

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

MAY 11, 2010

+ + + + +

The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Meridith H. Moldenhauer,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
NICOLE SORG, Board Member

ZONING COMMISSION MEMBER[S] PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON

ARTHUR JACKSON

KAREN THOMAS

The transcript constitutes the minutes from the Special Public Meeting held on May 11, 2010.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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| Rescheduled for Decision. | .9 |
| DCCA's Remand of Application No. 17810 of Michael Reitz | 12 |
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1 P-R-O-C-E-E-D-I-N-G-S

2 9:30 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will please come to order.

5 Good morning, ladies and
6 gentlemen. This is the May 11, 2010 Public
7 Meeting of the Board of Zoning Adjustment. My
8 name is Meridith Moldenhauer.

9 Joining me today to my right is
10 Michael Turnbull, representative of the Zoning
11 Commission. To my left, Nicole Sorg, mayoral
12 appointee.

13 Copies of today's meeting agenda
14 are available to you and are located to my
15 left in the wall bin near the door.

16 We do not take any public
17 testimony at our meetings unless the Board
18 asks someone to come forward.

19 Please be advised this proceeding
20 is being recorded by a court reporter and is
21 also being Webcast live. Accordingly, we must
22 ask you to refrain from any disturbing noise

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1 or actions in the hearing room.

2 Please turn off all cell phones
3 and beepers.

4 Does the staff have any
5 preliminary matters?

6 MR. MOY: Yes, we do, Madam Chair.
7 The staff would suggest taking that outline on
8 a case-by-case basis.

9 CHAIRPERSON MOLDENHAUER:
10 Wonderful. Why don't we call the first case?

11 MR. MOY: That would be the motion
12 to extend the validity of the order. This is
13 to Application No. 17679-A of Jemal's TP Land
14 and LLC, pursuant to section 3130 of the
15 Zoning Regulations.

16 The original application was
17 approved on February 5, 2008. This original
18 application was pursuant to 11 DCMR 3104.1 for
19 special exceptions under sections 353 and
20 2516, and under section 411 regarding roof
21 structures, to permit the construction of a
22 new residential development.

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1 This is in the R-5-A District at
2 premises 6923-6953 Maple Street NW and 6916-
3 6926 Willow Street NW. I'm going to forego
4 listing the Square numbers and Lots. They're
5 quite numerous.

6 Again, the applicant filed on
7 April 6, 2010. That filing is noted in your
8 files as Exhibit 48.

9 There are no other filings in the
10 record, Madam Chair.

11 The Board is acting on the merits
12 of the request to extend pursuant to 3130. Of
13 course, we have a standard under subsection
14 3130.9.

15 The staff leave it at that.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much, Mr. Moy.

18 Having reviewed this application,
19 the initial issue that comes before us before
20 we actually get to the merits is that the
21 applicant did not include a request to waive
22 the requirements under section 3130.9, which

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1 specifically states that there is a 30-day
2 requirement prior to the order actually
3 expiring. So this application should have
4 been submitted on March 23, but it was about
5 a week late and not submitted until April 6.

6 What we're going to do is we are
7 actually going to postpone this case until we
8 can receive a supplemental filing from the
9 applicant to identify that issue, and to
10 request for the specific relief to be waived
11 under that section; also, to provide the 30-
12 day period in time for the party opponent that
13 this case did have.

14 If this case potentially had no
15 opposition, that may have been another
16 situation. But here this case did
17 specifically have a party status opponent and
18 the ANC, so we feel that we should wait the
19 30-day timeframe.

20 If we can postpone this and
21 request that the applicant provide us with
22 supplemental filing, we will move on.

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1 MR. MOY: Okay. Does the Board
2 have a proposed date to reschedule this to?

3 CHAIRPERSON MOLDENHAUER: Yes. We
4 can reschedule this to May 25.

5 MR. MOY: We don't have a hearing
6 scheduled for that day, Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Well,
8 then I don't think we should come in just for
9 that case. Why don't we reschedule this for
10 June 1?

