

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

MARCH 18, 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:

- GREGORY N. JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on March 18, 2008.

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

10:07 a.m.

CHAIRPERSON MILLER: Good

morning, ladies and gentlemen. We have both a meeting and a hearing this morning and we'll be starting off with the meeting. We have just one case on the agenda to deliberate at our meeting. So, this is the March 18, 2008 public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I am the Chair of the BZA and to my right is Mr. Marc Loud, the Vice-Chair, and next to him is Mr. Greg Jeffries from the Zoning Commission.

To my left is Mary Oates Walker and Shane Dettman on the board, and next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Ms. Lori Monroe from the Office of Attorney General, and Ms. Beverly Bailey from the 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
4 not take any public testimony at our meeting
5 unless the board asks someone to come
6 forward.

7 Please be advised that this
8 proceeding is being recorded by a court
9 reporter and is also webcast live.
10 Accordingly, we must ask you to refrain from
11 any disruptive noises or actions in the
12 hearing room. Please turn off all beepers
13 and cell phones. Does the staff have any
14 preliminary matters?

15 MCX?: No, Madam Chair.

16 CHAIRPERSON MILLER: Okay, in
17 which case let us now proceed with the
18 agenda for the Special Public Meeting.

19 MCX?: Yes. Good morning, Madam
20 Chair and members of the board. The only
21 case for a special public meeting this
22 morning is the Application of 17716 of

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1 Victor Udo pursuant to 11 DCMR 3103.2 for a
2 special exception to construct a new, and as
3 amended to a new five unit apartment
4 building under Section 353 in the R-5-A
5 district.

6 That premises is 901 Barnaby
7 Street, SE. That's in square 5924, lot 63.
8 The staff also notes that at the last
9 hearing on February 12 the applicant amended
10 the application to include requests for
11 variance relief under, from the side yard
12 requirements under Section 405.

13 Also on February 12, 2008 the
14 board completed public testimony, closed a
15 record and scheduled its decision on March
16 18, 2008. The board requested additional
17 information from the applicant, including a
18 report from the Department of Transportation
19 and Office of Planning supplemental report.

20 The filings in the record, Madam
21 Chair, in your case folder from the
22 applicant there's a filing dated March 11,

1 2008 identified as Exhibit 31. Also in your
2 folders is the OP supplemental report dated
3 March 11, 2008 identified as Exhibit 32.
4 And finally, a DDOT report dated March 10,
5 2008 identified as Exhibit 30.

6 The board is to act on the merits
7 of the application seeking special exception
8 relief from Section 353, and variance relief
9 from the side yard requirements. And that
10 will complete the staff's briefing, Madam
11 Chair.

12 CHAIRPERSON MILLER: Thank you,
13 Mr. Moy. As board members recall, this
14 originally came in as a six unit apartment
15 building and it was revised to be a five
16 unit building, and we had an extensive
17 hearing on this case and explored various
18 concerns.

19 And particularly with respect to
20 the 353 special exception, I think we had
21 concerns about access to parking and
22 landscaping and the articulation of the

1 building. And I think that the applicant
2 has worked to address all those issues and
3 that's represented in Exhibit 31.

4 And then we also, as Mr. Moy
5 said, have some supplemental reports from
6 DDOT and Office of Planning. Does anyone
7 want to start with our analysis with respect
8 to this case under the variance test and the
9 353?

10 MEMBER DETTMAN: I can -- I'd be
11 happy to sort of set up the analysis of 353
12 as well as the requested variance. So,
13 since this is a development consisting of,
14 not entirely of single family detached
15 dwellings, this is before the board as a
16 special exception, a 353. 353.2 stating
17 that the application shall be referred to
18 the DC Board of Education for comment and
19 recommendation.

20 The application was referred to
21 the Board of Education on August 20, 2007
22 and no report has been filed to date.

1 However, according to DCOP's report the
2 small number of units is unlikely to result
3 in an inability of the public schools to
4 accommodate any new students, and that's
5 Exhibit 24 on Page 4. 353.3 stating that
6 the application shall be referred to DDOT
7 and DHCD, the application was referred to
8 both of those agencies.

9 Prior to the hearing, there was
10 no report filed by DDOT. However, at the
11 board's request the application was reviewed
12 by DDOT after the hearing, and they did
13 submit a report that's Exhibit 30 in the
14 file.

