

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 2, 2010

+ + + + +

The Regular Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD	Chairman
SHANE L. DETTMAN	Vice Chairman (NCPC)
MERIDITH MOLDENHAUER	Board Member
NICOLE SORG	Board Member

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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

This transcript constitutes the minutes from the Public Meeting held on February 2, 2010.

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

2 9:45 a.m.

3 CHAIRMAN LOUD: Good morning,
4 ladies and gentlemen. This meeting will,
5 please, come to order. This is the February
6 2, 2010 Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc Loud, Chairperson.

9 Joining me today are Vice Chair Shane
10 Dettman, representing the National Capital
11 Planning Commission, Meridith Moldenhauer,
12 BZA, new Board Member Nicki Sorg, BZA. To her
13 left Mr. Clifford Moy, Secretary of BZA, Ms.
14 Sherry Glazer, Office of the Attorney General
15 and on the far end Ms. Beverley Bailey, Zoning
16 Specialist in the Office of Zoning.

17 Copies of today's meeting agenda
18 are available to you and are located to my
19 left in the wall bin near the door. We do not
20 take any public testimony at our meeting
21 unless the Board asks someone to come forward.

22 Please, be advised that this

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1 proceeding is being recorded by a Court
2 Reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room. Please, turn off all beepers
6 and cell phones.

7 Does the staff have any preliminary
8 matters?

9 MR. MOY: Good morning, Mr.
10 Chairman, yes, we do, but staff would advise
11 that we take it on a case-by-case basis.

12 CHAIRMAN LOUD: Thank you, Mr. Moy.
13 We will follow your advise.

14 Why don't we proceed with the
15 calendar. We will go as sequenced on the
16 published calendar and I guess we can start
17 with the Fort Lincoln.

18 MR. MOY: Yes, sir. Thank you, Mr.
19 Chairman. Good morning to the Members of the
20 Board.

21 The first of the two cases for
22 decision, the first is a request for

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1 modification of approved plans. This is to
2 Application No. 17741-A of Fort Lincoln -
3 Eastern Market, LLC, pursuant to section 3129
4 of the Zoning Regulations.

5 The original application, Mr.
6 Chairman, is pursuant to 11 DCMR 3104.1 and
7 3103.2, for a special exception under section
8 353, new residential development and section
9 2516, theoretical lot, and variance relief
10 from the floor area ratio and side yard
11 requirements under section 2516, to construct
12 56 residential dwelling units, 28 stacked
13 townhouses and four separate buildings in the
14 R-5-A and R-5-D Districts on property bounded
15 by Bladensburg Road, N.E., Eastern Avenue,
16 N.E., and Fort Lincoln Drive, N.E., in Square
17 4325, Lots 44, 802 and Parcel 174/15.

18 The original hearing date was April
19 1, 2008. The final order was issued April 9,
20 2008.

21 The applicant filed a request for a
22 minor modification of approved plans on

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1 January 5, 2010, pursuant to section 3129.
2 And this filing is in your case folders, Mr.
3 Chairman, identified as Exhibit 33.

4 The second and only other filing is
5 a response report by the Office of Planning
6 dated January 26, 2010. And that document is
7 identified as Exhibit 34.

8 The Board is to act on the merits
9 of the applicant's request for minor
10 modification pursuant to section 3129. That
11 completes the staff's briefing, Mr. Chairman.

12 CHAIRMAN LOUD: Thank you, Mr. Moy.

13 I think we can proceed with decision on this
14 one. The record is full. I think the bottom
15 line is that the change there before us for
16 minor modification, so the modifications
17 proposed have to be minor under the
18 requirements of the rule.

19 The changes that they are proposing
20 will do the following: A reduced number of
21 units from 56 to 54. There will be a 1
22 percent reduction in the green space. They

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1 are going to eliminate the need for side yard
2 variance to seven of the townhouses. I think
3 Units 15 to 22.

4 There will be a .04 increase in the
5 FAR to the R-5-A Zone portion of the site, but
6 it will still be under the allowable .9 FAR
7 for the entire site.

8 A change in the townhouse model,
9 which originally were going to be 56 offering
10 two separate floor plans to now 54 offering a
11 standard 24 foot wide, 52 foot deep floor
12 plan.

13 The Office of Planning report, at
14 our Exhibit 34, has reviewed the modification
15 and concludes that it is not significant and
16 recommends approval.

17 The ANC was served on January 5th.
18 Our rules require that there be a 10 day
19 window between the time that they are served,
20 the time that they have to respond. They have
21 not responded. The 10 days have passed. So
22 it is ripe for decision.

