

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 15, 2014

+ + + + +

The Regular Public Hearing and 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., Lloyd J. Jordan, Chairperson, presiding.

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE HEATH, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MARCIE COHEN, ZC Vice Chairman
PETER MAY, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing and Meeting held on April 15, 2014.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Application No. 18732
WSD Capital, LLC 8

Application No. 18638
Rosebusch, LLC 10

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

2 (9:39 a.m.)

3 CHAIR JORDAN: And please come to
4 order. We're located at the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street, N.W.
6 Today's date is April 15th, 2014. We're here
7 for the meeting and hearings of the Board of
8 Zoning Adjustment in the District of Columbia.

9 My name is Lloyd Jordan,
10 Chairperson. To my right is Jeffrey Hinkle,
11 member of the Board. To my left is Marnique
12 Heath, member of the Board. To her left is
13 Marcie Cohen, a member of the Zoning
14 Commission.

15 Please be advised that today's
16 proceedings are being webcast live and also
17 being recorded by a court reporter. So
18 therefore I'm going to ask you to refrain from
19 any disruptive noises here in the hearing room
20 today.

21 It'd be a good time now to check
22 those things that ring and buzz loud and all

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1 that. We've been doing pretty good. Usually
2 we don't get disrupted, but there's always
3 going to be the day, so let's just check it
4 please. Besides my computer going off last
5 week.

6 The Board's hearing procedures are
7 contained on a pamphlet or document by the back
8 door to my left, so feel free to get that so you
9 can acquaint yourself with how we operate here
10 at the Board.

11 If you're going to testify or
12 provide a statement to the Board in any of the
13 cases before the Board today, I'm going to need
14 you to do two things. The first of which, I'm
15 going to need you to complete two witness cards
16 per person.

17 If you're going to testify or
18 provide a statement to the Board, I'm going to
19 ask that you complete two witness cards and give
20 them to the court reporter who's seated to my
21 right prior to you testifying.

22 The second thing I'm going to need

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1 you to do is to now stand and to take the oath
2 which will be given by Mr. Moy, the Board
3 Secretary.

4 MR. MOY: Good morning.

5 (All witnesses sworn.)

6 MR. MOY: Ladies and gentlemen, you
7 may consider yourselves under oath.

8 CHAIR JORDAN: Just give some
9 head's up notice. We're going to play musical
10 Zoning Commission member, which we're glad for
11 them to be.

12 But there's certain cases which
13 they've been on before, matters which have
14 continued from other hearings or additional
15 information was provided or hearings were
16 continued.

17 So we're going to have probably
18 three different Zoning Commission members
19 sitting with us today. With that being said,
20 on matter 18638 Rosebusch, that's not going to
21 be called until probably 11 o'clock when Mr. May
22 joins us for also the appeal matter. So 18638

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1 and 18735, 18737 is not going to be called until
2 about 11 o'clock when Mr. May will be joining
3 us.

4 Just to give you head's up. If you
5 needed to do something, come back or whatever,
6 stretch your legs or you can always stay, but
7 I just want to give you head's up on that. I
8 think everything else we're okay. So with
9 that, Mr. Moy, can we call 18732. I mean Mr.
10 Moy. Did I say May? Moy.

11 MR. MOY: Seventh.

12 CHAIR JORDAN: Moy, May, what's a A
13 and a O.

14 MR. MOY: It's close. Well,
15 before I do that Mr. Chairman, just for the
16 record, two cases that's on the docket today,
17 Application Number 18712, a Craig Marina, that
18 has been withdrawn by the applicant. Second,
19 Application Number 18738 of Kashani, that
20 application has been postponed and rescheduled
21 to April 29th, 2014.

22 CHAIR JORDAN: Thank you.

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1 MR. MOY: Okay. So with that the
2 first case you said you wanted to call was --

3 CHAIR JORDAN: 732.

4 MR. MOY: Which case is that, 732.

5 CHAIR JORDAN: That's a decision
6 case. 18732 request for motion by Michael --

7 MR. MOY: Oh, yes --

8 CHAIR JORDAN: -- Sindram.

9 MR. MOY: -- yes, yes. Sorry, I
10 should have known that. Okay. One of the
11 first two decision cases, this one is a motion
12 or a request for reconsideration rehearing of
13 Application Number 18732 or WSD Capital, LLC
14 and also a waiver of time requirements to file
15 pursuant to Section 3126.

