

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

NOVEMBER 29, 2005

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:08 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN

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TRAVIS PARKER

This transcript constitutes the minutes
from the Special Public Meeting held on November 29,
2005.

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

10:08 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Special Public Meeting of the 29th of November 2005. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this morning is Mr. Jeffries.

We do have a Special Public Meeting this morning, which means this and I'm going to get through this very quickly. We have a case that has already been heard. The record is completely closed. We are now going to hear some deliberation and a decision from the Board.

I will then dispense with the Special Public Meeting and call the hearing to order and so I'm not going to get into much more of my opening, but will say that as I call the hearing to make up a little bit of time. Just note that I would ask that everyone turn off cell phones and beepers, at this time, so we don't disrupt the transmission. Of course, all our proceedings are going to be recorded.

With that, let me say a very good morning

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1 to Mr. Moy, who is sitting on my right, with the
2 Office of Zoning and Ms. Bailey, on my very far left,
3 with the Office of Zoning. And I would ask if we
4 could call the first case for decision this morning?

5 MR. MOY: Yes, sir, good morning, Mr.
6 Chairman, Members of the Board. The first morning
7 case for our Special Public Meeting this morning is
8 Application No. 17377 of Jefferson, LLC, pursuant to
9 11 DCMR 3103.2, for a variance from the nonconforming
10 structure provisions under subsection 2001.3, to allow
11 the renovation and addition to an existing apartment
12 house, not meeting the lot occupancy requirements
13 under section 403, and open court requirements under
14 section 406 in the R-4 District. This is at premises
15 5401 through 5407 9th Street, N.W., that's in Square
16 2994, Lots 23, 24 and 25.

17 On November 8, 2005, the Board completed
18 public testimony on the application and scheduled this
19 decision originally on December 6, 2005, but was
20 rescheduled to today, November 29, 2005. The record
21 has been closed. No additional post-hearing documents
22 were requested by the Board. And the staff will
23 conclude by saying the Board is to act on the merits
24 of the application.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

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1 you very much, Mr. Moy. I appreciate that. Let's
2 jump right into this. We do have an existing
3 nonconforming structure. It's in an R-4 Zone. Of
4 course, that is an apartment building. It is
5 nonconforming in several aspects, the rear yard, lot
6 occupancy and a court.

7 What is being proposed, as we well know,
8 in going through the hearing, but also rereviewing
9 this, is the addition and modernization of the
10 apartment building, addition of a mezzanine level.
11 And I am going to open it up for deliberation on this.
12 Let's go quickly to the test of the variance, of
13 course, the uniqueness or confluence of factors that
14 have created a difficulty in fully complying with the
15 Zoning Regulations, and then we can get into whether
16 it would impair intent and integrity of the Zone Plan
17 and Map or the public good.

18 Would anyone like to start? Ms. Miller?

19 VICE CHAIR MILLER: Okay. The roof area
20 is a uniqueness to this building and it's directly
21 connected to the practical difficulties that are
22 complying with the regulations. We heard evidence
23 that it's the largest building in the square. And we
24 have a situation where there is a building here and
25 there are constraints by the building. That being the

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1 lot that is large and that it is also U shaped, which
2 creates certain practical difficulties in this case of
3 converting the units to two bedroom units, which have
4 been identified as a real need in the community.

5 We have evidence of different structural
6 obstacles for creating those two bedroom units. I
7 think OP raised a concern well, they could renovate
8 the building, but what I heard was they could renovate
9 the building, but they couldn't renovate it in a way
10 in which would create the two bedroom units, which are
11 identified as in real need by the ANC and also by --
12 we had a lot of letters from Members of the City
13 Council saying that this type of housing unit would
14 reach -- that the workforce housing was greatly needed
15 and in demand and that this building as converted to
16 be able to do that would reach those needs.

17 CHAIRPERSON GRIFFIS: Okay. Thank you.
18 I just want to take a last point. Of course, I didn't
19 see anything in the record that was actually
20 programming those types of assets, but I understand
21 what you're saying. I believe, it was that in this
22 geographic area what is proposed to be delivered is
23 based on the market that's there. And that fits
24 within the parameters of this workforce housing. Is
25 that correct?

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1 VICE CHAIR MILLER: Right. We heard
2 evidence about, at least from the ANC and some of
3 these letters and the applicant, that there are
4 married couples and families and seniors who have a
5 need for housing that that one bedroom unit doesn't
6 reach that need, but the two bedrooms do.

