

GOVERNMENT OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING AND ADJUSTMENT

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SPECIAL PUBLIC MEETING

TUESDAY

March 23, 2004

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The Special Public Meeting was convened in Room 200 South, 441 4th Street, N.W. Washington, D.C. 20001, pursuant to notice at 9:53 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
JOHN A MANN II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary, BZA
BEVERLY BAILEY	Zoning Specialist

OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.

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Page No.

Preliminary Matters3

Board Action: Application Nr. 17099 of The Most
Worshipful Prince Hall Grand Lodge.5

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

9:53 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I do appreciate your patience and let me call to order the special public meeting of the Board of Zoning Adjustment in the District of Columbia. This is the 23rd of March, 2004. My name is Geoff Griffis. I am chairperson. Joining me today is the vice chair, Ms. Miller and representing the National Capital Planning Commission is Mr. Mann.

Copies of today's hearing agenda are available to you for our meeting. I'm going to dispense with all of my introductions for the meeting and incorporate them and go into the public hearing. So I think we're prepared to move ahead and call the first case for the morning for our public meeting.

I will just mention one thing quickly. I'd ask everybody to turn off cell phones and beepers and I will be more explicit as I open up the public hearing.

And a good morning to you, Mr. Moy, if you would not mind.

MR. MOY: Good morning, Mr. Chairman, members of the Board.

Now this morning we have for the special

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1 public meeting, Application Nr. 17099 of The Most
2 Worshipful Prince Hall Grand Lodge, pursuant to 11
3 DCMR 3104.1, for a special exception to permit open
4 accessory parking spaces under subsection 2116.5 in an
5 R-4 District at premises 1902-1906 Vermont Avenue,
6 N.W., Square 333, Lots 824, 825 and 827.

7 On March 16th, 2004, the Board completed
8 testimony on the application and scheduled its
9 decision on March 23rd, 2004. At that time, the Board
10 also amended the application to withdraw lots 824 and
11 825 as part of the application. The Board requested
12 that the application submit a proposed draft order for
13 review which would include language referencing the
14 development and interim usage agreement. The deadline
15 for submission was March 19, 2004.

16 The applicant did submit the requested
17 post-hearing document and that is Exhibit 39. Also
18 yesterday, March 22nd, the office received a revised
19 draft order from the Westminster Neighborhood
20 Association and that's in your case folder as Exhibit
21 40. Finally, the office also received this morning,
22 March 23rd, a revised usage agreement and I believe
23 that's also in your case folder.

24 The only staff reminder is that at the
25 hearing on March 16th the Board made a motion which

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1 was tabled and that completes the staff briefing, Mr.
2 Chairman.

3 CHAIRPERSON GRIFFIS: Thank you very much,
4 Mr. Moy. Let me first bring to the Board's attention,
5 and I know we've spent quite a bit of time on this,
6 looking at all the submissions we will be accepting,
7 unless there's any opposition from the Board, the
8 submissions that came in this morning, and we'll
9 incorporate that in our decision making. I would at
10 this time, in order to expedite the situation, move to
11 amend the application. The amended application would
12 bring 17099, The Most Worshipful Prince Hall Grand
13 Lodge, before us for a special exception as enumerated
14 by Mr. Moy under 2116 and would add a variance from
15 Section 214, and that would in fact include the aspect
16 of the separation from the alley and the distance from
17 the use. And I believe the Board is well aware of the
18 specifics of that nature and I would ask for a second.

19 VICE CHAIRPERSON MILLER: Second.

20 CHAIRPERSON GRIFFIS: Thank you very much.
21 The pertinent part is 214.3, of course, which is the
22 distance requirement from the user to the accessory
23 parking lot. I think it had taken the Board some
24 time. I know we talked about it briefly in the
25 hearing and the brief discussion about whether it

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1 should be appropriately under 214 or not. It
2 situations like these that have become most difficult
3 for the Board, I believe, because of the ambiguity of
4 the zoning regulations themselves. Certainly we're
5 charged with looking at the regulations and making
6 sure that the test for relief from those regulations
7 are met.

