

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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FRIDAY

JUNE 28, 2013

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The Regular Public Meeting
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., S. Kathryn Allen, Vice-
Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

S. KATHRYN ALLEN, Vice-Chairperson

JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, Commissioner

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Sr. Zoning Specialist

JOHN NYARKU, Zoning Specialist

STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

**The transcript constitutes the
minutes from the Public Meeting held on June
28, 2013.**

A G E N D A

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Application No. 18563, MCSKA, LLC..... 11

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

9:44 a.m.

VICE CHAIR ALLEN: This meeting will please come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W.

This is Friday, June 28th, 2013 public hearing, actually public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is -- this hearing was originally scheduled for Tuesday, June 25th, but was postponed to today with notice to parties and the public through posting in the Office of Zoning, and on the website.

My name is S. Kathryn Allen. I'm Vice Chairperson. Joining me today on my right is Jeffrey Hinkle, Board Member, and representing the Zoning Commission is Michael Turnbull. Also, Mr. Peter May will join us for one of the cases this morning.

1 MS. ROSE: Good morning, Madam
2 Vice Chair. The first matter for the Board's
3 consideration today is the expedited review
4 calendar.

5 Application No. 18586

6 MS. ROSE: That is Application
7 18586 of Mary McGrath, as amended, pursuant to
8 11 DCMR 3104.1, for a special exception to
9 allow completion of a rear addition and front
10 addition to an existing one family detached
11 dwelling under Section 223, not meeting the
12 site yard requirements of Section 405.8, and
13 front yard setback requirements, Subsection
14 1543.4, in the Wesley Heights Overlay/R1B
15 District at premises 4351 Klinge Street,
16 N.W., Square 1625, Lot 802.

17 For preliminary matters, there is
18 a request filed by the Applicant to bifurcate
19 the application. This is Exhibit 27. This is
20 for the Board's consideration this morning.

21 VICE CHAIR ALLEN: Thank you, Ms.
22 Rose. Would we need to deal with the other

1 case, the recusal please?

2 MS. ROSE: That's going to be at
3 the hearing. We're going to do that after the
4 meeting.

5 VICE CHAIR ALLEN: Okay, thank
6 you.

7 MS. ROSE: Sure.

8 VICE CHAIR ALLEN: Thank you. Can
9 we have the parties to this case please join
10 us at the table, and actually as a preliminary
11 matter, everyone today who is planning to
12 testify, can you please stand and be sworn in?

13 [WITNESSES SWORN.]

14 MS. ROSE: Ladies and gentlemen,
15 you may consider yourself under oath.

16 VICE CHAIR ALLEN: And please make
17 sure that you fill out two witness cards and
18 turn them into our gentleman over here on the
19 right.

20 So the first order of business
21 today is the request for a bifurcation of the
22 matter, with part staying on the expedited

1 calendar and the other part going to a full
2 hearing.

3 The Chair has given this some
4 consideration, and it is our belief that the
5 bifurcation is not appropriate at this time.
6 We once that the request has been made, that
7 obviously puts part of the, or there have been
8 some objections that puts part of the hearing
9 into, I mean part of the expedited case into
10 a full hearing.

11 We don't find a need or a good
12 case to split them and to have to have two
13 hearings to have to have time of the Board
14 spent doing that. So it would be my thought
15 that we should remove the entire case to a
16 hearing as soon as possible. Any comments
17 from my colleagues?

18 MEMBER HINKLE: Yes. Thank you
19 Madam Vice Chair. I tend to agree with you.
20 We should take this as one case and not split
21 it. It seems like some double duty on the
22 Board's part.

1 In addition, there was a request
2 in terms of reviewing the front yard issue as
3 a special exception versus a variance under,
4 what was the request, 1543, which is the
5 Wesley Heights Overlay District, and I'm not
6 sure that that's appropriate as well.

7 It seems like the regulations are
8 relatively clear in terms of what qualifies
9 for a special exception, and Section 1543 is
10 not part of that regulation. So that's my
11 opinion.

12 COMMISSIONER TURNBULL: I would
13 concur with the both of you on the request for
14 bifurcation. I would also agree with Mr.
15 Hinkle on Section 1543.

16 VICE CHAIR ALLEN: By consensus,
17 we will move this to a hearing. Ms. Rose, if
18 we can have that, a date please, and while
19 she's getting that, I just want to be clear,
20 that we are looking for a variance argument
21 when we do hear this on the front yard, as
22 opposed to a special exception.

