

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
SEPTEMBER 16, 2003

+ + + + +

APPLICATION NO. 17044
OF CLAUDIO AND LUCIA ROSAN

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The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W. , Washington, D.C. 20001 Pursuant to notice at 9:14 a.m. , Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS L. ETHERLY, JR.	Board Member
RUTHANNE G. MILLER	Board Member
JOHN G. PARSONS	Board Member
DAVID ZAIDAIN	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY G. HOOD	Commissioner
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OFFICE OF ZONING 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

(9:12 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I am going to call to order the 16 September '03 special public meeting of the Board of Zoning Adjustment of the District of Columbia.

I'm going to save all of my introductions and instructions until we call the public hearing at 9:30.

We have one case to decide, and then we will take a short break and get back down to start our public hearing at 9:30.

Mr. Moy, if you wouldn't mind introducing the case that is before us for decision at this time.

MR. MOY: Yes, sir.

Good morning, Mr. Chairman and members of the Board. This morning we have the case of Application No. 17044, Claudio and Lucia Rosan, pursuant to 11 DCMR 3103.2, for a variance from the use provisions under Section 350.4, to establish an inn/tourist home of 15 units in the R-5-D district at premises 2005 Columbia Road, N.W. That's in Square 2536, Lot 150.

On July 29th, 2003, the Board concluded

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1 testimony on the application and requested additional
2 information for its decision on September 16th, 2003.

3 The applicant submitted the post hearing
4 document on August 22nd, 2003, and that's in your
5 case folders as Exhibit No. 42.

6 The ANC-1C provided at the Board's
7 request resumes of your expert witnesses at the July
8 29, 2003 public hearing, and that's in your case
9 folders as Exhibit 48.

10 The Kalorama Citizens Association
11 submitted their requested information, and that's in
12 your case folders as Exhibit 43, as well as their
13 response to the applicant's submission, and that's in
14 your folders as Exhibit No. 44.

15 The applicant has submitted two
16 responses, primarily their response to a Kalorama
17 Citizens Association, and they're in your case
18 folders as Exhibit 45 and 47.

19 Finally, the ANC-1C, Kalorama Citizens
20 Association, and the condominium party have combined
21 to submit findings of fact and conclusions of law,
22 and that's in your case folders as Exhibit 46.

23 And that completes my briefing, Mr.
24 Chairman.

25 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

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1 (Whereupon, the foregoing matter went off
2 the record at 9:22 a.m. and went back on
3 the record at 9:23 a.m.)

4 CHAIRPERSON GRIFFIS: Okay. We're all
5 set? Very well.

6 We appreciate everyone's patience. There
7 must be something about this room or maybe it's just
8 our Board, but we start on time, and the room won't
9 allow us. But we just had some technical
10 difficulties with the recording. I think we're ready
11 to roll.

12 So as Mr. Moy has outlined, we are doing
13 a special public meeting in the decision on the Rosan
14 case, which is before us as a use variance. Use
15 variance, of course, is one of the highest, in fact,
16 it might be correct to say the highest threshold to
17 make for the variance. Clearly, you go through the
18 practical difficulties. We need to then be shown
19 hardship.

20 Hardship is an interesting point in the
21 use variance, and it goes to whether the property can
22 be used for any other purposes that would be matter
23 of right or under perhaps a lesser relief.

24 And then, of course, the last is that it
25 would not harm the public good or impair the intent

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1 and integrity of the zoning plan.

2 This had a lot of complications to it and
3 an awful lot of information, and I know full well
4 that the Board has taken an amazing amount of time
5 going through the details, creating our own
6 chronologies and cross-referencing all of the
7 information that has come in.

8 We have several parties in opposition to
9 this that have also given some excellent evidence and
10 testimony.

11 So what I'd like to do is briefly or
12 comprehensively deliberate on this this morning and
13 go through the test for the use variance as we look
14 at setting up the uniqueness for this. It is
15 difficult to find something to grasp onto that
16 creates the uniqueness out of this property. It's in
17 a row of townhouses similar. In fact, there's almost
18 a stereo townhouse directly adjacent to this.

19 There was testimony, in fact, from an
20 expert witness from the party in opposition that
21 spoke to the other houses on the block and square
22 being utilized as single family or residential matter
23 of right.

24 As we go to the hardship, again, the
25 threshold for that needs to be established that sets

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1 out how this could not be used for something that is
2 a matter of right, and, again, it is countered with
3 testimony that speaks to its viability with several
4 other uses, some very direct, and some maybe have to
5 be a little bit more creative.

6 Through the process it was advertised for
7 15 units, and I know we do have some submission from
8 the applicant that it's 12. Either number -- and I
9 know we took that under consideration -- either
10 number doesn't change the facts and on face what is
11 before us.

12 And, lastly, as we go to the not harming
13 the public good or the intent and integrity of the
14 zoning plan, I did not see substantial evidence from
15 the applicant addressing the issues that were brought
16 forward by the parties and persons in opposition, and
17 they are classic issues of traffic and trash removal
18 and noise.

19 I think that for myself in deliberating
20 on this, I could remove the history of this house, of
21 which it did not seem that it was run very well or
22 programmed very well and did create some adverse
23 conditions, and removing that from the deliberation
24 and projecting the best case scenario, I didn't find
25 substantial evidence, again, that addressed an awful

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1 lot of the issues, not to mention the fundamental
2 issue as the zoning and definitions have changed that
3 have precluded this size and use in this
4 neighborhood.

