

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 7, 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:

MICHAEL G. TURNBULL, FAIA, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS III, ESQ.
MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
STEPHEN GYOR
MATT JESICK
ELISE VITALE

The transcript constitutes the minutes from the
Public Meeting held on April 7, 2015.

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

9:40 a.m.

CHAIRMAN JORDAN: Good morning. Can we please come to order? We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, NW.

Today's date is April 7, 2015. And we're here for the public meeting and public hearings of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. To my right is Jeffrey Hinkle, a member of the Board. To my left is Vice Chair, Marnique Health. To her left is Michael Turnbull, a member of the Zoning Commission sitting in as a member of the Board of Zoning Adjustment today.

Please be advised that today's proceeding is being webcast live. And also being recorded by a court reporter.

Therefore, I'm going to ask you to refrain from any disruptive noises here in the hearing room today. So that's a good sign for you now to make sure that you've turned off your cell phones and other things that may make noise during this meeting.

The Board's hearing procedures are contained in a document at the back of the room to my left. So feel free to get a copy of those -- of that information to familiarize yourself with how we operate here at the Board.

If you're going to provide testimony, read a statement

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1 to the Board or address the Board in any manner today, I'm going
2 to need you to do two things. Again, if you're going to address
3 the Board in any manner today, read a statement, oppose or
4 support a matter, I'm going to need you to do two things.

5 The first of which is to complete two witness cards per
6 person. That's to complete two witness cards per person.
7 Prior to testifying, give those witness cards to the court
8 reporter, who is seated to my right.

9 So that's two witness cards per person. And prior to
10 testifying, prior to testifying, give those cards to the court
11 reporter.

12 The second thing I'm going to need you to do is to now
13 stand and take the oath, which will be administered by Mr. Moy,
14 Secretary to the Board.

15 MR. MOY: Good morning. Do you solemnly swear or
16 affirm that the testimony you are about to present in this
17 proceeding is the truth, the whole truth, and nothing but the
18 truth?

19 Ladies and gentlemen, you may consider yourselves under
20 oath.

21 CHAIRMAN JORDAN: Mr. Moy, do we have any announcements
22 today?

23 MR. MOY: Yes, I do, Mr. Chairman. Good morning and
24 also to members of the Board.

25 A couple of things, first, the staff would like to

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1 apologize a bit on the printed public hearing notice. You'll
2 find that it's absent.

3 We are in stealth mode, two Applications that should be
4 on it. But indeed is on the docket today, and that's
5 Application 18927 of Rodriguez and 18900 of Academy of Ideal
6 Education.

7 Second, there's four Applications that were on the
8 docket that have been postponed and rescheduled. The first
9 is Application Number 18960 of Mark and Matthew Medvene. That
10 has been rescheduled to April 21.

11 Second, Application Number 18970 has been postponed and
12 rescheduled to May 12. Third, Application Number 18972 of
13 Greenway Apartments, LP, has been rescheduled to May 5. And
14 finally, Application Number 18949 of Bright Future Early
15 Learning Center, LLC, has been rescheduled to April 14.

16 That completes the staff's briefing Mr. Chairman.

17 CHAIRMAN JORDAN: So we have no cases today, right?

18 MR. MOY: Hardly.

19 CHAIRMAN JORDAN: Okay, thank you, Mr. Moy. Then let's
20 handle this, 18884 in preliminary. I'm going to remove this
21 from decision today and reschedule this matter, unless the
22 Board objects, 18884 for a continued hearing.

23 Since we had the hearing in this matter, there's a couple
24 of issues. One, I believe that we need to get a weigh in from
25 the Zoning Administrator regarding the FAR calculations on

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1 this.

2 I mean, there is three different sets of FAR
3 calculations offered to the Board in this case and I'm not
4 really comfortable. And I would like to see the Zoning
5 Administrator's input on that.

6 Additionally, the plans have changed, have been
7 amended. And I believe the ZA should weigh in on that as well
8 as the Office of Planning to get updated on those things.

9 Plus, I think we need to discuss with the Applicant, the
10 changed plans. Particularly the meaningful connection -- the
11 connection that was made to the property and the FAR
12 calculations.

13 So that would be my intent to move this to a hearing date.
14 It can be a short window. Mr. Moy, next week or two weeks
15 either way.

16 But we would notify all the parties on that. If that's
17 okay with the Board. Anybody object? Any issues?

18 MR. HINKLE: No, that makes sense Mr. Chair.

19 MR. TURNBULL: No, I'm fine with, in fact I would agree
20 with you 100 percent. The only thing is I don't know if a week
21 would be enough time for the ZA? Maybe. I don't know.