1 MS. ROSE: Are they going to make
2 comments? No comments.

3 (Off mic comment.)

4 MR. BROWN: By the way, I'm
5 Patrick Brown from Greenstein, DeLorme and
6 Luchs, the applicant's counsel. With me is
7 Mary McGrath. I think we need to clarify the
8 side yard issue, which arose first, and is
9 clearly within the purview of the expedited
10 review and not opposed.

11 VICE CHAIR ALLEN: Excuse me. I'm
12 very sorry. I appreciate your concern. We've
13 really actually already made a ruling and
14 we're going to move on. I apologize that this
15 is a concern for you, but we've made a ruling
16 and we're not going to continue to argue it.

17 MS. McGRATH: Excuse me, I must, I
18 must understand.

19 VICE CHAIR ALLEN: Sorry, please
20 --

21 MS. McGRATH: Does this mean I
22 have to stop building my house and --

1 VICE CHAIR ALLEN: It means that
2 we'll provide a hearing for you as soon as
3 possible, okay. Ms. Rose, can I have that
4 hearing please, a date?

5 MS. ROSE: Madam Chair, were you
6 interested in something very soon or after --

7 VICE CHAIR ALLEN: Yes, yes, as
8 soon as possible.

9 MS. ROSE: Okay, very soon. The
10 staff will recommend July 16th, 9:30 a.m.

11 VICE CHAIR ALLEN: Is there
12 anything available on the 9th?

13 MS. ROSE: We have six cases on
14 the 9th. Did you want to change it to that
15 date? That's a week and a half.

16 VICE CHAIR ALLEN: I think we
17 would try to accommodate and make it as
18 quickly as possible. So let's do it on the
19 9th.

20 MS. ROSE: On the 9th.

21 (Off mic comment.)

22 MR. HEIMERT: Sorry. My name is

1 Andrew Heimert. I'm one of the parties. I
2 have previously scheduled plans to be out of
3 town on the 9th, so would not be able to
4 participate in the hearing on that day.

5 VICE CHAIR ALLEN: Okay. So we'll
6 have to do it on the 16th. Is everybody
7 available on the 16th? Okay, 16th it is.
8 Thank you. Can we have the next case please?

9 (Pause.)

10 Application No. 18563

11 MS. ROSE: The next matter is a
12 decision in Application No. 18563 of MCSKA,
13 LLC, as amended, pursuant to 11 DCMR 3103.2,
14 for a variance from the off street parking
15 requirements under Subsection 2101.1, for a
16 six-unit apartment building in the R5B
17 District at premises 1469 Harvard Street,
18 N.W., Square 2670, Lot 818.

19 This case was heard on June 4th,
20 2013. On that date, the Board granted party
21 status to Mr. Eric Hoy, completed public
22 testimony, closed the record, except to allow

1 the applicant to file any revision to the
2 application attendant to the relief being
3 requested.

4 That submission was due by Friday,
5 June 21st, 2013. The Board scheduled its
6 decision for the meeting of, for the public
7 meeting of June 25th, 2013. That decision
8 date was rescheduled to today. The ANC did
9 not attend the hearing, but filed a report in
10 support.

11 OP recommends approval with one
12 condition, to provide a bicycle rack for eight
13 bicycles. There is no DDOT report. The Board
14 has received the following post-hearing
15 documents.

16 The applicant filed a timely
17 request to amend the application. It is dated
18 June 18th, 2013 at Exhibit 35. The applicant
19 expressed that the amended application is to
20 reduce the number of units from eight to six,
21 and the number of parking spaces needing
22 variance from four to three.

1 The Board has also received a
2 response from the opposition party, Mr. Hoy,
3 addressing a number of issues, including
4 deferring the decision to allow more time for
5 negotiations on the easement issue, and the
6 Board is to act on the merits of this case.

7 VICE CHAIR ALLEN: Thank you.
8 Okay. Is the Board prepared to make a
9 decision? We've been joined by Mr. May. All
10 right. I guess I just had a question
11 regarding any revised plans. Did we receive
12 any revised plans for the change?

13 MS. ROSE: Just a moment, Madam
14 Chair.

15 (Pause.)

