

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 22, 2013

+ + + + +

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 9:50 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN RICE, Zoning Specialist
STEPHEN VARGA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on October 22, 2013.

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

2 9:50 a.m.

3 CHAIRPERSON JORDAN: Good morning.

4 Will we please come to order? We're here today
5 for the meeting and hearing of the Board of
6 Zoning Adjustment.

7 We are located at 441 Fourth Street,
8 N.W., in the Jerrily R. Kress Memorial Hearing
9 Room.

10 Today's date is October 22nd. My
11 name is Lloyd Jordan, Chairperson. To my left
12 is Peter May, member of the Zoning Commission.
13 And to my right, Jeffrey Hinkle, a member of the
14 Board.

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

20 I need you to do two things. Those
21 people who are going to testify or provide
22 statements in any cases that are on our docket

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1 for the day - and we have some docket cleanup.
2 So, I'm going to get to that at a point.

3 On our docket for today, anyone who
4 will provide testimony and/or want to provide a
5 statement to the Board, I'm going to ask two
6 things I need from you.

7 One is that I'm going to have you to
8 complete two witness cards for each person. And
9 prior to your testimony, giving the witness
10 cards to the court reporter who is seated to my
11 right and your left.

12 So, that's two witness cards per
13 person and give them to the court reporter prior
14 to your testimony and/or statement.

15 The second thing I'm going to need
16 you to do if you're going to provide testimony
17 and/or provide a statement to the Board, I'm
18 going to ask you to rise now and take the oath
19 or affirmation being given by the Board
20 secretary, Mr. Moy.

21 So, if you're going to provide any
22 statement or testimony on our record, I'm going

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1 to need you to be sworn in.

2 MR. MOY: Good morning. Do you
3 solemnly swear or affirm that the testimony
4 you're about to present in this proceeding is the
5 truth, the whole truth and nothing but the truth?

6 GROUP RESPONSE: I do.

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

9 CHAIRPERSON JORDAN: Now, we have
10 some procedural issues and procedural matters
11 which we're going to have to discuss. And I want
12 to get some of those out of the way, because one
13 of our cases we're going to have to move to
14 another date, because we won't have a quorum for
15 that particular portion of the meeting.

16 As you see, the Board is sitting now
17 with three members which establishes a quorum,
18 however, due to a recusal that we're going to
19 have, that we're not going to have a quorum for
20 Case Number 18638.

21 So, Case Number 18638 we're going to
22 reschedule to December 10th, 2013. So, I didn't

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1 want to wait until the end of the docket to get
2 that to you so you didn't have to sit here if
3 you're here for that case.

4 So, 18638 is being removed because
5 of fail for a lack of quorum to be able to take
6 testimony on that case.

7 Mr. Moy, do we have any other
8 housekeeping matters we need to take care of?

9 MR. MOY: Well, yes. Very quickly
10 for the record, that two appeal cases, Appeal
11 Number 18539 and Appeal Number 18540 -

12 CHAIRPERSON JORDAN: Appeal cases?

13 MR. MOY: They've been continued to
14 January the 28th. And then my - although there
15 are preliminary matters that should be taken up
16 case by case, we do have some on -

17 CHAIRPERSON JORDAN: Well, I'm on
18 docket management stuff now.

19 MR. MOY: Okay.

20 CHAIRPERSON JORDAN: For instance,
21 where are we on Case 18654?

22 (Pause in the proceedings.)

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1 MR. MOY: 18654, Mr. Chairman, is
2 that there was a request from the Applicant to
3 pull their application off the expedited
4 calendar to a future date.

5 CHAIRPERSON JORDAN: Okay. Is there
6 a person here representing the Applicant? Is
7 the Applicant here for 18654?

8 All right. Mr. Moy, let's move that
9 to - what was December 10th? Is that a hearing
10 date? That's a hearing date.

11 MR. MOY: That's a hearing date, but
12 be mindful that the Board and the Zoning
13 Commission have a training session that
14 afternoon.