22 CHAIRMAN JORDAN: Yes.

23 MR. TURNBULL: Or OP to weigh in. I mean if -- that's
24 fine. I'm okay with that.

25 CHAIRMAN JORDAN: Okay. Mr. Moy, how are we looking

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1 time wise for next week or the week after?

2 MR. MOY: Well, based on my understanding, late night
3 understanding with the Office of Planning, their case manager
4 was going to be out of town for two weeks. So, allowing for
5 that time, I would suggest -- and of course, the Zoning
6 Administrator's Office, I think April 21 might be the best bet.

7 If you want to set it up sooner, we can do that. But
8 it would be contingent upon when they would be available to
9 meet the Board's time line.

10 CHAIRMAN JORDAN: Okay. So that's what? Two week?
11 Two weeks, yes. Okay, so let's do that. That's two weeks.

12 Yes, it's important. There's too many moving parts in
13 this. And we really need to nail it down and it has a lot of
14 impact to a lot of people. And I'd rather err on the side of
15 caution as anything else.

16 So then, that would be the Order?

17 MR. MOY: Yes.

18 CHAIRMAN JORDAN: You said the 21st, right?

19 MR. MOY: Okay, I can do the -- I had initially said
20 28th, but I can --

21 CHAIRMAN JORDAN: Oh, 28th? I'm sorry. I thought you
22 said do it on the 21st.

23 MR. MOY: If you want to do it on the 21st, I can do it
24 on the 21st. And then I'll see where we stand with the parties.

25 CHAIRMAN JORDAN: All right. Anyway, but we'll do the

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1 -- if that's it, the 28th.

2 MR. HINKLE: Yes, Mr. Chair, do you want to make clear
3 whether the Applicants and the party in opposition can submit
4 extra documents or not?

5 CHAIRMAN JORDAN: I don't need these -- no.

6 MR. HINKLE: Okay.

7 CHAIRMAN JORDAN: But I -- we may drill out on questions
8 for what we have. Certainly any other submission would be done
9 by the Zoning Administrator, maybe Office of Planning. But
10 not from any of the parties.

11 I'm just looking for the technical support from Planning
12 and the ZA.

13 MR. HINKLE: No, thank you. I agree. I just wanted to
14 make sure that was clear.

15 CHAIRMAN JORDAN: Yes. Because this, in the interim
16 from the last time, this file got a whole bunch of other
17 filings. And I just -- I think we're filed enough.

18 But we just had to have some ability to ask questions
19 based upon these most recent filings. So, that would be the
20 Order please Mr. Moy.

21 Okay. So can we call our first meeting case please?

22 MR. MOY: The first meeting case is an application
23 that's on the Board's expedited review calendar. And that is
24 Application Number 18963 of Alexandra Freidberg.

25 CHAIRMAN JORDAN: Okay. Is the Board ready to

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1 deliberate 18963? All right, any discussion on this case?

2 I believe the record is sufficient to support the relief
3 requested in 18963. And it's request for a special exception.
4 Mr. Turnbull?

5 MR. TURNBULL: You said -- oh, 891 -- 189?

6 CHAIRMAN JORDAN: 18963. Isn't that right? 18963?

7 MR. MOY: Right.

8 MR. TURNBULL: My only -- the only question is, the roof
9 is being raised. We had some photographs of that.

10 And my only concern was the impact of raising the roof
11 with the neighbor's chimney's and vents. And if that's going
12 to cause not a zoning issue, but a building construction issue
13 where they now have to raise their roofs to be in compliance.

14 And if that -- that would be my only concern. I'm not
15 concerned about what they're trying to do. But one of our
16 concerns is the impacts on neighbors.

17 And if the raising of this roof causes an adjacent
18 chimney or a vent now to have to be moved on an adjacent
19 property, I don't think the neighbors probably realize the
20 impact of what that means. So, unless the Applicant can
21 address that.

22 CHAIRMAN JORDAN: Yes. But I do see there's letters of
23 support from neighbors.

24 MS. HEALTH: There was a neighbor who submitted a letter
25 in support. But asked us to include some language about their

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1 concerns about potential structural damage.

2 I wasn't sure how we could weigh in on this because it's
3 a construction issue.

4 MR. TURNBULL: It's a construction issue, but I'm just
5 -- we look at impacts on neighbors. And if a neighbor now has
6 to redo their chimney because of the height of the neighbor's
7 roof.

8 And if it does anything, if there's anything there that
9 a neighbor now says, oh, because you raised your building, I
10 now have to raise my chimney to be in compliance with the
11 regulations. I think there could be a valid impact and I'm
12 --

13 CHAIRMAN JORDAN: Okay. We can set it down. We can
14 set it down for a hearing.

15 MR. TURNBULL: Yes, but that would be my only concern.
16 Is that it should be talked about. And it may be nothing.
17 There may be no impact.