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1 I think the applicant has met the
2 requirements of Rule 3129 and I'll be voting
3 to support the minor modification.

4 Let me open it up and see if
5 colleagues have any further thoughts on it.

6 Hearing none, then what I would
7 like to do is move approval of Application
8 17741-A for minor modification under Rule 3129
9 of approved plans for residential development
10 at Bladensburg Road and Fort Lincoln Drive,
11 N.E.

12 VICE CHAIRMAN DETTMAN: Second.

13 CHAIRMAN LOUD: Motion has been
14 made and seconded. Is there further
15 discussion?

16 Hearing none, all those in favor
17 say aye.

18 ALL: Aye.

19 CHAIRMAN LOUD: All those who
20 oppose? And are there any abstentions? Mr.
21 Moy, can you read back the vote?

22 MR. MOY: Yes, sir. The staff

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1 would record the vote as 3-0-2. This is on
2 the motion of the Chair, Mr. Loud, to grant
3 the request for modification of approved
4 plans. Seconding the motion was Mr. Dettman.

5 Also in support of the motion Ms.
6 Moldenhauer. We have a Zoning Commissioner
7 not present, not voting and no other Board
8 participating.

9 Again, the vote would be 3-0-2.
10 And of course, staff understanding that Mr.
11 Loud and Ms. Moldenhauer has read the record
12 for participating.

13 CHAIRMAN LOUD: Thank you, Mr. Moy.

14 Just to clarify, in addition to Mrs.
15 Moldenhauer reading the record, I read the
16 record as well, because I don't believe I was
17 on the original case.

18 So with that, if we have no further
19 business on this case, why don't we call the
20 second case for this morning?

21 MR. MOY: The next and final case
22 for decision, Mr. Chairman, is the applicant's

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1 motion for reconsideration of Condition No. 3
2 of the Order to Application No. 17996 of the
3 Protestant Episcopal Cathedral Foundation of
4 the District of Columbia.

5 This is pursuant to section 3126 of
6 the Zoning Regulations.

7 If the Board will recall, the
8 original application was pursuant to 11 DCMR
9 3104.1, for a special exception under section
10 206 to modify an existing private school use
11 to increase the number of faculty and staff at
12 the National Cathedral Elementary School,
13 Beauvoir, to 109 in the R-1-B District at
14 premises 3500 Woodley Road, N.W. This is in
15 Square 1944, Lot 25.

16 On December 30, 2009, the applicant
17 filed a request to reconsider and eliminate
18 Condition No. 3 in BZA Order No. 17996. This
19 filing is in your case folders identified as
20 Exhibit 39.

21 The applicant also requests to
22 admit two additional documents that describe

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1 correspondence between the Foundation and the
2 ANC-3C, which addresses the issue and provides
3 supporting evidence for removing Condition No.
4 3.

5 Finally, the record also contains a
6 response filing from ANC-3C, a document dated
7 January 22, 2010, and that is identified as
8 Exhibit 40 in your case folders.

9 This should be considered as a
10 preliminary matter as this document is
11 untimely, pursuant to section 3126.5.

12 Finally, the Board is to act on the
13 merits of the reconsideration and whether to
14 eliminate Condition No. 3 in BZA Order No.
15 17996. And that completes the staff's
16 briefing, Mr. Chairman.

17 CHAIRMAN LOUD: Thank you, Mr. Moy.

18 I believe the record is full with respect to
19 the motion for reconsideration. And I believe
20 Mrs. Moldenhauer is going to start us off.

21 MEMBER MOLDENHAUER: Thank you, Mr.
22 Loud. The current issue before us will be the

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1 initial matter of whether or not we actually
2 move to consider or grant the motion for
3 reconsideration.

4 I have reviewed the record and the
5 filing is timely. The order was finalized on
6 December 22nd and then we received the motion
7 to reconsideration on December 30th. And thus,
8 I would like to move that we do accept this
9 motion for reconsideration and move forward on
10 the merits.

11 CHAIRMAN LOUD: Motion seconded. A
12 motion has been made and seconded regarding
13 accepting the motion for reconsideration. Is
14 there further discussion?

15 Hearing none, all those in favor
16 say aye.

17 ALL: Aye.

18 CHAIRMAN LOUD: Are there any
19 opposition? Is there any opposition or
20 abstentions? Mr. Moy, can you read back the
21 vote?