15 CHAIRPERSON JORDAN: What is our
16 docket like that afternoon?

17 MR. MOY: It's for the training
18 session. That's going to be -

19 CHAIRPERSON JORDAN: The training
20 session is in the afternoon?

21 MR. MOY: That's correct. We did a
22 reversal.

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1 CHAIRPERSON JORDAN: How about the
2 morning?

3 MR. MOY: But the morning we have four
4 or five cases. I was going to suggest moving
5 this case to December 17th, which is doable.

6 CHAIRPERSON JORDAN: That's fine.

7 MR. MOY: All right.

8 CHAIRPERSON JORDAN: So, let's move
9 that to December 17th. So, 18654 would be moved
10 to December 17th.

11 (Pause in the proceedings.)

12 CHAIRPERSON JORDAN: Now, is there a
13 - I need a representative for Case 18639 to come
14 forward and/or the party who submitted in
15 opposition, which I believe is - do you have the
16 name of - Smeltzer. Smeltzer.

17 Okay. Please come forward.
18 Please take a seat and identify yourself. Just
19 make sure your microphone is on. It should have
20 a bright, glowing, green light there.

21 I don't believe yours is on. There.
22 It will be right in front of you. Try it now.

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1 MR. SMELTZER: Okay. I'm John L.
2 Smeltzer. I'm co-owner of 227 12th Street, S.E.

3 CHAIRPERSON JORDAN: And you applied
4 for party status, correct?

5 MR. SMELTZER: I did.

6 CHAIRPERSON JORDAN: And are you
7 still maintaining your request for party status?

8 MR. SMELTZER: I am not. If I can
9 explain?

10 CHAIRPERSON JORDAN: I think I have
11 your document. You've been having discussions
12 with the Applicant?

13 MR. SMELTZER: We just reached a
14 Memorandum of Agreement out in the hallway and
15 I'm prepared to file that with the Board today.

16 CHAIRPERSON JORDAN: Okay. Well,
17 then just for the record let's identify the other
18 parties at the table. And then I'm going to ask
19 you to move back, because I think we've resolved
20 that.

21 MR. SULLIVAN: Good morning, Mr.
22 Chairman and members of the Board. My name is

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1 Martin Sullivan, attorney for the Applicant,
2 Justin Sprinzen.

3 MR. SPRINZEN: Justin Sprinzen,
4 owner/applicant.

5 MR. HALL: Michael Hall, Studio
6 Crowley-Hall, architects for the Applicant.

7 CHAIRPERSON JORDAN: Good. Well,
8 thank you. As you know, Mr. Sullivan, it is our
9 practice when we have parties in opposition, to
10 try to bring the parties to the table early so
11 they can go out in the hall and at least have
12 conversation about some of the matters to try to
13 resolve them. But it appears that you are way
14 ahead of the Board, thank you, and resolved these
15 matters.

16 And we really appreciate you, both
17 parties, working these particular things out -
18 well, you're not a party yet, but still working
19 it out, because it's best that these things get
20 worked out before the Board has to work them out.
21 And the people are neighbors and it's something
22 that we're really trying to encourage to do.

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1 Well, thank you. I was just going
2 to find out the status and I understand where we
3 are.

4 (Discussion off the record.)

5 CHAIRPERSON JORDAN: One thing we try
6 to do, the Board, you know, as I said over and
7 over again, that the Board reviews the cases and
8 reviews all the documents, you know, well ahead
9 of time.

10 But invariably when we get in on
11 Tuesday morning, there's a stack of new
12 documents and filings. People are changing
13 their party statuses or trying to become parties
14 or filing new documents this thick and say, well,
15 review this before the hearing.

16 It's a document this thick. So, it
17 kind of gets us all jumbled. And so, doing this
18 kind of cleanup and housework is what we're
19 trying to do first off.

20 You can come in. We know where we
21 are before, say, nine o'clock. But as soon as
22 we walk in here at nine o'clock, it's a whole

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1 different world. So, that's what we kind of do.

2 And my little docket where I keep
3 score about what's going on, it looks like I
4 guess a tic-tac-toe kind of thing now. Is this
5 screwed up?