7 CHAIRPERSON GRIFFIS: Okay. Good. Thank
8 you. Others? Indeed. I think we need to go to some
9 of the other facts in the case that were presented for
10 our own deliberation. And going on, there are some
11 differences of analysis, one with the Office of
12 Planning, which has indicated that this doesn't have
13 or meet the uniqueness test. And I think if we look
14 at this in terms of the existence of the building in
15 the '30s or '40s as an apartment building, I think
16 that is a clear differentiation of other cases that
17 perhaps we have heard, but also it's specifically does
18 this rise to the level of uniqueness.

19 In my mind, in looking at it, the building
20 was made nonconforming when we adopted the regulations
21 in 1958. The nonconforming aspects of it are that it
22 was not given a rear yard. Well, it wasn't required
23 to when it was built. It is now nonconforming for the
24 rear yard. The courts also don't fit the size of the
25 parameter and the lot occupancy, which is above 70

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1 percent on this.

2 All of those factors are not being
3 impacted, except for the court, with this
4 modernization or addition of what the applicant is
5 calling a mezzanine. And so what I see as some of the
6 uniqueness is the existence of this building in its
7 configuration as an apartment building in an R-4 Zone
8 and that the practical difficulty in complying with
9 the regulations with the proposed work is that they
10 cannot cure the rear yard and the lot occupancy.

11 However, they are not impacted in the rear
12 yard and lot occupancy. The court, of course, is
13 being impacted if the addition is put on. Although,
14 that has been cured also, my understanding, from one
15 of the courts with the roof structure and there is
16 more detail in the record, but I don't need to go to
17 all of that.

18 In looking at that, does this rise to the
19 level of a persuasive practical difficulty and, I
20 mean, I think I can be -- to be straight, it has taken
21 some time in looking at the deliberation or the
22 analysis of this and the total deliberation on this,
23 and I think that what comes down to the fact is that
24 we do have an existing structure and I think it has
25 been well-shown by this Board's decision, and most

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1 importantly upheld by the court decisions, that the
2 existence of a building is part of its unique aspect.
3 The shape of this building in the U shape and then how
4 it was built, which is traditional of the era in which
5 this was built, how it occupied its lot, etcetera,
6 lends itself to its uniqueness.

7 And then also is there a direct
8 correlation to the practical difficulties? What would
9 have set this off I think, in my mind, is whether if
10 they weren't even close to complying with the number
11 of units based on the size of the lot, if this was
12 well-above what is actually allowable. And R-4 has
13 the provision of 900 square feet based on the lot
14 size. This is a very large lot size.

15 And, therefore, all of these together, I
16 guess being maybe more direct, is as you look at this,
17 if you were to build this new, conceivably you could
18 reconfigure this. You could put the number of units
19 that they are putting on this. You could conceivably
20 build the mezzanine level and you could make it comply
21 with the lot occupancy and provide a rear yard.

22 What is the practical difficulty here is
23 that it was built in the '30s or '40s. It was not
24 built in compliance with the regulations that didn't
25 exist at that time and, therefore, isn't able to cure

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1 those aspects, but there is a practical difficulty in
2 modernizing this and then adding the small pieces to
3 it.

4 And that's where I am. When I looked at
5 whether it would impair the intent and integrity of
6 the Zone Plan, I don't see that again going directly
7 to the aspect of the R-4 allowable for the size. The
8 density is regulated by the lot size in the R-4. It
9 certainly in the R-4 is not a multi-family or an
10 apartment building district.

11 However, there are provisions to allow for
12 those conversions based on the reality that we mapped
13 R-4 across the city in areas that have huge and
14 beautiful apartment buildings. It is part of the
15 context and the character. This is one such piece.
16 And having this addition or modernization again
17 doesn't impact anything that has been shown in this
18 self-certified application as extending or creating
19 nonconformities. And, therefore, I don't see how it
20 could or would impair the intent or integrity of the
21 Zone Plan and Map.

22 And then, lastly, when we look at whether
23 the public good is served, one might say, in
24 paraphrasing our test, I think Ms. Miller has been
25 adequate in addressing that situation of what is being

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1 provided here. In my mind, I am not under the
2 understanding that this is a programmed, regulated,
3 required sale or rental level or anything of that
4 nature.

5 But is very clear that this is something
6 that is being built and constructed in an area that is
7 not as expensive and it is providing a product on the
8 market. It will be a market product, but it is
9 providing one that is something that is of demand in
10 that area and will serve that demand. And I think
11 that is where a lot of the Council Member's letters
12 were going to also.