22 MR. MOY: Yes, sir. The staff

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1 would record the vote as 4-0-1. This is to
2 grant the motion for reconsideration on the
3 motion of Ms. Moldenhauer, seconded by Mr.
4 Loud. In support of the motion is Mr. Dettman
5 and by absentee ballot Mr. Hood. And no other
6 Board participating, so again, that's 4-0-1 to
7 grant the motion for reconsideration.

8 CHAIRMAN LOUD: Thank you, Mr. Moy.

9 MEMBER MOLDENHAUER: Now, based on
10 the merits of the case, we believe the record
11 is full. On the initial hearing, it was
12 certainly convoluted and complex in regards to
13 the two separate -- there was one application,
14 but there were two separate major issues that
15 we were dealing with.

16 We were dealing with both the
17 Beauvoir Elementary School and the CDC at the
18 same time, even though they had slightly
19 separate facts, they were put together. And I
20 think that based on the record and based on
21 the supporting documentation in this motion
22 and the response, I think that we have

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1 sufficient evidence to reconsider this and to
2 eliminate Condition No. 3 in the BZA Order,
3 which would then no longer prevent the
4 elementary school from offering conferences,
5 training sessions and other programs.

6 I would then move to grant this
7 motion. I would also move to admit the
8 additional documentation as supporting
9 evidence on this motion. If there is any need
10 to waive our rules for the reply by the ANC, I
11 would do that pursuant to 3100.5.

12 CHAIRMAN LOUD: Thank you, Mrs.
13 Moldenhauer. I think it's consistent with
14 3100.5 and you have said this very eloquently
15 that there appears to be good cause shown. I
16 think they raised it at the hearing. It was
17 kind of convoluted and went back and forth
18 between the different uses on the campus.

19 And they mentioned at the hearing
20 that they had this documentation regarding the
21 exchange between the ANC and the applicant.
22 They just didn't bring it to the hearing. So

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1 now they have supplemented the record with it.

2 I think that's a good reason to waive our
3 rules.

4 And it doesn't appear to be any
5 prejudice to the applicant. In fact, they are
6 joining with the ANC and trying to seek this
7 clarification.

8 So what we have before us then is
9 the motion to grant the motion to waive our
10 rules to allow the ANC report with attachments
11 into our record. I believe it is Exhibit 40.

12 Do we need to vote on that, Mr. Moy
13 and/or Ms. Glazer or can the presiding officer
14 rule on that?

15 MR. MOY: The Board has gone either
16 way, Mr. Chairman. It's the flexibility on
17 the Chair.

18 CHAIRMAN LOUD: Okay. Well, given
19 that all of us are in agreement, why don't I
20 just, as presiding officer, rule that it is
21 admissible, so that we can fast track what we
22 are doing here.

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1 And then we will come back now and
2 we have before us just the motion for
3 reconsideration.

4 MEMBER MOLDENHAUER: Then I submit
5 based on the record a motion to grant the
6 motion for reconsideration and supplement our
7 corrected order to eliminate Condition No. 3
8 on BZA Order 17996.

9 CHAIRMAN LOUD: The motion has been
10 made. I second the motion. Is there further
11 deliberation?

12 Hearing none, all those in favor
13 say aye.

14 ALL: Aye.

15 CHAIRMAN LOUD: Is there any
16 opposition and/or abstentions?

17 MEMBER MOLDENHAUER: And just for
18 clarification, it's just eliminating the
19 restriction on the elementary school and not
20 on the CDC.

21 CHAIRMAN LOUD: Thank you.

22 MS. GLAZER: Mr. Chairman?

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1 CHAIRMAN LOUD: Ms. Glazer?

2 MS. GLAZER: Yes. I just wanted to
3 add, I believe it is implicit, but perhaps the
4 order should state that a corrected order will
5 be issued eliminating Condition 3.

6 CHAIRMAN LOUD: Thank you, Ms.
7 Glazer.

8 MR. MOY: Staff would record that
9 vote, Mr. Chairman, as 4-0-1 on the motion of
10 Ms. Moldenhauer, seconded by Mr. Loud. Also
11 in support Mr. Dettman and Mr. Hood by
12 absentee ballot. No other Board Member
13 participating. Again, 4-0-1.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.
15 And I do believe that concludes the Public
16 Meeting for this morning?

17 MR. MOY: Yes, sir.

18 CHAIRMAN LOUD: Okay. And we are
19 ahead of schedule. So we're not going to be
20 able to start the Public Hearing for two
21 minutes.

22 (Whereupon, the Public Meeting was

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1 concluded at 9:59 a.m.)

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