6 So, with that, Mr. Moy, let's - I
7 believe then we are in our public meeting and we
8 have two cases on our public meeting.

9 Would that be correct?

10 MR. MOY: That's correct, sir.

11 CHAIRPERSON JORDAN: Let's call our
12 first matter.

13 MR. MOY: The first matter is an
14 application that's on the Board's expedited
15 review calendar. And that is Application
16 Number 18658 of Kenneth Scott Davies and Edel
17 Quinones, I believe it's pronounced,
18 Q-U-I-N-O-N-E-S.

19 This is pursuant to 11 DCMR 3104.1
20 for an addition to a one-family row dwelling
21 under Section 223 not meeting the lot area
22 requirements under Section 401, lot occupancy

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1 under Section 403, and nonconforming structure
2 under Subsection 2001.3 requirements.

3 This is what has been captioned in
4 the Public Notice in the DC/R-4 District at
5 premises 1421 Swann Street, N.W., Square 206,
6 Lot 115.

7 For the Board's note, in your case
8 folders there was a filing by the Applicant, a
9 cover letter and a revised new drawing under
10 Exhibit 32.

11 And I believe it is also in Exhibit
12 33 where a requester for party status has been
13 withdrawn.

14 CHAIRPERSON JORDAN: Another example
15 of what we've just been talking about. So, this
16 matter was about to be pulled because there was
17 opposition. And now, there is no opposition,
18 which is always, again, we encourage the parties
19 to work things out.

20 Board Case Number 18658 is on the
21 expedited review docket. We've had a chance to
22 review the filings.

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1 Is the Board ready to deliberate?
2 Then moving to deliberation, I believe that the
3 filings contain all the necessary information
4 and supports the request made by this applicant
5 for relief as requested.

6 It will be my intent to move the -
7 to approve the request for relief. In fact, I
8 so move that.

9 MEMBER HINKLE: I'll second.

10 CHAIRPERSON JORDAN: Motion being
11 seconded. Unreadiness? Discussion?

12 (No response.)

13 CHAIRPERSON JORDAN: Seeing none,
14 all those in favor signify by saying "Aye."

15 GROUP RESPONSE: Aye.

16 CHAIRPERSON JORDAN: Those opposed,
17 "Nay."

18 The motion carries. Mr. Moy.

19 MR. MOY: Staff would record the vote
20 as three to zero on the motion of Chairman Jordan
21 to approve the application for the relief
22 requested.

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1 Seconded the motion, Mr. Hinkle.
2 All support, Mr. Peter May. We have a board
3 member absent and a board seat vacant.

4 Motion carries three to zero, Mr.
5 Chairman.

6 CHAIRPERSON JORDAN: Okay. Good.
7 Then let's just take a brief second.

8 MR. MOY: Would that be a summary
9 order, Mr. Chairman?

10 CHAIRPERSON JORDAN: Yes, summary
11 order. Thank you.

12 MR. MOY: Thank you, sir. Just
13 checking.

14 (Pause in the proceedings.)

15 CHAIRPERSON JORDAN: Thank you.
16 Then let's call our next matter for decision.

17 MR. MOY: Yes, sir. That would be
18 Application Number 18610 of Back Alley, LLC and
19 Ellsworth T. Simpson Trust pursuant to 11 DCMR
20 3103.2.

21 This is a variance from the
22 nonresidential floor area ratio restrictions

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1 under Subsection 931.2 to subdivide and use all
2 of the existing buildings on the property for
3 nonresidential uses permitted in the W-1
4 District at premises 1063 Wisconsin Avenue,
5 N.W., Square 1199, Lot 48.

6 As the Board will recall on
7 September 17th, the Board completed public
8 testimony, closed the record and scheduled its
9 decision on October 22nd.

10 The Board allowed filings into the
11 record. The only filing in your case folders,
12 Mr. Chairman, is probably from the Applicant
13 dated October 15th under Exhibit 3.

