

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,  
MARCH 18, 2003

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 2001, pursuant to notice at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson  
ANNE MOHNKERN RENSHAW, Vice Chairperson  
DAVID A. ZAIDAIN  
CURTIS L. ETHERLY, JR.

STAFF PRESENT:

SHERI M. PRUITT, Secretary. Office of Zoning  
BEVERLY BAILEY, Office of Zoning  
JOHN K. A. NYARDKU, Office of Zoning  
CLIFFORD MOY, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION NO. 16985 OF BENNETT BEAUTY</u>	
<u>INSTITUTE</u> . . . . .	3

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

CHAIRPERSON GRIFFIS: Let me call to order the Special Public Meeting of 18 March, 2003. I will save all introductions until we open the hearing this morning, and I think we can jump right into the first case for our deliberation.

MR. MOY: Yes, Mr. Chairman and members of the Board. The Special Public Meeting is for Case Application No. 16985 of Bennett Beauty Institute pursuant to 11 DCMR 3103.2 for a variance from the use provisions to establish a trade school having 250 students and 24 teachers and staff under Subsection 330.5 and a variance to allow 50 children in a child development center under Subsection 330.5(d), and a variance from the off-street parking requirements under Section 2101 in the R-4 District at premises 700 Monroe Street, N.E. That's in Square 3657, Lot 827.

The Board heard the facts of the case at its public meeting on March 4, 2003, and for its decision meeting today, March 18, 2003, the Board requested the following information.

From the Applicant, a couple of items first, to provide an economic study comparing the time the property has been on the market with other similar properties in the area, and that's in your case folder

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1 under Exhibits 46, 47, and 48. Second, a letter of  
2 authorization from the owner, Mr. George Basilico, and  
3 that is in your case folder as Exhibits 41 and 45. No  
4 draft findings of fact and conclusions of law were  
5 submitted.

6 From government agencies, the Board asked  
7 for an ANC 5-C report based on their meeting of March  
8 4, 2003, and that was submitted, and that's in your  
9 folders under Exhibits 42 and 44.

10 That completes my briefing, sir.

11 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

12 Board Members, I know we were all here at the hearing  
13 and also have reviewed the additional submissions with  
14 this. I don't think anyone would disagree with me  
15 that this is a difficult case on several levels, the  
16 first being I think on a personal level, each of us  
17 wants this to go through. There's no reason to look  
18 to deny in it terms of what the program is, the  
19 service it will provide the community, or in terms of  
20 the program, any sort of difficulty with the location  
21 and the site which is being proposed.

22 We do, however, also have a difficulty in  
23 that this is a use variance, one of in fact the most  
24 difficult tests to prove for zoning relief. As we  
25 know, some of the history and the background of this,

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1 there was the discussion of whether this is more  
2 appropriately before the Zoning Commission for a map  
3 amendment, which would actually change the zoning,  
4 which would then facilitate the matter of right  
5 development as proposed.

6 I think the threshold that needs to be  
7 met, of course, is our test of uniqueness and hardship  
8 and then not impairing the integrity of the map. The  
9 uniqueness was laid out I think fairly well and  
10 succinctly, the size of the lot, the existing  
11 structure, all of which we have relied upon before,  
12 all of which go directly to making that test.

13 It was in the hearing stated, and I think  
14 articulately so, that the size and the structure had  
15 actually moved this lot out of compatibility with that  
16 of an R-4 zoning or even an R-4 use. I don't think we  
17 would have, or I do not have any contention with that  
18 statement.

19 However, when we go to the hardship, I  
20 think we run into more difficulty. Office of  
21 Planning, of course, has come in not recommending  
22 approval, recommending denial, based on the fact that,  
23 and as they state in their report, that in their  
24 review, the Applicant hasn't shown that in fact, the  
25 property could not be reasonably used for another

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1 purpose which would be a matter of right to the zoning  
2 currently on the site.

3 They also did indicate that they saw no  
4 reason why they would not fully support a changing of  
5 the zoning, as it does, in fact, fit within a  
6 commercial zone, and in fact, some commercial, some CM  
7 zoning in the area.

8 So, when we go actually to the third,  
9 whether it would, in fact, impair the intent or  
10 integrity, the Office of Planning again states that it  
11 would, in fact, impair the intent granting a use  
12 variance, and they are fairly articulate in their memo  
13 to this Board, which I bring up one, because I think  
14 it is fairly substantial. Two, if this Board decides  
15 to go in a different direction, those issues need to  
16 be addressed specifically and how we view it  
17 differently than the Office of Planning.