15 In the report, DDOT does not
16 indicate that they have any objections to
17 the revised site plan with respect to how
18 the parking area will be accessed, and with
19 the proposed improvements to the adjacent
20 alley.

21 When the application was referred
22 to DHCD, DHCD filed a report dated January

1 25, 2008 stating that they do not support
2 the application as presently configured.
3 And they had recommended that the number of
4 units be reduced to four, stating that they
5 believe that these modifications would be
6 more conducive to families, will eliminate
7 the need to create a curb cut along Barnaby
8 and will increase the amount of the site
9 that can be dedicated to landscaping.

10 DHCD has not weighed in on the
11 modifications that were submitted by the
12 applicant, as their post-hearing submission.
13 353.4 saying that the application should be
14 referred to DC Office of Planning, and I
15 think during the testimony we found that in
16 DCOP's report that's dated February 5, 2008,
17 they had indicated that they could not
18 support the special exception primarily for
19 the same reasons that DHCD did.

20 They thought that a five unit
21 development was a little bit too dense.
22 They had some reservations about how the

1 parking was configured and how it would be
2 accessed.

3 With the revised plans that were
4 submitted by the applicant post-hearing,
5 DDOT submitted a supplemental report date
6 March 11, 2008 stating that they have no
7 objection to the modified plan, which
8 appears to respond to the parking access
9 facade treatment and landscaping issues.
10 So, it appears as if DCOP is in support of
11 the application as it's currently proposed.

12 353.5 deals with the filing
13 requirements of the applicant and it appears
14 that the applicant has met that requirement.
15 Quickly turning over to the variance for
16 side yard relief, the first prong of the
17 variance test indicating if the property is
18 affected by an exceptional extraordinary
19 situation.

20 During the hearing we sort of saw
21 in the plans that this particular property,
22 being a corner lot, is affected by a 15-foot

1 building restriction line on two sides, both
2 along Barnaby as well as along 9th I believe.

3 And so the existing of the
4 building restriction lines reduced the
5 buildable area of the property by
6 approximately 44 percent resulting in about
7 a 25-foot width along 9th Street that would
8 be buildable, the rest falling within those
9 building restriction lines.

10 The second prong of the test
11 dealing with whether or not the
12 extraordinary situation gives rise to a
13 practical difficulty. I think given the
14 existence of the building restriction lines
15 and the substantial reduction in the amount
16 of buildable area on this property, it looks
17 as if conformance with the side yard
18 requirements within that 25-foot width would
19 result in a 17-foot wide exterior building
20 envelope, which it was sort of fleshed out
21 in the hearing that this would be difficult
22 to make work either as a multiple dwelling

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1 unit or as even as a single family unit. A
2 17-foot exterior width is difficult.

3 And so, I guess I'll turn it over
4 to the board for deliberation, not getting
5 into whether or not the relief can be
6 granted. I think that might be an
7 appropriate point to turn it over.

8 CHAIRPERSON MILLER: Okay. I
9 just want to comment on a couple of things
10 that you said also, on the OP report. I
11 interpret the OP report as now being in
12 support of the application, because they
13 basically say, they say they have no
14 objection to the modified plan.

15 I think that the parking access
16 issue was a big issue that was changed by
17 eliminating the curb cut on Barnaby and
18 making the parking access from the alley.
19 And I think that that was a big point that
20 DDOT addressed as well.

21 We talked about that at the
22 hearing. Also that the applicant has agreed

1 to pave the alley adjacent to its property
2 to, according to DDOT's standards and
3 specifications for alley design and
4 construction. That's put in the DDOT
5 memorandum and it says that the design will
6 be reviewed and approved by DDOT's
7 Infrastructure Project Management
8 Administration. So, I think that was an
9 important change.

10 Are there other comments on the
11 revised plans? Basically, Exhibit 31 does
12 reference the changes that are reflected in
13 the plans. One is to the parking entrance
14 that if they remove the 25-foot curb cut
15 along Barnaby Street, parking access is now
16 from alley through existing apron plans show
17 extent of alley paving per DDOT standards.

18 It also referenced the trash
19 enclosure and having a solid wall in the
20 parking area. They referenced elevation in
21 the look of the facade, so that it's not a
22 boxed look and the shielding of the parking

1 area with fencing and walls.

2 So, are there other comments on
3 this application? I think Mr. Dettman
4 addressed all the standards in both the
5 variance test and the special exception
6 test. So, any other comments?

