

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

March 31, 2015

+ + + + +

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., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairman

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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
MATT JESICK
STEPHEN MORDFIN
MEGAN RAPPOLT

The transcript constitutes the minutes from the
Public Meeting held on March 31, 2014.

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

(9:53 a.m.)

BZA CHAIR JORDAN: Good morning. Will we please come to order. We're located at Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. And we're here for the meeting of the Board of Zoning Adjustment of the District of Columbia.

Today's date is March 31st, 2015. My name is Lloyd Jordan, Chairperson of the Board. To my right is Jeffrey Hinkle. Member of the Board to my left is Vice Chair Marnique Heath and to her left is Antony Hood, Chairman of the Zoning Commission sitting in as Member of the Board of Zoning Adjustment.

Please be advised that today's proceedings are being webcast live and also being recorded by a court reporter. Therefore we're going to ask you to refrain from any disruptive noises here in the room today.

The Board's hearing procedures are contained in documents to the backdoor, to my left. If you're not familiar with how we operate at the Board, please feel free to get the brochures and take a look at how we operate.

If you're going to testify or address the Board in any manner today, I'm going to need you to do two things prior to you addressing the Board. If you're going to address the Board in anyway, read a letter, make comments to the Board about any

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1 application or any process that we have going here today, I'm
2 going to need you to do two things.

3 The first of which I'm going to need you to complete two
4 witness cards, per person. That's two witness cards, per
5 person. And then give those two witness cards, per person,
6 the court reporter who is seated to my right.

7 So that's two witness cards, per person, prior to you
8 sitting in these seats. Prior to sitting in this seat, please
9 give them to the court reporter. Because they get mad at me.
10 So please do.

11 The second thing I need you to do is now stand and take
12 the oath, which we administer by Mr. Moy, Secretary to the
13 Board.

14 MR. MOY: Good morning.

15 (Witnesses sworn.)

16 MR. MOY: Ladies and gentlemen, you may consider
17 yourselves under oath.

18 BZA CHAIR JORDAN: Good. Now, Mr. Moy, are there any
19 preliminary announcements?

20 MR. MOY: Yes, sir, I do, Mr. Chairman. Good morning,
21 Mr. Chairman, members of the Board. Two items.

22 The first is on the docket. This is for the record that
23 application number, actually it's Appeal Number 18965,
24 Minshall, has been postponed and rescheduled at the
25 Applicant's request. Or rather, the Appellant's request, to

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1 April the 14th, 2015.

2 And finally, our guest this morning, if you are
3 submitting written testimony, if you remember to have enough
4 copies for the Board. If you don't have more than one copy
5 we have reproduction machines across the hall in our main
6 lobby.

7 BZA CHAIR JORDAN: How many copies do they need?

8 MR. MOY: I'd like to have at least eight, sir.

9 BZA CHAIR JORDAN: Okay.

10 MR. MOY: Thank you.

11 BZA CHAIR JORDAN: Just thought I'd through that in.
12 Is that good? Any other announcements? Okay.

13 Let me have, on Case Number 18964, the Applicant and the
14 two people who are requesting party status in that case. So
15 the Applicant, representative of the Applicant and the two
16 people requesting party status in Case 18964.

17 Okay. All right. Please identify yourselves.

18 MR. BELLO: Good morning, Mr. Chair. Toye Bello
19 representing the Applicant.

20 MR. RAGIMOV: My name is Todd Ragimov and I am the owner
21 of the company that owns 1220 Potomac Avenue, Southeast.

22 MR. ALI: Ramy Ali from --

23 BZA CHAIR JORDAN: Oh, let me just -- timeout.
24 Timeout. I need one representative from the Applicant and two
25 people who are requesting party status. That's all I need.

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1 Because we're not having the hearing right at this
2 point, we're doing some preliminary discussions. Okay? All
3 right. Just to make sure we're okay. Next, who do we have?

4 MR. ORTON: Gregg Orton and Meina Banh, representing
5 ourselves.

6 MS. GREEN: Linda Green, representing myself.

7 BZA CHAIR JORDAN: Okay. Good. Mr. Bello, any issues
8 about the request for party status before we make a decision
9 on that? I think there's sufficient pleadings by the two to
10 certainly qualify but, let me go back one other second.

