

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING
1185th MEETING SESSION (13th OF 2005)

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MONDAY
JULY 25, 2005

The Special Public Meeting of the District of Columbia Zoning Commission convened in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C. 2001, pursuant to notice at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice-Chairperson
KEVIN HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN Acting Secretary (ZC)

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the regular meeting held on June 25, 2005

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I N D E X

I. Preliminary Matters (None)

II. Proposed Action

 A. Z.C. Case No. 04-34
 (Pervious Materials) - postponed until
 7/28/05

 B. Z.C. Case No. 03-30
 (Square 643 Associates) 3

III. Final Action

 A. Z.C. Case No. 05-14 (Non-Profit
 Community Development Corporation
 of Washington, D.C., Inc.) 18

 B. Z.C. Case No. 05-03 (Anacostia Gateway
 Government Center) 19

Adjourn 20

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

6:09 P.M.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a special public meeting of the Zoning Commission of the District of Columbia for Monday, July 25, 2005.

My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons and Greg Jeffries is around here someplace. He'll be in in just a moment.

We have a couple of items on our agenda and we'd like to move through them so that we can start our hearing close to 6:30 and the first thing I have to announce is that we're going to postpone consideration of Case No. 04-34 which is the Pervious Materials until Thursday of this week. We have another special public meeting on Thursday. So I apologize to those of you who came down for that, but we're a little pressed for time and we know we're going to have a healthy discussion about that. So the case that's up for proposed action tonight is Case No. 03-30 which is Square 643 Associates, a Planned Unit Development.

I believe we have all the submissions that

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1 came in before the record closed and we also have a
2 proposed order. And among the issues, if you
3 remember, this is a Planned Unit Development that is
4 proposed to include the retention and restoration of
5 what more recently was the Redeemed Temple of Jesus
6 Christ. It's been designated a landmark and then this
7 would have an apartment building that is constructed
8 around it. And the order enumerates the items that
9 have been proffered in terms of amenities and
10 benefits.

11 One of the items that we have to address
12 is the -- one of the significant amenities and this is
13 actually where there is some difference of opinion
14 with the neighborhood about whether or not this is an
15 appropriate way to ensure restoration of the church,
16 whether having this building constructed around the
17 new construction is an appropriate way to deal with
18 this landmark. But in addition to that, what the
19 owner is proffering is that the sanctuary of the
20 church would be retained and the way to make that work
21 instead of carving it up into residential units would
22 be to allow nonprofit use, nonprofit office use and
23 that is not a use that is permitted as a matter of
24 right or by special exception in the zoned district
25 and we're in a residential zone. So we would have to

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1 grant relief for that use in the context of accepting
2 that as an amenity to the PUD. So I wanted to mention
3 that especially.

4 Let me mention a couple of things that
5 concern me in addition to the one I just mentioned
6 because I think that's important for us because the
7 Applicant had cited a couple of BZA cases where this
8 nonprofit office use was applied to nonresidential
9 structures when in fact the zoning ordinance is very
10 explicit about it being former residential structure.

11 So we really do have a departure here that we would
12 be making.

13 There's a couple of things that are just
14 not clear. One is the proffer about litter control
15 and the findings of fact, it says it would be monthly
16 and then in the conclusions and the decision it says
17 it would be bi-monthly. It doesn't really delineate
18 the specific area other than to talk about the
19 baseball diamonds.

20 And then we have the Applicant wanting to
21 administer the affordability provisions which is not
22 typically what we do. So I ask for some reaction to
23 some of these issues and whether we think the
24 Applicant has met their burden.

25 MR. PARSONS: Well, I guess you want to

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1 talk a little bit about the nonprofit use.

2 CHAIRPERSON MITTEN: Yes.

3 MR. PARSONS: I'm trying to recall whether
4 I can ever remember a circumstance like this and I
5 guess there hasn't been one. But I see no other way
6 to accommodate the needs of the public to gain access
7 to this church which is a unique and a very emotional
8 issue in the community.

