

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 11, 2003

+ + + + +

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., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
ANNE MOHNKERN RENSHAW, Vice Chairperson
CURTIS L. ETHERLY, Board Member

COMMISSION STAFF PRESENT:

BEVERLY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

9:25 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Special Public Meeting of February 11, 2003. We will get through this public meeting hopefully very expeditiously and then call our regular scheduled public hearing.

With that, Mr. Moy?

MR. MOY: Good morning, Mr. Chairman, Members of the Board. The first meeting decision case is Application No. 16966 of NEST and Totah Venture, LLC, pursuant to 11 DCMR 3104.1 for a special exception to allow a mechanical penthouse not meeting the setback requirements under Section 411, 707.6(b) and pursuant to 11 DCMR 3103.2, a variance from the floor area ratio requirements under Section 771 and a variance from the rear yard requirements under Section 774 to allow the construction of a retail/offiCe building with an accessory parking garage in the C-4 District at premises 1426 to 1430 K Street, N.W., in Square 218 Lots 808 and 823.

The Board heard this case on January 14th and at that time requested that the -- requested supplemental information first being a revised Zoning

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1 Administrator's memorandum which addresses a revision
2 to the requested variance on the FAR variance which is
3 in your folders under Exhibit 36, Tab A.

4 And finally, the Applicant and the Party
5 Opponent have submitted proposed findings of fact and
6 conclusions of law and that's in your case folders as
7 Exhibit 36 and Exhibit 37, respectfully, and that
8 completes my briefing, sir.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

10 Board Members, as you do recall this case, there's a
11 couple of things that I just want to point to. First
12 of all, I think this is actually an excellent example
13 of a well-argued case and I say that on both sides. I
14 think each are to be complimented in terms of their
15 clarity and directness, that being the Applicant and
16 also that being the party in opposition.

17 That always, of course, helps and
18 facilitates our work and decision making and jumping
19 into that, let me just remind you and highlight some
20 of the pieces that I found pertinent to this
21 particular application, that is we do have two
22 structures that are going to be combined into a single
23 lot. They have been vacant and as I recall from the
24 record, 10, perhaps 10 plus years. It has been looked
25 at previously in terms of its reuse as an office

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1 building which is absolutely appropriate for the
2 location that it is and also well within the use of
3 the zone district that it resides in.

4 Clearly, there was evidence in the record,
5 establishing the fact that there was difficulty in
6 combining the two existing structures. That being
7 floor slab differentiations, also adapting it for
8 contemporary and current use, that is current office
9 use. And that does go to some of the requirements
10 that one has to put in buildings with ADA and egress
11 and also more contemporary layouts of office spaces.

12 That really goes into a lot of or several
13 of the pieces that I see as unique to this. The other
14 unique argument, of course, is the fact that on this
15 square this has a particularly specific siting that is
16 its adjacency to the alley and the fact of the matter
17 that the alley does not cross all the way in the rear
18 of the building, thereby giving a differing definition
19 of how one measures height setback, etcetera. As
20 argued by the party in opposition, that does not lend
21 itself to uniqueness, that in fact, the zoning
22 regulations are clear in differentiating when property
23 abuts the alley and when it does not and there are
24 reasons for that.

25 Although I find that a very strong

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1 argument, I don't find it persuasive in this situation
2 as this lot itself is in the unique position of and
3 within the square of kind of being a hybrid, something
4 caught in between the definitions in the regulation.
5 And I believe that it is absolutely appropriate that
6 this is before us because that's exactly why we look
7 at variances and the test for uniqueness and those
8 arising, of course, creating some sort of practical
9 difficulty in putting this together. So I see great
10 uniqueness in terms of (1) the existing structures,
11 (2) the positioning on the square; and its position in
12 terms of the alley and not running the entire length
13 of the rear.

14 I think the infill, as I've said, in terms
15 of the base history of this, going to the existing
16 structure, one would question, I think, logically and
17 common sense, we would begin to say well, you've got a
18 building there. Why not just renovate it and fill it
19 and I think that has been clearly answered why that is
20 not even possible to entertain.

