

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 22, 1999

+ + + + +

The meeting convened in Room 220, 441
4th Street, N.W., Washington, D.C. 20001, pursuant
to notice at 9:30 a.m., Sheila Cross Reid,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JERRY GILREATH	Board Member
ROBERT SOCKWELL	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD	Commissioner
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COMMISSION STAFF PRESENT:

Sheri Pruitt-Williams,	Secretary, BZA
John Nyarku,	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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C-O-N-T-E-N-T-S

AGENDA ITEM

PAGE

APPLICATION OF MARQUETTE UNIVERSITY:

16459 ANC 6B 3

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CHAIRPERSON REID: Good morning. The September 22 meeting of the Board of Zoning Adjustment will now come to order.

MS. PRUITT-WILLIAMS: Good morning, Madam Chair, before you today in the public meeting is Application 16459, Application of Marquette University, pursuant to 11 DMCR 3108.1 for a special exception under subsection 206 to use the premises as a private school for 20 students and two staffs in an R-4 District at Premise 502 East Capitol Street, N.E., Square 840, lot 23. This is before you for decision. This case was heard on May 19th and June 21st.

Just as a note, there was a letter in your file from the Applicant's Attorney, dated September 17, 1999. He is withdrawing that request, so it's no longer on the table. So there are no issues.

CHAIRPERSON REID: What request was that?

MS. PRUITT-WILLIAMS: For us to quash information that came in later.

CHAIRPERSON REID: Oh.

MS. PRUITT-WILLIAMS: There are really

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1 no impediments to you making a decision based on the
2 record.

3 VICE CHAIR KING: Madam Chair, I move
4 that we grant this application with conditions.

5 MR. GILREATH: Madam Chair, I sat on the
6 first meeting on this, but the July 21st I was not
7 here, I was away. So am I permitted to participate
8 in this or not?

9 VICE CHAIR KING: Who participated in
10 this case?

11 MR. GILREATH: I'm fairly familiar with
12 the issues.

13 CHAIRPERSON REID: You did read the
14 record?

15 MR. GILREATH: Yes.

16 CHAIRPERSON REID: Well, then just
17 basically state that you have read the record.

18 MR. GILREATH: Well, they did not send
19 the July record over. For the May meeting I read
20 the record of materials on that, but I had no access
21 to the July 21st meeting.

22 CHAIRPERSON REID: I think that that
23 meeting was one in which we just simply -- we
24 scheduled the hearing.

25 MR. GILREATH: Is that the case?

26 VICE CHAIR KING: I don't recall

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1 frankly.

2 CHAIRPERSON REID: Ms. Pruitt-Williams?

3 MS. PRUITT-WILLIAMS: I'm looking -- I
4 can't recall whether or not we just rescheduled.

5 VICE CHAIR KING: Perhaps Mr. Nettler
6 can bring some light to this.

7 CHAIRPERSON REID: We have to get -- I
8 think what the issue was was that the ANC had asked
9 for additional time to be able to weigh in on the
10 case and we granted that and we had to basically
11 juggle the schedule to be able to accommodate.

12 MS. PRUITT-WILLIAMS: Yes, yes.

13 VICE CHAIR KING: Ms. Pruitt-Williams --

14 MS. PRUITT-WILLIAMS: There was
15 testimony.

16 VICE CHAIR KING: -- Can you ask Mr.
17 Nettler, to see if we're correct in that if there's
18 any impediment to Mr. Gilreath judging this case.

19 MS. PRUITT-WILLIAMS: Actually, as I --
20 conferring with Mr. Nettler, as I recall too, the
21 July hearing was a hearing on the merits which needs
22 to be heard. It wasn't just a postponement. That
23 was the issue where, if you recall, there was a lot
24 of people here who had concerns about another
25 property that Marquette had that was that hearing
26 that dealt with that.

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1 CHAIRPERSON REID: Oh, right, right.

2 VICE CHAIR KING: That's what I thought.

3 CHAIRPERSON REID: So how did it get
4 postponed?

5 MS. PRUITT-WILLIAMS: It didn't get
6 postponed. We had the -- July was the hearing.
7 This is our first -- well, they could not make the
8 September 8th meeting because ANCs don't meet in
9 August, so you gave them until the 22nd to allow the
10 ANC --

11 CHAIRPERSON REID: TO submit their
12 report.

13 MS. PRUITT-WILLIAMS: That's why --

14 CHAIRPERSON REID: You're right, right.
15 I remember. We did have the hearing.

16 MR. GILREATH: Madam Chair, Mr. Hood is
17 up here.

18 CHAIRPERSON REID: He did not sit --

19 COMMISSIONER HOOD: Yes, I did. I
20 apologize for being late. I thought we started at
21 9:30. But I did sit on the Marquette case.