9 So I favor this nonprofit use, even though
10 it's not something we would find in a residential zone
11 and I don't know how we define that uniqueness, so it
12 isn't precedent-setting, but I certainly think we
13 ought to do it.

14 CHAIRPERSON MITTEN: I think the issue
15 that you just raised is related to this that the
16 Applicant represented to us that having the nonprofit
17 office use would be a way of granting the public
18 access, but there is no provision, specifically, to
19 just allow the general public access, so that's a
20 component of it that we would have to include which
21 would be something like in the decision in number five
22 where it delineates the different provisions for the
23 nonprofit use, I think we would just have to say that
24 access to the general public during normal business
25 shall be made available or reasonably available or

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1 something like that.

2 MR. PARSONS: Absolutely. That's the
3 basis of the decision.

4 CHAIRPERSON MITTEN: Right.

5 MR. JEFFRIES: I would just have some
6 concern about the ability to -- the sort of difficulty
7 in terms of leasing the space, even to a nonprofit
8 that had requirements. I guess it would really depend
9 on who the nonprofit is, but there's certainly
10 nonprofits that would not be beneficial to them to
11 have those kind of conditions put upon them and I
12 would imagine that it would make it difficult for the
13 Applicant to lease the space.

14 CHAIRPERSON MITTEN: Do you have something
15 to suggest?

16 MR. PARSONS: To me, certainly if the
17 Applicant or its successors have trouble with this
18 condition, they can come back and tell us about it,
19 but I'd rather try it initially.

20 CHAIRPERSON MITTEN: Okay, then this is
21 what I suggest is that we have a 5F that says
22 reasonable public access shall be made available
23 during normal business hours. That way, if somebody
24 wants to come in and they want to look, that doesn't
25 mean they have to tour the place and see what's on

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1 everyone's desk.

2 MR. JEFFRIES: Could it be after hours?
3 Could it be after 5? Could it be community meetings
4 that the space could be available to the community
5 after hours? I mean it's still public use.

6 CHAIRPERSON MITTEN: I think the idea is
7 not that they get to use it, but they get to look at
8 it.

9 MR. PARSONS: Right, I can imagine that
10 it's going to be meeting rooms available for the
11 general public, there's more access to the sanctuary,
12 former sanctuary.

13 CHAIRPERSON MITTEN: Which is on two
14 levels.

15 VICE-CHAIR HOOD: Madam Chair, I guess to
16 the extent there are certain parts of this nonprofit
17 space that could have access -- there's a certain
18 area, the sanctuary or something. I guess having
19 access would be great. I'm just again concerned about
20 the ability to lease the space.

21 And before you asked the question, I'm
22 trying to think of some other alternatives.

23 MR. PARSONS: While you're thinking, a
24 technical matter. It seems to me D and E, before we
25 add an F, really don't relate to the nonprofit use.

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1 It talks about lighting. It talks about parking.

2 CHAIRPERSON MITTEN: True.

3 MR. PARSONS: So I would suggest we have a
4 new D and number D and E, as numbers, chronologically
5 or place them elsewhere, I'm not sure where.

6 CHAIRPERSON MITTEN: Well, D is actually
7 satisfied under 8. I mean it does say -- we have a
8 provision for how big the nonprofit space can be and
9 then we have the number of parking spaces, so the
10 ratio is kind of -- we don't need the ratio. But what
11 we do actually -- actually, maybe we should add D to 8
12 because --

13 MR. PARSONS: Yes.

14 CHAIRPERSON MITTEN: They're asking for
15 flexibility on the number of units. So okay, we'll at
16 D to 8. And then we can make E a stand alone
17 condition.

18 MR. PARSONS: We could add that to 8 as
19 well. I mean it deals with parking.

20 MR. JEFFRIES: We're going to have to do
21 some renumbering anyway because there are two number
22 12s here, I see at the bottom of the page.

23 CHAIRPERSON MITTEN: Yes, there are,
24 starting with 12. How do you all feel about letting
25 the Applicant administer the affordable units?