21 In terms of expansion space and other
22 alternatives, I think it was also clearly shown on the
23 record that there was no other way. One of the
24 difficulties that comes up and the uniqueness of this
25 is that the depth of the site and the width of the

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1 site. That goes directly to the fact of how a floor
2 plan is laid out in a new building, a new
3 construction.

4 As we've seen before and I think it's very
5 pertinent in this case, the core requirement, the
6 elevator, the egress stairs, the mechanical shafts and
7 such, are somewhat static, are somewhat a given;
8 elevators and ADA-accessible elevators and code
9 complying egress stairs start at a base dimension and
10 that goes for a small footprint or a large footprint.

11 And the case that's before us, they are arguing, in
12 fact, that with that requirement, if the building
13 based on its depth dimension cannot conceivably make a
14 usable or major portions of the floor plan would not
15 be usable, based on the amount of square footage that
16 was taken up on the core.

17 So if you look to how does one expand
18 within the zoning, even if there was an additional
19 height added, it would not cure that practical
20 difficulty of actually creating a usable floor plan.

21 Also, what was brought up by the parties
22 in opposition is, as we look to the relief from the
23 rear yard, now clearly in this zone, there's 100
24 percent lot occupancy allowed and then above 20 feet,
25 so we have the building that is a matter of right

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1 filling a lot. However, it needs to set back as it
2 rises. We have seen and we asked for more clear
3 sections that would show us the difference between
4 what exists today and also what is being proposed. In
5 that -- in the initial hearing and also in the
6 additional submission, there was the diagram showing
7 the pattern and direction of sun. And what is
8 interesting and was interesting to me at the hearing
9 is although there are two items that were brought up
10 in opposition and they really were created, I think, I
11 don't think -- they were created by the tenants of the
12 building saying that they would be negatively impacted
13 which would then, of course, negatively impact the
14 owner of the adjacent property if they were unable or
15 would lose tenants. That's something I know we take
16 very seriously. But their concern was lack or
17 diminishing light and air.

18 Two things that I was moved by in looking
19 at and we asked for additional photographs, first of
20 all, I don't find the rear of the existing structure
21 very attractive. And I think that's mild for what it
22 is really is. And so if one, as we've put in light
23 and air, we have also looked at view and what is the
24 impact and obviously, they're all very related.

25 I think the first and the easiest one is

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1 the new design remedies of view in that I think it
2 will be much more appealing to look at. And in fact,
3 there seems to be more attention, detail and material
4 on the rear of the building than was previously done
5 on the existing structure.

6 Light and air. The adjacent structure has
7 a setback in addition to well, as you know, as you
8 have seen on the diagrams that we asked for, the
9 building cuts in, meaning the windows that are there
10 actually have an additional dimension away from the
11 property line. We are not building and it is not
12 being requested that the building is built to the
13 property line which would absolutely cut off light and
14 air, but rather a diminish of the setback. There's
15 still a substantial amount of setback that's there and
16 I do believe that air can easily circulate coming off
17 the alley and into that building.

18 Light. Light would be very important,
19 clearly for, although it won't be the most prestigious
20 tenant area, I think it is of great concern for us to
21 look at how much natural light can transmit into the
22 sides and the rears of buildings, but what was
23 interesting to me and what was submitted regarding the
24 diagrams of the sun pattern is that the sun, not using
25 directions, but is always behind the adjacent

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1 property, meaning it is shining directly on the
2 proposed building. So there was never direct light
3 and there will not be a cut off of direct light into
4 this.

5 We have in the submission in terms of
6 materials, the amount of glass that's being put on,
7 there will actually be an increase in reflectivity of
8 the sun and its pattern in that area. I'm not an
9 expert enough to know whether that's necessarily true
10 or not, however, if you think about it in terms of
11 common sense, as light shines into glass and metal as
12 opposed to masonry or brick, I think there is some
13 truth and merit that we can take in looking at that.

