

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

MAY 27, 2008

+ + + + +

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., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- RUTHANNE G. MILLER, Chairperson
- MARC D. LOUD, Vice Chairman
- MARY OATES WALKER, Board Member
- SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

- CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on May 27, 2008.

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

2 (9:55 a.m.)

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

5 Good morning, ladies and  
6 gentlemen. This is the May 27, 2008, public  
7 meeting of the Board of Zoning Adjustment of  
8 the District of Columbia. We have both a  
9 public meeting this morning and a public  
10 hearing. We have one case on the agenda for  
11 the meeting.

12 My name is Ruthanne Miller. I am  
13 the Chairperson of the BZA. Joining me today,  
14 to my right is Mr. Marc Loud, our Vice Chair,  
15 and next to him is Mr. Curtis Etherly with the  
16 Zoning Commission. To my left is Mary Oates  
17 Walker and Shane Dettman, Board Members. Mr.  
18 Dettman will be joining us in a minute.

19 And Mr. Clifford Moy with the  
20 Office of Zoning; Lori Monroe, Office of  
21 Attorney General; and Beverley Bailey with the  
22 Office of Zoning.

1                   Copies of today's meeting agenda  
2                   are available to you and are located to my  
3                   left in the wall bin near the door. We do not  
4                   take any public testimony at our meetings  
5                   unless the Board asks someone to come forward.

6                   Please be advised that this  
7                   proceeding is being recorded by a Court  
8                   Reporter, and is also webcast live.  
9                   Accordingly, we must ask you to refrain from  
10                  any disruptive actions or noises in the  
11                  hearing room. So please turn off all beepers  
12                  and cell phones.

13                  Does the staff have any  
14                  preliminary matters?

15                  MR. MOY: No, Madam Chair.

16                  CHAIRPERSON MILLER: Then, let us  
17                  proceed with the agenda for the public  
18                  meeting.

19                  MR. MOY: Yes. The first and only  
20                  case for the Special Public Meeting, Madam  
21                  Chair, is a Board action on a motion for  
22                  reconsideration of Application Number 17729,

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1 pursuant to Section 3126 of the Zoning  
2 Regulations.

3 This is to Application Number  
4 17729 of Morrison-Clark Limited Partnership I  
5 and Morrison-Clark LP, pursuant to 11 DCMR  
6 3103.2 and 3104.1, for a variance from the use  
7 provisions under Subsection 350.4(d), a  
8 variance from non-conforming structure  
9 provisions under Subsection 2001.3, a variance  
10 from the rear yard requirements under Section  
11 404, and a special exception from the root  
12 structure setback requirements under  
13 Subsection 411.11. This was to allow the --  
14 for the renovation and expansion of an  
15 existing inn located in the DD/R-5-E District  
16 at premises 1015 L Street, N.W. This is in  
17 Square 341, Lots 63, 69, 70, 831, and 832.

18 If the Board will recall, on May  
19 6th, the Board deliberated on ANC-2F's motion  
20 for reconsideration and rehearing. On  
21 consideration of the movements brief and the  
22 response brief from the applicant, the Board

1 granted the motion in part. The Board granted  
2 the motion for reconsideration and denied the  
3 motion for a rehearing.

4 A special public meeting was  
5 scheduled for May 20, 2008, which on the  
6 Board's action was subsequently extended to --  
7 rescheduled to May 27th. The Board did not  
8 request any additional information from the  
9 parties.

10 With that, the staff is going to  
11 end its briefing, Madam Chair.

12 CHAIRPERSON MILLER: Thank you,  
13 Mr. Moy.

14 As Mr. Moy reviewed the history on  
15 this, basically we do have a motion before us  
16 for reconsideration of Application 17729. And  
17 on May 6th, we decided that we would  
18 reconsider the decision, but we denied a  
19 rehearing on the decision.

20 So where we are today is  
21 reconsidering the merits of the decision as it  
22 relates to the impacts on the adjacent

1 condominium building, as that is what the  
2 errors claimed by the ANC in this case go to.

3 So the rule that governs our  
4 reconsideration is set forth in 3126.4, and  
5 that is that we need to determine, based on  
6 the record, whether the final decision was  
7 erroneous in any way.

8 So I have looked at the motion  
9 again and identified the errors that are  
10 alleged as follows. Basically, the ANC has  
11 alleged that the relief granted would have an  
12 adverse impact on the condominium building,  
13 because, one, the real wall of the addition  
14 will be three feet from the condominium's  
15 south-facing wall, and, therefore, would  
16 eliminate views and access to light and air.