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1 VICE-CHAIR HOOD: Did we decide on the
2 access? Maybe I missed that? Did we decide on the
3 access, what condition we're going to incorporate?

4 CHAIRPERSON MITTEN: So far I've suggested
5 some language while we talked through some other
6 things. Commissioner Jeffries is going to --

7 VICE-CHAIR HOOD: Are you going to come
8 back?

9 CHAIRPERSON MITTEN: Yes, unless somebody
10 has an alternative, that's what I'm going to propose.

11 VICE-CHAIR HOOD: Could you read your
12 suggestion?

13 CHAIRPERSON MITTEN: Yes. Reasonable
14 public access shall be made available during normal
15 business hours. And this would be to the nonprofit
16 office use of space.

17 VICE-CHAIR HOOD: Okay. I would concur
18 with that.

19 CHAIRPERSON MITTEN: Okay.

20 MR. PARSONS: I find the first 12, the
21 first number 12, to be unenforceable and something we
22 just shouldn't get engaged in.

23 CHAIRPERSON MITTEN: That's fine. They
24 can do it as a good will gesture, if they want to.

25 MR. PARSONS: Yes, adopt a park or

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1 whatever.

2 CHAIRPERSON MITTEN: Yes.

3 MR. PARSONS: We should require.

4 CHAIRPERSON MITTEN: Well, that solves our
5 numbering problem, too.

6 MR. PARSONS: Yes, it does.

7 CHAIRPERSON MITTEN: I guess what I --
8 even though I understand why the Applicant would want
9 to do this, I would want to have, if we decide we want
10 to let the Applicant do this, then we need to have
11 some kind of audit provision for DHCD to -- they
12 submit a statement, but it doesn't say what you can do
13 if you don't agree with the statement or you think
14 it's questionable. So we'd have to have some kind of
15 audit rights for the statement. And then E, I don't
16 know why E is in there. It's a qualifying household.
17 I don't know why we have to get into who it might be.
18 We're on 4E, page 12.

19 MR. PARSONS: So you're suggesting, we
20 delete it?

21 CHAIRPERSON MITTEN: Delete E. Does
22 anybody have a problem with deleting 4E?

23 Okay, and then what about -- I'm
24 suggesting if we want to allow the Applicant to
25 administer this, then we need to have some kind of

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1 audit provision which applies to the old F.

2 (Pause.)

3 Okay, can I -- let's just hear it. What
4 about the Applicant administering their own -- do you
5 guys want to do that or do you just want to not
6 endorse that?

7 MR. HILDEBRAND: It makes me a big
8 uncomfortable. I think if we would use the standard
9 procedures. What would our normal procedure be?
10 Would it be the Housing Authority administering that
11 kind of rental unit?

12 CHAIRPERSON MITTEN: I think DHCD does
13 that.

14 MR. HILDEBRAND: DHCD?

15 CHAIRPERSON MITTEN: Yes. So is the
16 preference for the standard procedure?

17 MR. HILDEBRAND: Yes.

18 CHAIRPERSON MITTEN: Okay, great. So then
19 we don't have to worry about that one. We'll just
20 write in the standard procedure.

21 Mr. Jeffries, not to put you on the spot,
22 but --

23 MR. JEFFRIES: That's all right. So my
24 hope is that if we can allow a tenant to be able to
25 have some part of the space restricted from public

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1 access, I don't know if we do a percentage or perhaps
2 some of the office space. I just --

3 CHAIRPERSON MITTEN: I think the reason I
4 use the word reasonable is because that's going to be
5 in the eye of the beholder, so someone is going to
6 have to come back to us, if they think they haven't
7 struck the right balance. If the community is not
8 getting the kind of access that they thought was
9 intended, they'll have to come back to us and we'll
10 have to hash it out. But I think this gives
11 flexibility to say you guys said you were going to let
12 the public in, so let them in. That's the whole thing
13 driving this as an amenity.

14 MR. JEFFRIES: And so they will have to --
15 they are going to have to come back to us with a
16 particular nonprofit tenant?

17 CHAIRPERSON MITTEN: They've specifically
18 requested not to have to do that which would be --
19 that's why those conditions are in here.