22 VICE CHAIR KING: Mr. Hood, I have moved
23 that we grant this application with conditions.

24 COMMISSIONER HOOD: I'll second that
25 motion, Commissioner King. Also, I concur that we
26 need to make sure those conditions are in place

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1 because I see that if we don't put those conditions
2 in place in a couple of years from now another board
3 will be here and they'll be trying to explain it
4 even more, so I think -- I concur with you.

5 VICE CHAIR KING: Okay, thank you.

6 CHAIRPERSON REID: I would agree. I
7 think that some of the issues that were raised by
8 the ANC and some of the neighbors certainly should
9 be taken into consideration. This case was a rather
10 convoluted case where you had on the one hand an
11 entity who wants to put a school, wants to hold
12 classes in a building that that is somehow deemed as
13 a building for public receptions and commercial
14 types of activities and the concern about the
15 adverse impact on the community and I think that
16 what we had to determine was to make sure that the
17 building would be used for the purpose which they're
18 applying for only and also, Mrs. King, one of the
19 conditions that I would suggest would be while much
20 of the protest appeared to stem from another
21 building that students apparently lived in and also
22 where there is adverse impact, we don't have any
23 authority to impose any conditions on that
24 particular building, but I think that when the
25 applicant appeared before us he did agree that they
26 would -- the University would take Marquette

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1 University would take considerable steps to insure
2 that the students would be somehow given some type
3 of supervision, period, not necessarily as far as
4 the site is concerned, but just as the school
5 policy.

6 VICE CHAIR KING: Well, I don't know.
7 It seemed to me that they were going to share with
8 the community the rules that they establish for
9 their students, but I didn't hear any undertaking to
10 you know, insure that those rules were -- and I
11 think that the community was very just in saying
12 that the behavior that they had experienced in their
13 neighborhood with the students who were living in a
14 group home was perhaps activities that would not be
15 permitted if those students were living on the
16 Marquette campus, but that is as you say, not
17 something that we can dictate, but I would urge that
18 the applicant do everything possible to mitigate the
19 adverse impact of their other building. But getting
20 to the building that we're talking about, my
21 suggestion is that we specify that the exception is
22 granted for the basement of this building, that the
23 rest of the building that provides solely
24 residential housing for a nonstudent employee of
25 Marquette; the enrollment to be limited to a maximum
26 of 20 students and two full-time staff persons.

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1 Now I'm not sure about this. It seems
2 to me that the hours of operation we were told about
3 were Tuesday through Thursday from 1 to 4:30 p.m.,
4 plus occasional lectures for students only.

5 CHAIRPERSON REID: What time?

6 VICE CHAIR KING: Tuesday through
7 Thursday from 1 to 4:30 p.m. and an occasional
8 additional lectures provided for students only and I
9 saw Mr. Nettler nod his head, so I guess I got that
10 right.

11 CHAIRPERSON REID: Okay.

12 VICE CHAIR KING: The school shall not
13 assist any student in obtaining a Zone 6 residential
14 parking permit or a temporary visitor residential
15 parking permit.

16 The applicant shall not permit any part
17 of the building to be used for -- rented out or used
18 in any way for functions that do not relate to the
19 Les Aspin Center or are not attended by students and
20 their guests provided that nothing shall be
21 construed to prohibit the residents of the premises,
22 the resident of the premises for using the
23 residential portions in a manner consistent with
24 such residential use which clearly does not include
25 renting it out.

26 And specifically, I think we need to say

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1 that there shall be no garden parties. And the
2 applicant shall establish a liaison with the
3 Advisory Neighborhood Commission 6A and shall attend
4 through its representative ANC 6A meetings at least
5 twice a year.

6 Now I have a question mark next to time
7 limit.

8 CHAIRPERSON REID: You know, Ms. King, I
9 too had some reservations about that. I felt that
10 the community asked that there be imposed a time --

11 VICE CHAIR KING: They wanted a three
12 year limit, I think.

13 CHAIRPERSON REID: A three year limit.

14 CHAIRPERSON REID: For the term for the
15 school -- I think they've given what appears to be a
16 problematic situation in that area and in all
17 fairness to the community that we perhaps, maybe not
18 a three year, but maybe a five year term.

19 VICE CHAIR KING: I'll go along with
20 that.

21 CHAIRPERSON REID: We can then be able
22 to come back, they can come back and then we can
23 reassess how, in fact, they have lived up to their
24 promises --

25 VICE CHAIR KING: Good idea.

26 CHAIRPERSON REID: And then --

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1 COMMISSIONER HOOD: Are we saying we're
2 going to go from -- they've asked for 3 years.

