

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

SEPTEMBER 28, 2010

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Meridith H. Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
JEFFREY L. HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL H. TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEVEN COCHRAN
PAUL GOLDSTEIN
STEPHEN MORDFIN

The transcript constitutes the
minutes from the Public Meeting held on
September 28, 2010.

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C-O-N-T-E-N-T-S

	<u>Page</u>
APPLICATION No. 18098 of John P. Storz	5
MOTION FOR TWO-YEAR EXTENSION OF THE VALIDITY OF THE ORDER TO APPLICATION NO. 17809 of Jemal's Uline LLC	6
MOTION TO APPROVE APPLICATION NO. 17809 ...	9
VOTE TO APPROVE APPLICATION NO. 17809	10
MOTION FOR TWO-YEAR EXTENSION OF THE VALIDITY OF THE ORDER TO APPLICATION NO. 17816 of Michael D. Sendar	11
MOTION TO APPROVE APPLICATION NO. 17816 ..	13
VOTE TO APPROVE APPLICATION NO. 17816	13
APPELLANT'S MOTION FOR RECONSIDERATION OF BOARD OF ZONING ADJUSTMENT'S DECISION OF APPEAL NO. 18031-A OF WEST END CITIZENS ASSOCIATION	16

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

(9:48 a.m.)

CHAIRPERSON MOLDENHAUER: This meeting will please come to order. Good morning ladies and gentlemen. This is the September 28, 2010 public meeting of the Board of Zoning Adjustment for the District of Columbia.

My name is Meridith Moldenhauer, Chairperson. Joining me today to my right is Jeff Hinkle, representative of the National Capitol Planning Commission and to my left, Michael Turnbull, representative of the Zoning Commission.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised this proceeding is being required by a court reporter and is

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1 also being webcast live. Accordingly, we must
2 ask you to refrain from any disturbing noise
3 or actions in the hearing room. Please turn
4 off all cell phones and beepers at this time.

5 Mr. Secretary, are there any
6 preliminary matters?

7 MR. MOY: We do have a few this
8 morning, Madam Chair, but I would suggest --
9 staff would suggest that the Board take those
10 matters up as the case is called.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. Then why don't we proceed with the
13 agenda for this morning?

14 MR. MOY: Yes. Good morning Madam
15 Chairperson, members of the Board. The first
16 case for action before the Board is
17 application number 18098 of John Storz,
18 pursuant to 11 DCMR 3104.1 for a special
19 exception to allow a rear addition to an
20 existing two-family row dwelling, under
21 Section 223, not meeting the lot occupancy
22 (section 403), rear yard (section 404) and

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1 court requirements (section 406), in the R-4
2 District at premises 914 P Street, N.W. The
3 property is in Square 366, Lot 814.

4 As the Board will recall, on
5 September 14, 2010, the Board convened the
6 application for public hearing testimony.
7 After extensive review and discussion with
8 the applicant, the Board allowed the
9 applicant to reevaluate its request for
10 zoning relief and to reply and submit to the
11 Board by September 24, 2010.

12 Madam Chair, the applicant did
13 make a filing this morning and I believe
14 that's in your case folders and staff will
15 just leave it at that, Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank you
17 for very much, Mr. Moy. Based on the fact
18 that we did just receive these two additional
19 documents this morning, what the Board is
20 going to do is we are going to take time to
21 actually review this and review the new plan
22 and then we will set this for a decision next

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1 week in the morning for October 5.

2 MR. MOY: Okay, very good. Thank
3 you, Madam Chair. The second case before the
4 Board this morning is a motion from the
5 applicant requesting a two-year extension of
6 the validity of the order to application
7 number 17809 of Jemal's Uline LLC, pursuant
8 to Section 3130 of the Zoning regulations.
9 The original application that was approved on
10 September 16, 2008, was pursuant to 11 DCMR
11 3104.1 for special exception relief on the
12 parking requirements for historic structures
13 under 2120 and a special exception from the
14 roof structure number and setback
15 requirements under Section 411 which would
16 permit the expansion and renovation of the
17 existing Uline arena and ice house in the C-
18 M-1 and C-M-3 Districts at premises 1130-1150
19 3rd Street, N.E. The property is in Square
20 748, Lots 8-11, 42, 43, 802, 808-812.

21 On August 18 of this year the
22 applicant made its submission, its filing

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1 request. That document is identified as
2 Exhibit 34 in your case folders.

3 There is also a second filing on
4 the record in response. It is from the
5 Chairperson of ANC 6C on behalf of the
6 Commission and that document is identified as
7 Exhibit 35 in your case folders.