14 With that, the Board is left to the
15 merits of the requested relief under Subsection
16 931.2.

17 CHAIRPERSON JORDAN: I believe I
18 thought we had the party in opposition, other
19 opposition.

20 Would that be correct?

21 MR. MOY: That's correct. It was an
22 individual in opposition. No party status was

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1 asked or granted. And there was no filing from
2 Mr. Harry Schnipper.

3 CHAIRPERSON JORDAN: Right. That's
4 the matter where we had some extensive
5 conversation and testimony.

6 The Board granted additional time
7 for the person to - Mr. Schnipper to provide
8 additional support for his representations to
9 the Board. And there was a date, I believe, of
10 - October 15th was the deadline for submission.

11 It's my understanding through, I
12 believe, the representation of counsel that this
13 now has been resolved.

14 This is a case where there's a clear
15 showing of exceptional situational
16 circumstances.

17 The property is a very unique
18 property as it's situated in Georgetown at two
19 historic structures. It's kind of an oddity.

20 Even access to the property, I
21 think, is an issue certainly because of the
22 configurations and as the buildings lie that it

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1 creates practical difficulty to be allowed for
2 this building to be converted to really any real
3 use. And residential use, I think, is just
4 completely out of the question as it is zoned.

5 That's my thought about it and I
6 would move that we grant the relief requested in
7 this matter.

8 MEMBER HINKLE: Yes, Mr. Chair, I
9 tend to agree with you. I do think within this
10 application it was a little bit weak in terms of
11 showing the Board how the buildings could not be
12 used for residential purposes.

13 Like, I didn't necessarily have any
14 sort of studies or some real pictures of that
15 nature.

16 But just by understanding the
17 configuration of the buildings and how they both
18 are lots that come off of the alleyway and so
19 forth, I do understand the practical difficulty
20 in providing residential space from that
21 perspective.

22 So, I could be supportive of the

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1 request that's being requested here and I can
2 second your motion.

3 CHAIRPERSON JORDAN: Any other
4 discussion or unreadiness?

5 (No response.)

6 CHAIRPERSON JORDAN: Then all those
7 in favor of the motion signify by saying "Aye."

8 GROUP RESPONSE: Aye.

9 CHAIRPERSON JORDAN: Those opposed,
10 "Nay." We do have absentee ballot.

11 MR. MOY: Yes, sir. We do have an
12 absentee ballot from a participant, Mr. Michael
13 Turnbull. And his absentee vote is to approve
14 the application with any conditions that the
15 Board may impose.

16 I'm also in receipt of another
17 absentee vote for a ballot from Ms. Allen, but
18 I can't -

19 CHAIRPERSON JORDAN: Oh, yes.

20 MR. MOY: So, I don't know, Mr.
21 Chairman, how you wanted to -

22 CHAIRPERSON JORDAN: She did confirm

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1 that.

2 MR. MOY: She did?

3 CHAIRPERSON JORDAN: Yes.

4 MR. MOY: Oh, okay.

5 CHAIRPERSON JORDAN: We couldn't
6 read it, but she confirmed it.

7 MR. MOY: Okay. Great. So, you
8 have more recent information than I do. Well,
9 then that gives -

10 (Discussion off the record.)

11 MR. MOY: Perfect. So, with that,
12 Mr. Chairman, that would give a final vote of
13 four to zero on the motion of Chairman Jordan to
14 approve. Seconded by Mr. Hinkle. And of
15 course two absentee ballot votes by - from Mr.
16 Turnbull and Ms. Allen. We have a board seat
17 vacant. Motion carries four to zero.

18 CHAIRPERSON JORDAN: And there will
19 be a summary order, please.

20 MR. MOY: Thank you, sir.

21 CHAIRPERSON JORDAN: So that those
22 who are not knowledgeable or familiar how we

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1 operate, board members can vote on a case if they
2 have either attended the hearing and they're not
3 present at the date of the meeting for the
4 discussion and/or review the complete record on
5 the file.

6 And we have two members who actually
7 were here for the hearing, but who are not here
8 today who participated in the whole discussion
9 and examination and hearing on this matter. So,
10 that matter is approved for the summary order.

11 (Whereupon, at 10:08 o'clock a.m.
12 the public meeting was concluded.)
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