13 That is what I know and I will open it up
14 to others.

15 VICE CHAIR MILLER: I just would like to
16 add to addressing the no substantial detriment test,
17 because I think that is where Office of Planning took
18 a different position. When I looked at that, there is
19 no harm to what certainly any of those individuals
20 complained of, so we don't have that. The use is
21 allowed already. They are continuing the use as an
22 apartment building. The increase in height is within
23 zoning and they are not increasing any nonconformity.

24 And, as I stated before, it is serving a
25 public interest in meeting the goals of housing that

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1 is needed. I think, basically, also OP said that
2 there is harm to the Zone Plan by expanding a
3 nonconforming apartment building and that the intent
4 of 2001.3 is to restrict enlargements or additions to
5 nonconforming structures.

6 And we had a little discussion about that
7 and it seems to me that Office of Planning's position
8 would basically lead to the conclusion that you
9 couldn't get a variance from this section, because it
10 would take away from that intent, and I don't see the
11 regulations as being set up that way. If we weren't
12 allowed to grant a variance from that provision, then
13 there should be a regulation that says that. And I
14 think there isn't for good reason, that if you can
15 meet the variance test that they apply to this
16 provision as well.

17 CHAIRPERSON GRIFFIS: Good. And I think
18 it is an interesting piece because, first of all,
19 we're not talking about, and you mentioned height and
20 stories, we're not talking about the -- there is no
21 height variance here, so that's not what we're looking
22 at. In terms of the stories, I know that Office of
23 Planning had indicated that they were adding a story
24 onto this and we had brief deliberation or discussion
25 on this in the hearing.

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1 It's fairly clear what is being proposed
2 to us is this is a mezzanine. We have not needed to
3 clarify whether it is or is not. It is in the
4 application and a mezzanine in the definition of 199,
5 Title 11 DCMR is that, the last sentence, "A mezzanine
6 shall not be considered a story to determine the
7 maximum number of permitted stories."

8 So it doesn't rise to the issue. I know
9 it was an important point of analysis and it's a
10 critical one, but that's where I am in terms of
11 dealing with that issue on this application. Okay.
12 Anything else?

13 COMMISSIONER JEFFRIES: The only thing
14 that I would add is that my difficulty with this
15 particular application was this whole notion of
16 passing this test of practical difficulties for the
17 applicant to make the case that in order to create a
18 certain mix of units within the Jefferson, they really
19 needed to sort of create this mezzanine to create
20 these two bedroom units. And so they are walking
21 through this whole notion of moving partitions around
22 in the existing envelope such that they really could
23 not achieve that and that, therefore, creates the
24 practical difficulty.

25 I am somewhat compelled with Office of

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1 Planning's argument that there could be other design
2 solutions, but we have had this discussion around sort
3 of how this thing was -- space plans and so forth and
4 I have gotten comfortable that we could probably rest
5 on this notion that the practical difficulties has
6 been achieved.

7 My overarching concern is this whole
8 notion of the nonconforming building throughout
9 Washington and making certain that we allow these
10 buildings to be modernized, we allow them to be
11 functioning buildings again. And so, therefore, I
12 would like to sort of give the benefit of the doubt,
13 some of the concerns the Office of Planning has here,
14 particularly around practical difficulties, that this
15 -- that these types of buildings, these nonconforming
16 buildings, that we can somehow get our arms around
17 them and allow these buildings to become functioning
18 and modernized and improve the overall physical
19 landscape of the District.

20 The whole notion of the test of
21 substantial detriment to the public good and
22 substantially impairing the intent, I don't see where
23 this building is of any detriment. In fact, I do
24 think that it is, in fact, improving the area. And
25 the amount of mezzanine that is shown in the

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1 elevations I just don't think has any substantial
2 impact or impair on the intent of the Zone Plan.

3 This whole uniqueness issue, I have heard
4 what you have said, Chair, and it does seem that the
5 applicant is really relying on the existence of the
6 present nonconformity, but there are things within the
7 design of this building that was done before 1958 that
8 clearly lend to difficulty in terms of modernizing it.

9 So I think that the Office of Planning has
10 put forward a very good memo. I am more so compelled
11 by the notion that we really need to do what we can in
12 order to make certain that we are not allowing
13 nonconforming buildings to follow in the city and
14 making certain that they become contributing
15 structures and so forth.

16 And I am sort of resting on that
17 overarching issue and not getting too stuck in a lot
18 of the technicalities of this.