11 By party status, is your intent to participate in a
12 hearing by cross examining witnesses and too produce evidence?
13 Is that what you want to do?

14 MR. BELLO: I produced evidence when I filed.

15 BZA CHAIR JORDAN: Okay, so you --

16 MR. BELLO: So I don't really have any additional
17 evidence at this time.

18 BZA CHAIR JORDAN: So you really want to present to the
19 Board, discuss to the Board your issues with the case?

20 MR. BELLO: Correct.

21 BZA CHAIR JORDAN: okay. Is that for both of you?

22 MR. ORTON: That's correct.

23 BZA CHAIR JORDAN: Okay, we'll do this. Typically
24 receiving party status is a little deeper than just saying you
25 want to do your presentation, discuss with the Board. It's

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1 cross examination, presenting exhibits and witnesses,
2 etcetera.

3 What I'm getting feel and understanding is that you
4 really want to have the opportunity to delve into the case and
5 really talk to the Board, right?

6 We normally give witnesses three minutes to do that, but
7 what we can do is give each one of you, separately, five minutes
8 to do so. You think that would be sufficient time for you to
9 talk about your issues?

10 We've already read what you've submitted in advance.

11 MR. BELLO: Okay.

12 BZA CHAIR JORDAN: Okay. Then that's the way we'll
13 handle it.

14 However, in the interim, the way we normally proceed
15 here, at the Board, is to have those who have filed party
16 status, in which we would normally grant party status, however
17 we've kind of worked through that, and require that the
18 Applicant and those who've requested party statuses, to have
19 some type of discussion. To try to resolve and workout issues
20 and have the communications to see what we can do before you
21 come in front of this Board.

22 And I tell you it works. You got to be committed to get
23 it done. And I always say to people that you'd rather -- to
24 work it out ourselves.

25 Especially on these issues. That you'd rather work it

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1 out yourselves then to have us decide because somebody's not
2 going to be happy.

3 And so we want meaningful discussions among the parties.
4 And not for you to just give us a perfunctory kind of walk out
5 the room, wait two minutes and walk back into the room.

6 Because actually I take notes. And we've had some
7 people that do that. And we've had parties, we have was it
8 12?

9 Twelve separate party status and a huge issue in a part
10 of the city, which I never thought they would compromise. But
11 came back with major compromises and worked the whole thing
12 out.

13 So it does work. But you have to believe in it to work
14 and you have to truly have discussions with good faith. Okay?

15 So please do so and you'll call your case back up. Thank
16 you.

17 MR. MOY: Mr. Chairman?

18 BZA CHAIR JORDAN: Yes.

19 MR. MOY: Just really quickly for the transcript. Are
20 the two requesters withdrawing their party status?

21 BZA CHAIR JORDAN: We're extending.

22 MR. MOY: Okay.

23 BZA CHAIR JORDAN: We're going through it. Though
24 we're not going to grant them party status, however they're
25 getting extended periods of presentation. As they discussed,

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1 they really are not interested in party status, but they really
2 want to present to the Board.

3 MR. MOY: Okay, thank you, sir.

4 BZA CHAIR JORDAN: Appreciate it.

5 MR. BELLO: Thank you.

6 MS. GREEN: Can I ask a question? If we've already had
7 a meeting with the Applicant --

8 BZA CHAIR JORDAN: Do it again.

9 MS. GREEN: Okay.

10 BZA CHAIR JORDAN: A lot of things happen when you get
11 here. It's some kind of way people's minds just open up and
12 say okay, we're going to take another look at it.

13 MS. GREEN: Okay.

14 BZA CHAIR JORDAN: I appreciate it, thank you.

15 MR. BELLO: Thank you.

16 BZA CHAIR JORDAN: Okay. I need a representative of
17 the Applicant in Case 18886 and those that are requesting party
18 status. Well it's only one, we got to talk about that, in
19 18886. Okay.