20 MR. JEFFRIES: Well, you can ask them to
21 take them both out.

22 CHAIRPERSON MITTEN: Okay. I did have one
23 final thing which is on the second 12B, it says to
24 vary the exterior design, materials and landscaping in
25 accordance with the final plans reviewed by HPRB, but

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1 with no reduction in quality based on availability at
2 the time of construction. But I think usually we say
3 within the same color ranges, too. So we need to add
4 that language.

5 MR. HILDEBRAND: One of the things about
6 this particular application that concerned me was the
7 removal of the stained glass windows from the
8 sanctuary. I know that the Applicant was adamant that
9 that needed to be done for lighting in the nonprofit
10 space. But in looking at their plan, they're cutting
11 in all these new skylights on what would be the north
12 face of the roof to allow natural light into the
13 sanctuary space. So I'm wondering if it really is
14 necessary to remove that sort of character
15 contributing feature of the stained glass windows from
16 at least the two public facades of the church.

17 Does anyone else feel strongly about that?

18 CHAIRPERSON MITTEN: I hear your concern.
19 I guess it's an issue that HPRB has already
20 addressed, not that I am always into deferring to
21 them. But if we were going to say -- we can't say it
22 without the Applicant proffering it to us that they
23 must retain the stained glass windows. So we'd have
24 to ask them to revisit that and then we wouldn't be
25 able to take the vote. So I don't know how strongly

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1 you feel about it.

2 MR. JEFFRIES: Commissioner Hildebrand, I
3 just again, just am very concerned about making
4 certain that the space is marketable to a pool of
5 potential tenants and everyone loves light and so
6 forth and again, it will not be functioning as a
7 church any longer, unfortunately, but so I probably
8 don't have such the concern that you do.

9 MR. HILDEBRAND: Madam Chair, if I could,
10 I just wanted -- the Applicant has addressed one of
11 the issues I heard and I think what we heard from the
12 neighbors and that was preserving some of the history,
13 at least the attempt from what I see here in the
14 record was made to the City Historian, Dr. Harris.
15 I'm glad that they made the attempt, but I see where
16 they have retained the services of the -- hopefully
17 it's Dr. McQuarter, that's who I'm looking at. They
18 said someone who worked on the African-American Trail.

19 And my issue was making sure that the
20 history was preserved in some kind of way and I
21 understand it's going to be in the oral histories, and
22 if it's Dr. McQuarter, then I'm satisfied with that
23 component of the order. Hopefully, it is Dr.
24 McQuarter. I was looking for a nod -- okay, it seems
25 to be Dr. McQuarter. So I'm satisfied and I want to

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1 thank the Applicant for trying to do this so we can
2 preserve the history of the African-Americans in that
3 area. Thank you.

4 CHAIRPERSON MITTEN: Okay, thank you.
5 Thank you for bringing it up. It will probably save
6 the oral history of the church.

7 MR. HILDEBRAND: I hope so.

8 CHAIRPERSON MITTEN: Okay. I did want to
9 just address really briefly before we take a vote
10 about this issue about the neighborhood being divided
11 about this approach as a way to preserve the church.
12 And we did -- the Applicant did tell a story about
13 what the former owner went through in terms of trying
14 to sell the building to another congregation and the
15 challenges associated with that and that they were
16 unsuccessful. So my fear is that if this PUD doesn't
17 go forward, that they might win the battle and lose
18 the war which is the only thing that would be left to
19 the Applicant to do, would be to convert the building
20 to residential units. And that's clearly not what
21 they want. Because there doesn't seem to be another
22 stand-alone use that would be supportable. So I feel
23 comfortable that we've addressed the concerns that
24 have been raised by the community in terms of the
25 approach to preserving the structure.

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1 So let me just briefly -- we have the
2 order in terms of the decision section. We're
3 striking 4E. We are requiring that we use our
4 standard procedure for administering the affordable
5 unit. We have struck D and E from No. 5 and we're
6 adding a new D that says "reasonable public access
7 shall be made available during normal business hours."