5 I do not see how if we got to the third
6 test we could look to and substantiate how it
7 wouldn't, in fact, impair our own regulations and, in
8 fact, the comprehensive plan.

9 But let me have others speak to those
10 issues and additional. Ms. Miller.

11 COMMISSIONER MILLER: Mr. Chairman, I
12 concur with your analysis with respect to the
13 variance test. I just wanted to highlight some of
14 the evidence in the record.

15 We had a lot of evidence from opposing
16 parties with respect to the fact that this property
17 could be used as provided under the regulations. It
18 could be converted to a residential home. OP and ANC
19 witnesses testified to that. It could used as a six
20 suite bed and breakfast, according to OP. It could
21 be used as a rooming house, and in fact, it got a C
22 of O for a rooming house.

23 And there wasn't evidence presented by
24 the applicants really to the contrary, that they
25 couldn't use it for those purposes.

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1 Also, with respect to the substantial
2 harm, it's in the 5-D residential district, and OP
3 has stated that the comprehensive plan seeks to
4 protect this district from nonresidential uses and
5 that the inns are first permitting within zoning
6 regs. within the special purpose district or buffer
7 area. Its introduction or use within a residential
8 area is inappropriate, and there really wasn't any
9 evidence contrary to that, as well.

10 We're required under our regulations and
11 the statute to give OP great weight and ANC great
12 weight, and the ANC did comport with the requirements
13 of 11 DCMR 3115, both of which opposed the variance.

14 There was much discussion at the hearing
15 about grandfathering, but the question of
16 grandfathering in no way bears on the variance
17 analysis or at least the case wasn't made that that
18 was a factor to persuade us with respect to any of
19 the variance tests.

20 So, therefore, I don't think we need to
21 reach the merits of the grandfathering argument in
22 this proceeding.

23 I think I'll leave it at that for now.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much.

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1 You do bring up the grandfathering point,
2 and I think we can say -- I know I am -- sympathetic
3 to the situation that's happened in terms of the
4 purchase of this and the intention, and just to
5 clarify, of course, although it was testified by the
6 applicant that they bought this property to create
7 this inn.

8 That's not what we can hold for the test
9 of whether it can be used or not used. It is the
10 general and more global issue of use.

11 Mr. Parsons, did you have additional?

12 COMMISSIONER PARSONS: Not much. That
13 is, I think I concur with both of you, and I think we
14 were all -- well, at least I was -- disappointed that
15 the post hearing submissions and the additional
16 research that the Rosans did didn't bring forward any
17 additional information to assist them in their case.

18 So if it's appropriate, I would move we
19 deny the application.

20 CHAIRPERSON GRIFFIS: So moved. Is there
21 a second?

22 COMMISSIONER MILLER: Second.

23 CHAIRPERSON GRIFFIS: The motion before
24 us to deny the variance for the use provisions under
25 Section 350.4, to establish the inn/tourist home

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1 advertised as 15 units in the R-5-D district at 2005
2 Columbia Road, N.W. It has been seconded.

3 Further discussion?

4 One last comment. In terms of the
5 hearing, there was the notion of evidencing the tax
6 records and business licenses and then the
7 certificate of occupancy. I think it should be
8 clarified. In my deliberation there is a difference
9 between what we look at in terms of zoning issues and
10 obviously zoning regs. of which we need to look to in
11 our decision making and the difference between the
12 tax, business license, or other agencies that would
13 have given, let us say, permission or licensing or
14 put a tax rate on it, my point being if this was
15 taxed as a 110-story skyscraper, it doesn't make it
16 legal in the zoning, although it probably would be
17 nice somewhere in the city, but legal in the zoning
18 for that.

19 COMMISSIONER PARSONS: Now, wait a
20 minute. A 110-story building? If you want to go off
21 in that direction, I'll be glad to debate that with
22 you.

23 CHAIRPERSON GRIFFIS: Indeed. But I
24 think the point is clear even though perhaps a
25 ridiculous example used.

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1 But so with that, are there any other
2 last comments, conclusions?

3 I think that there is a way to look at
4 the use of this property within matter of right and
5 the zoning. I don't think that this is a devastating
6 case of a total loss, and I would certainly hope that
7 those involved would agree to that and look to what
8 might be viably used and utilized in this property.

9 If there's nothing further then, I would
10 ask for all those in favor of the motion to deny
11 indicate by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GRIFFIS: And opposed?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Mr. Moy, if you
16 would not mind recording the vote.

17 MR. MOY: Yes, sir. The staff would
18 record the vote as three, zero to two, on the motion
19 of Mr. Parsons, seconded by Ms. Miller, and Mr.
20 Griffis, the Chair, to deny the application.

21 CHAIRPERSON GRIFFIS: Good. Is there
22 anything else for us in the special public meeting
23 this morning?

24 MR. MOY: No, sir.

25 CHAIRPERSON GRIFFIS: Very well. This

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1 concludes the special public meeting.

2 We're just going to take five minutes to
3 let the case presentation set up and get ready, and
4 then I'll call the public hearing.

5 (Whereupon, at 9:32 a.m., the special
6 public meeting was concluded.)

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