

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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IN THE MATTER OF :
SAFE HAVEN OUTREACH MINISTRY :
2352, 2356 AND 360 High St., SE :
Washington, DC :
District R-3 :
Square 5799, Lot 976 :
:
Application No. :
17358 :
-----:

Tuesday,
October 4, 2005

Formal Council Chamber
441 4th Street, N.W.
Washington, DC

The Public Hearing convened in the Formal Council Chamber, 441 4th Street, N.W., Washington, D.C., pursuant to Notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Senior Zoning Specialist

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D.C OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

This transcript constitutes the minutes
from the public hearing held on October 4, 2005.

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

(11:02 A.M.)

MR. GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our public meeting of the 4th of October, 2005. This is, of course, the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Mr. Etherly and also Mr. Mann, representing the National Capital Planning Commission. Copies of this hearing Agenda are available for you. They are located where you entered into the hearing room. We appreciate everyone's understanding in our new location. This will be temporary and, hopefully, we'll be up in our new accommodations sometime in the near future.

I would ask that people just turn off their cell phones and beepers at this time so that we can proceed with our public meeting Agenda. Of course, this is an opportunity for the Board to deliberate on cases that have already been heard. Therefore, there will be no further testimony or evidence taken into the record. The record is closed for those cases that are before us.

With that, let me say a very good morning to Ms. Bailey, on my right, who is with the Office of

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1 Zoning, and also Mr. Moy on my left, Ms. Rose and Ms.
2 Monroe, with us also on the task. Let me ask if we
3 can call the first case for decision this morning.

4 MR. MOY: Yes, sir. Good morning, Mr.
5 Chairman, members of the Board. The first case for
6 decision-making is Application Number 17358 of Safe
7 Haven Outreach Ministry, pursuant to the 11th DCMR
8 3103.2 for a variance from the extension of non-
9 conforming uses within structures. Provisions under
10 Subsection 2002.3 and a variance from the off-street
11 parking requirements under Subsection 2101.1, as to
12 allow the renovation of two multi-family buildings
13 comprising 48 units in the R-3 District at premises
14 2352, 2356 and 2360 High Street, Southeast. That's in
15 Square 5799, Lot 976.

16 On September 20, 2005, the Board completed
17 public testimony on the application and scheduled its
18 decision on October 4, 2005. The record was closed
19 except for the possible submission of ANC 8(a) report.

20 Mr. Chairman, the ANC has filed a series
21 of filings and they are included in your case folders,
22 identified as Exhibits 34, 35 and 37. I think at this
23 point, the staff is going to conclude its briefing,
24 only to say that the Board is to act on the merits of
25 the application.

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1 MR. GRIFFIS: Excellent. Thank you very
2 much, Mr. Moy. Well put in terms of setting up the
3 background of the case. Obviously, Board Members are
4 here for two variances; one under 2101.1 and also
5 under 2002.3. To put it into a little bit of context,
6 first let me state that we do have exhibits that were
7 offered up for the record and we should just take
8 official action on that. I would move acceptance of
9 the ANC Exhibits, 34, 35 and 37, into the record. I
10 would like to hear from others. Mr. Mann?

11 MR. ETHERLY: No objection, Mr. Chair.

12 MR. GRIFFIS: Excellent. Mr. Mann?

13 MR. MANN: I agree. I think we should
14 accept them.

15 MR. GRIFFIS: Excellent. Then let's take
16 that into the record.

17 (Whereupon, Exhibits 34, 35 and 37 were
18 accepted into the record.)

19 MR. GRIFFIS: We have reviewed those and
20 we can proceed with our deliberation.

21 Of course, setting this up again, Mr. Gell
22 who was representing the Applicant, did put a Motion
23 in as a preliminary matter, and that was to dismiss
24 his own case. That was based on the fact that there
25 was not relief required from this Board. The Board

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1 denied that Motion with the basis and the
2 understanding that there was additional facts and
3 testimony that was required in order to reach such a
4 conclusion, but actually dispensed with reaching that
5 conclusion and went straight ahead with the
6 application. I think it was based on, and I can
7 summarize, based on the fact that this was a self-
8 certified application and, therefore, it was Mr.
9 Gell's own legal analysis that has brought him to the
10 Board for relief of these two requirements and
11 regulations.