16 A Mr. Sindram made his filing on
17 March 18th, 2014 and that document is, well,
18 actually I'm going to cite two under Exhibits
19 30 and 32. So I'm going to leave it with that,
20 Mr. Chairman.

21 CHAIR JORDAN: Yes, I've reviewed
22 the motion. I'm sure the Board has reviewed

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1 the motion and aware of what he asserts in the
2 motion as his document's on. This is a motion
3 for reconsideration from the Board's decision
4 on the underlying matter of 18732.

5 I believe the motion has to be
6 denied for the fact that it doesn't follow the
7 requirements under 3126 or the zoning
8 regulations. First being that this is a motion
9 by individual who is not a party, nor a
10 participant in previous decision.

11 But generally the motion also
12 doesn't address the requirements of 3126 and
13 that the motion doesn't claim anything that the
14 Board did erroneously, nor did it present any
15 evidence on his request for rehearing that
16 could not have been presented to the Board
17 before.

18 So it's just clear on its face, but
19 also about the motion. It really wasn't
20 talking about anything that the Board did, it
21 was complaining about the ANC generally. So my
22 recommendation, well, my motion would be that

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1 we deny the request under 18732.

2 MEMBER HINKLE: I'll second.

3 CHAIR JORDAN: Motion made and
4 second. All those in favor signify by saying
5 aye.

6 (Multiple ayes.)

7 CHAIR JORDAN: Those opposed. The
8 motion carries. Mr. Moy.

9 MR. MOY: Staff would record the
10 vote as three to zero. This on a motion
11 Chairman Jordan to deny the request for
12 reconsideration rehearing. Seconded motion,
13 Mr. Hinkle. Also in support Ms. Heath and we
14 have two members not participating today. So
15 the motion carries three to zero.

16 CHAIR JORDAN: Let's call 18638.

17 MR. MOY: Okay. The next
18 application before the Board that's on the
19 docket for the day is the, well, actually there
20 are two. I guess, the Board will want to take
21 up the Application 18638 of Rosebusch, LLC and
22 Gregg M. Busch.

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1 As the Board will recall, the Board
2 deliberated and made a decision back on April
3 the 8th, 2014 and actually bifurcated its
4 decision.

5 The voting on a motion for the roof
6 structure relief and then not having a majority
7 vote for the relief to parking under 2101.1.

8 Since then, Mr. Chairman, there are
9 preliminary matters. There are two filings in
10 the record. The applicant filed a motion to
11 reopen and the party opponent replied with a
12 motion opposed to the motion to reopen. And
13 that's before the Board.

14 CHAIR JORDAN: All right. Well,
15 on the motion to reopen, we still have a Board
16 member who has not voted in that matter who sat
17 in on that case. So I would hold in advance a
18 motion to reopen the record pending that vote,
19 Mr. Moy. Did we subsequently get a
20 communication?

21 MR. MOY: You mean from a Board
22 member?

1 CHAIR JORDAN: Yes, on the case.

2 MR. MOY: Yes. Yes, I do. The
3 absentee ballot did not go to the motion reopen,
4 so --

5 CHAIR JORDAN: No, actually --

6 MR. MOY: -- because that's --

7 CHAIR JORDAN: -- I've heard their
8 motion to --

9 MR. MOY: -- what I'm holding a
10 motion in advance.

11 CHAIR JORDAN: -- reopen in advance
12 of --

13 MR. MOY: Understood.

14 CHAIR JORDAN: -- whatever.

15 MR. MOY: Understood. The member
16 did file a motion to vote on the variance for
17 the parking --

18 CHAIR JORDAN: She filed --

19 MR. MOY: -- her voice didn't --

20 CHAIR JORDAN: -- an absentee
21 ballot --

22 MR. MOY: That's right --

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1 CHAIR JORDAN: -- that's right.

2 MR. MOY: -- she filed.

3 CHAIR JORDAN: Okay.

4 COMMISSIONER MAY: Mr. Chairman,
5 is the right way to handle this for us to repeat
6 the motion and take the vote or just to simply
7 --

8 CHAIR JORDAN: I think we, because
9 the record's kept open for her vote.

10 COMMISSIONER MAY: Oh, okay. So
11 we just --

12 CHAIR JORDAN: Yes.

13 COMMISSIONER MAY: -- left it open
14 for her. All right.

15 CHAIR JORDAN: So where is she on
16 this?

17 MR. MOY: Her absentee vote is to
18 deny the variance relief for parking.

19 CHAIR JORDAN: What about the
20 other?

21 MR. MOY: And on the motion for a
22 special exception for height, is she grants

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1 that. She's in approval.

