

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 15, 2003

+ + + + +

The Special Public Meeting 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:

| | |
|---------------------|--------------|
| GEOFFREY H. GRIFFIS | Chairperson |
| CURTIS ETHERLY, JR. | Board Member |
| DAVID A. ZAIDAIN | Board Member |

ZONING COMMISSION MEMBERS PRESENT:

| | |
|-----------------|--------------|
| CAROL J. MITTEN | Commissioner |
|-----------------|--------------|

BZA STAFF PRESENT:

| | |
|-----------------|------------------|
| BEVERLEY BAILEY | Office of Zoning |
| CLIFFORD MOY | Office of Zoning |
| JOHN NYARKU | Office of Zoning |

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, Esq.

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PAGE

1. Application No. 16987
of Pablo Martinez
1207 Clifton Street, N.W.
Square 2865, Lot 41 3

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

9:30 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen, pardon our delay this morning. We will catch up with the schedule, I am certain. With that, we're going to, first, we have a special public meeting, which is, of course, our deliberative session.

We will call that to order and then I will call the public hearing to order, which we have one case for the morning. Let me just, and actually let me skip introductions until I call the public hearing.

And I would ask if staff could call the first case for our meeting.

MR. MOY: Yes, good morning, Mr. Chairman, members of the Board. The first case for the special public meeting is Application No. 16987 of Pablo Martinez.

Pursuant to 11 DCMR 3104.1, for a special exception to allow a rear deck addition to an existing flat, two-family dwelling, under Section 223, not meeting the lot occupancy, Section 403, rear yard, Section 404, and court area, Section 406, requirement in the R-4 District at premises 1207

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1 Clifton Street, N.W., and that's in Square 2865, Lot
2 41.

3 Now, at the public hearing on March 11th,
4 2003, the Board received testimony on the case and
5 application and requested further information from
6 the Applicant and the party opponent.

7 The Board then requested, yes, then the
8 Applicant was requested to supply the following
9 information. One, written closing remarks, brief
10 history and reasons for the size and height of the
11 existing deck.

12 Provide clarification on the apparent
13 inconsistency of whether the front elevation of the
14 building is on the building restriction line relative
15 to the former front porch, which is shown on the
16 submitted survey plat and photographs of the
17 building.

18 The next two items were requested of both
19 the Applicant and the party opponent. And that is,
20 one, provide graphic representation and/or
21 photographs of the Applicant's and the neighbor's
22 rear property, including the buildings, the deck and
23 the rear yards.

24 And provide responses, if any, to the
25 Office of Planning's report which, apparently,

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1 neither the Applicant nor the party opponents have
2 received a copy of. Submissions from the Applicant,
3 addressing these questions, are in your case folders
4 under Exhibit 35.

5 The information from the party opponent
6 is from Mr. Robert Stofferson's submission is under
7 Exhibit 32. And both Mr. Larry Ewers and Mr. Robert
8 Stofferson addressed these questions and provided the
9 information, and that's combined under Exhibit 33.

10 In addition, Mr. Larry Ewers was to
11 provide a statement or explanation as to why the
12 ANC's report should not be granted great weight. And
13 that's in your case folder as Exhibit 34.

14 Finally, responses were received by both
15 the Applicant and party opponent. That's in your
16 case folders as Exhibit 38, and Exhibit 37,
17 respectively. In conclusion, there is a preliminary
18 matter here that Mr. Larry Ewers filed a motion for
19 continuance.

20 And that's dated April 8th, 2003, in
21 Exhibit 38. Mr. Ewers states in his motion that,
22 after moving for a continuance, he received notice
23 that his motion was denied, and in the alternative he
24 requests that the party opponent, Mr. Robert
25 Stofferson, be allowed to represent his interest at

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1 this special public meeting.