8 The Board is to act on the merits
9 of the standards for the request to extend
10 the validity of the order pursuant to 313,
11 specifically 3130.6 and that completes the
12 staff's briefing, Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you
14 very much. I will start by discussing the
15 standard under 3130 and then what we have is
16 we have the requirement for the applicant to
17 show that there is good cause to extend the
18 request and here they have shown under
19 3130.6-B that there is good cause based on a
20 challenging economic
21 situation and an inability to obtain
22 financing.

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1 We have the requested
2 documentation from the applicant the vice-
3 president of this development which is our
4 Exhibit No. B, which illustrates on line
5 number 3 that they have contacted several
6 lenders but had a challenging time obtaining
7 financing due to the current economy.

8 In addition to that, this
9 submission clearly says that there is no
10 material changes and I find that this is
11 sufficient to satisfy the requirements under
12 3130.6. In addition, as Mr. Moy indicated, we
13 have a letter from the ANC, our Exhibit No.
14 35, which indicates that at a duly held
15 meeting on September 13, that there was a
16 quorum present and that the ANC voted
17 unanimously, 8-0-0 to support the two-year
18 extension.

19 Based on this, I would recommend
20 approval of this request to extend the
21 application -- extend the order, I'm sorry --
22 is there any additional deliberation from

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1 Board members?

2 (No response.)

3 MOTION TO APPROVE APPLICATION NO. 17809

4 Seeing none, then at this time I
5 will submit a motion, a motion to grant
6 Application No. 17809-A to extend the BZA
7 order for two years, BZA order 17809. Motion
8 has been made. Is there a second?

9 HHH. Second.

10 VOTE TO APPROVE APPLICATION NO. 17809

11 CHAIRPERSON MOLDENHAUER: Motion
12 has been made and seconded. All this in favor
13 say aye.

14 (Chorus of ayes.)

15 MR. MOY: Madam Chair, before I
16 give the final vote, we have an absentee vote
17 from Mr. Anthony Hood, who participated on
18 the original order as well as participating
19 on this request and his absentee vote is to
20 approve the request to extend for another two
21 years.

22 So that would give a final vote of

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1 3:0:2 on the motion of the Chairperson Ms.
2 Moldenhauer to approve, seconded by Mr.
3 Hinkle and of course Mr. Hood in support, no
4 other Board members participating. So again
5 the vote is 3:0:2. Summary order, Madam
6 Chair?

7 CHAIRPERSON MOLDENHAUER: Yes
8 please. Thank you.

9 MR. MOY: The next Board's action
10 is another request for another extension of
11 the validity of the order but this is to
12 Application No. 17816 of Michael D. Sendar,
13 pursuant to Section 3130 of the zoning
14 regulations. The original application was
15 approved on October 7, 2008, pursuant to 11
16 DCMR 3103.2 for a variance from the use
17 provisions for a general retail business
18 under subsection 330.5 in the R-4 District at
19 premises 816 and 818 Rhode Island Avenue,
20 N.W., and 819 and 821 Q Street, N.W.
21 The property is in Square 396, Lots 28, 805
22 and 806.

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1 The applicant filed its request on
2 August 19, 2010. The document is identified
3 as Exhibit 40 in your case folders. There is
4 also -- rather there are no responses to the
5 request in your case folders so the Board is
6 to act on the merits of the standards and the
7 request to extend for another two years
8 pursuant to Section 3130. That completes the
9 staff's briefing, Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you
11 very much, Mr. Moy. This case as Mr. Moy
12 indicated is another two-year extension of
13 3130.6 and we have a very full application on
14 behalf of the applicant, Mr. Sendar. We have
15 his affidavit, which specifically indicates
16 that he satisfies the standard of 3130.6
17 indicating on section 6 of his affidavit that
18 he is unable to move forward with the project
19 due to a lack of available financing from
20 banks and other traditional lenders.

21 There's additional reasons that he
22 provides for the needed extension and he

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1 indicates that there is going to be no
2 material changes in the project. In addition
3 to that, we have a letter from the ANC
4 Chairperson, Ms. Doris Brooks, indicting to
5 us that they had obviously supported the
6 application in the past.

7 And so based on that I see no
8 concern with supporting the extension and I
9 will open it up to any additional questions
10 or issues from other Board members.

11 MEMBER TURNBULL: I would concur
12 with you, Madam Chair. I think the record is
13 full.

14 MOTION TO APPROVE APPLICATION NO. 17816

15 CHAIRPERSON MOLDENHAUER: Thank
16 you. Then at this time I will submit a
17 motion, a motion to grant the two-year
18 extension under Section 3130. 6 for BZA Order
19 No. 17816. Motion has been made. Is there a
20 second?

21 MEMBER TURNBULL: Second.

22 VOTE TO APPROVE APPLICATION NO. 17816

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1 CHAIRPERSON MOLDENHAUER: Motion
2 has been made and seconded. All this in favor
3 say aye.