17 Two, that the wall abutting --  
18 that there's a wall above the carriage house  
19 that will block views and -- I guess it's  
20 views of the adjacent condominium.

21 And, third, that the proposed  
22 construction would block nearly all sunlight

1 from a landscaped courtyard of the adjacent  
2 condominium.

3 That's the way I understand it,  
4 but it is set forth in the motion. And also,  
5 I would like to just put forth that if we were  
6 to decide that we erred, then the result would  
7 be that we would reverse our final decision on  
8 grounds that the applicant didn't meet the  
9 third prong of the variance test, which means  
10 that the relief has to be granted without  
11 substantial detriment to the public good.

12 And that's where the ANC's  
13 arguments go to the public good, meaning the  
14 impacts on the adjacent condominium units.

15 So I think we can start with the  
16 rear wall of the addition. That is three feet  
17 from the condominium's south-facing wall.  
18 That topic was very thoroughly discussed at  
19 the hearing. We did have one owner of a  
20 condominium unit, a Ms. Busenberg, who  
21 appeared and raised concerns about the impact  
22 of the addition on the condominium.

1           And this was one that was very  
2 thoroughly addressed. And my understanding of  
3 this issue is that the windows that are  
4 presently on the condominium wall are three  
5 feet from the property line, and they are  
6 considered at-risk windows, because the  
7 building code doesn't require -- doesn't allow  
8 them to be used for required light and  
9 ventilation, because they are not far enough  
10 away from the property line. and, therefore,  
11 those units have other windows that bring in  
12 the required light and ventilation.

13           And it's true that, at least the  
14 way I understood it, and actually as was said  
15 at the hearing, I think there will be a  
16 diminution in light certainly, but not to that  
17 level of substantial detriment.

18           Apparently, these units also have  
19 windows that face west and look down an alley,  
20 and they get more light through those windows.

21           Does anybody want to say anything  
22 further on that one?

1 (No response.)

2 That one really was very hashed  
3 out at the hearing.

4 The next one goes to the structure  
5 being I believe built above the carriage  
6 house, blocking west-facing portions of the  
7 adjacent condominium. And looking at the  
8 plans and the transcript that I did to look --  
9 to consider this question, it appears that  
10 there is a great distance between that wall  
11 above the carriage house and the walls of the  
12 adjacent condominium.

13 I think that the plans show almost  
14 40 feet, so that, therefore, views won't be  
15 interrupted, really. And so I didn't find a  
16 substantial detriment in that case. Does  
17 anybody want to say anything else to that  
18 point?

19 The third point was the proposed  
20 construction would block nearly all sunlight  
21 from the landscaped courtyard of the adjacent  
22 condominium. And I couldn't find anything on

1 that in our record at all, and even in the  
2 plans that we have I couldn't identify what  
3 courtyard in the adjacent condominium was at  
4 issue.

5 I think what I want to say here  
6 about that is that the ANC -- well, the  
7 movement for reconsideration has a burden to  
8 show us what the error is, not to just allege  
9 that there is going to be an impact.

10 You know, I have tried looking at  
11 the transcript, looking at the plans, looking  
12 at all the filings that are in the record, to  
13 find information on this courtyard, and I  
14 can't find it.

15 And so under the law, I think that  
16 it fails because the movement didn't meet  
17 their burden, and I think -- in case people  
18 don't understand, there is some of a burden in  
19 a motion for reconsideration to not just  
20 really allege an error, but to show the Board  
21 how the Board erred and what the error is.  
22 And this is just too general to find.

1           So I think those were the three  
2 issues that went to the merit that I could  
3 identify. The ANC also said that they were  
4 withdrawing their support now, and so that's  
5 a factor in our reconsideration, though it  
6 doesn't really go to how we erred. It just  
7 goes to their putting on the record that they  
8 didn't support the previous decision anymore.

9           Anything anyone else wants to add?

10           VICE CHAIRMAN LOUD: Madam Chair,  
11 just a couple of additional thoughts. And I,  
12 too, will be voting to affirm the decision  
13 that we made March 11th.

14           With respect to sort of the  
15 underlying concern that the ANC raised in its  
16 motion papers that a different set of plans  
17 was presented March 11th than they had seen  
18 previously, it did cause me some concern. I  
19 think it's reflected by the record of the  
20 transcript of that hearing.

21           But upon reviewing both the  
22 standard that we are looking at, which you

1 alluded to the 3124 -- 3126.4, and whether or  
2 not we erred in making a decision, I think  
3 that the record fully supports the decision we  
4 made, and we did not rely exclusively or  
5 substantially on the ANC report, which I  
6 believe is what the movant suggests was our  
7 error, on page 6 of their motion for  
8 reconsideration.