2 That concludes my briefing, Mr. Chairman.

3 CHAIRMAN GRIFFIS: Thank you, Mr. Moy.

4 Board members, let's take up all the issues. First
5 of all, we have the motion for continuance. I would
6 suggest that we not, or in fact deny the motion for
7 continuance.

8 This is a public meeting. We were not
9 anticipating, in fact it was directly stated in the
10 public hearing on this case that we would not have
11 additional testimony. Therefore, although it is
12 encouraged to be here to hear us, because after all
13 it's not so much fun to speak when you don't have an
14 audience.

15 However, there is no participation for
16 the participants, so there is no reason for us to
17 look for a continuance on that matter, based on the
18 fact of attendance. Unless any other Board members
19 disagree, and if I don't hear any notions of
20 opposition, I will take that as a consensus to deny
21 the motion for continuance so we can then go into the
22 other issues.

23 I want to address a few of the issues
24 before we get to the base substance of this
25 application. First of all, there was concern from

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1 the party's opponent about the ANC, and granting the
2 ANC great weight.

3 In our regulations, of course, it is laid
4 out what decides great weight for the ANCs. Based on
5 the fact that the party opponents were not aware of
6 the ANC meeting, and therefore did not participate in
7 that meeting, is not a basis for not granting great
8 weight.

9 And I think that needs to be stated
10 regarding this application. Therefore, if we have
11 found in the record that the ANC fulfilled our
12 requirements, then it would be afford a great weight.

13 There is nothing wrong with addressing
14 the issues that the ANC brought up, of which they
15 began to do. In addition, the Office of Planning's
16 report, the parties in opposition also addressed the
17 Office of Planning's addition, and that is proper
18 and, in fact, why we have public hearings, and it is
19 important for participation in those hearings

20 Now, as Mr. Moy has clearly and
21 articulately laid out, we are at a special exception
22 for this. There was some question at the public
23 hearing regarding the actual dimensions of the
24 structures and what was and was not calculated into
25 the lot occupancy.

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1 There is some differentiation of numbers
2 and calculations and think that's where we should
3 begin. Clearly with a special exception, of which
4 this has come to us, under Section 223, the lot
5 occupancy cannot be higher than 70 percent.

6 We have the latest submission by the
7 Applicant that is indicating that the total lot
8 occupancy reaches about 68.7 percent. If we go to
9 Exhibit A, in their submission, and just take that as
10 the plat and dimensions that we would look to, so
11 that we're all looking at the same thing for
12 calculation.

13 First of all, I don't, I don't calculate
14 the same numbers that the Applicant does, which lends
15 some concern to me. And let me summarize. If we
16 count, and there could be some discussion on this.

17 But if we count the front yard,
18 essentially the land area beyond the building
19 restriction line, going toward the total lot, which
20 would then go into the calculation of lot occupancy,
21 there is a dimension of 30 feet listed there.

22 If we calculate that, we do find that the
23 existing structure of 57, or rather, well, 57 feet
24 plus eight feet for the front porch, would give us
25 the lot occupancy of roughly 60 percent. Again,

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1 that's counting a front yard of 30 feet which has no
2 structure to it, essentially.

3 If we add the deck in back and, I should
4 also state that in calculating the structure, I am
5 calculating in the middle areaway, of which it's been
6 kind of bantered back and forth about court and such.

7 In my reading of it, first of all, the
8 five feet that appears on this plat, looks to be a
9 rounded number and in fact the dimensions that I've
10 seen previously in submissions is that it's less than
11 five feet.

12 That, then, would go to lot occupancy.
13 So, adding that into the lot occupancy, adding the
14 deck in, I'm coming up with about 79.6 percent lot
15 occupancy. That pushes it beyond the 70 percent,
16 which would allow it to come under special exception
17 under 223.

18 Those are my concerns. Therefore, if
19 there is concurrence with that, we essentially have
20 an application that is not properly before us and we
21 can deal with that situation. Comments. Ms. Mitten.

