spaces in case of subsequent increase."

5 I did, in fact, find some help in that section
6 because I think the case is trying to be made of the specific use
7 of this building with, in fact, the growth potential that is
8 needed which I think is a reality in any ownership or business.
9 It does speak to the fact that the use of the parking level is
10 essentially -- won't be utilized, but can be utilized to
11 functions that are, in fact, specific to the institution.

12 Now, also in the submissions and I think we ought
13 to look some -- in the recent submissions from Mr. Glasgow, we
14 had an awful lot of case references and citations and I think some
15 clarification might be needed in some of those and I think others
16 can pick it up if they found the same.

17 The one that struck me, of course, was the self-
18 created hardship and I throw this out for I guess let's say the
19 level playing field then for discussions so that we're all
20 thinking in the same frame of mind. I believe that Mr.
21 Glasgow put together the case with -- actually, I'm not going to
22 cite all of the cases some of which were older and not
23 necessarily current and I think if we look at the self-created
24 hardship, I think -- and we have seen it in other cases that the
25 courts actually do look to that.

1 I don't know if we need to go -- if we need to go
2 further in that. If I need to explain myself, I can get into it.

3
4 But, let me hear from others if they are able at
5 this point. Otherwise, I'll keep yammering.

6 MEMBER LEVY: Mr. Chair.

7 CHAIRPERSON GRIFFIS: Yes.

8 MEMBER LEVY: I don't want to speak specifically to
9 the point of self-created hardship.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER LEVY: But, on the point of the variance
12 test for the number of parking spaces, I mean this is a property
13 that's already -- I struggle quite a bit with this whole issue of
14 parking downtown. However, this is a property that's already
15 benefitted from a reduction in the requirement due to the
16 proximity of the Metro station. Additionally, it's received a
17 variance previously from the BZA.

18 This is a building -- this is a property in which
19 the applicant is looking to both increase the square footage of
20 usable space and at the same time reduce the amount of parking
21 and in looking at the number of employees there now, the
22 potential number of employees in that amount of square footage, I
23 think that the amount of parking -- I'm hesitant to further
24 reduce the amount of parking from what's there now. I mean if
25 you look at -- they're talking about having a very low percentage

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1 of parking spaces even for the 67 people that will be occupying
2 the space currently and those numbers are going to go up. I
3 think the applicant testified that there would be expansion in
4 terms of the number of employees.

5 I think that we're -- to further reduce, I don't
6 see the case for practical difficulty, you know, to further
7 reduce the number of spaces that are there now. I'm more
8 concerned about that than I am about any substantial detriment to
9 the public good for the loss of nine parking spaces.

10 However, given that there is going to be space in
11 the building that the applicant is going to be leasing out,
12 initially that's not needed, I'm really having a hard time seeing
13 the test for practical difficulty.

14 CHAIRPERSON GRIFFIS: Well, some of the discussion
15 on the record for the practical difficulty I think what you spoke
16 to that they are leasing out space and it did come up in the
17 public hearing and the direct question was asked well, why can't
18 you just utilize that space and I think it was fairly accurately
19 and adequately stated that anyone, any business grows or it is,
20 in fact, diminishing and going out of business. In the purchase
21 of a building you would, in fact, and I think this would be
22 general to most everybody, you would purchase a building or
23 occupy and lease a building that would allow for the expansion.

24 But, I understand what your -- I understand your
25 point of view with that. I think there was also substantial

1 documentation of the actual driving use by the employees.

2 Now, the other side of that as was brought up is
3 that those employees may change. However, it was I think
4 rebutted in the fact that they indicated that the nature of the
5 institution and who they employee will be consistent. So, one
6 might logically be able to assume that that statistic of driving
7 would be maintained throughout.

8 MEMBER LEVY: And, in fact, I think that the
9 transportation management plan that was prepared was very
10 thorough and in other circumstances would be very convincing.
11 However, I need to look to the zoning regulations to see whether
12 the case is, in fact, supported there specifically and it's
13 therein that I find that the variance tests have not been met.

14 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Yes.

16 VICE CHAIRPERSON RENSHAW: I agree with my
17 colleague, Mr. Levy, concerning his hesitancy to support -- well,
18 I take it, his hesitancy to support this application. There is
19 space in the building that is available although the applicant
20 wishes to lease that out.

21 Mr. Glasgow has made a point in his writings to
22 lean to a great degree on the extraordinary security concerns of
23 this applicant. We understand that. These are difficult times,
24 but that, in itself, does not mean that we should ignore the
25 previous zoning or zoning relief that we have given this

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1 particular building when it came before the BZA earlier.

2 I have a difficulty with this application because
3 there is space in the building to do what the applicant would
4 like to do in this sub-level space and I am also hesitant to
5 reduce the parking configuration in that building.

6 CHAIRPERSON GRIFFIS: Okay. I do appreciate those
7 comments and so, both of what I'm hearing this morning is that
8 you feel -- the case that they made for practical difficulty, in
9 fact, was that it was unduly burdensome for them to be forced to
10 maintain the B level or one of the levels of the parking when, in
11 fact, by their own program and institution it would not be used.

12
13 But, that doesn't -- what I'm understanding is that
14 that doesn't come up to the level of test that you both feel are
15 needed for the variance.