4 MS. GLAZER: Madam Chair, pardon me
5 for interrupting. I wanted to clarify what
6 the date was. I think the staff report said
7 that the expiration on the order was October
8 14 and that is correct, but I think on the
9 record another date may have been given.

10 CHAIRPERSON MOLDENHAUER: Okay, so
11 yes, just to clarify that this is extending
12 from the date of the order for October 14,
13 2008.

14 MR. MOY: Very good, the staff
15 would record the vote then as 3:0:2 on the
16 motion of the Chairperson, Ms. Moldenhauer to
17 approve the, rather grant the motion for a
18 two-year extension, seconded by Mr. Turnbull,
19 also in support of the motion Mr. Hinkle. So,
20 again, the vote is 3:0:2.

21 CHAIRPERSON MOLDENHAUER: And Mr.
22 Moy, we would request a summary order.

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1 MR. MOY: Very good. Thank you. The
2 next application, again Madam Chair, is a
3 request, a motion for a two-year extension of
4 the validity of the order to -- but this is
5 to Application 17806 of Mid-Atlantic Realty
6 Partners, LLC, pursuant to Section 3130 of
7 the Zoning Regulations.

8 The original application was
9 approved on September 9, 2008, pursuant to 11
10 DCMR 3103.2 for a variance from the lot
11 occupancy requirements under section 772, a
12 variance from the rear yard requirements
13 under 774, a variance from the limitation on
14 compact parking space requirements under
15 Section 2115.2 and a variance from the off-
16 street loading facility requirements under
17 subsection 2201.1, to permit the construction
18 of a multiple dwelling (residential) building
19 with ground floor retail in the DD/C-2-C
20 District at the southeast corner of the
21 intersection of 6th and K Streets, N.W. The
22 property is in Square 484, Lots 23, 811-813

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1 and 826.

2 As the Board will recall, this
3 application was convened on September 21,
4 2010 for deliberation for the two-year
5 extension. After discussion, for the Board
6 attended to Section 3130 standards, the Board
7 deferred its decision September 28.

8 Madam Chair, there was a
9 submission by the applicant this morning,
10 which I believe is in your case folders and I
11 think staff will leave that to the Chair to
12 discuss. That completes the staff's briefing
13 Madam Chair.

14 CHAIRPERSON MOLDENHAUER: Thank you
15 very much, Mr. Moy. As you indicated we do
16 have a preliminary matter in this case which
17 was a submission by the applicant's attorney
18 and it requests an extension to address
19 certain issues in this application for two
20 weeks.

21 So we would be willing to grant
22 this application request for an extension and

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1 so we will put this back on the calendar for
2 October 19.

3 MR. MOY: Very good. Thank you
4 Madam Chair.

5 The last case for Board action is
6 the Appellant's Motion for Reconsideration of
7 the Board's Decision of Appeal NO. 18031 of
8 the West End Citizens Association, pursuant
9 to Section 3126 of the Zoning Regulations.
10 The original application was pursuant to 11
11 DCMR 3100 and 3101 from a November 4, 2009
12 decision of the Zoning Administrator,
13 Department of Consumer and Regulatory
14 Affairs, to issue the Certificate of
15 Occupancy No. CO1000323, which is for a
16 grocery store in the R-5-E District at
17 premises 2140 F Street, N.W. The property is
18 in Square 81, Lot 811.

19 The Board is in receipt of a
20 number of filings, Madam Chair. The first is
21 of course the request for reconsideration
22 from the appellant and that document is

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1 identified in your case folders as Exhibit
2 25. Second filing is from the appellee, DCRA,
3 as a response and that document is identified
4 -- is dated September 10, 2010, identified as
5 Exhibit 26.

6 The third filing is from the
7 intervener, the property owner, the Foggy
8 Bottom Groceries and their document is dated
9 September 13. There are multiple dates but I
10 think I'll take the earlier date, September
11 13. The document is identified in your case
12 folders as Exhibit 27.

13 The Board is to act on the merits
14 of the motion for reconsideration, pursuant
15 to Section 3126.6 and that completes the
16 staff's briefing, Madam Chair.

17 CHAIRPERSON MOLDENHAUER: Thank you
18 very much Mr. Moy. This case initially had
19 Mr. Turnbull, myself and Ms. Sorg on the case
20 so in order for efficiency what we are going
21 to do is we are actually going to postpone
22 this case until next week. Ms. Sorg is away

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1 for business travel abroad and so when she
2 returns on October 5, we will hear this case
3 or we will deliberate on this case, based on
4 the record.

5 MR. MOY: Okay very good. Thank you
6 Madam Chair.

7 CHAIRPERSON MOLDENHAUER: I believe
8 that -- does that conclude our morning public
9 meeting?

10 MR. MOY: Yes, Madam Chair.

11 (Whereupon, the foregoing matter
12 was concluded at 10:05 a.m.)

13

14

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