20 Okay, please identify yourselves. Starting on my right
21 side here.

22 MS. BRINK: You only want one representative?

23 BZA CHAIR JORDAN: Yes. But -- yes, okay.

24 MS. BRINK: Malia Brink from the Massachusetts Avenue
25 Heights --

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1 (Off microphone comment)

2 MS. BRINK: Malia Brink from the Massachusetts Avenue
3 Heights Community Association.

4 MR. CUNNINGHAM: Paul Cunningham, Massachusetts Avenue
5 Heights.

6 BZA CHAIR JORDAN: Your name again?

7 MR. CUNNINGHAM: Paul Cunningham, president of
8 Massachusetts Avenue Heights Citizens Association.

9 MS. MOLDENHAUER: Meridith Moldenhauer from the law
10 firm of Griffin, Murphy, Moldenhauer & Wiggins on behalf of
11 the Applicant.

12 MS. HOORAZOR: Niloufar Hoorazor, homeowner.

13 MR. TEKMEH: Ahmet Tekmen, homeowner.

14 BZA CHAIR JORDAN: Okay. I don't know where to start
15 with this. Last night became a very active night for both
16 parties. And I'm really not happy by it at all.

17 And it doesn't behoove the parties to file things in
18 front of the Board last minute. The Board really puts a lot
19 of time and effort into these cases. Where we read them, we
20 go through all the exhibits and spend, you know, I think this
21 particular weekend it was about 11 hours on my part and others.

22 And it's just what we do. Because we have to be fair
23 to the citizens and to you. We need the time to actually go
24 through it. And sitting here at the hearings I can't really
25 do that.

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1 So there's a lot of activity overnight. In fact I came
2 in this morning and was like what, and then went back to the
3 online files and saw there was a lot that was filed yesterday.

4 So there's so many issues here that we need to get
5 handled before we move forward. There is late filing.
6 Filings that were made by the requestor to party status.

7 Which has also been challenged about the authorization
8 for the Massachusetts Avenue Heights Citizen Association to
9 represent a group. They're kind of within at filing, they are
10 individuals within that group who would normally -- who
11 arguable would qualify for party status if they filed on their
12 own.

13 There's at least two motions to strike and a motion in
14 limine for matters in this hearing. Did I miss anything?

15 MR. CUNNINGHAM: No, that about sums it up.

16 BZA CHAIR JORDAN: Okay. Okay, so let's first talk
17 about the -- and I'm taking it, Ms. Moldenhauer, that you are
18 challenging the party status of Massachusetts Avenue Heights
19 Citizen Association with your motion that talks about the lack
20 of authorization? Can you expound on that for a minute?

21 MS. MOLDENHAUER: There's nothing in the
22 documentation. Typically it's our understand that, one, the
23 regulations require it, and two, the Board requests right of
24 authorization or resolution indicating that there was a
25 properly noticed meeting of that organization.

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1 BZA CHAIR JORDAN: In a vote.

2 MS. MOLDENHAUER: And then authorizing the individual
3 present to speak on behalf of it. That has not been presented
4 as part of the record.

5 BZA CHAIR JORDAN: Mr. Cunningham, I understand what
6 her motion is, do you understand what she's saying?

7 MR. CUNNINGHAM: I do roughly understand what she's
8 saying. I don't -- we were advised by counsel, we're not able
9 to find counsel that would appear here because of conflict
10 issues.

11 But we were advised by counsel as to the procedures. I
12 filled out the form as I was instructed. I am a lawyer but
13 I'm not a --

14 BZA CHAIR JORDAN: Okay.

15 MR. CUNNINGHAM: -- residential zoning lawyer. I am
16 authorized by my zoning committee and the executive committee
17 of my association to appear. I've been present at
18 associations for almost 30 years. I've been here several
19 times and I've never had this issue before.

20 BZA CHAIR JORDAN: So has the association took a vote
21 and --

22 MR. CUNNINGHAM: Association doesn't vote. It
23 operates, unless there is an action that requires the
24 coincidence of all the parties.

25 We had a meeting of all the affected parties, we had a

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1 meeting of our zoning committee. We're very highly organized
2 although we're a perfectly informal organization.

3 And then executive committee ultimately authorized my
4 appearance here with a strong concurrence of the zoning
5 committee.