7 If there aren't any other
8 comments, then I would move to approve
9 application number 17716 of Victor E. Udo
10 pursuant to 11 DCMR Section 3103.2 for
11 special exception to construct a new five
12 unit apartment building under Section 353 in
13 the R-5-A district, and also for variance
14 relief. Do I have a second?

15 MEMBER DETTMAN: Second.

16 CHAIRPERSON MILLER: I, is there
17 deliberation on this? I would suggest
18 before we vote on this that I think it's
19 important that we reference in the order
20 that they are going to provide access to the
21 alley from the, provide access from the
22 alley.

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1 I think perhaps we can say that
2 it's per the revised plans, which show that.
3 And then perhaps in the, that could be a
4 condition just that we're clear which plans
5 they're going to be building in accordance
6 with. And then perhaps we could reference
7 in the order that they will be working with
8 DDOT and improving the alley, according to
9 the DDOT standards and specifications and
10 that it will be reviewed and approved by
11 DDOT.

12 ZC VICE CHAIRMAN JEFFRIES: With
13 that you're going to improve the alley that
14 abuts the proposed project, and not the
15 entire alley.

16 CHAIRPERSON MILLER: Correct.
17 Yes, as it's referenced in the DDOT
18 memorandum, right.

19 MEMBER DETTMAN: I think with
20 respect with to sort of the third prong of
21 the variance test, which I sort of stopped
22 short, thinking back to the hearing about

1 how we heard about density, and you know, it
2 was that the original proposal was six and I
3 think a couple of agencies would have liked
4 to see four, sort of fell around five.

5 I think given the surrounding
6 environment, which is pretty high, you know,
7 some high density residential as well as
8 some row houses, I think the applicant's
9 decision to stay with five units is
10 appropriate. I don't think that this is
11 really going to be out of character or
12 compromise the zone plan.

13 And I like that the 25-foot curb
14 cut along Barnaby was eliminated and that
15 the applicant has decided to use the alley
16 for access. So, I think that all of the
17 major issues that were sort of discussed
18 during the hearing have been resolved.

19 CHAIRPERSON MILLER: I would
20 agree and I think when we were discussing
21 with OP what was the difference between the
22 four units and the five units, I think they

1 prefer the four units just for, it seemed
2 like a public policy, but when we looked at
3 the zoning relief in this case it didn't
4 change in any way how parking might have an
5 adverse impact, or the curb cut, or any of
6 the issues, landscaping, etcetera. It's all
7 just very interior to the building.

8 Any other comments? Okay. So,
9 then what's on the table is a motion to
10 approve the application as conditioned to be
11 in accordance with the revised plans. All
12 those in favor say aye.

13 [Chorus of ayes.]

14 CHAIRPERSON MILLER: All those
15 opposed. All those abstaining. And would
16 you call the vote please.

17 MR. MOY: Yes, Madam Chair.
18 Staff would record the vote as five zero
19 zero. There's a motion on the Chair, Ms.
20 Miller to approve the application per the
21 special exception 353 in the variance relief
22 under 405. Second motion to Mr. Dettman.

1 Also in support of the motion to
2 Ms. Walker, Mr. Loud, and Mr. Jeffries.
3 Also, in the written order there will be a
4 reference to that there be a provision for
5 providing access to the parking from the
6 alley, as shown on Exhibit number 31. Also,
7 the applicant coordinating with DDOT to
8 improve the alley per DDOT standards and
9 specifications.

10 CHAIRPERSON MILLER: That's
11 correct. The condition would go to, in
12 accordance with the approved plans and then
13 the language in the body of the order, which
14 is referenced that the alley would be
15 constructed in accordance with DDOT
16 standards, as the language is in DDOT's
17 memorandum.

18 MR. MOY: Okay. Very good.

19 CHAIRPERSON MILLER: Okay.

20 MR. MOY: Thank you.

21 CHAIRPERSON MILLER: And Office
22 of Attorney General will have flexibility to

1 work with that language. Okay. Thank you.

2 MR. MOY: And of course that
3 would be a summary order, Madam Chair?

4 CHAIRPERSON MILLER: Yes, since
5 there's no party in opposition there would
6 be a summary order. So, I believe that we
7 don't have any other items on the agenda for
8 the Special Public Meeting, is that correct?

9 MR. MOY: That's correct, Madam
10 Chair.

11 CHAIRPERSON MILLER: Okay, then
12 the public meeting is adjourned.

13 (Whereupon, at 10:23 a.m. the
14 meeting was adjourned.)

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