

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning  
Board of Zoning Adjustment

PUBLIC MEETING & PUBLIC HEARING  
OF THE BOARD OF ZONING ADJUSTMENT

Tuesday, December 6, 2011

441 4th Street, N.W.  
Jerrily R. Kress Memorial Room  
Second Floor Hearing Room, Suite 220-South  
Washington, D.C. 20001

OLENDER REPORTING, INC.  
1100 Connecticut Avenue, N.W., #810, Washington D.C. 20036  
Washington: (202) 898-1108 / Baltimore: (410) 752-3376  
Toll Free: (888) 445-3376

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

Board Members:

MERIDITH MOLDENHAUER, Chairperson  
NICOLE SORG, Vice-Chairperson  
JEFFERY HINKLE, National Capital Planning  
Designee  
MICHAEL TURNBULL, Zoning Commission

Also Present:

CLIFFORD W. MOY, Secretary to the Board

C O N T E N T S

Page

Introductory Remarks. . . . . 4

A.M. Session

Application No. 18116 (withdrawn) . . . . . 5

Application No. 18305 . . . . . 5

Extension of Order Nos. 17696 and 17696-A . . .10

Appeal No. 18257. . . . .19

Conclusion of the Meeting . . . . .27

OLENDER REPORTING, INC.

1100 Connecticut Avenue, N.W., #810, Washington D.C. 20036

Washington: (202) 898-1108 / Baltimore: (410) 752-3376

Toll Free: (888) 445-3376

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

2 CHAIRPERSON MOLDENHAUER: This meeting  
3 will please come to order. Good morning, ladies  
4 and gentlemen. We are located in the Jerrily R.  
5 Kress Memorial Hearing Room located at 441 4th  
6 Street, N.W. Today is the December 6th, 2011,  
7 Public Meeting of the Board of Zoning Adjustment  
8 for the District of Columbia.

9 My name is Meridith Moldenhauer,  
10 Chairperson. Joining me today is Vice-Chair  
11 Nicole Sorg; Mayoral Appointee. To my far left  
12 is Michael Turnbull, representative of the Zoning  
13 Commission, and to my right is Jeffrey Hinkle,  
14 representative of the National Capital Planning  
15 Commission.

16 Copies of today's agenda are available to  
17 you and are located to my left in the wall bin  
18 near the door.

19 We do not take any public testimony  
20 during our meeting, unless the Board asks someone  
21 to come forward. Please be advised this  
22 proceeding is being recorded by a court reporter

1 and is also being webcast live.

2           Accordingly, we ask you to refrain from  
3 any disturbing noise or actions in the hearing  
4 room. Please turn off all cell phones and  
5 beepers at this time, so as not to disturb these  
6 proceedings.

7           Mr. Secretary, do we have any preliminary  
8 matters?

9                           Application No. 18116

10           MR. MOY: Madam Chair, we do have one,  
11 but mostly it's an acknowledgement that  
12 Application No. 18116 of Kerry Bedard. The  
13 Applicant has withdrawn her application, and  
14 that's it.

15           CHAIRPERSON MOLDENHAUER: Wonderful.  
16 Thank you. That case had been on the calendar  
17 for a long time, so it's good to hear that's been  
18 resolved.

19           MR. MOY: Absolutely.

20           CHAIRPERSON MOLDENHAUER: Then I guess  
21 we'll call our first case for the morning.

22                           Application No. 18305

1           MR. MOY: Yes. Good morning, Madam Chair  
2 and members of the Board. The first case for  
3 Board action is the Expedited Review Calendar,  
4 and on the calendar this morning, there is one  
5 application. And that is the application of  
6 18305 of Veronique Rodman, pursuant to 11 DCMR  
7 3104.1, for a special exception to allow a rear  
8 addition to an existing one-family detached  
9 dwelling under Section 223, not meeting the rear  
10 yard (Section 404) requirements in the WH/R-1-B  
11 District at premises 3118 North -- rather New  
12 Mexico Avenue, N.W. Property located in Square  
13 1625, Lot 23.