14 Again, the section, I think, well, first
15 of all, I think as I laid out, I do believe the test
16 of uniqueness and practical difficulty have been met
17 and in terms of whether there's any substantial
18 detriment to the public good is really what we're
19 talking about in terms of the opposition from the
20 neighboring properties. And I do not see that as an
21 overwhelmingly persuasive argument of what it would,
22 in fact, curtail.

23 The other -- I think in order to be
24 informative, the other aspect of it is this did have a
25 previous order from the Board. It is implemented,

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1 however, I think it is informative to the Board. I do
2 not believe that this Board -- I do not believe in my
3 personal opinion that we would, in this specific case,
4 be move to adopt a previous order from a previous
5 Board, but I think, as I say, it is informative that
6 the Board found previously uniqueness, practical
7 difficulty.

8 And that's my summation, but I'll go into
9 detail, if needed.

10 Anybody else?

11 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes.

13 VICE CHAIRPERSON RENSHAW: We appreciate
14 that, the review of the application which was very
15 complete and laid out the application as it's before
16 the Board now. I was pleased that you mentioned in
17 the very beginning that this was a well argued case.
18 And indeed, the Board benefitted from the submissions,
19 not only from the Applicant, of course, but from the
20 attorney representing the Party Opponent. And I just
21 want to state that the brief that was submitted by the
22 Party Opponent laid out a very interesting case that
23 this property is not very unique at all, and the fact
24 that if any kind of economic hardship comes to the
25 fore, that that is not an excuse for granting the

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1 relief that the Applicant has requested.

2 And it's mentioned in that brief from the
3 Party Opponent's attorney is that seven other
4 properties within the same square are more gravely
5 affected and the property and size of the property,
6 the shape and size of the property, are not unique at
7 all.

8 And I just wanted to lay that out in the
9 deliberation that it was a strong argument for the
10 Party Opponent which feels that that mechanical
11 rooftop is 23 feet closer to its building and 6 feet
12 from the rear edge. That would affect light and air,
13 I would think more light than air, but I just wanted
14 to present those points.

15 CHAIRPERSON GRIFFIS: Good, I'm glad you
16 bring that up because we do have the special exception
17 411 for the penthouse structure. And it's interesting
18 when you say it will impede light, again, it goes to
19 the fact that the sun is actually behind the building.

20 There is at no point from looking at the diagrams
21 that the sun would be shining from K Street side over
22 in which case the penthouse would, in fact, block it.

23 So I don't see how that actually happens.

24 VICE CHAIRPERSON RENSHAW: I believe that
25 the argument has to do with perceived loss of light

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1 and air. The Applicant has stated that that is not
2 the case and has presented some evidence, but the
3 Party Opponent is dealing with those who rent offices
4 in that building who feel that they are quite affected
5 by the loss of light and air.

6 Others?

7 Ms. Renshaw, I'm looking at the penthouse,
8 if you're persuaded that, in fact, although you've
9 said it's a perceived --

10 VICE CHAIRPERSON RENSHAW: It could be a
11 perceived.

12 CHAIRMAN GRIFFIS: Impression. Is there
13 remedy that you see to that? For instance, we of
14 course do have total jurisdiction over design,
15 location and anything of that nature, but I think we
16 also need to be clear that penthouse is not something
17 that you can move around. It obviously is clearly
18 based on the core and accessing.

19 VICE CHAIRPERSON RENSHAW: But the height
20 of that is 18.

21 CHAIRMAN GRIFFIS: It's being called out
22 in the submission A302 as 17 feet 6 inches.

23 VICE CHAIRPERSON RENSHAW: Almost 18 feet.

24 CHAIRMAN GRIFFIS: Right. Actually, then
25 we need to add a penthouse parapet. They're within

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1 the height. They're not clearly looking for any
2 relief from the height in terms of 18 feet 6 inches.

3 VICE CHAIRPERSON RENSHAW: I'm not the
4 architect here and cannot suggest that it be moved a
5 foot or two. That's not my profession. But I do feel
6 that the Party Opponent is well within its rights to
7 argue that six feet from the rear edge is too close to
8 the building and across the alley way.