8 We struck the first number 12 which relates to the
9 litter removal. We've moved the old 5D down to be
10 part of -- the old 5D and E to be part of 8, actually.

11 We didn't strike them. We moved them to 8. We've
12 added to the second 12B that the changes will have to
13 be in the same -- any changes will have to be same
14 color ranges and I think that's everything.

15 And with that, I would move approval of
16 Case No. 03-30.

17 MR. JEFFRIES: Second.

18 CHAIRPERSON MITTEN: Any further
19 discussion?

20 All those in favor, please say aye.

21 (Ayes.)

22 Ms. Schellin?

23 MS. SCHELLIN: Yes, staff would record the
24 vote 5 to 0 to approve proposed action in Case No. 03-
25 30. Commissioner Mitten moving; Commissioner Jeffries

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1 seconding; Commissioners Parsons, Hood and Hildebrand
2 in favor.

3 CHAIRPERSON MITTEN: Thank you. Okay, the
4 first case under final action is Case No. 05-14 which
5 is the PUD for the Non-Profit Community Development
6 Corporation of Washington, D.C. We have a proposed
7 order in front of us. I would just note that all of
8 the provisions that had been proffered as the reasons
9 for needing the relief have just been incorporated as
10 conditions of the order.

11 VICE CHAIR HOOD: Madam Chair, with that I
12 move approval of the Zoning Commission Case No. 05-14.

13 CHAIRPERSON MITTEN: Thank you.

14 MR. PARSONS: Second.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Parsons.

17 Any discussion? All those in favor please
18 say aye.

19 (Ayes.)

20 None opposed.

21 MS. SCHELLIN: Staff would record the 5 to
22 0 to 0 to approve final action in Case No. 05-14.
23 Commissioner Hood moving; Commissioner Parsons
24 seconding; Commissioners Jeffries, Mitten and
25 Hildebrand in favor.

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1 CHAIRPERSON MITTEN: Thank you. And we're
2 going to defer action on the sua sponte case for the
3 time being and then the second case under final action
4 which Mr. Hood is going to handle because I'm recused
5 is Case No. 05-03.

6 VICE CHAIR HOOD: Okay, Commissioners, we
7 have in front of us Zoning Commission Case No. 05-03.

8 That's the Anacostia Gateway Government Center. We
9 have a final order in front of us. Again, if those
10 remember, the main tenant is the District's Department
11 of Transportation and as we heard at the hearing,
12 helping to revitalize that particular area.

13 Ms. Schellin, did you want to add
14 something? Okay.

15 Let me just ask this though, I did notice
16 that NCPC -- can we move on it without them having --

17 MS. SCHELLIN: Actually, I spoke with
18 them. They've given approval, but not officially.
19 They're not going to look at this again. They saw it.

20 Gave it a cursory look and they're not going to bring
21 it up again, so they will not be providing the report,
22 whether we delay this or not.

23 VICE CHAIR HOOD: Okay, sounds good.
24 Thank you.

25 MR. BERGSTEIN: To answer your question,

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1 30 days have passed and you can take action.

2 VICE CHAIR HOOD: Okay, well, let's do
3 that, colleagues, unless someone has anything else to
4 add?

5 MR. PARSONS: I move approval.

6 VICE CHAIR HOOD: It's been moved. Do I
7 hear a second?

8 MR. JEFFRIES: Second.

9 VICE CHAIR HOOD: All those in favor?

10 (Ayes.)

11 Any opposition?

12 So ordered. Staff, will you record the
13 vote?

14 MS. SCHELLIN: Staff will record the vote
15 4 to 0 to 1 to approve final action in Case No. 05-03.
16 Commissioner Parsons moving; Commissioner Jeffries
17 seconding; Commissioners Hildebrand and Hood in favor.
18 Commissioner Mitten, not voting, having recused
19 herself.

20 CHAIRPERSON MITTEN: Thank you and now
21 that ends our special public meeting.

22 (Whereupon, at 6:33 p.m., the special
23 public meeting was concluded.)

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