14           As the Board will recall, Expedited  
15 Review Calendar items are zoning applications  
16 where the Applicant has waived the right to a  
17 public hearing, and applications are subject to  
18 either Board approval or removal from the  
19 calendar for rescheduling to a future hearing  
20 date pursuant to Sections 3118.3, .6, and .7 of  
21 the Zoning Regulations.

22           With that, the Board is to act on the

1 merits of the Expedited Review Calendar pursuant  
2 to Section 3118, which consists of this  
3 Application No. 18305 for a special exception  
4 relief under Section 223.

5 CHAIRPERSON MOLDENHAUER: Thank you very  
6 much, Mr. Moy.

7 We will start our discussion on this  
8 case. I think that this is a pretty  
9 straightforward 223. The Applicant has posted  
10 everything properly, and we have ANC support and  
11 OP support.

12 I see no issue with this application, and  
13 I would be in support of the application, but  
14 I'll see if there's any additional discussion or  
15 deliberation from Board members.

16 VICE-CHAIRPERSON SORG: Thank you, Madam  
17 Chair. I agree that there seems to be no issues  
18 with this case. It seems pretty straightforward.

19 I also would note, as I think you were  
20 going to mention, that OP requested us to waive  
21 our rules and accept their report in less than 7  
22 days.

1           CHAIRPERSON MOLDENHAUER: Yes. And I  
2 think that we will accept that waiver and admit  
3 that report in late.

4           Is there any additional comments from  
5 Board members?

6           MR. TURNBULL: Madam Chair, I would just  
7 say that the special exception is very de  
8 minimis, considering the neighborhood it's in and  
9 everything else. I think it's -- I'm fine with  
10 it, and I think what they're doing with the rest  
11 of the house is excellent also.

12           CHAIRPERSON MOLDENHAUER: Okay. Well,  
13 then if we're all in agreement, then I'll submit  
14 a motion, a motion to approve 18305, pursuant to  
15 11 DCMR 3104.1, for a special exception to allow  
16 a rear addition to an existing one-family  
17 detached dwelling under Section 223, not meeting  
18 a rear yard, under 404 requirements in the WH/R-  
19 1-B District at premises 3118 New Mexico Avenue,  
20 N.W.

21           A motion has been made. Is there a  
22 second?

1 VICE-CHAIRPERSON SORG: Second.

2 CHAIRPERSON MOLDENHAUER: Motion has been  
3 made and seconded. All those in favor, say  
4 "aye."

5 [Chorus of ayes.]

6 MR. MOY: Before I read the final vote,  
7 Madam Chair, we do have an absentee ballot from  
8 another participant, and that is Mr. Lloyd  
9 Jordan, and his absentee ballot vote is to  
10 approve the calendar with this Application No.  
11 18305.

12 So that would give a final vote of 5 to 0  
13 to 0 on the motion of the Chairperson, Ms.  
14 Moldenhauer, second the motion Ms. Sorg to  
15 approve the special exception, 223. Also in  
16 support of the motion, Mr. Turnbull and Mr.  
17 Hinkle. So again, the final vote is 5 to 0 to 0.  
18 Motion carries.

19 CHAIRPERSON MOLDENHAUER: Thank you very  
20 much, Mr. Moy, and seeing that there is no  
21 opposition in this case, we would like to waive  
22 our requirements and ask that a summary order be

1 issued.

2 MR. MOY: Yeah. Thank you, Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Thank you.

4 Extension of Order Nos. 17696 and 17696-A

5 MR. MOY: I believe the next application  
6 before the Board for action is a request -- a  
7 motion for a second 2-year time extension of  
8 Order No. 17696 and 17696-A of Hines VAFII, 2100  
9 M Street LP, pursuant to Section 3130 of the  
10 Zoning Regulations.