3 VICE CHAIR KING: They've asked for
4 perpetual.

5 CHAIRPERSON REID: And the community
6 wants it limited to 3.

7 VICE CHAIR KING: The community asked
8 for 3 and we're suggesting 5. They'll have to come
9 back in 5 years and you know, that will give the
10 community an opportunity to see if they can't
11 rectify the ill will that appears to exist, that
12 always seems to exist between universities or
13 educational --

14 COMMISSIONER HOOD: I was more or less
15 in favor of that 3. The longer the time the more
16 impact it's going to have on that community. So if
17 we give them a shorter time then they'll be able to
18 come back and express their concerns earlier as
19 opposed to later. So can we compromise and say 4?

20 VICE CHAIR KING: I'll go along with 4.

21 CHAIRPERSON REID: We will go with that.
22 Four is reasonable, I think. Also, there was a
23 draft order that was submitted and I think that we'd
24 have to vote on the adaptation of this order,
25 however, there's some tweaking I feel that has to be
26 done to this order before it is --

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1 VICE CHAIR KING: You mean the
2 conditions?

3 CHAIRPERSON REID: No, no. There was a
4 draft order submitted by --

5 VICE CHAIR KING: I know, I know. I
6 read it.

7 CHAIRPERSON REID: Just in general,
8 there's some things that I --

9 VICE CHAIR KING: I see, okay.

10 CHAIRPERSON REID: I think need to be --

11 VICE CHAIR KING: Okay, because the
12 conditions that I have suggested, although some of
13 them are in that draft order, really, the staff
14 needs to look to listen to the tape or read the
15 transcript and make sure that they got it right
16 because they are not the ones that are in the draft
17 order.

18 MS. PRUITT-WILLIAMS: Do you have your
19 conditions written down, Ms. King?

20 VICE CHAIR KING: Well, yes, kind of --
21 no, not really.

22 MS. PRUITT-WILLIAMS: Okay. We will go
23 back and check the transcripts. I have taken notes,
24 but I will check them against the transcripts.

25 VICE CHAIR KING: I will give you this,
26 but you may not be able to read it.

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1 MS. PRUITT-WILLIAMS: Okay, thank you.

2 CHAIRPERSON REID: Let me also give you
3 my suggestions for the changes in the draft order.
4 On the first page, paragraph 4 where it says the
5 premises -- this is just a typo, premises -- or
6 grammatical, I guess -- premises -- it should be the
7 premises and I think the premises is singular. The
8 verb would then be occupies, rather than in occupy?

9 MS. PRUITT-WILLIAMS: Madam Chair, most
10 of those grammatical or structural changes are
11 content issues.

12 CHAIRPERSON REID: So you will make sure
13 they're changed?

14 MS. PRUITT-WILLIAMS: Right, if they're
15 issues like that, you can just give us the marked up
16 --

17 CHAIRPERSON REID: That was, like I
18 said, like that was more like typo or grammatical.
19 Let's go to page 4. Paragraphs 16, I would like to
20 have --fifth line where it says apparently not
21 understanding the criteria for special exception,
22 I'd like to have deleted.

23 MS. PRUITT-WILLIAMS: I'm sorry, could
24 you say that again?

25 CHAIRPERSON REID: Okay. One, two,
26 three, four, fifth line. The sentence begins

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1 "apparently not understanding the criteria for
2 special exception, Mr. Simon also testified." I'd
3 like to delete the "apparently not understanding the
4 criteria for special exception" and then begin that
5 sentence with "Mr. Sissmon."

6 MS. PRUITT-WILLIAMS: Okay.

7 CHAIRPERSON REID: And then on paragraph
8 18, the last end of the sentence, "thus, their
9 observation was based on their use of other premises
10 lived in by Marquette students and not the premises
11 where the school was located." I think that should
12 be deleted because it's already reflected early on
13 in this order. It's repeated two or three different
14 times.

15 Paragraph 19 where it begins on line 1,
16 2, 3, 4, 5, 6. I think that sentence should start
17 with the word "The Council Member characterized the
18 past activities" and then on line 7, the sentence
19 that begins "notwithstanding her misunderstanding
20 about the proposed use of the premises and intent of
21 the use", I would delete that part and start that
22 with "Council Member", "The Council Member" or
23 "Council Member Ambrose urged the Board" -- do you
24 see what I'm saying?

25 MS. PRUITT-WILLIAMS: Yes.

26 CHAIRPERSON REID: On page 5, I think

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1 that the proposed findings of facts, I think that we
2 should include them and No. 23, the Board also finds
3 that the use is not likely to have an objectionable
4 impact on neighboring property because of either
5 noise, traffic, parking, the anticipated use or as
6 studied considerations." I think we should add
7 parking there.