12 I think it was well said by Mr. Gell that
13 he was ensuring the fact that there might be -- might
14 not be difficulty in terms of the Zoning Administrator
15 to review this and, therefore, bringing it to the
16 Board would be determinative. However, I believe at
17 this point, it is my opinion, looking at the entire
18 case that has been presented to us, that it is -- I am
19 not of the mind to be determinative whether relief was
20 needed or not, but rather, I am prepared to comment on
21 that and would like to proceed in the fashion of the
22 application that was before us, and that's for the
23 variance of the parking spaces and the variance of the
24 existing non-conforming use structures. I do believe
25 that the test has been made for each of those

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1 variances and we'll get into that.

2 But let me first hear comments to make
3 sure that we're progressing in the appropriate fashion
4 in terms of looking at the variances. I will take any
5 comments.

6 Mr. Mann?

7 MR. MANN: I agree with the position that
8 you have just stated and, furthermore, would just
9 reiterate that when we decided whether or not we
10 should hear this, based on Mr. Gell's Motion, one of
11 the things that we discussed was, in the alternative,
12 he could have withdrawn this case and chose not to.

13 MR. GRIFFIS: Excellent, indeed. Okay.

14 Then let's proceed with looking at each of
15 those. And I think, frankly -- well, let's establish
16 first the parking and the criterion of which we are
17 looking at, and I know we have all deliberated on it.
18 But the parking relief that was required, it's
19 interesting actually even to get to the relief that's
20 required, just the number of spaces, you get to the
21 test that's being made. So let me start with, first
22 of all, the uniqueness of this is a confluence of
23 elements. Primarily those are, we have existing three
24 structures on a single lot. We have a structure that
25 was previously built when it was zoned R-5. It was

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1 re-zoned, down zoned, to an R-3, rendering it non-
2 conforming. It has a previous BZA Order of sometime
3 ago that dealt with some of the parking and perhaps is
4 not articulated as we might articulate variances, but
5 it does have that standing Order of Relief under the
6 R-5. And I believe it was the basis of which it was
7 able to be developed.

8 Looking at that, we have to establish how
9 many parking spaces are actually required, and
10 therefore, how many would then need relief. I think
11 it's appropriate -- obviously, the Office of Planning
12 has indicated that as apartments, they are not a
13 conforming use in an R- -- there is no parking
14 requirement set forth for apartments in R-3.
15 Therefore, they move their analysis to all other
16 structures that renders a parking count based on the
17 total square footage or a matter of square footage.
18 I believe it's one per 600 square feet.

19 That works well outside of residential
20 buildings and I don't know any zone that calculates
21 residential structures' parking by square footage. You
22 obviously do for retail or commercial use. So moving
23 in that seems to move it outside of actually the
24 parameters or the intent one might say of 2100. I
25 think we need to move back into a calculation of

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1 residential units and parking per units. If we look
2 at the R-5 when it was originally built or currently
3 the R-5 zones, A and B, we look at the calculation of
4 parking requirements as one space per one unit. If we
5 -- and I think it's appropriate to look at it in that
6 vein -- it's additionally appropriate, I think,
7 because as we look at the R-3, the R-3 is a similar
8 calculation of one parking space per household.

9 Now, obviously, multiple dwellings aren't
10 allowed in R-3, but the density of parking per use is
11 there. So I think it's perfectly appropriate to do
12 that and I think we'd go for one-to-one. That would
13 put it to, if I recall correctly, the number of units
14 was increasing from 36 to 48, a requirement of 48
15 parking spaces would, therefore, be conforming. They
16 are proposing to do 19 spaces.

17 Let me just hear if there is any other
18 misunderstandings to that, or if that's the
19 appropriate way to proceed with the parking.

20 MR. MANN: I agree that that's the
21 appropriate way to proceed with the parking, and I
22 think that it -- it almost gives us sort of an
23 abundance of caution in determining what the next
24 round number of parking spaces might have been under
25 the most extreme scenario.

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1 MR. GRIFFIS: Good. And the extreme
2 scenario would be?

3 MR. MANN: To provide one unit for -- one
4 parking space for every unit versus some other method
5 of determining that that might, in fact, show that a
6 lower number of parking spaces could have been
7 acceptable.