11 The first extension request was approved  
12 on December 8th, 2009. This was under Order  
13 17676-A.

14 I am going to read the original  
15 underlying application caption, Madam Chair,  
16 which was approved on December 18, 2007, and this  
17 application was pursuant to 11 DCMR 3104.1 and  
18 3103.2 for a special exception from the roof  
19 structure setback requirements under Subsection  
20 400.7 and the parking space requirements under  
21 Subsection 2108.2 and a variance from the loading  
22 platform height requirements under Subsection

1 2201.7, variance from the van parking  
2 requirements under Subsection 2115.8, variance  
3 from the park -- variance from the compact  
4 parking space requirements under Subsection  
5 2115.4, variance from the 45-degree high setback  
6 from neighboring property requirements under  
7 Subsection 1709.20, and a variance from the  
8 loading space height requirements under  
9 Subsection 2201.6.

10           This was to allow the expansion of the  
11 existing office building with street-level retail  
12 through transferrable development rights by  
13 adding three new floors in the C-3-C District at  
14 premises 2100 M Street, N.W., Square 72, Lot 75.

15           The Applicant filed their request on  
16 November 4, 2011. That document, Madam Chair, is  
17 in your case folders identified as Exhibit 37.

18           The Applicant is also requesting that the  
19 Board waive this requirement to permit the second  
20 -- second 2-year time extension, pursuant to  
21 Subsection 3130.6(c), 1 through 3.

22           The Board is to act on the preliminary

1 matter and then act on the merits of the request  
2 to extend the validity of Order No. 17696-A.

3 That completes the Staff's briefing,  
4 Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Thank you very  
6 much, Mr. Moy. As you indicated, we have a  
7 preliminary matter in this case, which would be  
8 whether or not the Board would waive its  
9 requirements under 3100.5 to allow a second 2-  
10 year extension and whether or not the Applicant  
11 has shown good cause in that matter.

12 I will turn to Vice-Chair Sorg to start  
13 us off in that discussion.

14 VICE-CHAIRPERSON SORG: Thank you, Madam  
15 Chair.

16 A couple of sort of thoughts on that  
17 matter for this case, I think that if we were  
18 looking at a first extension, regular extension  
19 of an application here, I would say that we might  
20 have enough information, but for me, my feeling  
21 here is that I am not sure there is enough  
22 information in the application, specifically

1 related to the request to waive our rules for --  
2 to allow a second extension.

3 In that way, I think that the good cause  
4 shown has to go towards not just, you know, the  
5 difficult in -- under the statute here in 3130.6,  
6 but specifically to what is the good cause shown  
7 for a second exception, for example.

8 So, therefore, I think actually in this  
9 regard I would want for the Applicant to come  
10 back and show a little bit more information in  
11 the application, specifically in that regard.

12 For me, some of the things that could be  
13 useful here are if we look at in their -- in our  
14 Exhibit No. 37, the affidavit that is submitted.

15 In Item 6 and 7, they indicate that, you know,  
16 an initial financial institution had bowed out  
17 and, you know, there are -- have been outreach to  
18 other financial institutions, some documentation  
19 of that, I think could be something that could go  
20 toward a reasonable documentation of good cause  
21 for a second extension.

22 Similarly, in their Item No. 7, the

1 Applicant states outreach to -- I'm sorry -- No.  
2 8 for outreach for leasing commitments. Further  
3 documentation of that, I think would be good.

4           Basically, I think a lot of the  
5 information in this application is related to  
6 things that happen in '07, '08, but I think  
7 what's necessary to show good cause for us to  
8 waive our rules and allow a second potential  
9 extension would be information that is  
10 specifically related to the last 2 years.

11           I think personally and, of course, as the  
12 Board -- sensitive to the sort of ongoing  
13 difficulty in the economy, so I don't personally  
14 believe it's impossible for us to look at waiving  
15 those rules in general based on the economy, but  
16 I think that the good cause has to be related to  
17 the specific time period.

18           CHAIRPERSON MOLDENHAUER: Thank you, Ms.  
19 Sorg. I think I agree with you. I think the  
20 issue here is that in order to waive the  
21 requirements, it's not enough to just satisfy the  
22 standards in general, which would typically

1 permit an extension under 3130.6, but rather that  
2 there is additional evidence that needs to be  
3 shown and additional good cause to show that  
4 there has been continued effort on behalf of the  
5 Applicant between the last 2 years, '09 and '10  
6 and into '11. From the extension, it's '09 for a  
7 very brief time, and it was extended in December  
8 of '09, but that there was good cause on behalf  
9 of the Applicant that they have been pursuing and  
10 going forward.