8 What becomes more problematic are the
9 times when the regulations don't really tell us what
10 relief is to be requested and therefore how are we
11 even to begin the discussion of how do we grant the
12 relief from those. Actually, I should step back and
13 say this is not the first time that we've run into
14 this endeavor and I think this one really brings it
15 back to the forefront of my thinking and we will
16 follow up from this Board a request that the Zoning
17 Commission look at 2116.214 and also 331 to see how
18 they all interact, how they relate so that there is
19 clarity for any applicant coming in and therefore
20 requesting the specific and appropriate relief.

21 That being said, let me ask if there's any
22 other deliberation on the amending of the application
23 and the relief required. If there is none, then I
24 would ask for all those in favor of the motion to
25 signify by saying aye. Aye.

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1 VICE CHAIRPERSON MILLER: Aye.

2 MEMBER MANN: Aye.

3 CHAIRPERSON GRIFFIS: And opposed?

4 Abstaining?

5 MR. MOY: The staff would record the vote
6 to amend the application as 3-0-0 on the motion of the
7 chairman, Mr. Griffis, seconded by Ms. Miller. Also
8 in favor of the motion Mr. Mann. The staff also has
9 received absentee votes from Mr. Parsons, Mr. Etherly,
10 both supporting the motion. So that gives a final
11 vote as 5-0-0.

12 CHAIRPERSON GRIFFIS: Thank you very much,
13 Mr. Moy. Let's move ahead then to the merits of the
14 case we have before us and that is for the variance
15 from the 200-foot distance requirement and also the
16 separation from the alley, and then of course the
17 special exception to permit the open accessory parking
18 spaces.

19 The critical piece of this as we look at
20 them, and I think some of the aspects have loaned some
21 confusion is accessory parking and how that is
22 regulated in Title 11. I think what we have before us
23 is fairly clear. We have what might be bantered
24 around as an accessory parking. The important aspect
25 to that is that, for this lot that we're looking at,

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1 it's a principal use. The principal use is that of
2 accessory parking. That is fundamentally why it comes
3 under 214 and not specifically just under other
4 provisions in the regulations. Also of clarify in the
5 application and quite frankly I'm going to rely a lot
6 on what's in the record and not enumerate all the
7 specifics as we go through this. But there is no
8 required parking, which lends itself to some unique
9 aspects to this application. But as we're looking at
10 it again, we're looking at a principal use on the
11 property that is before us for relief from 214 and the
12 special exception.

13 I think it's appropriate to go straight
14 into a motion and then deliberate on the motion and
15 the merits of the application and what we rely on and
16 therefore I would then move for approval of
17 Application, which was right in front of me two
18 seconds ago, 17099 for The Most Worshipful Prince Hall
19 Grand Lodge and that would be pursuant to 11 DCMR
20 3104.1 for the special exception to permit the open
21 accessory parking spaces under Section 2116.5 and also
22 as amended for a variance in accordance with Section
23 214. This is in an R-4 District and is at the
24 premises as noted in the application on Vermont
25 Avenue, Square 333, Lot 827. And I'd ask for a

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1 second.

2 VICE CHAIRPERSON MILLER: Second.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 I believe the Board is very up-to-speed on all the
5 specifics, as we are on all our applications, but this
6 one in particular, looking at all the differing
7 aspects of it.

8 First of all, this has a long zoning
9 history and continued use as a surface parking lot.
10 It was recently before us with parties in great
11 opposition to it not meeting the tests that were put
12 before us. What's unique about the application as
13 it's formed in this aspect is the fact that the
14 parties are no longer in opposition but are standing,
15 one might say, in concern for the continued use of
16 this. It really goes to speak to the detrimental
17 impact. I think the parties are now coming together
18 and I think all involved should be applauded at
19 putting together the agreement they have. But,
20 specifically for us, the important is that the
21 community has come together to see a situation that
22 would remedy what had caused a great opposition in the
23 past.