6 BZA CHAIR JORDAN: All right.

7 MR. CUNNINGHAM: And we have an authorized -- as to hire
8 counsel, to get advice on the procedures and so forth.

9 BZA CHAIR JORDAN: Okay.

10 MR. CUNNINGHAM: Which we did.

11 BZA CHAIR JORDAN: So --

12 MR. CUNNINGHAM: And I can get a --

13 BZA CHAIR JORDAN: So there are --

14 MR. CUNNINGHAM: -- if you need it. Post doc.

15 BZA CHAIR JORDAN: So there are -- did we get separate
16 letters of party status request from --

17 MR. CUNNINGHAM: I made the request on behalf of the
18 parties.

19 MS. MOLDENHAUER: But there's only one party status.
20 Which is the association. We --

21 BZA CHAIR JORDAN: Yes, I understand completely what's
22 going on, Ms. Moldenhauer. But they also are alleging that
23 people in the membership group actually could have
24 individually made a request.

25 MR. CUNNINGHAM: Yes.

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1 BZA CHAIR JORDAN: And I understand that argument too.

2 MR. CUNNINGHAM: Yes. And some of them are here today.

3 BZA CHAIR JORDAN: Procedurally that they may not have
4 -- so he's saying their good faith that they've moved forward
5 to do what they thought they could do. The regulations are
6 not set in stone in regards to your organization.

7 I do have problems with it. But --

8 MR. CUNNINGHAM: There is --

9 MS. MOLDENHAUER: We would be fine with Mr. Cunningham
10 individually being a party status. There was no attempt by
11 this organization, this association, to reach out to us to
12 present any of these meetings. And so that's where we --

13 MR. CUNNINGHAM: That's an --

14 BZA CHAIR JORDAN: I was kind of going to be Solomon in
15 this, if you let me finish with this. And so I'm not likely
16 to grant party status to the Massachusetts Avenue Heights
17 Citizen Association because I don't think they dotted I's
18 crossed the T's.

19 However, we were going to consolidate as a group. And,
20 Mr. Cunningham, you can be a spokesperson for the group.
21 Overall, even if every individual here filed with their own
22 party status request, we would not have six, seven kind of
23 individual party status representation.

24 We would have required you to consolidate and have a
25 spokesperson anyway. So I think it's no harm, no foul. And

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1 you still can take that same --

2 MR. CUNNINGHAM: May I be joined in that by Ms. Brink
3 who has a lot of evidence --

4 BZA CHAIR JORDAN: You can --

5 MR. CUNNINGHAM: -- on behalf of the association?

6 BZA CHAIR JORDAN: It's all got to come through you.
7 It's all got to come through you. That's the way we will do
8 it.

9 MR. CUNNINGHAM: All right, thank you.

10 BZA CHAIR JORDAN: Yes. So it was going to be
11 consolidated anyway. And so whichever persons going to be a
12 spokesperson, you can defer off to, Ms. Brinkman is it?

13 MS. BRINK: Brink.

14 BZA CHAIR JORDAN: Brink to do it or one the other. But
15 we're not going to have a group of people talking. We never
16 do.

17 MS. BRINK: Right.

18 BZA CHAIR JORDAN: And so we would grant party status
19 to the consolidated group, to yourself. And as the
20 representative of that group, you can put forward what other
21 people have provided and support.

22 MS. BRINK: Okay.

23 BZA CHAIR JORDAN: All right?

24 MS. BRINK: Thank you.

25 BZA CHAIR JORDAN: So that's what we're going to do.

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1 Now also in front of us -- is that okay, Board? With the Board?
2 Good. All right.

3 Also with the file this morning was a motion to strike
4 Exhibit 47. The basis of 47, I believe you're saying that it's
5 filed out of time? Is that the basis of your motion?

6 MS. MOLDENHAUER: One, yes it was filed out of time and,
7 two, that it was bringing out matters that are germane to BZA
8 standard.

9 BZA CHAIR JORDAN: Oh, got it. 42 is not by a party,
10 a person who's a party to this so he can file the comments at
11 any time. There was some discussion, I believe, he was trying
12 to be provided as an expert. We're not recognizing an expert
13 but the Board can take their opinion, just as any other
14 layperson, accept it that way.

15 And any other matter that may hit or not hit, the issue
16 before the Board is just there. And as you know, you well take
17 it for whatever it's worth and not worth. So we'll deny that
18 motion.

19 Exhibit 48 though? Your motion to strike Exhibit 48?

20 MS. MOLDENHAUER: Yes. Exhibit 48 was also late filed
21 and contained large degree of arguments in regards to with
22 estoppel, which we believe should be stricken.