22 MS. MITTEN: Mr. Chairman, I agree with
23 you and I agree with your analysis of the lot
24 occupancy situation. And I would just note that, you
25 know, in relying on the Applicant's submission,

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1 typically when we have these plats, the survey plat
2 with the building drawn on, it's certified or stamped
3 by an architect, so that we can have some confidence
4 that a professional has drawn it.

5 And in this case, there is no such stamp.

6 So I think that there is, I think there's room for
7 doubt in such things as what you said, which is that
8 the five foot court measurement appears to be a
9 rounded number.

10 And I would agree with you that it is,
11 and that should be included in the measurement. And
12 so I guess I just wanted to add the fact that we
13 don't have a stamped plat.

14 CHAIRMAN GRIFFIS: Good. It brings up an
15 excellent point. Because, I mean, we have actually
16 different building footprints depending on which plat
17 we're looking at, none of which are, of course,
18 stamped.

19 So, again, that lends some substance to
20 one's difficulty in continuing this. I mean I think
21 the Board feels as a consensus that we don't like to
22 do this. It is better to get this cleared up.

23 But I think in the public hearing that's
24 exactly why we had the additional submissions
25 requested, and that was one of which was these plats.

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1 And I guess we weren't specific enough to what that
2 was in terms of requirements. Mr. Zaidain.

3 MR. ZAIDAIN: Well, just to provide some
4 clarification. This wasn't self-certified, so there
5 was a computation sheet --

6 CHAIRMAN GRIFFIS: Okay.

7 MR. ZAIDAIN: -- submitted in for the ZA,
8 and we may want to walk through, just --

9 CHAIRMAN GRIFFIS: Good.

10 MR. ZAIDAIN: -- to see what the
11 difference is, what we're looking at for lot
12 occupancy and what the ZA submitted. If I'm
13 understanding your correctly, it's because the ZA did
14 not take into account the front porch and then the
15 court area.

16 Which I have, not having the definition
17 in front of me, this court area does not count as a
18 court and used as a court.

19 MS. MITTEN: It's definitely a court.

20 MR. ZAIDAIN: It's definitely a court?
21 Okay.

22 MS. MITTEN: Yes. We've had a debate at
23 the Zoning Commission once about what was a court,
24 and this is definitely a court.

25 CHAIRMAN GRIFFIS: Let me see if my

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1 understanding is correct. And we don't really need
2 to walk into how we define it, based on the fact that
3 building area, which goes into the calculation for
4 percentage of lot occupancy, specifically laid down
5 the definition that areas that are less than a
6 dimension of which, that's five feet, count toward
7 lot occupancy.

8 So, no matter what, even if we count it
9 as a niche, then there it is.

10 MS. MITTEN: True. Correct, true. I
11 think, I don't know that Mr. Zaidain's question was
12 answered, but I just wanted to throw in another thing
13 and maybe then you can follow up on Mr. Zaidain.

14 Is that the most, probably the most
15 credible piece of evidence we have in terms of a plat
16 is the survey plat for the adjacent property that
17 certainly calls into question the plat that was
18 provided by the Applicant, and on which the DCRA
19 calculations were made.

20 Because it is showing that, even though
21 porch is measured at the same depth of 7.11 feet,
22 it's showing that the building restriction line
23 relative to that porch is, that the house is only set
24 back two feet from the building restriction line
25 instead of the full seven feet.

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1 And so that, I think that suggests that
2 the plat that we have from the Applicant is not
3 accurate. Because we have a survey plat with a
4 building depicted by a Surveyor that's been stamped
5 for the adjacent property.

6 And it shows, you know, all the, I mean
7 you can see from a photograph that the front of each
8 of these buildings is on the same line, wherever that
9 is. I'm looking at Exhibit Number 33, about halfway
10 back there is a survey for the adjacent property.