2 CHAIR JORDAN: Gee, so that leaves
3 us. So the final vote is what? So that means
4 it's two votes to approve the parking variance,
5 two votes to oppose the parking variance and
6 there's no decision there, but there seems to
7 be unanimous vote on the special exception, is
8 that --

9 MR. MOY: That's --

10 CHAIR JORDAN: -- correct?

11 MR. MOY: -- correct, sir.

12 CHAIR JORDAN: Okay. Let me speak
13 to counsel.

14 (Off the microphone discussion.)

15 CHAIR JORDAN: In fact, we didn't
16 know that. We should've done that before.
17 That's, yes, we should have, yes. If that's
18 true then we would have had a full complement
19 of the Board. That's, okay.

20 We've just been advised by counsel
21 on how to handle this matter. In fact, it's
22 something we should have done before. There's

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1 a motion to reopen the record. We had one Board
2 member who recruits himself for NCPC, but
3 actually it's NCPCs position.

4 And as have been indicated by
5 counsel, that we should have made a request of
6 NCPC to have someone sit in, and we will do so.

7 And in that regard, it's been
8 recommended that we do reopen the record so that
9 NCPC, on their one parking issue, that NCPC
10 representative should be allowed to
11 participate in that bit because they haven't
12 seen any of the evidence.

13 Is that what I understand in the way
14 flow of that going? Okay. So if that would
15 be, then I would entertain a motion that we
16 reopen the record and that we request NCPC.

17 COMMISSIONER MAY: So moved.

18 CHAIR JORDAN: Second?

19 MEMBER HEATH: Second.

20 CHAIR JORDAN: Motion made and
21 second that the record be reopened to take
22 evidence in on the parking issue and that we're

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1 going to schedule that for hearing and that the
2 request for a representative of NCPC be
3 present. Okay. All those in favor signify it
4 by saying aye.

5 (Multiple ayes.)

6 CHAIR JORDAN: Those opposed nay.
7 The motion carries. Mr. Moy.

8 MR. MOY: Yes, staff would record
9 that as three to zero on the motion of Chairman
10 Jordan, second by Mr. Peter May. Ms. Heath in
11 support. Motion carries three to zero.

12 CHAIR JORDAN: Okay. All right.

13 MR. MOY: Would the Board care to
14 set a future date on that or --

15 CHAIR JORDAN: Yes, let's --

16 MR. MOY: -- should we leave that --

17 CHAIR JORDAN: -- do that. Yes,
18 we're going to work off Peter's schedule.

19 COMMISSIONER MAY: May 20th is the
20 next time I'm here.

21 MR. MOY: Okay.

22 COMMISSIONER MAY: Does that work?

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1 MR. MOY: That works. Works for me
2 if it works for the Chair and the Board.

3 CHAIR JORDAN: May 20th, let me
4 see.

5 MR. MOY: We have space.

6 CHAIR JORDAN: We have space. May
7 20th, yes, we have space. They have a time.
8 All right. Okay. And Mr. Moy, would you
9 handle the request for NCPC, please?

10 MR. MOY: Yes, I'll do that. For
11 clarity for the staff, what's that do with
12 motions that reopen from the --

13 CHAIR JORDAN: That we were --

14 MR. MOY: -- applicant?

15 CHAIR JORDAN: We are going to open
16 it for hearing again on parking.

17 MR. MOY: Okay. Their filings?
18 Well, this is for a hearing or for a session.

19 CHAIR JORDAN: For hearing.

20 MR. MOY: Okay. All right. Just
21 to be clear. All right. Very good.

22 CHAIR JORDAN: Thank you. Yes, I

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1 didn't know why we didn't think of that before.
2 Thank you. Mr. Moy, is there any other
3 business to come in for the Board today?

4 MR. MOY: Not today, sir.

5 CHAIR JORDAN: Okay. Then we're
6 adjourned, Board. Thank you. Thanks
7 everybody.

8 (Whereupon, the meeting in the
9 above-entitled matter was concluded at 2:51
10 p.m.)

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