8 And on No. 25, where it says "as for the
9 objections of ANC 6B, the Board finds that the
10 objections are not relevant to the issue before the
11 Board. In an application for a special exception,
12 the issue is" and then here we delete "not whether
13 the proposed use is special or could be located
14 somewhere else, but only" and it would then read,
15 "The issue is whether the application meets the
16 criteria established under the zoning regulations."

17 On page 6, the last paragraph, line 4.
18 And it reads, "The zoning regulation requires only
19 that the Les Aspin Center demonstrate that it is not
20 likely that the proposed site will become
21 objectionable. I think that that should be "The
22 Zoning Regulation requires only that the Les Aspin
23 Center demonstrate that it is not that the proposed
24 site will become objectionable to the properties."
25 I don't know that the word "likely" is in there. I
26 don't know what the regulations specify. The word

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1 "likely" or is it just simply a very straight
2 forward --

3 MS. PRUITT-WILLIAMS: We can verify
4 that.

5 CHAIRPERSON REID: Yes. On page 7, the
6 third paragraph, the third line where it says
7 "Furthermore, delete the record as the Board of any
8 evidence which demonstrates" and replace it with
9 "Furthermore, it did not appear that to locate to
10 the special exception use in the basement by the
11 premises has any unique impact on the neighboring
12 property."

13 On the fifth -- fourth paragraph, at the
14 end it says "It should be noted that the premises
15 are the personal residence of Father O'Brien." That
16 "in no way" should be deleted and simply say, "It is
17 not the Board's intent to limit Father O'Brien's use
18 as a residential property."

19 VICE CHAIR KING: Is that a condition,
20 one of the conditions?

21 CHAIRPERSON REID: No, it is not a
22 condition. We haven't gotten to that yet.

23 VICE CHAIR KING: Okay.

24 CHAIRPERSON REID: Page 8. The fourth
25 paragraph where it says, "The regulations are
26 clearly aimed at multiple building conditions."

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1 Simply say then, delete "clearly" and say -- it
2 should read, "The regulations are aimed at multiple
3 building conditions."

4 All right, now, these are conditions and
5 on page 9 where it says, number 2, it says "In terms
6 of dates and time", not -- let's just read the whole
7 thing. "Les Aspin Center should be operated in
8 accordance with the testimony of Father O'Brien in
9 terms of date and time." I think that should be
10 specified herein. I think Ms. King indicated it
11 earlier, exactly what the dates and times are.

12 VICE CHAIR KING: Yes. That's part of
13 the -- conditions and here's my scribbled notes.

14 CHAIRPERSON REID: And I think she said
15 it would not be used -- said property would not be
16 used for commercial purposes.

17 VICE CHAIR KING: No commercial
18 purposes, no use other than strictly residential use
19 of the upper floors and what we specified, Les Aspin
20 Center, no renting out, no garden parties --

21 CHAIRPERSON REID: Use as a student
22 dormitory.

23 VICE CHAIR KING: No, no. I specified
24 that this applies to the basement only and that the
25 upstairs is a residence for one nonstudent employee.

26 CHAIRPERSON REID: And I also indicated

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1 that Marquette University will put forth its best
2 efforts to supervise student conduct and behavior.
3 Also, on number 4, 5, the last line it says "The ANC
4 6A meetings at least once a year", but it's twice a
5 year.

6 MS. PRUITT-WILLIAMS: That is, I
7 believe, is part of Ms. King's request. We'll
8 combine the two.

9 CHAIRPERSON REID: Okay, I think that's
10 just about it unless any of the other Board Members
11 have any other changes in the order.

12 VICE CHAIR KING: I commend you for
13 going through that with a fine tooth comb. I didn't
14 notice those problems.

15 CHAIRPERSON REID: Thank you. All
16 right. Did you second it?

17 COMMISSIONER HOOD: Yes.

18 CHAIRPERSON REID: All right, then all
19 in favor.

20 ALL: Aye.

21 CHAIRPERSON REID: Opposed.

22 MS. PRUITT-WILLIAMS: Staff will record
23 the vote as 3 to 0 to approve the motion made by Ms.
24 King, seconded by Mr. Hood. Mr. Gilreath and Mr.
25 Sockwell not voting, not having been present at the
26 hearing.

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That concludes my part of this presentation.

CHAIRPERSON REID: Okay, thank you. This concludes the September 22nd meeting of the Board of Zoning Adjustments.

Board Members will not take a short recess and will convene within a few minutes.

(Whereupon, at 9:40, the meeting was concluded.)

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