11           And there's been general comments that  
12 the Applicant did include in their submission,  
13 and I do see that, but I think in order to rise  
14 to the level, in order to potentially, at least  
15 me personally to support the application for  
16 waiving that requirement, I would need to see the  
17 affidavit specifically reference that information  
18 in regards to the time frames.

19           And I think as, Ms. Sorg, you pointed  
20 out, the affidavit in those areas does not  
21 provide any specific time frame. So that would,  
22 I think, be what I would be looking for, would be

1 comments or additional supplemental information  
2 that has to do with the time frame and showing  
3 that they have been continuing their efforts to  
4 continue this project.

5 Are there additional deliberations from  
6 Board members? Mr. Hinkle.

7 MR. HINKLE: Well, thank you, Madam  
8 Chair.

9 I am certainly in agreement with both  
10 yourself and Ms. Sorg.

11 I was struck in particular about -- after  
12 having read the initial extension from 2009, the  
13 language in that order hasn't necessary changed  
14 in terms of what the additional documentation  
15 that we have today for this request for a waiver.

16 So, if you are looking at asking for  
17 additional information, I would certainly support  
18 that.

19 MR. TURNBULL: Madam Chair, I would agree  
20 with all of your comments.

21 I would just add one other thing, I  
22 think, which we should get for the record, which

1 is in Exhibit 37 with the affidavit of Michael  
2 Allen, Item 6, where they talk about HSH  
3 Nordbank, and one of the items they bring up,  
4 they talk about the troubles they have. HSH  
5 confirmed that we'd be proceeding with funding of  
6 the construction portion of the project subject  
7 to a prerelease of the expansion space  
8 contemplated in the redevelopment. Owner has  
9 searched for replacement financing to enable it  
10 to proceed without a prereleasing commitment,  
11 blah-blah-blah.

12 I would just like to think they ought to  
13 state for the record what the impact of a  
14 prerelease agreement or a commitment means and  
15 why that has impacted them so much and why they  
16 need to go to a different financing. I think  
17 they ought to explain that. It's a fine point,  
18 but I think for us and the record for going head  
19 on, especially on a second extension, I think  
20 they ought to really explain that.

21 CHAIRPERSON MOLDENHAUER: Well, yes, and  
22 I think that pretty much -- I see counsel in the

1 audience. I think that they have heard all of  
2 our comments, and then what we'll do is we'll  
3 postpone this decision until January 10th.

4           We will leave the record open for  
5 additional submissions until -- hold on. Let's  
6 see here. We'll leave the record open until  
7 January 5th, so that will provide, I think, the  
8 Applicant plenty of time, especially over the  
9 holidays, to obtain the additional information  
10 that we have requested, so that we can review  
11 this application again.

12           Vice-Chair Sorg just indicated, obviously  
13 -- but I think it isn't understood that obviously  
14 the extension right now expires on December 20th,  
15 but obviously that will be tolled until the next  
16 decision date, and any extension would obviously  
17 be from the prior decision date, so we would  
18 obviously go back to December 20th from that  
19 date. But this case will then be continued to  
20 January 10th in the afternoon, and I believe we  
21 made a decision that the afternoon cases are  
22 going to start at two o'clock for decision on the

1 afternoon on December 10th.

2 MR. MOY: Yes. Very good, Madam Chair.  
3 Thank you. Decision, January 10th. Submissions  
4 due to the office by Thursday, January the 5th,  
5 2012.

6 Appeal No. 18257

7 MR. MOY: The next item before the Board  
8 for the action, Madam Chair, is Appeal No. 18257  
9 of Water Parris, pursuant to 11 DCMR 3100 and  
10 3101, from an April 8, 2011, decision by the  
11 Zoning Administrator, Department of Consumer and  
12 Regulatory Affairs, to issue a building permit,  
13 allowing the construction of an elevator or  
14 material lift in the C-2-A District, in the rear  
15 of premises 3307 M Street, N.W., property located  
16 in Square 1205, Lot 79.