11 MR. MOY: It doesn't look like --

12 MS. GLAZER: Madam Chair, is the
13 Board inclined to give 30 days from the time
14 of the supplemental filing?

15 CHAIRPERSON MOLDENHAUER: No. I
16 believe -- and tell me if OAG confers -- our
17 Exhibit 47 indicates that all parties,
18 including the party opponent and the ANC,
19 received notification on March -- no, actually
20 that's April.

21 I think, then, we should wait 30
22 days from that filing. Unless of course the

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1 applicant submits notification as to why that
2 requirement should be waived, and they could
3 potentially request an earlier date.

4 If they get that filing in
5 hopefully this next week, we could -- why
6 don't we schedule -- is there a time open on
7 our docket on June 15?

8 MR. MOY: June 15 would work.

9 CHAIRPERSON MOLDENHAUER: We will
10 reschedule this for the Public Hearing on June
11 15.

12 Do we have any other matters for
13 the Public Meeting?

14 MR. MOY: Not until the afternoon
15 session at 1:00.

16 CHAIRPERSON MOLDENHAUER: Okay.
17 Then what we will do is we will postpone the
18 rest of the Public Meeting until this
19 afternoon and we will enter into our morning
20 session.

21 (Whereupon, at 9:55 a.m. the
22 meeting was adjourned to reconvene at 2:23

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1 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

3

2:23 p.m.

4

CHAIRPERSON MOLDENHAUER: Okay.

5

We're back on the record for our Public

6

Meeting.

7

What we will do is -- actually,

8

it's a continuation from this morning. We

9

will ask the parties for Case No. 17810 to

10

come forward.

11

Mr. Moy?

12

MR. MOY: Yes, Madam Chair.

13

Should I read the record?

14

CHAIRPERSON MOLDENHAUER: Yes,

15

please.

16

MR. MOY: Before I do that, Madam

17

Chair, I don't want to forget that on the

18

previous case this morning which is Case No.

19

17673 of Jemal's TP Land -- this was an

20

extension of the validity of the order -- the

21

Board had rescheduled that decision to June

22

15.

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1 What staff actually meant to say
2 was that the date is rescheduled to June 22,
3 which would give more of a fuller 30-day
4 response time.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you for that clarification.

7 MR. MOY: Okay. So this final
8 case in the Special Public Meeting is the DC
9 Court of Appeals Remand of Application No.
10 17810 of Michael Reitz.

11 The original application, Madam
12 Chair, was pursuant to 11 DCMR 3104.1 for a
13 special exception to allow a garage addition
14 to an existing one-family dwelling under
15 section 223, not meeting the lot occupancy
16 (section 403) and rear yard (section 404)
17 requirements in the D/R-5-B District at
18 premises 1505 Harvard Street NW (Square 2577,
19 Lot 42).

20 The remand by the Court of Appeals
21 -- it's in your case folders -- was received
22 in our office October 22, 2009. The order

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1 itself is dated October 19, and that is
2 identified as Exhibit 50.

3 That would conclude the status
4 briefing, Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much.

7 If the parties can come forward?
8 We don't normally have testimony for parties
9 during a Special Public Meeting but for
10 purposes based on reviewing the record, we
11 actually will ask you to just step forward.

12 We're going to conduct this,
13 rather than as a decision, as a status to let
14 you know how we're reviewing the case, what
15 different types of issues we believe are still
16 existing, and how we would like to go forward
17 with this.

18 We have gone through everything to
19 this point and reviewed the different issues.
20 We see two remaining issues that need to be
21 addressed more fully based on where we are
22 with the record: (1) whether or not a right-

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1 of-way or easement exists, and, (2) whether or
2 not that right-of-way is for private use or is
3 for public use.

4 There is a specific Appeals Case
5 No. 17631, which is ANC Commission 3E and Todd
6 Boley. This case specifically talks about
7 easements. It describes the issue that may
8 also be the issue where we have to determine
9 in this case as to whether or not an easement
10 is public or private, and how that distinction
11 is important in calculating the lot occupancy
12 and things to that effect.

13 Right now we don't believe from
14 the record that we can make a determination as
15 to whether or not the right-of-way exists.
16 There seems to be documentation of something.
17 But the question is, if it does exist, what is
18 it; is it for private or public use? That
19 question was never specifically asked, nor was
20 that question previously briefed or provided
21 documentation for.