24 I know the Board looks very seriously at
25 any sort of community agreements and there's a long

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1 litany of cases before us that deal with those types
2 of aspects. In this particular case, I think it has
3 an incredibly important community agreement that was
4 crafted in order for all those involved to see a
5 positive outcome and the fruition of the future use of
6 the site. I'm reminded of a previous application that
7 is somewhat analogous to this and that is to the
8 Museum on Pennsylvania Avenue of which came for relief
9 in order to provide a surface parking lot on
10 Pennsylvania Avenue and I think the Board could easily
11 see how awful that would be if it was a permanent
12 situation and what we did note in the findings and
13 also in our deliberation that it was in fact a
14 temporary situation. We have that in this case also.
15 One relying on the previous zoning history with this,
16 but also relying on the specifics and uniqueness of
17 this case, the fact that this is somewhat not defined
18 in our regulations, but it is a temporary principal
19 use on this lot. And I think the rest is sufficiently
20 laid out for my purposes in the regulations, but I
21 think it's important to note the fact that we looked
22 at this not coming under 331, which does permit
23 accessory parking as an accessory use, but rather
24 coming under 214 as accessory parking as a principal
25 use. Ms. Miller?

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1 VICE CHAIRPERSON MILLER: just want to add
2 about our amending the application to include the
3 variance under 214 and the way I see it is that we
4 need to look at this parking lot from different
5 directions. One is from the direction of the parking
6 lot itself, how is that authorized to be used and that
7 is if we've concluded the principal use is a parking
8 lot and that needs a variance because it's further
9 away than 200 yards, whatever that distance is.

10 CHAIRPERSON GRIFFIS: Feet.

11 VICE CHAIRPERSON MILLER: Feet? Okay.
12 Then the other aspect is how the Lodge intends to
13 provide parking and we find that that falls under 2116
14 because it needs accessory parking for the Lodge. So
15 that's how we got to adding 214.

16 CHAIRPERSON GRIFFIS: Excellent points.
17 Others? Anything further on this?

18 (Whereupon, at 10:06 a.m. off the record
19 until 10:07 a.m.)

20 CHAIRPERSON GRIFFIS: Okay. Yes, I think
21 we've addressed and can sufficiently rely on the
22 record for the test. I would ask in the motion -- I
23 perhaps was a little bit quick in putting the motion
24 together. The motion should have anticipated
25 conditions and what we had asked is the submission

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1 from the parties in the case to provide proposed
2 conditions and I think it would be appropriate to go
3 through those as those they will be attached to the
4 motion for our deliberation.

5 I think, first of all, that the motion
6 should incorporate a condition that provide a three-
7 year duration for this approval. I'll note that the
8 application was amended to incorporate 827. Of course
9 the other adjacent lots are going to be used for
10 landscaping, but we are looking at lot 827 and it is
11 providing 20 parking spaces. I think it's probably
12 best if we look to the proposed conditions of the
13 Office of Planning first and find those that are not
14 redundant or those that we want to add or not, or
15 subtract. And then move to what I would propose is
16 Condition 2 which enumerates the conditions, most of
17 which are adopted from the agreement that has been
18 struck between the applicant and the community, but
19 would fall within the Board's jurisdiction.

20 Yes, Ms. Miller?

21 VICE CHAIRPERSON MILLER: I just wonder if
22 we could just back up a minute and reflect that we
23 were given this proposed summary order with some
24 introductory language and then specific conditions,
25 some of which the parties agreed to and some of which

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1 they didn't, but most of which they did. And in the
2 introductory language they suggest that we incorporate
3 it as the proposed agreement that the parties have
4 come to as part of our order and I would suggest that
5 we reference it as an exhibit and pick out and just
6 attach specific conditions. I think that what you're
7 referring to is we were given two alternatives for
8 number two. One is suggesting that we include all the
9 conditions in the usage agreement that we find are
10 within our jurisdiction. And the other alternative is
11 to specifically adopt specific conditions that are in
12 that agreement also. And I think that's the direction
13 you're going. We're looking at those specifics and
14 deciding which ones to include in our order.

15 CHAIRPERSON GRIFFIS: That's right.

16 VICE CHAIRPERSON MILLER: Okay.

17 CHAIRPERSON GRIFFIS: In your first point
18 though, in terms of the preliminary matters listed, as
19 anticipated as a summary order, it does enumerate the
20 fact that the agreement which was dated March 10th,
21 which may be revised, entered into by the applicant,
22 the ANC and the Westminster Neighborhood Association
23 and included in the record as an exhibit and it will
24 be given the official exhibit number in the record.
25 I think that suffices for noting that the agreement

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1 exists.

