

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

- - -

WEDNESDAY

JUNE 24, 1998

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The Board of Zoning Adjustment met in Hearing Room 220 South, 441 4th Street, N.W., Washington, D.C., at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT:

SHEILA CROSS REID, Chairperson

BETTY KING, Vice Chair

STAFF PRESENT:

SHERI PRUITT-WILLIAMS

TRACEY WITTEN ROSE

PAUL HART

APPEARANCES :

ON BEHALF OF THE APPLICANT, CAPITOL HILL L.L.C.

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ON BEHALF OF THE OPPOSITION IN CASE 1621

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1 MR. WELLS: Oh, I'm sorry. I'm at 311
2 4th Street, S.E.

3 MS. NEEDLE: Good morning. I'm Barbara
4 Wachter Needle with the law firm of Robbins, Kaplan
5 in here for Richard Nettler, and we are representing
6 those in opposition.

7 MR. SCHAUER: Lyle Schauer. I requested
8 party status. I'm the Zoning Chair of the Capitol
9 Hill Restoration Society. I reside at 1107
10 Independence Avenue, S.E.

11 MS. NEEDLE: Good morning. We are here
12 requesting a continuance this morning. Richard
13 Nettler, who is counsel on this matter, was called
14 out of the country for an emergency. His son became
15 very ill, and that is why we are requesting a
16 continuance on this matter.

17 We have discussed the matter with
18 opposing counsel. They are agreeable to this,
19 provided that we can get another hearing date by
20 September, if that's possible, and we'd like to --

21 MS. KING: Now there is some question
22 about Ms. Giordano not having included one lot in
23 her submission. Is that correct?

24 MS. GIORDANO: I think that issue was
25 raised by the Capitol Hill Restoration Society., and
26 in view of that issue -- We don't think that it

1 needs to be raised. The lot is currently being used
2 to access -- It's a paved lot. It's being used to
3 access the parking on the subject site, but given
4 the fact that we are going to be having a
5 postponement anyway, we would go back and include
6 that and ask for a special exception formally on
7 that lot.

8 We'd be happy to do that, and expand. I
9 think that we already noticed everybody within 200
10 feet of that lot as well, but we would expand the
11 property owners list accordingly. We're not opposed
12 to that.

13 CHAIRMAN REID: Mr. Schauer?

14 MR. SCHAUER: That was my --

15 CHAIRMAN REID: Into the mike.

16 MR. SCHAUER: -- preliminary motion.
17 Ms. King, that was my preliminary motion, and Madam
18 Chairperson, we would have no objection to the plan
19 of Ms. Giordano, as just outlined.

20 MS. KING: Could you -- Wait a minute
21 until the siren passes.

22 MR. SCHAUER: We would have no objection
23 to Ms. Giordano's plan; that is, not to hear the
24 preliminary motion this morning and, in fact, it may
25 be unnecessary when this board next convenes. Thank
26 you.

1 CHAIRMAN REID: Thank you very much.
2 Obviously, this morning it's a situation wherein
3 everyone, it seems, needs more time. So it's a
4 given that we're going to have to reschedule, and we
5 will readvertise, and Ms. Williams will be able to
6 tell us the next available date.

7 MS. PRUITT-WILLIAMS: The next available
8 date is October 21st.

9 CHAIRMAN REID: Remember, this was a
10 special hearing date that we came up with to
11 accommodate you, and apparently the calendar for --
12 In August, as you know, we're in recess, and in
13 September it is full.

14 MS. PRUITT-WILLIAMS: The hearing dates
15 are full up until then. That's the first available
16 slot. We've had quite a few postponements,
17 continuances, and just the number of cases that have
18 come in the office. You know, as they come in, we
19 send them out.

20 CHAIRMAN REID: That's October what?

21 MS. PRUITT-WILLIAMS: Twenty-second.
22 I'm sorry, twenty-first.

23 CHAIRMAN REID: Twenty-first of October
24 is the earliest date that we can reschedule it for.

25 MS. GIORDANO: There is no possibility
26 of another special hearing date in September?

1 MS. KING: I think we already have a
2 special hearing date in September established, don't
3 we? Or do we?

4 MS. PRUITT-WILLIAMS: No, not in
5 September.

6 CHAIRMAN REID: Special, as in
7 September. Obviously --

8 MS. KING: Can we do that for them? I
9 mean --

10 MS. PRUITT-WILLIAMS: That's up to the
11 Board's discretion. Right now in September you have
12 hearing dates on the 9th and 23rd. I will remind
13 you that Labor Day falls on the 7th, so that -- I
14 mean, so you can make sure that you can accommodate.