11 CHAIRMAN GRIFFIS: Okay.

12 MR. ZAIDAIN: Are you referring to this?

13 MS. MITTEN: Yes.

14 MR. ZAIDAIN: And on this plat, Lot 41,
15 is what we're looking at, correct?

16 MS. MITTEN: Yes.

17 MR. ZAIDAIN: I apologize, I was
18 shuffling through my file as you were speaking, so I
19 missed some of what you were saying. But, you're not
20 asserting that -- obviously this takes into account
21 and provides some clarification on the front porch
22 structure, but it doesn't seem to me that it clears
23 up the issue with the areaway, the court, of whether
24 or not it's less than five feet or not.

25 MS. MITTEN: That's true. There's no

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1 dimension given other than the, if you look at, I
2 mean the houses appear to be identical.

3 MR. ZAIDAIN: Umm hmm.

4 MS. MITTEN: The width of the lot is 18
5 feet. At the back of the dwelling there is a
6 dimension given of 13 and a half feet on the
7 dwelling, the adjacent dwelling.

8 MR. ZAIDAIN: For the adjacent dwelling,
9 right.

10 MS. MITTEN: So that suggests that it's
11 four and a half feet at the opening to the court.
12 Which, you know, it's debatable whether or not that's
13 identical on the other lot.

14 MR. ZAIDAIN: Right.

15 MS. MITTEN: But I guess my point was
16 what you can tell from this plat in that the front
17 yard is shallower than the plat that the Applicant
18 has submitted. And, you know, their calculations are
19 based on the fact that the entire area in front of
20 the building restriction line is unoccupied, when, in
21 fact, it isn't.

22 And you can also see that the dimension
23 on the dwelling appears to be, and the depth of the
24 dwelling itself is 59 and a half feet on the survey
25 plat relative to 57 feet on the drawing that we have

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1 from the Applicant.

2 So, you know, there are numerous
3 inconsistencies and the Applicant, you know, had
4 every opportunity to provide us with a more credible
5 document and they didn't do it.

6 CHAIRMAN GRIFFIS: Okay. And Mr.
7 Zaidain, to your point is going to the ZA's referral
8 and then the calculations that were done. I think it
9 does go to what Ms. Mitten is talking about as how
10 these dimensions were calculated.

11 I'll take one instance that gives me some
12 concern. Their calculation of lot occupancy, they
13 break out provided existing structures, 937 square
14 feet. And again, my quick calculations, based on the
15 plat provided, is 1,080.

16 So already we have a discrepancy in what
17 we're seeing and what, perhaps, the ZA was given to
18 calculate. Okay.

19 MR. ZAIDAIN: Well, obviously the
20 difference is a big one. I mean it's a difference
21 between whether or not this can go forward as a
22 special exception or a variance.

23 CHAIRMAN GRIFFIS: That's true.

24 MR. ZAIDAIN: And if, it seems to me, and
25 I'd like to hear some comments if I'm wrong that,

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1 that we have a pretty good indication that there,
2 well, we have an indication that there's some
3 inconsistencies.

4 We have a pretty good indication that it
5 is more than likely over 70 feet, but I'm just, I
6 think we want to be accurate. And I think it would
7 make, I think it would be helpful if we could get
8 something from the Applicant.

9 Either a statement saying we, you know,
10 we understand your point and, yeah, you are correct
11 that it is over 70 feet and this can proceed as a
12 variance. And then we can walk down that path.

13 Or, if they feel they can clarify the lot
14 occupancy by -- it seems to me the only way to do
15 that would be to get a survey. And then let them,
16 give them the opportunity to do that and clarify the
17 issue for us.

18 CHAIRMAN GRIFFIS: Well, I don't think we
19 need to wait for clarification of whether it's a
20 variance or not. I think we can pretty much note
21 that it is. Because, first of all, we're taking the
22 most liberal interpretation in allowing the front
23 yard out to the property line beyond the building
24 restriction line to be calculated within this.

25 If we just calculate within the building

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1 restriction line, I'd note any plat, it doesn't
2 matter what the dimension or the shape of the
3 structure is, I'm not sure how you calculate anything
4 less than 60 percent.