2 VICE CHAIRPERSON MILLER: Right. And I
3 think it also has some language in there that I would
4 agree with that says that this agreement is really a
5 basic grounds for our finding that there's no adverse
6 impact under the zoning regulations and map and to the
7 neighborhood, that this reflects a temporary use of
8 the property for accessory parking and it goes towards
9 a very positive solution in this case.

10 CHAIRPERSON GRIFFIS: Okay. Well, do you
11 want to take up the conditions then?

12 VICE CHAIRPERSON MILLER: Yes. Okay. I'm
13 ready to take up the specifics.

14 CHAIRPERSON GRIFFIS: But you turned your
15 microphone off.

16 VICE CHAIRPERSON MILLER: All right. To
17 continue, I think that most of them I would go along
18 with. They address maintenance. There's maintenance
19 use, security and traffic and I think we should look
20 and see where OP's recommended conditions might be
21 redundant.

22 CHAIRPERSON GRIFFIS: Okay. Very well.
23 And then as submitted, it is Condition 2, we can
24 maintain it as Condition 2. Condition 1 is approved,
25 "Shall be a period of three years."

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1 VICE CHAIRPERSON MILLER: Right.

2 CHAIRPERSON GRIFFIS: Condition 2 goes to
3 the use restrictions and I see that those are all
4 appropriate. (b) is the landscaping. (c) is the
5 maintenance. (d) is the security and traffic control.
6 A lot of these are also redundant of our own
7 regulations which would have to be provided, so being
8 redundant in conditions may not be a bad thing in this
9 particular situation.

10 Going back then to cross reference the
11 Office of Planning's conditions, (c) would not be
12 needed, "The parking lot shall be used by the tenant
13 as it is enumerated in the use restrictions."

14 VICE CHAIRPERSON MILLER: Right.

15 CHAIRPERSON GRIFFIS: "Applicant
16 implanting landscape plan as attached." (d) is OP's
17 condition. We would also not need to incorporate that
18 as it's incorporated in condition 2(b). (e),
19 "Landscaping maintained and healthy" is also in
20 condition 2B. (f), in terms of the lighting, again is
21 addressed somewhere, because I know I read it in the
22 Condition 2. And Condition (e), or rather (f), goes
23 to "Any lighting used to illuminate the parking lot or
24 its accessory building shall be so arranged to direct
25 all rays in such lighting confined to the surface of

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1 the parking lot." That will be difficult to read in
2 the transcript as I've mumbled it.

3 But the point being if that is in fact a
4 requirement of the regulations for providing the
5 parking and so I do believe that the only condition in
6 the Office of Planning needed to be incorporated is
7 the three years and then taking Condition 2(a), (b),
8 (c) and (d) would be appropriate. Others?

9 VICE CHAIRPERSON MILLER: I just would
10 say, if we can't find (f), I have no problem keeping
11 that one in with respect to the lighting.

12 CHAIRPERSON GRIFFIS: Condition 3, or
13 rather 2D(i), "All illumination of parking lots shall
14 be so configured to confine direct rays exclusively to
15 the Vermont Avenue property."

16 VICE CHAIRPERSON MILLER: Thank you.
17 Okay.

18 CHAIRPERSON GRIFFIS: I note that 3
19 addresses the horn honking. I'm not sure that's a
20 specific zoning regulation term, but anything else?
21 Questions? Clarifications? Further deliberation?

22 The motion before us has been seconded for
23 the approval of this application with conditions.
24 Clarifications? Any? Very well. Then I ask for all
25 those in favor of the motion to signify by saying aye.

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1 Aye.

2 VICE CHAIRPERSON MILLER: Aye.

3 MEMBER MANN: Aye.

4 CHAIRPERSON GRIFFIS: And opposed?

5 Abstaining?

6 MR. MOY: Staff would record the vote to
7 approve the application as amended on the motion of
8 the chairman, Mr. Griffis, seconded by Ms. Miller, 3-
9 0-0. We have two absentee votes from Mr. Parsons and
10 Mr. Etherly voting in favor of the application and
11 that would give the final vote as 5-0-0.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much, Mr. Moy. Is there anything else for
14 the Board's attention in the Special Public Meeting
15 this morning?

16 MR. MOY: No, sir.

17 CHAIRPERSON GRIFFIS: Very well. Then I
18 would adjourn this Special Public Meeting.

19 (Whereupon, the hearing was concluded at
20 10:15 a.m.)

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