22 What we are going to do is we are

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1 going to set this for a hearing. That way we
2 can have testimony from both parties and hear
3 these two different issues.

4 In addition to that, previously I
5 know one of the issues was a preliminary
6 matter of whether or not John Moore was
7 granted party status. For procedural
8 efficiency since we are going to be asking
9 both parties to provide different arguments
10 for this issue, what we'd like to do is we'd
11 like to find out whether or not Mr. Moore is
12 still interested in obtaining party status at
13 this point in time today, and if so, address
14 that issue.

15 MR. KEYS: Madam Chair, my name is
16 George Keys. I represented John Moore on the
17 appeal of the Board's decision. I did not
18 enter an appearance in the Board's proceedings
19 and have not to this date. I was here really
20 in a capacity of observer, to see what
21 decision you would come to.

22 I would certainly be willing --

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1 I've been in touch with John Moore. I will
2 contact him and ask him that question as to
3 whether he wishes to continue in this and seek
4 party status.

5 CHAIRPERSON MOLDENHAUER: Then
6 what we will do is we will address that as a
7 preliminary matter at the hearing that will be
8 scheduled.

9 What we are going to do is we are
10 going to ask for any submissions on this issue
11 to be simultaneously submitted by June 8. So
12 both the applicant and any individuals wishing
13 status or wishing to oppose the different
14 issues have to submit that by the 8th. There
15 will be no opportunity to respond. Any
16 responses can occur on June 15 at the
17 afternoon session of the Public Hearing.

18 That will be a limited hearing.
19 The only issues that we will be addressing at
20 that hearing will be, again; (1) whether or
21 not a right-of-way exists, and (2) whether or
22 not that right-of-way is private or public.

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1 If you're speaking you need to
2 turn on the microphone. And identify yourself
3 and speak into the mic, please.

4 MR. REITZ: Okay. Yes. Sorry
5 about that. I had one question.

6 CHAIRPERSON MOLDENHAUER: Can you
7 identify yourself?

8 MR. REITZ: Mike Reitz. I'm the
9 owner and occupant of 1505 Harvard Street.

10 With regards to the easement,
11 whether or not it exists, my understanding is,
12 because I do own another property, there is an
13 easement -- it's a private easement -- listed
14 on that particular property and it's recorded
15 in the deed.

16 I would think I would want to make
17 sure that the -- I think this was never
18 recorded after, I want to say, the 1970s-
19 1980s. I wanted to try to make sure that all
20 those easements were properly documented so
21 they can produce evidence that prior to that
22 date that they were actually documented as

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1 they were supposed to be, as I understand, on
2 the deeds. Because I had previously looked to
3 see if there was any easements. And that's
4 the same thing the Office of Planning had
5 determined, that they didn't find any private
6 or public easements otherwise.

7 But in any case, what it comes
8 down to is when I bought my house, there was
9 no indication of any type of easement on my
10 deed. And so I may have to engage my title
11 insurance company to see how this would affect
12 my property.

13 So I may need to have time to -- I
14 wasn't planning on doing that at this point.
15 So I'm not sure at what point in the process
16 you can provide me time to kind of indicate --
17 because I had not ever engaged my title
18 insurance company.

19 CHAIRPERSON MOLDENHAUER: Okay.
20 At this point in time, we cannot -- this is a
21 limited forum for this purpose today. We
22 cannot advise you in regards to title issues

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1 or anything to that effect. What we can do is
2 we can state that these are the issues we're
3 going to be looking at.

4 MR. REITZ: Okay.

5 CHAIRPERSON MOLDENHAUER: And that
6 if you need to pursue obtaining counsel or
7 reviewing anything with anybody, that is
8 obviously something you should do on your own.
9 All we can indicate is that these are the two
10 issues that we're looking at, and that those
11 are the points that either you need to respond
12 to --

13 MR. REITZ: Okay.

14 CHAIRPERSON MOLDENHAUER: -- as
15 the applicant. Whether you need to work with
16 OP, work with the ZA, or work with your own
17 counsel, these are the limited issues that
18 we're addressing today.