17 As the Board will recall on November 1st,  
18 2011, the Board completed public testimony,  
19 closed the record, and scheduled its decision on  
20 November 8, 2011. After deliberation, the Board  
21 requested additional information to supplement  
22 the record from the parties and as well as the

1 Applicant.

2           Madam Chair, in your case folders, those  
3 filings are as follows: From the Appellant; the  
4 Appellee, DCRA; and the Intervenor, which is the  
5 property owner. The Appellant's filings is  
6 identified as Exhibit 34. The Appellee's post-  
7 hearing document is Exhibit 32. The Intervenor's  
8 document is identified as Exhibit 33.

9           The Board also allowed responses by  
10 Friday, December 2, 2011. There is one response  
11 filing, and it is from the Intervenor, dated  
12 December 2nd. That document is identified as  
13 Exhibit 35.

14           Other than that, the Board is to act on  
15 the merits of the appeal of the April 8, 2011,  
16 decision by the Zoning Administrator to issue the  
17 building permit allowing the construction of an  
18 elevator or material lift in the C-2-A District.

19           That completes the Staff's briefing,  
20 Madam Chair.

21           CHAIRPERSON MOLDENHAUER: Thank you very  
22 much, Mr. Moy.

1           We are here to discuss an issue that was  
2 actually brought up by myself at the last  
3 deliberation hearing, and I think we have been  
4 sufficiently briefed on that issue in regards to  
5 whether or not the building would be a  
6 nonconforming use or an extension to a  
7 nonconforming structure. And I think, obviously,  
8 while it was a good course of questioning, I do  
9 think that, obviously, it is accurate to say that  
10 all the parties have agreed, and I agree, that  
11 the property building is nonconforming based on  
12 the specific time frame in which the structure  
13 was built.

14           That being said, the question now is, I  
15 think, we look to maybe the only other issue  
16 that's been raised in the submissions, which was  
17 raised by the Appellant, and the question is the  
18 Appellant has raised a new issue in regards to  
19 whether or not this is an addition to an illegal  
20 structure.

21           The question there that is then addressed  
22 or argued then by the Intervenor in their reply

1 brief, is that obviously that argument was not  
2 initially submitted to the Board in their initial  
3 appeal, and whether or not the Appellant can  
4 properly or procedurally at this point in time  
5 add a new claim to their appeal.

6           And I think the answer, while I am  
7 personally intrigued by the question of whether  
8 or not a -- the new decision of the ZA,  
9 obviously, in granting this permit and deeming  
10 this to be a roof structure, how that potentially  
11 affected the prior permit and how that issue can  
12 be addressed, because I think it does leave a lot  
13 of questions in my mind.

14           Unfortunately, procedurally, that issue  
15 was not raised in the initial appeal and cannot  
16 be raised after the hearing has been concluded,  
17 all arguments have been taken, and at the point  
18 in time where we are asking for a deliberation.  
19 So I think that the request to potentially amend,  
20 even though it was not typically worded in that  
21 fashion, but the core request to amend their  
22 appeal, to add a new claim, I believe -- and I'll

1 see what other Board members believe -- must be  
2 denied for the untimeliness, the fact that they  
3 did not raise that in their initial appeal; thus,  
4 it's not before the Board at this time.

5           And that being said, I think that this  
6 case then has been determined, and I think all  
7 Board members are pretty much on the same page in  
8 that regard, but I will open up the floor to  
9 deliberation and to have any additional comments  
10 on both the question of raising a new issue on  
11 appeal and whether that's timely or proper  
12 procedurally or if there's any additional  
13 comments. I know, Mr. Turnbull, you were not  
14 present at the prior discussion. Do you have any  
15 comments you want to make about that prior  
16 decision as well?