18 But since you're raising the roof, and I looked at some
19 of the pictures and I saw some chimneys that looked like there
20 were adjacent properties that were like right next door. And
21 I don't know whether that has an impact.

22 It's a monetary impact for a neighbor now to have to
23 correct their property to be in compliance with building
24 regulations because of what they're doing. So I don't --

25 CHAIRMAN JORDAN: Yes. It's on an expedited calendar.

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1 I mean, normally you don't take testimony as you know. And
2 part of the issue is that anybody can object for it being on
3 the expedited docket, therefore requiring it to be placed on
4 a hearing docket.

5 And if we place it on a hearing docket, then we need to
6 make sure there's adequate notice to people regarding having
7 a hearing on this relief. So I hesitate in having you come
8 forward to talk about this matter because others have not
9 received notice on it.

10 Come forward to the microphone and let me hear what you
11 have to say. And we'll take whatever information you're
12 providing on a limited basis. And I will hold a ruling on it
13 subject to what you're going to say to us.

14 MR. SULLIVAN: Thank you, Mr. Chairman for the
15 exception. My name is Marty Sullivan of Sullivan and Barros
16 here on behalf of the Applicant. And the Applicant would like
17 to explain her issue with timing.

18 I would just point out that it's a building code issue.
19 And if there's a vent or a chimney issue, it's going to be
20 covered by building code.

21 And she's been to the ANC. She's been to the civil
22 association meeting. Everybody's had notice. She's talked
23 to all her neighbors.

24 But she does have a concern about the timing of this.

25 MS. FREIDBERG: And it is accurate I --

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1 CHAIRMAN JORDAN: Your name please?

2 MS. FREIDBERG: Oh, I'm sorry, excuse me. Alexandra
3 Freidberg, I am the Applicant.

4 CHAIRMAN JORDAN: And I'm going to need both, I'm going
5 to need you to supply the witness cards. Your last name is
6 Freidberg?

7 MS. FREIDBERG: Freidberg, yes.

8 CHAIRMAN JORDAN: Okay.

9 MS. FREIDBERG: As my attorney has mentioned, I did
10 speak with all the neighbors. I -- as far as I know, none of
11 the chimney's are actually functioning. But if there is an
12 issue, we will of course deal with it.

13 On a side note, one of the reasons I'm doing all this
14 work is because my house burned down in October 2013. It has
15 been an extremely difficult situation for us and we're just
16 trying to find the silver lining by making some small
17 modifications.

18 The insurance has refused to keep paying. And we have
19 no longer a place to live. We are -- continue to rent small
20 apartments. But this delay in time would be an extremely and
21 substantial impact to me and my family in terms of having a
22 place to live.

23 As of July 3, which we finally were able to extend a
24 little bit, we are out. And we were really hoping to get as
25 much of the basics done.

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1 I did speak to all the neighbors. BCA was unanimously
2 in approval as was ANC. And I can assure you that my contractor
3 is very diligent in anything that needs to be done pursuant
4 to the code will be completed.

5 CHAIRMAN JORDAN: The question raised by Commissioner
6 Turnbull was the issue of potential impact on the neighbors
7 and community. Whether or not they recognize it or not. And
8 I think he wanted to drill down on it.

9 Mr. Turnbull, I don't want to speak for you, but --

10 MR. TURNBULL: Yes, my concern is whatever you're
11 doing, you know what you're doing. But if an adjacent
12 property, because of what you're doing now has to do something
13 to their property, whether it's a chimney or a vent to make
14 it compliant height wise, that's an impact to them.

15 That will be a cost that they would then have to then
16 bear because of this. And I don't know if they know that.

17 MR. SULLIVAN: They do not have to do anything that they
18 don't want to do. That's the practice unfortunately. And
19 that's the way it's been working out.

20 If they don't want to touch their chimney, then the
21 Applicant is out of luck.

22 MR. TURNBULL: But what if they get -- what if they're
23 cited by a regulatory authority?

24 MR. SULLIVAN: That's not the way it's working right
25 now. Right now the regulatory authority is saying, too bad,

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1 you can't build.

2 MR. TURNBULL: I'm not understanding what you're
3 saying.

4 MR. SULLIVAN: The regulatory -- DCRA right now is
5 saying if there's a chimney next door, you ask your neighbor
6 to raise that chimney. If they say no, then you're out of luck
7 and you can't do what you want to do.

8 So there's no mechanism for forcing anybody to do
9 something with their property that they don't want to do. And
10 I would also add that this has nothing to do with Section 223.

11 There is no -- I don't believe 223 says anything about
12 impacts on -- from vents or chimneys or anything related to
13 building code issues.

14 MR. TURNBULL: No, I'm just talking about an impact in
15 general. If there's an impact to a neighbor on his property
16 because of what you're doing, then it's a zoning issue. It's
17 an impact.