19 MR. REITZ: Okay.

20 CHAIRPERSON MOLDENHAUER: That's
21 all that we can state.

22 MR. REITZ: I just wanted to more

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1 or less state for the record that I will
2 probably need to do some work with regards to
3 my title insurance.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 Well, I think that the June 15 date provides
6 sufficient time. It provides a month from now
7 for a hearing. We're putting everybody on
8 notice as to what those issues are.

9 At this point in time, I think
10 that really concludes our business for today.

11 What we'll do is, again, if you
12 have any written submissions that you'd like
13 to present as to whether there is or is not an
14 easement, whether it was on someone's deed or
15 not on a deed, whether it's private or public
16 -- again, I reference this case because I
17 think it's going to have precedence in regards
18 to how we decide the case. And if you have
19 any questions, obviously you can ask the
20 Office of Zoning.

21 Anything that's in writing has to
22 be in by the 8th. And then we'll see everyone

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1 back here for the 15th.

2 MR. REITZ: Okay. Thank you.

3 MR. KEYS: Madam Chair, if I could
4 ask a question about the process you're
5 engaged in? When we appealed this we filed a
6 brief with the Court of Appeals and raised
7 three issues, and I think you've addressed two
8 of the three issues.

9 The first issue was the denial of
10 party status, or rather the method by which my
11 client was persuaded to withdrawal his request
12 for party status. And I think you are
13 apparently allowing us an opportunity to
14 regain that status in the upcoming hearing.

15 CHAIRPERSON MOLDENHAUER: To
16 present an argument as to why --

17 MR. KEYS: We should?

18 CHAIRPERSON MOLDENHAUER: -- you
19 should potentially have party status. Yes.

20 MR. KEYS: The second issue of
21 course is the existence of right-of-way and
22 how we characterize it, what are the source

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1 documents for it. And we're prepared for
2 that.

3 The third issue we raised on
4 appeal came out of the testimony at the
5 hearing. That was the intended purpose of the
6 garage.

7 CHAIRPERSON MOLDENHAUER: The
8 order from the Court of Appeals states that we
9 are remanding the case based on the
10 respondent's brief. The respondent was the
11 Office of Zoning. The Office of Zoning
12 voluntarily remanded the case back before us.
13 So that is actually the motion that is going
14 to have precedence in regards to what our
15 issues are.

16 And our issues are, as I just
17 articulated them, not the third element but
18 rather simply, does a right-of-way or easement
19 exist; is it public or private, thus how is
20 the lot occupancy calculated?

21 That is the limit of our remand,
22 based on the motion and based on the order of

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1 the Court of Appeals which determined that we
2 were remanding it based on the respondent's
3 motion, not the petitioner's motion.

4 MR. KEYS: That creates kind of a
5 procedural quandry. Because what you're doing
6 is you're choosing not to deal with an issue
7 that came up in the course of the hearing.
8 You're not dealing with evidence that came up
9 in the hearing.

10 If, for example, as a result of
11 the hearing you're scheduling you decide to
12 reaffirm that position, it's just asking for
13 another appeal of that decision because it
14 didn't consider the implications of the
15 evidence presented at the original hearing.
16 I would think that --

17 CHAIRPERSON MOLDENHAUER: At this
18 point in time --

19 MR. KEYS: -- you would wish to
20 conclude matters rather than to prolong
21 matters.

22 CHAIRPERSON MOLDENHAUER: I hear

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1 what you're saying. But at this point in
2 time, based on the documentation that I've
3 reviewed, we are limited specifically only to
4 the respondent's motion which is these two
5 points and these two questions.

6 I hear your issue. We will talk;
7 I'll consult with OAG. Right now this is how
8 we're proceeding. Unless you hear from the
9 Office of Zoning in writing about anything
10 else, that's how we will be proceeding on the
11 15th. And that would be the limited issues
12 that you should be briefing if you are going
13 to be presenting any documentation on the 8th.

14 Thank you very much.

15 I don't believe we have any other
16 cases for this afternoon.

17 MS. BAILEY: No, Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. Today's Hearing and Public Meetings are
20 adjourned.

21 (Whereupon, at 2:36 p.m. the
22 meeting was concluded.)

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