17           MR. TURNBULL: I just remembered I had  
18 for the last meeting -- I had submitted an  
19 absentee ballot.

20           CHAIRPERSON MOLDENHAUER: You had, yes.

21           MR. TURNBULL: And I read the lengthy  
22 brief that you had for continuing on.

1           I would agree with your comments. Well,  
2 I would agree with your comment that it is  
3 inappropriate at this time. I think it is  
4 untimely. I think an issue like that would  
5 require an entirely new hearing, and that would  
6 get into a whole new legal grounds on a lot of  
7 different areas. And I think we would require  
8 advice from our legal counsel as well looking at  
9 what that would involve.

10           So I think it is untimely, and we can't  
11 consider it, but as I say, I am ready to go  
12 forward on it.

13           VICE-CHAIRPERSON SORG: Madam Chair, I  
14 also -- i agree with your conclusions that the  
15 matters that are relevant to this appeal have  
16 been deliberated on and agreed, whether by vote  
17 or by consensus with us in the last hearing.

18           I don't agree, however, just as a small  
19 point that the introduction of new issues in the  
20 Appellant's post-hearing statements is in and of  
21 itself a request to amend the application, so I  
22 wouldn't view it as that. I don't think it is.

1 I just think that it's an issue that shouldn't be  
2 allowed into the discussions of the appeal, in  
3 addition to which counsel for the Appellant is  
4 not here to ask to amend anything.

5 So I don't view it as a denial of a  
6 request to amend the appeal. I just view it as  
7 superfluous issues that were brought in untimely.

8 That being said, of course, as I  
9 mentioned in the opening of my remarks, I agree  
10 with your conclusion that we decided this is a  
11 roof structure. The issues that were brought to  
12 us before appeal have been discussed and decided.

13 Thank you.

14 And with that, Madam Chair, if there is  
15 no other deliberation, then I can make a motion,  
16 and that is, I will submit a motion to deny  
17 Appeal No. 18257 of Walter Parrs' appeal to ZA  
18 decision to allow construction of structure in  
19 the C-2-A, the rear, 3307 M Street, N.W.

20 A motion has been made -- sorry.

21 CHAIRPERSON MOLDENHAUER: A motion has  
22 been made. Is there a second?

1 MR. TURNBULL: Second.

2 CHAIRPERSON MOLDENHAUER: Motion has been  
3 made and seconded. All those in favor, say  
4 "aye."

5 [Chorus of ayes.]

6 MR. MOY: Madam Chair, before I give the  
7 final vote, I do have an absentee ballot from a  
8 participant on this appeal from Mr. Lloyd Jordan,  
9 and I have been having discussions with our  
10 counsel, so I am going to leave this up to the  
11 Board, to the Chairperson, because on the  
12 absentee ballot, the vote reads as "I hereby vote  
13 to approve the above-identified BZA application."

14 As you know, on the absentee ballot,  
15 there is two components to it, one for BZA  
16 applications and one for appeals or motions, and  
17 on the category with BZA appeal/motions, the  
18 categories are I hereby vote to either grant,  
19 deny, or dismiss, but in this case, although the  
20 appeal is identified correctly as Parrs' appeal,  
21 Case No. 18257, he marked off "I hereby vote to  
22 approve."

1           CHAIRPERSON MOLDENHAUER: I think it's  
2 just -- obviously, there was an error, so I think  
3 we should just not accept that absentee vote, and  
4 I think that we have enough Board members, so  
5 that it would be irrelevant as to that vote.

6           Okay. Then with that, then the total --  
7 final vote is 4 to 0 to 1. This is on the motion  
8 of Vice-Chairperson, Ms. Sorg, to deny the  
9 appeal. Second the motion, Mr. Turnbull. Also  
10 in support of the motion, Chairperson Moldenhauer  
11 and Mr. Hinkle, and Mr. Jordan, as the -- not  
12 present, not voting. So again, the final vote is  
13 4 to 0 to 1. The motion carries.

14           CHAIRPERSON MOLDENHAUER: Thank you very  
15 much, Mr. Moy, and obviously, a full order will  
16 be required.

17           That, I believe, is the last case for our  
18 morning and for our day today, so we will  
19 reconvene on December 13th. Thank you so much,  
20 everybody.

21           [Whereupon, at 10:20 a.m., the Public  
22 Meeting was adjourned.]