16 VICE CHAIRPERSON RENSHAW: That is correct.

17 MEMBER LEVY: I would agree with that, Mr. Chair,
18 and I think that the arguments -- they're sound arguments in a
19 different context and perhaps the context is amendments to the
20 zoning regulations rather than variance before the BZA. I mean I
21 think the -- the argument of the proximity of the Metro and, you
22 know, I'm all in favor of people using Metro rather than driving.
23 I do it myself.

24 CHAIRPERSON GRIFFIS: Yes.

25 MEMBER LEVY: However, I need to set those strong

1 feelings that I have personally aside and again look to the
2 zoning regulations and I don't see the test having been met.

3 CHAIRPERSON GRIFFIS: And how do you address the
4 fact that actually parking relief was granted for this property?
5 We've spoken kind of around that.

6 MEMBER LEVY: Well, I think, you know, in the
7 original case, the test was tied more to the physical size of the
8 property itself and adjustments, appropriate adjustments, were
9 made. I think given the size of the site and the difficulty in
10 constructing the parking that would have been required and also,
11 I think it's appropriate that a reduction was given -- granted
12 the proximity to the Metro station.

13 CHAIRPERSON GRIFFIS: Yes.

14 MEMBER LEVY: At this point, the building's in
15 place. The parking has been constructed. There's no difficulty
16 in constructing the parking. It's there. The elevator's put in
17 place. The configuration has been successfully constructed.

18 So, I think the test now goes to whether or not the
19 parking that's there should be further reduced and it all ties
20 back to this applicant and this particular applicant's use of the
21 property not to the property itself.

22 CHAIRPERSON GRIFFIS: Okay. So, that statement is
23 saying to me that, in fact, the new owner with the new
24 circumstances does not -- is not able to essentially utilize that
25 uniqueness and that difficulty previously and cannot add to that

1 in terms of it being unduly burdensome for their own parking
2 based on their program.

3 MEMBER LEVY: Well, just that they can't tie back
4 to the original arguments which, I mean, there's already been a
5 variance granted --

6 CHAIRPERSON GRIFFIS: Right.

7 MEMBER LEVY: -- based on the original arguments
8 which were that it would be difficult to construct the building
9 in certain ways and at this point, the building -- you know, the
10 variances are granted. The building's built. So, I think those
11 arguments have been satisfied and I just don't see the
12 applicant's arguments rising to the level of the burden of proof
13 that's required in this case.

14 CHAIRPERSON GRIFFIS: Okay. Anything else?

15 I'm prepared to hear a motion then.

16 MEMBER LEVY: Mr. Chair, I would move that we deny
17 the application of 800 8th Street, N.W. LLC, pursuant to 11 DCMR
18 . 3103.2, for a variance for a modification of approve plans
19 pursuant to BZA Order No. 16498.

20 VICE CHAIRPERSON RENSHAW: Second.

21 CHAIRPERSON GRIFFIS: Any further discussion?

22 Do you want to summarize, Mr. Levy?

23 MEMBER LEVY: Just to say that the applicant has
24 not met their burden of proof for a variance test. I think we've
25 adequately discussed the issue at this point.

1 CHAIRPERSON GRIFFIS: Ms. Renshaw, do you have
2 anything to speak to?

3 VICE CHAIRPERSON RENSHAW: No, I would just call
4 the vote.

5 CHAIRPERSON GRIFFIS: If I -- very well then. The
6 vote has been called. I would ask for all those in favor of the
7 motion to deny the application signify by saying aye.

8 (Ayes.)

9 CHAIRPERSON GRIFFIS: And those opposed?

10 VICE CHAIRPERSON RENSHAW: Do you have a proxy?

11 CHAIRPERSON GRIFFIS: I will be opposed and let us
12 hear if we have proxies on this.

13 MR. HART: You would be opposed?

14 CHAIRPERSON GRIFFIS: I am opposed to the motion to
15 deny, Mr. Hart.

16 MR. HART: There are two proxies on this vote, Mr.
17 Chair. One from Mr. Curtis Etherly to deny and one from Mr. Hood
18 to deny.

19 The vote, therefore, reads 4-1-0 to deny this
20 application.

21 CHAIRPERSON GRIFFIS: Okay. Thank you, Mr. Hart.

22 Let me just in final indicate that I think -- I
23 think this Board did have some difficulty. I think our
24 discussion shows that. I think the issue is quite large with
25 this in terms of the test for the variance and in many respects

1 moves away from the number of parking spaces that we're actually
2 talking about. It speaks to the real substance of it.

3 I think it can be clearly -- well, I would speak
4 for myself that I -- I think that I would encourage anything that
5 worked towards reducing the driving necessity downtown and
6 getting people out whether that's done -- whether we have total
7 jurisdiction to accomplish that or not and whether, in fact, by
8 reducing parking that either exacerbates a problem, creates a
9 problem or alleviates one is of great discussion.

10 But, I appreciate everyone has focused an attention
11 on this and this will end 26 March 2002 public hearing and we
12 will return within 15 minutes I would indicate at -- yes, within
13 15. Thank you.

14 (Whereupon, the meeting was concluded at 9:21 a.m.)
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