9 CHAIRMAN GRIFFIS: If you look at the
10 section on the same sheet I just cited, the 302, Ms.
11 Renshaw, maybe this will -- maybe this is a step that
12 can address that.

13 We have a machine room which is attendant
14 to the elevator on 3 which is the section which kind
15 of gives you an idea of what's happening inside and
16 then you might want to refer to A105.

17 There's two components to this particular
18 penthouse. One is fully enclosed as it's reading off
19 of the drawings that's attendant to the stairs and
20 egress off of the roof. And the elevator overruns and
21 machine room. And then towards the rear we have the
22 screen of the rooftop units.

23 Now, clearly in our regulations, wise or
24 not wise, penthouse has to have one height, one roof
25 height across its entirety. There's no allowable

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1 differentiation between that which seems, if I might
2 digress briefly, to run into numerous problems in most
3 of the cases we look at under 411 because that clearly
4 diminishes or in fact precludes anybody from having
5 any sort of design addition to a penthouse. I mean if
6 you have to create a box, you create a box. My point
7 being, directly, if we look back on 302, there's the
8 area of the high wall or screen around the mechanical
9 unit. Would it not be possible to look at dropping
10 that and thereby granting a special exception for the
11 setback and also for the differing heights.

12 Now what I'm stepping into frankly is a
13 little bit difficult because I'm not sure how big that
14 unit is and certainly we want it screened, but that,
15 Ms. Renshaw, would drop that rear screen and therefore
16 diminish the height for another 17 plus feet as it hit
17 the mechanical room.

18 VICE CHAIRPERSON RENSHAW: It's a
19 possibility.

20 CHAIRMAN GRIFFIS: So what we could do,
21 unless anyone feels different or in fact, our
22 Corporation Counsel feels it's more problematic, we
23 could set the special exception for the location and
24 also that we would --

25 VICE CHAIRPERSON RENSHAW: Does that

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1 screening have anything to do with buffering the noise
2 of the HVAC unit?

3 CHAIRMAN GRIFFIS: I think any physical
4 structure there would be. I don't remember any
5 testimony or anything in the record that shows that
6 that's actually designed for sound absorbent, but
7 clearly it will if it's some sort of structure.

8 VICE CHAIRPERSON RENSHAW: I think
9 dropping the height of it, if it can be done, would be
10 a consideration that we should seriously put forward.

11 MR. ETHERLY: Well, Mr. Chairman, just to
12 reiterate, you're talking about the reduction of the
13 height of the screening element?

14 CHAIRPERSON GRIFFIS: That's right.

15 MR. ETHERLY: Only.

16 CHAIRPERSON GRIFFIS: That's correct.
17 Here's one way we could do it. We could approve it
18 that the screen wall was built to two feet above any
19 mechanical equipment on the roof and not more than as
20 shown on the diagram or on the drawings, meaning if
21 the mechanical equipment goes all the way up to 17
22 feet, we're not going to require it to get taller, but
23 rather look to it to be diminished around the edge.

24 VICE CHAIRPERSON RENSHAW: Okay.

25 MR. ETHERLY: It's your sense, however,

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1 that that type of mitigation wouldn't, would not have
2 an impact on that issue in the core that you raised in
3 your summation, because once again, I think from
4 review of the record, it's fairly clear that the
5 challenge for this property is the location of the
6 rooftop penthouse and mechanicals in relation to the
7 core, of course. And given the fact that the
8 buildable area, the lot is laid out as it is, that
9 core really has to be placed only in one location if
10 you're going to maintain a useable floor space still.

11 CHAIRMAN GRIFFIS: Right. But I don't see
12 any use in the mechanical equipment screen that's
13 attendant to anything that's happening.

14 MR. ETHERLY: Okay.

15 CHAIRMAN GRIFFIS: In fact, I think it's
16 there because we require it to be there.

17 MR. ETHERLY: Okay. I think it's a modest
18 concession. I'm not as convinced as my colleague, Ms.
19 Renshaw, with respect to the impact of that screening
20 element on light as far as the Party Opponent property
21 is concerned, but I'm more than happy to entertain
22 that notion.