15 CHAIRMAN REID: The 9th and the 23rd?

16 MS. PRUITT-WILLIAMS: Right.

17 CHAIRMAN REID: What other dates --
18 Well, let's do a third date, if possible.

19 MS. PRUITT-WILLIAMS: The first
20 available one would be Wednesday, the 2nd, the
21 weekend before Labor Day, then the weekend after --
22 I mean, the Wednesday after Labor Day is already a
23 scheduled hearing date. Then on the 16th, that's
24 available, and the 30th is Yom Kippur. So I would
25 suggest that you not schedule anything on that date.

26 CHAIRMAN REID: Holiday. Okay, well,

1 let's -

2 MS. KING: Clearly, this is -- You know,
3 we really infinitely prefer -- I'm sure the Chair
4 will agree with me; I know she will, because we've
5 discussed it -- that in controversial issues like
6 this that the parties get together and work out some
7 kind of a deal.

8 Is there even the remotest possibility
9 that that might happen?

10 MS. GIORDANO: I could just speak on
11 behalf of the applicant that we have tried. In
12 fact, we've indicated that we would be willing to
13 meet, and we have -- The reason we considered using
14 Lot 826 for additional access was because that issue
15 was raised, and somebody from the community asked if
16 we could use that lot for access.

17 Then we were before the Historic
18 Preservation Review Board a few weeks ago, and Mr.
19 Nettler's clients and the Capitol Hill Restoration
20 Society asked if we could flip the project so that
21 the building was on the opposite side that it was
22 and the parking on the other side, and we in our
23 prehearing submission made that change.

24 So we have tried to respond to all the
25 issues, but I think it's probably fair to say that
26 the opposition position is that they don't want this

1 use there, no matter how it's configured, no matter
2 what kinds of, you know, restrictions we put on it
3 to make it as palatable as possible.

4 MS. KING: I suggest, Madam Chairwoman,
5 that we have a special, because if there isn't a
6 deal cut, we're going to have a long hearing. I
7 suggest that we use the 16th and just have a day for
8 the Capitol Hill community.

9 MS. PRUITT-WILLIAMS: If you believe
10 it's going to be a long hearing, I would concur.
11 You have on September 9th a meeting and a hearing
12 date. So you have a shorter agenda in the afternoon
13 -- I mean, you have an agenda in the afternoon on
14 the 9th of September.

15 MS. KING: It's shorter?

16 MS. PRUITT-WILLIAMS: Well, you have an
17 afternoon session only.

18 MS. KING: Okay then, perhaps we can do
19 it on that day.

20 MS. PRUITT-WILLIAMS: However, you
21 already have four cases there.

22 MS. KING: But how many --

23 CHAIRMAN REID: But the morning is free?

24 MS. PRUITT-WILLIAMS: The morning is a
25 meeting.

26 MS. KING: Yes, but the meeting is going

1 to be very short, because Sheila and I are going to
2 be -- the Chairwoman and I are going to be the only
3 old members.

4 MS. PRUITT-WILLIAMS: Hopefully not.

5 MS. KING: No, but I mean -- You see
6 what I'm saying? I mean --

7 CHAIRMAN REID: Let me ask this, Ms.
8 King. Do you have any idea how long your case is
9 probably going to take.

10 MR. WELLS: We would prefer the 16th, to
11 be sure -- because this has a substantial amount of
12 community concern, to give everyone an opportunity
13 to be sure to be here. The later in September is a
14 better date, generally, because there's a holiday.

15 MS. KING: I understand that. That's
16 understandable, but I -- You know, we've read a lot
17 about this case.

18 CHAIRMAN REID: We're very clear on the
19 position of everyone in the community who has
20 submitted material to us. We're very clear on the
21 position of Papa John and on the opposition. We've
22 had ample time to read the voluminous amount of
23 material that's come in.

