

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY  
MAY 13, 2003

+ + + + +

The public meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
PETER MAY	Board Member
DAVID ZAIDAIN	Board Member

COMMISSION STAFF PRESENT:

BEVERLY BAILEY	Office of Zoning
CLIFFORD MOY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQUIRE

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of the District of Columbia  
West Virginia Avenue and 15th  
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2. Appeal No. 16984 of Advisory Neighborhood  
Commission 2A  
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P-R-O-C-E-E-D-I-N-G-S

9:17 a.m.

CHAIRPERSON GRIFFIS: Ladies and gentlemen, let me call to order our public meeting for this morning, May 13, 2003.

I'd like to jump right into it and then I will do introductions when we open our public hearing.

We have two cases to decide in this morning and let me have staff call those.

MR. MOY: Good morning, Mr. Chairman, members of the Board. The first case for decision making this morning is Application 16967 of Government of the District of Columbia.

Pursuant to 11 DCMR 3103.2, for a special exception from the penthouse set-back provisions under Section 411, and a variance from the building height requirements under Section 840, to allow the construction of a two-story building used for trash truck storage and administrative office space in the C-M-1 District at premises West Virginia Avenue and 15th Street, N.E., Square 4092, Lot 5.

On April 22nd, 2003, the Board completed hearing the case application and scheduled a meeting for May 13th, 2003. And this was scheduled primarily to allow ANC 5-B sufficient time to meet and to submit

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1 its report to the Board.

2 As of May 8th, 2003, the staff contacted  
3 ANC 5-B and was told that they, ANC had not been able  
4 to achieve a quorum, and therefore stated that a  
5 report would not be issued at this time. And that  
6 completes my report, sir.

7 CHAIRPERSON GRIFFIS: Good, thank you very  
8 much. Yes, I think the Board members, and we can call  
9 him out, Mr. May was very appropriate in asking that  
10 something of this magnitude, in this area, which would  
11 have great impact, be at least given additional time  
12 for the community to respond.

13 I think we have seen that, although the  
14 difficulties with the ANC being what they are, I think  
15 just the additional time was adequate to allow people  
16 to come in and voice or submit any complaints or  
17 compliments on it.

18 As you recall, Board members, it is a very  
19 large facility. We talked extensively in the hearing  
20 about the requirements for this facility. Height  
21 being the one to adequately house and service the  
22 trucks.

23 The other issue is this is in a proper  
24 zone for this type of facility. It is a very large  
25 lot. The height, as you recall, was just that small

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1 portion of the cover of the ramp, which is the  
2 exterior ramp, and it was at the rear of the building.

3 Let me just say, in looking at this,  
4 compared to what was existing, and the siting and  
5 structure siting, I think this is a great improvement  
6 in terms of, first of all, creating an edge on the  
7 sidewalk and really defining the street better than it  
8 did.

9 In terms of the height itself, I think the  
10 record shows adequately the tests for relief of that.

11 Clearly, there is, the issue comes in not being able  
12 to drop the building height based on the service  
13 entrance for the trucks and the equipment that needs  
14 to service those trucks inside.

15 And therefore, the height of the ramp  
16 itself and the cover of that is directly related to  
17 obviously driving up to the building and adequately  
18 being able to park on top of the structure.

19 Which, again, I think is a beneficial  
20 aspect of this project, in that there isn't a sea of  
21 circus parking, but rather it's consolidated and I  
22 think fairly well done in terms of its massing and  
23 somewhat its design.

24 I'm particularly appreciative of the fact  
25 that the street elevation is a little bit more

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1 animated, clearly than the rear. But also I would say  
2 in comparison to what other facilities of this nature  
3 look like or might look like.

4 And so, with that, I think it's fairly  
5 successful and I would put a motion before us so that  
6 we can have further discussion and deliberation. The  
7 motion would be to approve Application 16967 of the  
8 Government of the District of Columbia.

9 And that is for the special exception from  
10 the penthouse setbacks and the variance from the  
11 building height requirements under Section 840, which,  
12 of course, would allow the construction of this two-  
13 story building used for the trash truck storage and  
14 administration offices at West Virginia Avenue and  
15 15th, N.E. And I'd ask for a second.

16 MR. MAY: Second.

17 CHAIRPERSON GRIFFIS: Thank you very much,  
18 Mr. May. Let me just lastly, in terms of this special  
19 exception of the penthouse, clearly walk through the  
20 numbers and the set-backs which are directly related  
21 to the requirements of the mechanical equipment.