18 We did get the additional submissions, and  
19 I know this Board was putting out as much opportunity  
20 as possible for us to see this as a successful case.  
21 So, I would ask Board members if they want to speak to  
22 the record and also to any of the specific additional  
23 submissions that came in.

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Ms. Renshaw.

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1                   VICE   CHAIRPERSON   RENSHAW:       I   agree  
2   wholeheartedly   with   your   opening   comments   how  
3   difficult   it   is   to   judge   this   case   because   of   the  
4   acceptance   by   the   community,   the   ANC   5-C   coming   out  
5   with   unanimous   support   to   the   Applicant,   and   stating  
6   in   its   letter   of   March   5   that   their   expansion   is   a  
7   win-win-win   situation,   and   that   there   is   absolutely   no  
8   community   opposition   to   the   Applicant's   desire   to  
9   relocate   to   700   Monroe   Street,   N.E.,   and   I'm   quoting  
10   in   part   from   their   letter   of   March   5.

11                   It   seems   to   me   that   the   Office   of  
12   Planning's   recommendation   that   it   would   support   a  
13   change   in   zoning   is   the   direction   that   I   would   like   to  
14   see   this   case   go,   because   I   feel   that   this   win-win  
15   situation   could   be   achieved   not   here   today   through   the  
16   use   variance,   but   through   a   change   in   zoning.   So,   I  
17   would   like   to   hear   my   colleagues'   feelings   about   that  
18   also.

19                   MR.   ZAIDAIN:   If   I   could   speak   to   that,  
20   you   know,   reading   through   the   record   on   this,   and   it  
21   was   tough   to   deliberate   because   I   appreciate   the   good  
22   intent   and   the   work   that   this   operation   does   in   the  
23   community.   I   was   trying   to   explore   if   there   was   any  
24   way   to   address   that   issue   through   a   condition   which  
25   may   include   a   mechanism   for   timing   and   a   map   amendment

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1 and things such as that, but although that may be  
2 practical in the situation, that's just not legally  
3 realistic. So, I don't really see how that we can do  
4 that other than to recommend that they pursue  
5 addressing their situation through the Zoning  
6 Commission.

7 I also think it's important for the Board  
8 to consider that we try to make it clear that we  
9 cannot be a Board that is a fast track approval  
10 process. We have certain standards that we have to  
11 look at on each application and judge it accordingly,  
12 and that each individual project, if it does not meet  
13 the matter of right zoning, has to go to two different  
14 venues to get zoning relief. I don't think this is  
15 appropriate for this venue.

16 So, that is my position, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.  
18 Zaidain. Actually, that is very well said in terms of  
19 several issues. Let me take up first, you brought up  
20 practical versus legal. I think that's what I was  
21 really trying to capture, and you've done it well.  
22 That is, sometimes I think that it would be nice if we  
23 could just make the decisions based on what we want.

24 MR. ZAIDAIN: I agree.

25 CHAIRPERSON GRIFFIS: And the difficulty

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1 is that we are tied, and that's why we have an  
2 attorney that sits next to us all the time to make  
3 sure we don't make major mistakes.

4 MR. ZAIDAIN: We can make her be the bad  
5 guy, or bad person. Excuse me.

6 CHAIRPERSON GRIFFIS: Exactly. The other  
7 piece that you did mention is the time variance or the  
8 condition on the use variance based on time. I know  
9 we have explored that and what our jurisdiction and  
10 what our applicability legally could be to this  
11 particular application. Looking at that clearly,  
12 conditions and variances run with the land.

13 We would have to have found that for some  
14 extraordinary reason that the land delivered to us a  
15 specific and unique circumstance that tied it to time.

16 I can't even think of an example where that would  
17 actually happen, the time condition.

18 This particular case goes directly to the  
19 user, and again, I think we would enjoy being able to  
20 pursue that, but I have not come up with any  
21 substantive facts that would allow us to do that.

22 Mr. Etherly?

23 MR. ETHERLY: Thank you, Mr. Chair. What  
24 I'd be interested in having some discussion about with  
25 my colleagues is as you look at some of the additional

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1 submissions that came from the Applicant, in  
2 particular, Exhibit 47 and Exhibit 48, both of which  
3 speak at some length to fleshing out the issue of  
4 financial feasibility.