5 In fact, one's eye can tell you you can
6 take out a couple square feet of the front porch, at
7 the two feet five dimension, in front of the main
8 structure, and you may be able to take out a certain
9 percentage of the stairs in the back.

10 And the rest of it will count toward lot
11 occupancy, which I'd be shocked if that was anywhere
12 less than 90 percent.

13 MR. ZAIDAIN: So even if there was some
14 evidence given that the areaway was greater than five
15 feet, you feel like it would still be a variance?

16 CHAIRMAN GRIFFIS: Well, that's a good
17 point. I don't know that that would take it down to
18 70, but yeah.

19 MR. ZAIDAIN: Because, I mean, I can
20 understand everything in regards to the front porch
21 and the rest of what we're using in the calculation.
22 I think what's ambiguous is the areaway, the court.

23 CHAIRMAN GRIFFIS: Good, okay. Well, I
24 think there is clear consensus on the ambiguity of
25 what we're looking at. In which case, I don't feel

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1 or I'm not hearing from the Board that we can
2 actually decide this today.

3 So let's go to options of what we do.
4 First of all, we could leave this for the Applicant
5 to address the Board in writing in terms of re-
6 advertising based on their assumptions. Or we look
7 to another interpretation. Let me hear from others
8 if they have ideas.

9 MS. MITTEN: Well, Mr. Chairman, I
10 wouldn't, I, the only thing that I would want to rely
11 on in revisiting the calculations on the lot
12 occupancy is exactly what Mr. Zaidain suggested.

13 Which is that we get a survey plat and
14 that the Surveyor place the building on the site.

15 CHAIRMAN GRIFFIS: Right.

16 MS. MITTEN: And we have, we would have
17 the luxury in this case of him actually measuring the
18 deck, too. Because it is there already, so we can
19 know exactly what the end result will be.

20 CHAIRMAN GRIFFIS: Exactly.

21 MS. MITTEN: So that's the only thing
22 that I would find.

23 CHAIRMAN GRIFFIS: But once we receive
24 that, Mr. Zaidain is saying, well, if in fact it
25 comes in that we're looking at this thing correctly

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1 and it is still a special exception, then I would say
2 that we could move ahead with that.

3 If not, we're re-advertising it. So, to
4 be clear, we're looking at two essential steps. This
5 additional information that would be submitted, and
6 that would be the plat certified by a Surveyor, and
7 that will decide which direction this goes, if it
8 stays a special exception or it becomes a variance.

9 In which case, re-advertising will set
10 the schedule for this.

11 MS. MITTEN: I would say that we need to
12 fix a date and make it clear that the record is open
13 for one item and one item only.

14 CHAIRMAN GRIFFIS: Done. Ms. Bailey.

15 MS. BAILEY: Mr. Moy is handling this.
16 I'm sorry, Mr. Chairman.

17 CHAIRMAN GRIFFIS: Oh, I'm sorry, Mr.
18 Moy, indeed.

19 MR. MOY: No, that's fine. I yield to my
20 colleague. But depending on how swiftly the --

21 CHAIRMAN GRIFFIS: Let's set it for two
22 weeks. If an extension on that time is required, we
23 can accept that in writing, knowing that Surveyors
24 are often difficult to schedule and get out to
25 properties.

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1 But I would like to expedite and I'm sure
2 the Applicant wants to expedite. So let's set it for
3 two weeks due and we'll be open for extensions on
4 that.

5 MR. MOY: All right, that takes us May
6 6th, sir.

7 CHAIRMAN GRIFFIS: Excellent. Anything
8 else we need to do in regards to this? Anyone aware,
9 staff?

10 MR. MOY: No, thanks.

11 CHAIRMAN GRIFFIS: Very well, then let's
12 conclude the morning meeting.

13 (Whereupon, the foregoing matter was
14 concluded at 9:53 a.m.)

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