22 And also there was the issue that came up  
23 during the hearing about the stairs. One of the stair  
24 penthouses also went to that. I think it is the  
25 Board's opinion that it did, but can be covered under

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1 the same special exception.

2 And I think that clearly there is no  
3 adverse or potential for incredible adverse impact  
4 regarding the set-back of those or the limited set-  
5 back. And I'll let others speak to the motion.

6 MR. MAY: I'll just say I appreciate the  
7 fact that the Board decided to hold off on a decision  
8 making in this case, until we had given the ANC and  
9 the community ample opportunity to weigh in on all  
10 aspects of this project.

11 And I'm somewhat disappointed that we  
12 didn't get a more substantial reply on this, other  
13 than some intimations that it's not quite what they  
14 want.

15 But not having gotten any formal feedback  
16 from the ANC in terms of an actual motion voted on and  
17 it's hard to say truly what the community is thinking  
18 about it.

19 All that being considered, the building or  
20 the relief that is sought here is not so significant  
21 or onerous that I feel uncomfortable at this point  
22 proceeding with it.

23 I mean it's, it's, I think it's a  
24 reasonable thing to go ahead with and it's certainly a  
25 needed facility.

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1 CHAIRPERSON GRIFFIS: Good. Thank you.  
2 Others? Anything else?

3 MR. ZAIDAIN: I would just agree with all  
4 the comments from the Chair. And Mr. May I do think it  
5 was a good exercise to go through given that under the  
6 zoning regulations we're required to give great weight  
7 to the ANC.

8 So, I think it was perfect for us to give  
9 a little more time to try to get that guidance from  
10 the ANC, and it is a shame that we couldn't reach a  
11 point where we had the necessary information from  
12 them.

13 In terms of the development, I think the  
14 Chair brought up some good points related to the  
15 design and new location of it. It is interesting  
16 about the covering for the ramp, I guess, to access  
17 the roof.

18 But we heard testimony on why that was  
19 needed, and in my mind, although the canopy's  
20 existence is probably debatable and we could have  
21 gotten into that, I think the real height variance was  
22 driven by kind of the interior program of trying to  
23 make an odd, kind of odd use like this work within the  
24 zoning regulations.

25 So I'd be prepared to move forward.

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1 CHAIRPERSON GRIFFIS: Good. Thank you  
2 all. Anything else? In which case I can ask for all  
3 those in favor of the motion signify by saying aye.

4 (A chorus of ayes.)

5 CHAIRPERSON GRIFFIS: And opposed?

6 (No response.)

7 MR. MAY: Sorry, aye. I was voting in  
8 favor. I just didn't speak fast enough.

9 CHAIRPERSON GRIFFIS: Indeed.

10 MR. MOY: Staff will record the vote as  
11 four, zero, one. Mr. Griffis, the Chair, to approve.

12 Mr. May seconded it. Mr. Zaidain and Mr. Etherly and  
13 one mayoral appointee not present, not voting.

14 MS. BAILEY: Is that a summary order or a  
15 full order, Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes, I don't see any  
17 reason why we need a full order on that, unless the  
18 other Board members feel -- very well, we'll make that  
19 a summary order. In which case we can move on.

20 MR. MOY: Okay, the second case this  
21 morning for decision making is Appeal Number 16984 of  
22 ANC 2A, pursuant to 11 DCMR 3100 and 3101 from the  
23 administrative decision of the Zoning Administrator in  
24 the issuance of Building Permit Number B as in bravo,  
25 47779, relating to the renovation of the River Inn

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1 Hotel.

2 Appellant alleges that the Zoning  
3 Administrator erred by issuing a building permit where  
4 the proposed development would be in violation of the  
5 Subsection 350.4(d), which is limitations on hotel use  
6 in the R-5 District, and Subsection 351.2, commercial  
7 adjuncts to hotels of the zoning regulations.

8 And where proper notice of the permit  
9 application was not given to the ANC. The subject  
10 property is located in the R-5-E District at premises  
11 924 25th Street, N.W., in Square 16, Lot 884.

12 Let's see. The Board last met on this  
13 case application, this appeal application on April  
14 29th, 2003, and requested additional information from  
15 both the Appellant and the property owner, which is  
16 represented by Shaw, Pittman.