16 MS. ROSE: Madam Chair, the plans
17 were not -- the plans that the Board currently
18 has are the same, are the only plans that we
19 have.

20 But the seller was going to be
21 deleted, and in consulting with OZ staff I
22 learned that the case is really about the

1 variance for the parking, that we don't need
2 plans for the number of units.

3 We just need to know how many
4 parking spaces they would need in each row.
5 So we don't have revised plans in the record.

6 VICE CHAIR ALLEN: Okay, and
7 again, my understanding is that the party in
8 opposition has indicated that they would, for
9 a maximum of four units and the variance for
10 two parking spaces is what they have
11 requested, in terms of a compromise, and it
12 appears that the applicant has a counter to
13 that, being for I guess six units, and down to
14 -- well, because of the six units, they only
15 need three spaces. Any comments from my
16 colleagues on this? Mr. May.

17 COMMISSIONER MAY: Yeah. While
18 I'm sympathetic to the issues of parking in
19 the neighborhood, it seems like that's a much
20 broader problem and, you know, when we
21 consider just this case, I believe the
22 applicant has made a sufficient case to grant

1 the variance.

2 From the parking requirement,
3 we're talking about three spaces that they
4 would ordinarily have to provide, and they've
5 agreed to take the building off the RPP roles,
6 which I think is sufficient mitigation for not
7 being able to meet the parking requirement.

8 Plus I believe there is still the
9 opportunity to obtain easements from adjacent
10 neighbors, in order to be able to park two or
11 three cars in the backyard.

12 I think that -- I think, I'm
13 hopeful that that would continue, and that
14 they be able to get sufficient parking. But
15 I don't believe that it's absolutely essential
16 to be able to grant the variance.

17 VICE CHAIR ALLEN: Mr. Hinkle, do
18 you have any thoughts?

19 MEMBER HINKLE: I tend to agree
20 with my colleague, Mr. May. I'm not sure if
21 I have anything else to add to this. I can
22 certainly support a condition to restrict the

1 building, the residents in the building from
2 obtaining an RPP permit.

3 VICE CHAIR ALLEN: Do you want to
4 go ahead and make a motion on that?

5 MEMBER HINKLE: Sure. I'll make a
6 motion to approve the application for the
7 parking reduction from --

8 VICE CHAIR ALLEN: Three.

9 MEMBER HINKLE: Parking reduction
10 of three units, with the condition that the
11 residents are restricted from the RPP permit,
12 as well as a, as suggested by the Office of
13 Planning, that the applicant provides bicycle
14 parking for at least eight bicycles.

15 COMMISSIONER TURNBULL: Second.

16 VICE CHAIR ALLEN: It has been
17 moved and seconded that we approve the
18 applicant's request with conditions. All in
19 favor?

20 (Chorus of ayes.)

21 VICE CHAIR ALLEN: Opposed? Nay.

22 Ms. Rose.

1 MS. ROSE: Staff will report the
2 vote as 3-0-2. The motion was made by Mr.
3 Hinkle, seconded by Mr. May, with Ms. Allen to
4 approve the application with conditions, as
5 described. Mr. Jordan, not present, not
6 voting and one seat vacant on the Board.

7 VICE CHAIR ALLEN: Okay, thank
8 you. I assume we could do that in a summary
9 order? No? Oh, there was opposition, so
10 we'll do a full order. Thank you.

11 (Pause.)