18 MR. SULLIVAN: Right. They're totally protected.
19 They don't have -- I've experienced this situation with several
20 developers. If the neighboring property does not want to
21 change their chimney, they do not have to do a thing.

22 MS. FREIDBERG: And again, if I may add. I know it's
23 separate, and again, it will be dealt with as it needs to.

24 But I really believe that none of those chimneys are
25 functional because I've lived there for multiple years and

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1 they've never been used. There are no fireplaces to my
2 knowledge on either side that are functional.

3 MR. TURNBULL: Well, it's your call Mr. Chair.

4 CHAIRMAN JORDAN: Oh, thank you.

5 MR. TURNBULL: I've expressed my concern, but if
6 they're saying that no harm/no foul on this, that --

7 CHAIRMAN JORDAN: Yes, then it becomes an issue, how
8 would the neighbors know what's necessary. And rule is very
9 clear.

10 If there's an objection to having this on the -- I'm
11 taking what Mr. Turnbull says as an objection to have this one
12 expedited, and that additional information is needed.

13 MR. TURNBULL: I can withdraw my objection. I'm -- if
14 you feel that we have enough safeguards here that the
15 Applicant's attorney is basically saying everything's hunky
16 dorey.

17 MS. FREIDBERG: And also, I can assure you, we have done
18 everything to date as you know, I have been as transparent as
19 I could with all my neighbors. I've given them full
20 applications, full plans. And I will continue to be
21 transparent with them.

22 MR. TURNBULL: Unless the Applicant is proffering to
23 work with the neighbors in some way to --

24 CHAIRMAN JORDAN: Maybe there's some type of condition
25 -- Exhibit 23?

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1 MS. HEALTH: So, we received a letter from your
2 neighbor. And I trust you've seen this too.

3 But your neighbor indicates that although they support
4 your request, they recommend that these concerns that they have
5 about the work that you're doing, be incorporated into the
6 record. And they noted that these concerns for them are based
7 on the collapse of the adjoining property wall on the unit block
8 of New York Avenue.

9 They have three issues. One, that the common walls are
10 now, and remain structurally sound throughout the period of
11 construction. That should building materials or workers
12 damage the adjoining property, the homeowner assumes full
13 responsibility for restoration to the preconstruction
14 condition.

15 And the third is that direct drainage and water run off
16 from the elevated common wall and base of the adjoining
17 property, didn't say anything, but -- anything more, but that
18 it somehow be dealt with.

19 CHAIRMAN JORDAN: So --

20 MS. FREIDBERG: Yes, I saw that recent -- very recently,
21 just a couple of days ago.

22 And again, we have a very good, well known, contractor,
23 who will make sure to ensure that all these concerns are dealt
24 with.

25 CHAIRMAN JORDAN: Let's proceed on because we've

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1 actually -- then don't have anything other than our concern,
2 Mr. Turnbull. And they -- and I think the neighbors and the
3 ANC and everybody else should have raised the issue and asked
4 to pull it.

5 Not unless you feel strongly about it?

6 MR. TURNBULL: No, I think that if they're proffering
7 to work with the neighbors and I mean, we can't enforce it,
8 but it could be mentioned in the order that they're going to
9 be proffers to work with them as per this letter.

10 And I think the only thing else that OP said, that if
11 there's lighting on the deck, it has to be down lighting. It
12 can't be any obtrusive into the neighbor's yards.

13 MS. FREIDBERG: Absolutely.

14 CHAIRMAN JORDAN: Okay. So, with that we'll go ahead
15 and proceed on the case. And I would move we grant the relief
16 subject to the conditions as defined must a moment ago by Mr.
17 Turnbull that is actually affixed to the order.

18 MS. HEATH: Second

19 CHAIRMAN JORDAN: All right. Motion made and second.
20 Further discussion?

21 (No response)

22 CHAIRMAN JORDAN: All those in favor, aye?

23 (Chorus of ayes)

24 CHAIRMAN JORDAN: Those opposed, nay?

25 (No response)

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1 CHAIRMAN JORDAN: The motion carries, Mr. Moy.

2 MS. FREIDBERG: Thank you so much.

3 MR. MOY: Staff would record the vote as four to zero.
4 This is on a Motion of Chairman Jordan to approve the
5 Application for the special exception relief requested, along
6 with the -- I have noticed the two conditions raised by the
7 Board.

8 Second, the Motion of Vice Chair Heath. Also in
9 support, Mr. Turnbull and of course Mr. Hinkle. And we have
10 a Board Member, a Board seat vacant. Motion carries sir.

11 CHAIRMAN JORDAN: I guess summary with the condition?

12 MR. MOY: Yes, sir.

13 (Whereupon, the above-entitled matter went off the
14 record at 10:06 a.m.)

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