23 BZA CHAIR JORDAN: Mr. Cunningham?

24 MR. CUNNINGHAM: We were not a party at the time that
25 I filed that yesterday. I did not discover in my research,

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1 which it took me awhile to understand. We tried to get this
2 materials from the Applicants, they refused us.

3 We ourselves went to the DCRA and were not able to find
4 all the materials. We hired somebody, who's an expert in doing
5 that to find them, we got them. I had to muddle through them
6 several times before I understood.

7 And all of the matters there are supported. And I have
8 further evidence, if you would like it. The matters asserted.

9 And they directly deal with assertions made by the
10 Applicant in their initial statement and in their preliminary
11 hearing statement. Her, pardon me. There's one Applicant.

12 And I don't -- as a nonparty, I was trying to save dumping
13 all that on you today, by getting in. I didn't write it until
14 Sunday night when I figured it out. And I wrote it and cleaned
15 it up yesterday.

16 But I was advised by our counsel that it would be better
17 to get it in early than late. So I filed it. I didn't see
18 anything in the rules that precluded that.

19 BZA CHAIR JORDAN: Okay. We'll reserve a ruling on
20 that. I'm trying to decide if we want, because you also have
21 the right to present it during testimony. So I'll reserve
22 ruling until we call your case back up.

23 In the interim I want both the parties to have
24 conversation, as you heard me talk about this morning, to have
25 sound conversation. I think that the party status request

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1 group has a lift. I'm going to let you know that. But you
2 really need to go and have serious conversation.

3 MR. CUNNINGHAM: We will.

4 BZA CHAIR JORDAN: We'll call it back.

5 MR. CUNNINGHAM: Thank you very much. Mr.
6 Chairperson, pardon me, I misaddressed you in my letter.

7 BZA CHAIR JORDAN: Okay, Mr. Moy, let's call our first
8 meeting case please.

9 MR. MOY: Yes, sir. There are two cases before the
10 Board on the expedited review calendar that are filed pursuant
11 to requirements of Section 3118. The first is Application
12 Number 18985 of Patrick Scott.

13 BZA CHAIR JORDAN: All right. Has there been affidavit
14 of positing? No?

15 MR. MOY: No, sir.

16 BZA CHAIR JORDAN: All right, then we need to move this
17 off until we have proof of positing. Put it on a 30 day
18 reschedule, Mr. Moy.

19 MR. MOY: Okay. Okay, I'll double check after this,
20 but that would put us at -- to April 28th.

21 BZA CHAIR JORDAN: Okay.

22 MR. MOY: Or for a full 30 days on that, pushes us until
23 May. So that would be May 5th. Let's make it May 5th, sir.

24 BZA CHAIR JORDAN: Yes. As long as we're not crowding
25 the dockets then.

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1 MR. MOY: Very good. All right, so the second case then
2 would be Application Number 18961 of Erin and James Boyd. And
3 this is property located at 1733 D Street, Southeast.

4 BZA CHAIR JORDAN: Okay, good. Thank you. Is the
5 Board ready to deliberate on 18961? Okay. Does anybody have
6 any issues with the relief requested?

7 I guess it's kind of the amended relief requested. I
8 think the application and the supporting documentation support
9 the relief requested. It has received support from the Office
10 of Planning and from the ANC and the Department of
11 Transportation.

12 Anybody have anything they want to say about this one?
13 Okay. Then I would move that we grant the relief in 18961.

14 MEMBER HINKLE: Second.

15 BZA CHAIR JORDAN: Motion made and seconded.
16 Additional discussion? All in favor, aye?

17 (Chorus of ayes)

18 BZA CHAIR JORDAN: Those opposed nay? The motion
19 carries. Mr. Moy?

20 MR. MOY: The staff would record the vote as 4-0. This
21 is on the motion of Chairman Jordan to approve the requested
22 relief as amended. Second the motion, Mr. Hinkle.

23 Also support, Mr. Hood and Vice Chair Heath. And we
24 have a Board seat vacant. Motion carries, sir.

25 BZA CHAIR JORDAN: Consent please.

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1 MR. MOY: Thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 10:16 a.m.)

4