9 We looked at a combination of all  
10 of the other evidence, which would have  
11 included the OP report, included Mr. John  
12 Jessen's testimony, who had been qualified as  
13 an expert and who spoke specifically in the  
14 exchange with Ms. Busenberg and Mr. Etherly  
15 about the light impacts at the north rear wall  
16 of this project, as well as taking into  
17 consideration the Logan Circle Civic  
18 Association's support for the project.

19 So we did look at substantial  
20 detriment in a large context in the ANC  
21 report.

22 Additionally, it concerned me --

1 and the record was painfully silent on -- why  
2 the ANC did not address the September 2007  
3 plans that had been submitted to the BZA, and  
4 that had been provided to the ANC, which plans  
5 identified the height of the building -- 78  
6 feet, six inches -- as well as the location of  
7 the building with respect to the Quincy Park  
8 Condominium Association.

9           You could look at the plan and  
10 discern, if not that it was exactly three  
11 feet, that it was extremely close to the  
12 Quincy Park Condominium. So it concerned me  
13 that there was no -- the ANC, in moving for  
14 reconsideration, did not address what was  
15 clearly a very important issue, nor did the  
16 ANC address why they did not attend the March  
17 11 hearing.

18           And our rules contemplate -- I  
19 think at 3115.4, and I will confirm that --  
20 they sort of anticipate that there are going  
21 to be occasions where the ANC develops a  
22 report, they submit a report, and then a

1       misunderstanding develops between what was in  
2       the report and submitted and the position  
3       taken at the hearing.

4               And so what that rule allows the  
5       ANC representative to do is to speak to the  
6       inconsistencies between the report that they  
7       submitted and the changes since the time of  
8       their submittal.

9               Well, by not attending the March  
10       11 hearing, the ANC deprived itself of the  
11       opportunity to speak to that. And there is no  
12       reason that appears in the record for why the  
13       ANC was not present at the March 11 hearing,  
14       although that could have easily been included  
15       as a part of their motion for reconsideration.

16               So I think both on the substance,  
17       on the evidence that we took a look at, the  
18       testimony from Mr. Jessen, the support for the  
19       project from other community leaders, the  
20       exchange between Mr. Jessen, Commissioner  
21       Etherly, and Ms. Busenberg on the light/air  
22       impacts, and then on the process questions, I

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1 am comfortable affirming our decision of March  
2 11th.

3 Thank you.

4 CHAIRPERSON MILLER: Thank you.

5 I would also note that I can  
6 understand how the condominium unit owners  
7 would be concerned about the building coming,  
8 you know, so close to their property, but I  
9 think that they probably were unaware -- or at  
10 least, you know, our decision would go to the  
11 fact that this is something that goes to the  
12 building code and that, in fact, those units  
13 were required to get their light from other  
14 sides.

15 Okay. Anything else?

16 VICE CHAIRMAN LOUD: I just want  
17 to correct something I just said. The section  
18 of our regulations that deal with the scenario  
19 where an ANC submits a report, and then the  
20 understanding that that report is based on  
21 changes, is 3115.3. I believe I said 3115.4.

22 CHAIRPERSON MILLER: Anything

1 else?

2 (No response.)

3 Okay. Then, I would move for  
4 denial of the motion for reconsideration of  
5 Application Number 17729.

6 COMMISSIONER ETHERLY: Seconded,  
7 Madam Chair.

8 CHAIRPERSON MILLER: Further  
9 deliberation?

10 (No response.)

11 All those in favor say aye.

12 (Chorus of ayes.)

13 All those opposed?

14 (No response.)

15 All those abstaining?

16 (No response.)

17 And would you call the vote,  
18 please?

19 MR. MOY: Yes, Madam Chair. Staff  
20 would record the vote as five to zero to zero  
21 on the motion of the Chair, Ms. Miller,  
22 seconded by Mr. Etherly. Also in support of

1 the motion Ms. Walker, Mr. Dettman, and Mr.  
2 Loud.

3 CHAIRPERSON MILLER: Okay. Thank  
4 you. Is there anything else on the agenda for  
5 the Special Public Meeting?

6 MR. MOY: No. That completes the  
7 Special Public Meeting, Madam Chair.

8 CHAIRPERSON MILLER: Okay. Then,  
9 the Public Meeting is adjourned.

10 (Whereupon, at 10:11 a.m., the  
11 proceedings in the foregoing  
12 matter were adjourned.)

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