5 In particular, Exhibit No. 48 speaks to an  
6 appraisal that was done by Chaney & Associates, and  
7 that's noted at the next to the last paragraph in  
8 Exhibit 48. What I'm interested in kind of pursuing a  
9 little bit is I believe, I understand the concern  
10 about using financial hardship solely as the stool on  
11 which you base your argument under the peculiar and  
12 exceptional practical difficulties.

13 I find myself somewhat intrigued by the  
14 language that's cited in the appraisal, which speaks  
15 to some of the limitations that appear to be  
16 inherently part of the property at issue, the  
17 limitations that speak to the issue of financial  
18 feasibility.

19 You'll also note that there were comments  
20 from Catholic University also noted in Exhibit 48  
21 regarding the difficulties that would be involved in  
22 using the subject property as a dormitory building,  
23 which you could do under a special exception in the R-  
24 4 district.

25 So, I'm wondering whether or not that

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1 gives any of my colleagues any additional food for  
2 thought in terms of making this work under the  
3 peculiar and exceptional practical difficulty because  
4 I think you're assessment was spot on from the  
5 standpoint of the first prong, Mr. Chairman, which  
6 speaks to the uniqueness of the property because of  
7 exceptional narrowness, shallowness, et cetera.

8           You highlighted that there were continuing  
9 concerns with respect to the second and third prong,  
10 and I believe really from the Office of Planning  
11 standpoint, it's that second prong that creates the  
12 primary concern here. If I'm reading the Office of  
13 Planning report correctly, the intent purpose and  
14 integrity component of the variance relief continues  
15 to flow from their sense that there's not an undue  
16 hardship here.

17           CHAIRPERSON GRIFFIS: Correct.

18           MR. ETHERLY: Based on any physical  
19 constraints of the property. Basically what I'm  
20 getting at in a very long-winded way is does that  
21 additional information regarding their appraisal help  
22 fill in some of the gaps on that physical constraint  
23 issue.

24           CHAIRPERSON GRIFFIS: Well, I think it  
25 fills in some of the detail, but no, I don't think it

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1 fills in the test, and here's where I see it. As you  
2 brought up, the fact of the matter is it was built as  
3 a conforming use. It was dormitory. We haven't seen,  
4 and that's why I say, the use variance is the hardest  
5 task that we have before us. It hasn't been proven  
6 that it couldn't be converted to a number of  
7 residential units, allowable based on the site size in  
8 the R-4. Certainly there would be costs to that, but  
9 there are costs to any adaptation of this building.

10 Secondly, in looking at the highest and  
11 best use, although that's where I would go personally,  
12 and think that in fact, it makes common sense.  
13 Highest and best use for a site does not make the test  
14 for hardship if you're moving a use out of the zone  
15 district in which it is located.

16 So, one could say that, in fact -- well,  
17 there it is. The highest and best use for a  
18 residential townhouse in an R-4 may be for commercial  
19 office space, but that is not allowable, and that  
20 would not make for a hardship test.

21 MR. ETHERLY: So if you have some  
22 indication in the record that speaks to challenges  
23 that would confront an otherwise allowable use in that  
24 zone, that still doesn't necessarily get you where you  
25 need to be. So, it's basically putting it in English,

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1 it's not enough that there is an indication that a  
2 dormitory, the costs related to use of the site as a  
3 dormitory would be prohibitive based on some of the  
4 testimony or at least some of the record that we've  
5 gotten from a potential dormitory user. That still  
6 doesn't necessarily get us where we need to be in  
7 terms of satisfying that second prong, the use  
8 variance test.

9 CHAIRPERSON GRIFFIS: That's my thinking,  
10 yes.

11 MR. ETHERLY: Okay.

12 CHAIRPERSON GRIFFIS: Others?

13 MR. ZAIDAIN: Well, to respond to Mr.  
14 Etherly's statements, I mean, I think he brings up  
15 some definitely valid points, but I think it  
16 illustrates that the problem in terms of this proposed  
17 use, the problem is the current zoning. There is  
18 relief to accomplish this project, and that is to get  
19 a map amendment to almost bring the zoning in  
20 conformance with what they want to do, particularly in  
21 the fact that there is adjacent zoning that is  
22 compatible, and the Office of Planning supports that.

23 So, I think the points you bring up are  
24 definitely valid, but in a way, that almost proves the  
25 case even more than the zoning map needs to be

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1 adjusted for this project, and it doesn't really meet  
2 the use variance test. That's my take on it.

3 MR. ETHERLY: Well, Mr. Chair, I won't  
4 belabor the argument. I think I'm just in  
5 disagreement on this particular point, but I'd be  
6 prepared for us to move forward.