19 CHAIRPERSON GRIFFIS: Good. Thank you
20 very much and you brushed on a little bit. To
21 actually go further in terms of the uniqueness and
22 practical difficulty of the existing interior
23 structure, and that was something that was perhaps too
24 brief in the hearing, but it is obviously documented
25 in the graphics.

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1 There are four stairwells in this. A
2 typical building, of course, would have two compliant
3 with a corridor that accessed all the units. Each of
4 these units, two units per floor, access each of the
5 stairs. And what I heard the applicant talking about
6 was that you can't reconfigure this and make a
7 corridor out of this, because the depth of the wings
8 aren't deep enough to have the units, so reconfiguring
9 the whole inside to make it more efficient is one
10 thing or more serviceable to change the size.

11 As you start changing the sizes, you start
12 losing access to these egress stairs. And in looking
13 at where you put additions or how you reconfigure
14 this, there are certain structural walls in this
15 existing apartment building that you have to extend or
16 deal with, meaning you can't just put additions to a
17 building anywhere on this because there is nothing to
18 rest it on.

19 The structure of that would be difficult
20 or you create a new structure for it, which then
21 obviously raises the height of this building which
22 would then probably put it out of conformity or
23 require a variance. So all of those, again, the
24 components of those aspects in looking at
25 reconfiguring to provide, to modernize the unit sizes,

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1 etcetera, I think fill in the record in terms of the
2 uniqueness and practical difficulty.

3 Anything else? Any other deliberation on
4 this, comments? Then is there a proposed action from
5 the Board? All right. To just expedite things and
6 not put people on the spot, I would move approval of
7 Application 17377 of the Jefferson, LLC and that is
8 for the variance from the nonconforming structure
9 provisions under 2001.3. It is also to allow the
10 renovation and addition to the existing apartment
11 house not meeting the lot occupancy requirements, the
12 open court requirements in the R-4 District. It is
13 for the premises of 5401 to 5407 9th Street, N.W., and
14 I would ask for a second.

15 BOARD MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
17 Very well. I think we have been full on our
18 deliberation on this. I would note, you know, from my
19 own deliberation that this took a good deal of time in
20 weighing all the aspects of this and I think that the
21 applicant has put together an excellent case and is,
22 obviously, persuasive in my mind for the reasons
23 already stated.

24 I will open it up for any further last
25 deliberation, comments. Mr. Jeffries?

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1 COMMISSIONER JEFFRIES: But I would say
2 that, you know, I would hope that those that are in
3 earshot or view of this don't take this to mean that
4 there is some sort of universal allowance, use of an
5 area variance for these nonconforming buildings. I
6 mean, these will be looked upon on a case-by-case
7 basis and I just think we should really make that very
8 clear.

9 CHAIRPERSON GRIFFIS: Exactly so, and I
10 think that's an excellent point to end with and the
11 first test threshold for any variance, of course, is
12 uniqueness and that means that each of these
13 applications will have to meet that threshold test of
14 uniqueness. I think there are great differentiating
15 elements to this application as others perhaps might
16 come in or as we might perceive that they would be.
17 Okay. Anything else? Very well.

18 We have a motion before us that has been
19 seconded. I would ask for all those in favor to
20 signify by saying aye.

21 ALL: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?

23 MR. MOY: Staff would record the vote as
24 5-0-0. This is on the motion of the Chair, Mr.
25 Griffis, to approve the application, seconded by Mr.

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1 Mann. Also in support of the motion, Ms. Miller, the
2 Vice Chair, Mr. Etherly and Mr. Jeffries.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much. Mr. Moy, is there any other business
5 for the Board in the Special Public Meeting this
6 morning?

7 MR. MOY: Just a last item which staff
8 already raised. Would you prefer a full order or a
9 summary order?

10 CHAIRPERSON GRIFFIS: Indeed, appreciate
11 that. Board Members, I would hear comments on that.
12 I don't see a requirement to issue a full order on
13 this. Unless we have opposition from the Board, we
14 could issue a summary order on this.

15 BOARD MEMBER ETHERLY: No opposition.

16 CHAIRPERSON GRIFFIS: Very well. Then
17 we'll take it as a consensus of the Board to waive our
18 rules and regulations and issue a summary order on
19 this. Mr. Moy?

20 MR. MOY: Yes, sir. That's it, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much. With that then let's adjourn the
23 Special Public Meeting.

24 (Whereupon, the Special Public Meeting was
25 concluded at 10:29 a.m.)

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