23 VICE CHAIRPERSON RENSHAW: The Party
24 Opponent is just against having the unit so close to
25 the edge of the building, that that is where the major

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1 impact comes. But looking at these diagrams, of
2 course, with the shape of the core, where else can you
3 put that?

4 CHAIRMAN GRIFFIS: Well said.

5 VICE CHAIRPERSON RENSHAW: And it does not
6 look as though you could have a long less side A/C
7 unit up there.

8 CHAIRMAN GRIFFIS: Well said.

9 VICE CHAIRPERSON RENSHAW: These units are
10 standard and where are you going to put them? They
11 can't float above the building.

12 CHAIRMAN GRIFFIS: Right. Also,
13 diminishing that rear screen I think is one other
14 aspect we looked at, but diminishing rear screen, if
15 you recall in the record there was a request, not from
16 this Board, but from another jurisdiction about what
17 this would look like from the adjacent park which is
18 actually looking to the rear and we have a photograph
19 in the record that shows that this will be visible.
20 And what's interesting about this in its visibility,
21 that rear elevation takes on some importance. It's
22 certainly not the primary facade, but it is not
23 typical unseen rear elevation.

24 So with that, as we drop the height of the
25 screen as it is allowable, based on the requirements

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1 of the building, I think we would also look to
2 requiring that the screen, the rear screen, mechanical
3 screen reflect the architectural detail and material
4 that is shown in the building and specifically in the
5 embellishment that's happening out front. And I think
6 that is awfully general, but rather than us designing
7 it, I want to leave it at that.

8 Is there anything else? Any other
9 comments?

10 Let me move then approval of application
11 16966 for the special exception to allow the
12 mechanical penthouse which is not meeting the setback
13 requirements under 411 and also under 770.6(b) and
14 pursuant to the variance from the rear yard
15 requirements under 774 and also the FAR requirements
16 under 771 which will, of course, allow the
17 construction of a retail office, that's what my
18 hesitation was. "To allow the construction of a
19 retail/office building with an accessory parking
20 garage in the C-4" and I was not reading my notes, but
21 Ms. Renshaw, you're absolutely correct. The FAR was
22 removed from this which is why I was hesitating so
23 badly. But that being said and that is correct, Mr.
24 Moy?

25 MR. MOY: That is my understanding, sir.

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1 CHAIRMAN GRIFFIS: Indeed, in which case
2 also the motion will include the special exception
3 relief requirement from 411 allowing for diminished
4 height of the mechanical screen at the rear of the
5 penthouse structure and also will look to the added
6 detail and materials that would reflect the proposed
7 architecture of the new construction and I would ask
8 for a second.

9 MR. ETHERLY: Second it, Mr. Chairman.

10 CHAIRMAN GRIFFIS: Thank you. Any further
11 discussion on the motion? Additions?

12 VICE CHAIRPERSON RENSHAW: Just to note
13 that we understand that there will be special
14 attention or greater attention to the rear of the
15 building.

16 CHAIRMAN GRIFFIS: Good. Then I'd ask for
17 all those in favor signify by saying aye.

18 (Ayes.)

19 Opposed?

20 (No response.)

21 MR. MOY: Mr. Chairman, we do have a proxy
22 from Mr. Parsons to approve the application, so with
23 that then staff would record the vote as 4-0-0; Mr.
24 Chairman, the Vice Chairperson, Mr. Etherly and Mr.
25 Parsons voting in favor of the case application.

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1 CHAIRMAN GRIFFIS: Good. Thank you very
2 much. Do we have anything else for the Special Public
3 Meeting this morning?

4 MR. MOY: Not to my knowledge, sir.

5 CHAIRMAN GRIFFIS: Very well, does anyone
6 know of anything else?

7 If not we can adjourn this meeting.

8 (Whereupon, at 9:55 a.m., the special
9 public meeting was concluded.)

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