12 MS. ROSE: Madam Chair, we need to
13 adjourn the meeting.

14 VICE CHAIR ALLEN: Okay. This
15 meeting is hereby adjourned, and is that by
16 consensus? Yes, okay.

17 (Whereupon, at 10:00 a.m., the
18 public meeting was adjourned.)
19
20
21
22

A able 11:3 15:7,10 15:14,16 absolutely 15:15 accommodate 10:17 act 13:6 add 15:21 addition 5:9,10 8:1 addressing 13:3 adjacent 15:9 adjourn 17:13 adjourned 17:15 17:18 Adjustment 1:4,16 4:10 agree 7:19 8:14 15:19 agreed 15:5 ahead 16:4 Allen 1:14,17 4:3 4:17 5:21 6:5,8,16 8:16 9:11,19 10:1 10:7,11,16 11:5 13:7 14:6 15:17 16:3,8,16,21 17:3 17:7,14 allow 5:9 11:22 13:4 amend 12:17 amended 5:7 11:13 12:19 ANC 12:8 Andrew 11:1 apartment 11:16 apologize 9:14 appears 14:12 applicant 5:18 12:1 12:16,18 14:12,22 16:13 applicant's 9:6 16:18 application 3:13,16 5:5,6,19 11:10,12 12:2,17,19 16:6 17:4 appreciate 9:12	appropriate 7:5 8:6 approval 12:11 approve 16:6,17 17:4 argue 9:16 argument 8:20 arose 9:8 assume 17:8 attend 12:9 attendant 12:2 ATTORNEY 2:10 available 10:12 11:7 ayes 16:20 a.m 1:14 4:2 10:10 17:17 B backyard 15:11 belief 7:4 believe 14:21 15:8 15:15 bicycle 12:12 16:13 bicycles 12:13 16:14 bifurcate 5:18 bifurcation 6:21 7:5 8:14 Board 1:4,16,18 4:10,19 7:13 11:20 12:5,13 13:1,6,8,17 17:6 Board's 5:2,20 7:22 broader 14:20 Brown 9:4,5 building 9:22 11:16 15:5 16:1,1 business 6:20 C calendar 5:4 7:1 cards 6:17 cars 15:11 case 6:1,9 7:9,12,15 7:20 11:8,19 13:6 13:22 14:21,22 cases 4:22 10:13	certainly 15:22 Chair 1:15 4:3 5:2 5:21 6:5,8,16 7:3 7:19 8:16 9:11,19 10:1,5,7,11,16 11:5 13:7,14,16 14:6 15:17 16:3,8 16:16,21 17:7,12 17:14 Chairperson 4:18 change 10:14 13:12 Chorus 16:20 clarify 9:7 clear 8:8,19 clearly 9:9 closed 11:22 COCHRAN 2:17 colleague 15:20 colleagues 7:17 14:16 Columbia 1:2 4:11 come 4:4 comment 9:3 10:21 comments 7:16 9:2 9:2 14:15 Commission 1:19 4:20 Commissioner 1:20,21 8:12 14:17 16:15 completed 11:21 completion 5:9 compromise 14:11 concern 9:12,15 concur 8:13 condition 12:12 15:22 16:10 conditions 16:18 17:4 consensus 8:16 17:16 consider 6:15 14:21 consideration 5:3 5:20 7:4 constitutes 2:19 consulting 13:21	continue 9:16 15:13 convened 1:13 counsel 9:6 counter 14:12 currently 13:17 D D 3:10 date 8:18 10:4,15 11:20 12:8 dated 12:17 day 11:4 DCMR 5:8 11:13 DDOT 12:13 deal 5:22 decision 11:12 12:6 12:7 13:4,9 deferring 13:4 deleted 13:21 DeLorme 9:5 described 17:5 detached 5:10 District 1:2 4:10 5:15 8:5 11:17 documents 12:15 doing 7:14 double 7:21 due 12:4 duty 7:21 dwelling 5:11 D.C 1:14 2:10 E E 3:10 easement 13:5 easements 15:9 eight 12:12,20 16:14 entire 7:15 Eric 11:21 ESQ 2:12 essential 15:15 everybody 11:6 exception 5:8 8:3,9 8:22 Excuse 9:11,17 Exhibit 5:19 12:18	existing 5:10 expedited 5:3 6:22 7:9 9:9 expressed 12:19 F family 5:10 favor 16:19 file 12:1 filed 5:18 12:9,16 fill 6:17 find 7:11 first 5:2 6:20 9:8 following 12:14 four 12:22 14:9 Friday 1:9 4:8 12:4 front 5:9,13 8:2,21 full 7:1,10 17:10 G G 3:10 GENERAL 2:10 gentleman 6:18 gentlemen 4:5 6:14 getting 8:19 given 7:3 go 16:4 going 6:2,3 7:1 9:1 9:14,16 13:20 good 4:4 5:1 7:11 GOVERNMENT 1:1 grant 14:22 15:16 granted 11:20 Greenstein 9:5 guess 13:10 14:13 H half 10:15 Harvard 11:17 hear 8:21 heard 11:19 hearing 1:13 4:6,9 4:12 6:3 7:2,8,10 7:16 8:17 10:2,4 11:4 12:9 hearings 7:13 Heights 5:14 8:5
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 06-28-13

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Court Reporter

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