24 So with that, I don't think that it
25 would be necessary to come in and each person
26 reiterate -- Basically, it's the same thing. It's

1 the adverse impact, and we're very much aware, and
2 of the randomness at which the adverse impact is
3 being utilized as a basis for opposing this case.

4 So we're very clear on that. I don't
5 think that it's necessary for it to take a huge
6 amount of time. I think that we can probably listen
7 to the concerns and move it along pretty quickly.

8 By the same token, we're very clear on
9 the position of the applicant. We've read the
10 materials. We have all the submissions, and it
11 would be a matter of them basically hitting the
12 ceiling and point on the record on that day.

13 MR. WELLS: Excuse me, Ms. Chair. We
14 were just weighing in with a preference. That's
15 all.

16 CHAIRMAN REID: Yes. I don't think that
17 -- How long do you think, Ms. Giordano, you'll need?

18 MS. GIORDANO: One hour.

19 CHAIRMAN REID: An hour? All right. So
20 we're looking at about an hour each side, and give
21 some budge time.

22 MS. GIORDANO: And that's maximum.

23 CHAIRMAN REID: The morning of the 9th?

24 MS. PRUITT-WILLIAMS: I would then, if
25 you do that, suggest you start your public hearing a
26 little earlier.

1 CHAIRMAN REID: Okay. Start the public
2 meeting at nine.

3 MS. PRUITT-WILLIAMS: It hasn't been
4 advertised. So we could do that.

5 MS. ROSE: There's no way to predict
6 what wills be on the agenda September 9th, because
7 we're getting a lot of exceptions cases, civil
8 infractions, that type of thing. Given that we
9 don't have an agenda already prepared, we can't
10 really estimate how much time it will take, but I
11 would just caution you in that regard.

12 MS. NEEDLE: Excuse me, madam
13 Chairperson. We would like to not be limited to an
14 hour. While we would propose to put on our case as
15 efficiently as possible, since there are many people
16 that may want to appear, we don't know that we could
17 limit it to an hour. We wouldn't want to be limited
18 to that.

19 MS. KING: I would suggest to you that
20 this case originally was scheduled in March. It is
21 now going to be in September, that for all parties
22 concerned that I would urge you to have as many
23 people submit things in writing as possible.

24 You know, we have to deal with the
25 information that is given to us, but it doesn't have
26 to be given orally. Everybody who is -- who lives

1 in the community does not have to speak to us
2 orally. They can write to us.

3 You see what I'm saying? It seems to me
4 that -- I mean, if you all can't make a deal, and it
5 appears that you can't, we are going to have to
6 decide on a legal basis, unswayed by emotion, and we
7 understand the attitude of the community -- on a
8 legal basis, who wins and who loses.

9 I don't -- Unless you want to put it off
10 until October, I would suggest that you encourage
11 people to submit petitions, to put their feelings in
12 writing, let the lawyers and the Historical
13 Preservation Society and the ANC argue on behalf of
14 the community, and that the lawyers, you know, duke
15 it out on the legal issues, which is what we can
16 consider.

17 Otherwise, I think we'd just put it off
18 until October, and I don't think anybody is going to
19 be very happy about that.

20 MR. WELLS: We would support a later
21 date, if it assures that we will be heard, even if
22 it's the--

23 MS. KING: You will be heard.

24 MR. WELLS: Even if it's a small --

25 MS. KING: But not 100 people from the
26 community.

1 MR. WELLS; I understand that, and it
2 seems that it's even more important with the idea
3 that there could be a negotiated settlement when the
4 differences are so fundamental. It is clear that
5 the opposition will need time to put on its case,
6 and I know that you're assuring us that we will; but
7 again, later than the 9th, I think, would be
8 preferable for us.

9 CHAIRMAN REID: Please repeat the last
10 part of what you said.

11 MS. KING: He wants it later than the
12 9th.

13 CHAIRMAN REID: Okay. Even if it is
14 later than the 9th, let's be very clear about the
15 fact that we as the Board are trying to move toward
16 having more efficient hearings and trying to
17 expedite things and to be able to provide better
18 service to the public, notwithstanding the fact that
19 we understand that everyone has their concerns, and
20 the opposition really wants to have an opportunity
21 to air all of those concerns.