8 MR. GRIFFIS: Okay. Good. And then, if
9 we're establishing then a reduction -- and, actually,
10 it's not a clear reduction either. I mean, I think
11 they finished and the point that you bring up in terms
12 of assessing the maximum number -- because it's not a
13 very clear maximum requirement, however, looking at it
14 as if it just showed up, it would be 48. The previous
15 Order and obviously, with the existence of these
16 buildings, I don't think that there's any evidence in
17 the record, nor do I see how it could have been, that
18 48 spaces were ever provided in the development, in
19 the existence. The previous Order allowed for the
20 parking in the front of the buildings and the circle.
21 That has been proposed in this Application, not to be
22 counted in the parking, but rather all 19 spaces would
23 be accessed off the alley and there would be a secured
24 entrance from that side, and also from the front.

25 Very well. Let's -- I think it's -- I

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1 think we can probably expedite this further now that
2 we've defined all that is before us under a Motion.
3 I think it would be appropriate to move approval of
4 the variance under 2002.3 and also 2101.1, which would
5 allow the renovation of multi-family buildings
6 comprising 48 units at the premises of 2352, 2356 and
7 2360 High Street, Southeast. And I would ask for a
8 second.

9 MR. ETHERLY: Second, Mr. Chair.

10 MR. GRIFFIS: Thank you very much, Mr.
11 Etherly. I'm going to go right into the 2002.3, the
12 non-conforming use. As I established, I think if we
13 had -- I would have been more persuaded if this was
14 referred to the Board by the Zoning Administrator as
15 a requirement of relief to go into the discussion of
16 whether the proper -- whether it was properly before
17 us or not, but based on the fact that it's self-
18 certified, I don't -- I don't believe that the Board
19 should move in that direction. However, looking at
20 2002.3, I don't find it very persuasive in reading all
21 of this that relief would be needed, but we are here.
22 We have the existence of three structures. There is
23 -- the number of units of 36. In 2002, especially .3,
24 says non-conforming uses shall not be extended into
25 portions of the structure not devoted to that non-

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1 conforming use. Clearly, there is no extension into
2 it. I know the Office of Planning had talked about
3 the enclosure of the foyer area and I don't find that
4 that's an extension of conforming uses. But on the
5 test that's before us, we obviously have the
6 uniqueness of the existing structures, the uniqueness
7 of the zoning history, that being down zoning and
8 making this non-conforming. The existing and the
9 prior Order that allowed the development of this and
10 the reconfiguration of the units for what is a
11 conforming use in terms of residential, it is clearly
12 -- in order to make them contemporary or, I should
13 say, to bring them back to use, having been not in use
14 for some time. I think that rises to the level of
15 being practically difficult in conforming with the
16 regulations. Whether this would impair the integrity
17 of the Zone Plan and Map, I don't see any persuasive
18 testimony that it would. In fact, there's persuasive
19 testimony in the other direction. In terms of the
20 argument, which is fascinating to me, in terms of its
21 complexity, by saying that by increasing the units,
22 you're decreasing the density in the apartment
23 dwellings and that's making it -- the fact that as you
24 have larger units, there would be larger households.
25 But in increasing the number of units, you're

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1 decreasing the size and looking at individuals. So
2 overall, there's a less dense use of the property.

3 I don't think we need to delve too far
4 into it because we have preexisting structures, but it
5 was persuasive to me that to find that that discussion
6 and no other evidence presented that this would be, in
7 any way, detrimental to the Zone Plan and Map. In
8 fact, it raises the question of why it was actually
9 rezoned and not taken into the other -- or left alone
10 in terms of its zoning, as some of the adjacent
11 properties were.

12 Going to the parking, again, I think we
13 can rest on the same issues of uniqueness in terms of
14 existing structure in the zoning history. The
15 previous Order had talked about the site grading and
16 the difficulty of that. I didn't see that rising to
17 the level of persuaded elements of uniqueness or
18 creating practical difficulty. I think some of the
19 practical difficulty in terms of the parking stems
20 from the existence of the structures and their
21 placement, meaning there is no additional space.

22 I know the testimony that was presented by
23 the ANC members and the community that were here had
24 said why don't you park on the green spaces adjacent.
25 And it was shown in the record that it's actually not

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1 part of their property. It is appropriate to maximize
2 the parking off of the alley and I think, actually,
3 that all available areas for parking have been -- have
4 been delineated for that type of use. I don't see how
5 or where you would find additional -- I think it's
6 appropriate to remove parking from the front, the
7 turn-around in the entrance, because I think that
8 would probably be utilized for circulation of dropping
9 off or temporary standing and moving, and I think
10 that's an excellent way to utilize that space.