7 CHAIRPERSON GRIFFIS: Okay. Before we  
8 move forward, this is stepping out a little bit, but  
9 is the owner's representative here today? Is there an  
10 owner rep? Could you come to the table?

11 Good morning. If you wouldn't mind just  
12 introducing yourself for the record.

13 MR. RAY: My name is Todd Ray, and I'm  
14 with Studio 27 Architecture.

15 CHAIRPERSON GRIFFIS: Good. What I want  
16 to do here is first of all, make sure that you're  
17 fairly clear on reading the Board at this point. Do  
18 you think you have clarity?

19 MR. RAY: I understand your positions.

20 CHAIRPERSON GRIFFIS: Okay. In that case,  
21 what I'd like to do is give you an opportunity to put  
22 a motion before the Board if you are so inclined.

23 MR. RAY: From my interpretation of the  
24 current conversation that you're having, the dialogue,  
25 I would urge some reconsideration because I think that

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1 --

2 CHAIRPERSON GRIFFIS: Actually, let me be  
3 more direct then.

4 MR. RAY: Okay.

5 CHAIRPERSON GRIFFIS: What I don't want to  
6 do is have a reargument.

7 MR. RAY: Okay.

8 CHAIRPERSON GRIFFIS: But this is the  
9 situation. I guess I can be blunt. This Board, as  
10 we've said, it fully supports the program. I think  
11 this Board would fully support action before the  
12 Zoning Commission, and we would be perfectly prepared  
13 to do that up to the level that we are allowed.

14 MR. RAY: Okay.

15 CHAIRPERSON GRIFFIS: And so, what I'd  
16 like to put to you now is an opportunity to withdraw  
17 this application so that you are not facing a denial  
18 of an application before the Board of Zoning  
19 Adjustments and then moving to the Zoning Commission.  
20 It is food for thought. I don't know how the Board  
21 will vote; however, I've just heard some persuasive  
22 deliberation.

23 MR. RAY: I understand. Can you hold one  
24 moment?

25 CHAIRPERSON GRIFFIS: Absolutely. Take

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1 your time.

2 (Whereupon, the foregoing matter  
3 went off the record at 9:41 a.m.  
4 and went back on the record at  
5 9:45 a.m.)

6 CHAIRPERSON GRIFFIS: Let me interrupt  
7 you. By all means, there's no pressure in terms of  
8 time or anything like that, so give me an indication.  
9 What we can do is suspend our public meeting, give  
10 you an opportunity to discuss, and then we can recall  
11 this whenever you are willing.

12 MR. RAY: May I ask a small question?

13 CHAIRPERSON GRIFFIS: Of course.

14 MR. RAY: Would there be a letter of  
15 support that you would give to the zoning department?

16 CHAIRPERSON GRIFFIS: This Board?

17 MR. RAY: Yes.

18 CHAIRPERSON GRIFFIS: I think we're  
19 perfectly prepared to do that. I would hear  
20 objections to doing that.

21 MR. RAY: Our issue, just so that you  
22 know, is not the issue of going before the Zoning for  
23 a zoning change. Our issue is really purchasing the  
24 building.

25 CHAIRPERSON GRIFFIS: Right. No, and we

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1 fully understand that, and we understand the leasing  
2 and the timing and all that, and that, believe me, is  
3 what's caused us some long hours of thinking on this.

4 MR. RAY: I understand. We would like to  
5 withdraw.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much.

8 MR. RAY: Thank you.

9 CHAIRPERSON GRIFFIS: I will make a note.  
10 We will try and I think we can take the Board  
11 consensus that we would write a letter outlining what  
12 we have seen in this case and outlining the strong  
13 application that we believe there is for a map  
14 amendment before the Zoning Commission. I think I'd  
15 like to deliver that as quickly as possible. We can  
16 serve that on the Office of Planning.

17 I would also encourage you, I think you  
18 are talking to the Office of Planning, and to see how  
19 they can substantiate in the meantime what you need,  
20 in which case I say thank you for your patience and  
21 for coming before us. I regret that it has occurred  
22 with this outcome, but I think you are on a successful  
23 track and wish you great luck, and hope the timing  
24 works with that.

25 MR. RAY: Okay. We thank you for your

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1 consideration.

2 CHAIRPERSON GRIFFIS: Have a good day. Is  
3 there anything else staff has for us in the Special  
4 Public Meeting this morning?

5 MR. MOY: No, that's it, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Very well then.

7 (Whereupon, the above-referenced matter  
8 was concluded at 9:47 a.m.)

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