22 What we're trying to say to you is that,
23 looking at doing things a little differently, if you
24 could consolidate for us in the form of petition or
25 whatever it is that you want to make sure that we
26 are aware of, we will make sure that it is read. We

1 will read all of the material.

2 If you have additional material, we will
3 read those materials, and what we want to do is set
4 times for the applicant. They have the burden of
5 proof. So they, obviously, should be given ample
6 time to prove or to be able to make their case.

7 They have said an hour. So then we
8 queried the opposition to find out approximately
9 how long they need, and then we'll look at how long
10 the ANC needs and how long each individual with
11 party status and also to help the Restoration
12 Society. Then that gives us an idea as to how long
13 we're talking about. We can kind of get our arms
14 around it.

15 You also can be so notified, this is
16 what we are doing, and make sure that you provide us
17 with what we need to be able to adequately
18 deliberate on your case.

19 MS. KING: There's a suggestion from the
20 Commission which I'm sure that the lawyers and Alan
21 are familiar with, that there be requirement that
22 people who are in opposition have to file in
23 advance.

24 We're a little hesitant about that,
25 because we like to hear from the community. We
26 don't -- and people are not always that familiar

1 with the process that they -- We don't want to
2 arrive at a position where we have no alternative
3 but to say, if people don't file in advance, that
4 citizens can't appear before the Board.

5 So help us, please, by consolidating
6 your opposition. To have 20 people instead of one
7 come up and say I don't like this, I don't like fast
8 food, I don't think it belongs in my neighborhood --
9 you know, we understand that. But it's the legal
10 issues that need to be argued, and the ANC and a
11 select few members of the community.

12 We really are not terribly keen on this
13 scheme of saying, you know, if anybody is here today
14 who hasn't pre-registered to speak to this body,
15 they can't do it. We're not keen on that, but it
16 may become necessary in cases like this, if we are
17 deluged with a parade of people all saying the same
18 thing.

19 MR. WELLS: We will make every effort to
20 honor your request and to be efficient in presenting
21 our case together, I am sure. Our request is for
22 the hearing date to be after September 9th.

23 CHAIRMAN REID: Is everyone in agreement
24 with that? After September?

25 MS. GIORDANO: I'm not sure what the
26 basis for that is. Is that because you need more

1 time or you just -- I mean, the holiday is well
2 before that. Right?

3 MR. WELLS: The date of the holiday --

4 MS. PRUITT-WILLIAMS: The holiday is
5 September 7th and the first official date --

6 CHAIRMAN REID: There are two holidays,
7 two holidays in September.

8 MS. PRUITT-WILLIAMS: Right. The first
9 holiday is September 7th. The first meeting for BZA
10 in that month is the following Wednesday.

11 MR. WELLS: So because of -- Even though
12 -- Because --

13 MS. KING: We're talking nine weeks from
14 now.

15 MR. WELLS: Because we have to
16 coordinate together and to see that everyone is
17 available two days after a holiday, that week may, I
18 presume, be a vacation week for many. So -- Right?
19 September 7th is the holiday.

20 MS. PRUITT-WILLIAMS: Correct.

21 MR. WELLS: You're proposing the 9th,
22 and we're just simply requesting it be the week
23 afterwards.

24 CHAIRMAN REID: Sixteenth?

25 MR. WELLS: That would be great.

26 MS. KING: We don't have a scheduled

1 meeting then.

2 CHAIRMAN REID: Well, that's exactly
3 what we were proffering to you.

4 MR. WELLS: The 16th would be wonderful.

5 MS. KING: No, we were talking about --
6 because we have a very short agenda on the morning
7 of the 9th --

8 CHAIRMAN REID: Oh, I'm sorry.

9 MS. KING: -- and we're going to sit
10 here contemplating our navels.

11 CHAIRMAN REID: At first we said the
12 16th was a possibility. Then we said the 9th, but
13 if we're going to go back to the 16th, that means
14 there will be a special meeting for us.

15 MS. PRUITT-WILLIAMS: Correct.

16 CHAIRMAN REID: And if we feel that
17 that's necessary -- but let's see the time
18 parameters. Okay? How long do you think you need,
19 the ANC? How long do you think that you will need
20 for your --

21 MR. WELLS: The ANC will need no longer
22 than 20 minutes, I believe, if it's just ANC; but in
23 terms of allotting our time also to some of our
24 community leaders that are directly impacted, our
25 time would probably be 30 minutes total.