11 I think that's all I have. Mr. Mann?

12 MR. MANN: We also heard testimony that
13 this site is adjacent to a Metro Bus line. It's also
14 within fairly close proximity of the Metro Rail Line.
15 And the Applicant also testified that based on similar
16 programs that they've run, that history would show
17 that only one in three of the residents of this
18 complex is likely to own a vehicle anyway.

19 MR. GRIFFIS: Good.

20 MR. ETHERLY: Just to piggyback, Mr.
21 Chair, on Mr. Mann's comments with respect to the
22 issue of parking. Of course, my colleagues will
23 recall that we did hear a substantial amount of
24 concern expressed from some members of the community
25 regarding the potential parking impact of the proposed

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1 project. And I agree with Mr. Mann's and the
2 Chairman's interpretation of the record as it stands
3 at present, based on the testimony of Safe Haven and
4 their experience in these types of projects. It
5 appeared to be very clear that there was not an
6 expectation that a significant number of the residents
7 of the proposed dwelling would be, in fact, making use
8 of cars or other vehicles. I think it's important to
9 also note that, unfortunately, we could not get, shall
10 we say, precise clarification from the ANC as to where
11 their position was on this matter. As a result, we
12 would not be able to afford them great weight, but I
13 am certain that I speak for my colleagues when I say
14 we appreciated the testimony that we received. It
15 appeared as though there was some movement towards
16 understanding the scope of the project and the
17 direction in which it was heading. But once again,
18 based on the record, as I currently understand it, we
19 were not able to get a firm opinion from the ANC on
20 your position regarding the Application. But I
21 thought it was important to note the issue of parking
22 because we did hear testimony from some members of the
23 community regarding potential impact.

24 Thank you, Mr. Chair.

25 MR. GRIFFIS: Excellent. An excellent

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1 point, and I think, additionally, in terms of the ANC,
2 I absolutely concur that they have not met the test of
3 being afforded great weight. However, as you have
4 said, we take seriously all testimony that's put into
5 the record.

6 I note that the exhibits that we have
7 taken into the record today talk about the peace and
8 quiet of the neighborhood and, with that, also on the
9 other exhibits, the parking issue. It's interesting,
10 and I think it would be, obviously, a different case
11 if this was proposed new construction, but that this
12 is an existing apartment complex, let's say, it puts
13 it into a different light.

14 There was also testimony to the fact of
15 the precarious situations that happen in the alley
16 and, you know, whether it be illegal or certainly not
17 one of high quality of life, activities that are
18 happening and having under-utilized or abandoned
19 apartments certainly doesn't facilitate good -- a good
20 community image or reality.

21 I think that this, in fact, is going in
22 the correct direction of adding to the community
23 aspect and, hopefully, will be realized as such by
24 those that are now in opposition to this and have
25 presented that before the Board.

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1 That's all I have. Anything else?

2 MR. GRIFFIS: Excellent. Very well then.
3 We do have a Motion before us. It has been seconded.
4 I would ask for all those in favor to signify by
5 saying "aye."

6 (AYES.)

7 MR. GRIFFIS: Any opposed?

8 (NO RESPONSE.)

9 MR. GRIFFIS: Abstaining?

10 (NO RESPONSE.)

11 MR. GRIFFIS: Very well. Why don't we
12 record the vote.

13 MR. MANN: Yes, sir. The staff would
14 record the vote as three to zero to zero on the Motion
15 of the Chair, Mr. Griffis, to approve the Application,
16 seconded by Mr. Etherly. The staff also notes that
17 there are two absentee ballots from Mr. Hildebrand and
18 Ms. Miller, who have put the spade on the case, and
19 both have voted to approve the Application. That
20 would give a final vote of five to zero to zero.

21 MR. GRIFFIS: Excellent. Thank you very
22 much, Mr. Mann.

23 That being recorded, is there any other
24 business for the Board at this morning's public
25 meeting?

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1 MR. MANN: Not this morning, sir.

2 MR. GRIFFIS: Excellent. Thank you very
3 much then. Thank you all for being present.

4 If there is no other further business, we
5 can adjourn our morning session.

6 (Whereupon, the session was concluded at
7 11:23 a.m.)

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