26 MS. PRUITT-WILLIAMS: Excuse me. Would

1 those people be testifying as ANC representatives?

2 MR. WELLS: For just the ANC to speak,
3 we need no longer than 20 minutes.

4 MS. PRUITT-WILLIAMS: Okay. So you need
5 to separate them out.

6 CHAIRMAN REID: Okay, ANC 20 minutes,
7 and Ms. Schauer, how long do you think you'll need?

8 MR. SCHAUER: I don't expect to present
9 a very lengthy case. However, I caution you, Madam
10 Chairperson. We expect to do considerable cross-
11 examination, and cases like this tend to get bogged
12 down on cross-exam.

13 So I just wonder whether the proponent
14 will be able to finish their case within an hour. I
15 suspect it will drag on considerably.

16 CHAIRMAN REID: Thank you. How long do
17 you need?

18 MR. SCHAUER: I would need no more than
19 20 minutes probably.

20 MS. NEEDLE: Madam Chairperson, we would
21 probably need about 45 minutes to put on our case.

22 CHAIRMAN REID: Okay.

23 MS. KING: Does that include cross-
24 examination or just for the presentation of your
25 case?

26 MS. NEEDLE: Just for the presentation.

1 CHAIRMAN REID: Okay. I see this --
2 Even with the cross-examination -- and Mr. Schauer,
3 thank you for that observation -- I think that with
4 cross-examination -- There are two kinds of cross-
5 examination.

6 One is the type that goes on
7 incessantly. Then there's cross-examination that is
8 more efficient where it's kept specifically to the
9 testimony and, you know, it's done in such a way
10 that it's not drawn out forever.

11 So we try to do that in this case, try
12 to make sure that we're not asking the questions --
13 repetitive questions and try to have it move in such
14 a way that we can get through it in a relatively
15 short amount of time.

16 The idea here is just not to waste time.
17 So we can do it on the -- I have no problem either
18 way. If you want to hear it and get it done, we can
19 do it on the 9th and allow in the neighborhood of
20 three hours, give or take, depending on whether or
21 not we can get it done quicker or give some lag time
22 or some fudge time for completing it that day; or we
23 can schedule it for the 16th.

24 In that instance, perhaps you would not
25 feel as pressured. But even if we have it on the
26 16th, we're still going to --

1 MS. KING: We're going to be very
2 severe.

3 CHAIRMAN REID: Thank you. So it
4 doesn't matter.

5 MS. KING: What's your druthers?

6 CHAIRMAN REID: Sixteenth? Okay.

7 MS. KING: Sixteenth, morning.

8 MS. PRUITT-WILLIAMS: Sixteenth at 9:30,
9 but we will also readvertise this. So it will be in
10 the District Register.

11 CHAIRMAN REID: Are there any other
12 questions or issues, comments?

13 MS. GIORDANO: I would just hope that we
14 could advertise in a way that Lot 826 is included in
15 the alternative, because we were asked to include
16 that lot. Now I don't want to sort of have a
17 problem, because we did know that was the wrong
18 thing to do.

19 I'd like it, if we could, to say that
20 Lot 826 would be heard, but to leave it
21 discretionary as to whether it's included to the
22 Board. Do you follow me?

23 MS. PRUITT-WILLIAMS: Yes and no. I
24 would suggest that you advertise for more relief
25 than you may possibly need, so that -- It's always
26 easier to pull back, but if you don't advertise for

1 the maximum relief you need, then you'll have to be
2 back in this cycle again, and we'll have to
3 readvertise.

4 MS. GIORDANO: I just don't want to get
5 hoist on our own petard here, that you were asked to
6 include that now and know that's a problem now.

7 MS. PRUITT-WILLIAMS: No, I would
8 suggest that we advertise and include that lot in
9 there, so that if for some reason you want to amend
10 the application and it is not needed, that's fine;
11 but if it is, everybody will have the exact
12 information so that they can respond accordingly.

13 MS. GIORDANO: Okay.

14 CHAIRMAN REID: Okay. We're adjourned.

15 (Whereupon, the foregoing matter went
16 off the record at 10:09 a.m.)

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19