17 The Appellant, ANC 2-A, was to provide  
18 photographs of the exterior of the River Inn Hotel,  
19 and this was submitted by the ANC and that's in your  
20 case folder that's Exhibit 43.

21 From the property owner, was to provide  
22 revised drawings to the Board and also have them  
23 served to ANC 2-A, and to coordinate with DCRA to file  
24 revised building permits to the Board.

25 And that is in your case folders as

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1 Exhibit 44. And that completes my briefing, sir.

2 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

3 Board members, you do recall and we had some question  
4 last in the hearing. And the reason why we asked for  
5 the revised permit documents was the fact that the  
6 revisions had not been, let's say, officially  
7 submitted and approved.

8 But I think it's fairly clear the issues  
9 that are before us. We have this existing structure  
10 which, as the zoning regulations were passed, perhaps  
11 precluded from being built, or would have maybe, in  
12 fact, changed it a little bit.

13 But the key piece of this is, of course,  
14 that this is an existing structure and the functions,  
15 and the, of course, there was the first proposed  
16 design of moving the glass line and moving the glass  
17 line would have, perhaps, invoked portions of separate  
18 regulations 351, as Mr. Moy has also indicated.

19 I believe that it is in fact, now that we  
20 have the revised permit documents, moot to be  
21 discussing whether we go into a lot of the issues that  
22 regulate essentially new construction.

23 I think we need to rely and look at 350.4,  
24 which reads that hotels in this district that are in  
25 existence as of 1980, with valid C of O's are allowed

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1 to do numerous things.

2 And I would just outline, but it does  
3 clearly state repaired, renovated, remodeled or  
4 structurally altered. And looking and reviewing the  
5 plans, I think we have exactly that, if not only the  
6 intent, I think, the exact letter of that section and  
7 I am, I am hard pressed to be convinced that we need  
8 to move beyond that regulation.

9 Now, there's another important and  
10 specific piece that I think we need to address.  
11 Because it seems to be coming up again before us. And  
12 that is the Zoning Administrator's interpretative  
13 letter.

14 And I think there are two very clear  
15 things that need to be substantiated. This Board has  
16 ruled in a previous case and I'd like to reiterate  
17 what that position of this Board is, and I can be  
18 corrected or added to by others.

19 But in looking at a Zoning Administrator's  
20 interpretive letter as a project is being put  
21 together, formulated and massed, I believe that this  
22 Board feels strongly that those Zoning Administrators  
23 have the full weight and have the effect of  
24 influencing projects.

25 I think those are letters that should and

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1 can be relied upon as one is putting their drawings  
2 together. I do not, and I think it was the Board's  
3 opinion and decision, that this Board does not believe  
4 that that is definitively appealable before this  
5 Board.

6 And the reason is this. I believe the  
7 difficulty in appealing a Zoning Administrator's  
8 interpretation of or review of a project, cannot  
9 create any fruit at this Board.

10 How is it that if it was appealed, a  
11 project would in fact be changed, altered or somehow  
12 impacted when that, I guess the bricks and mortar  
13 aren't there yet, and so I guess more directly and  
14 definitively I believe that the permit, the actual  
15 approval of the permit document is the important and  
16 critical time at which there is an appealable issue  
17 before this Board.

18 Now it may be and it may well be that the  
19 Zoning Administrator's interpretation is part of the  
20 permit document, and therefore as that permit is  
21 appealed, that that is the aspect that is appealed.

22 But again, it goes through the line of  
23 creating the overall project and I think defining or  
24 rather being very definitive of the zoning issues that  
25 we would need to address and look at.

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1           That being said, we have several other  
2 issues that did come up and I think it would be  
3 important to address in this specific project. And  
4 there are the provisions, as we look to 351.2(a), (b),  
5 (c), (d), I believe it is.

6           It talks about how one is to hide  
7 accessories uses in these buildings. And all those,  
8 or most of those did come up. Again, most of them  
9 have gone away, but there was critical issues for the  
10 participants in this in terms of lighting, visibility,  
11 signage.

12           Now signage, of course, was removed, not  
13 announcing the restaurant. So I would open it up to  
14 others to speak to that. I find, in my opinion, in  
15 deliberating on this case is the fact I return to, is  
16 we have an existing structure.

17           We had existing exterior lighting. We had  
18 existing glass line. I do not see anything that  
19 precludes this Applicant from, or rather this  
20 Developer and Owner from changing out that lighting,  
21 changing out and renovating, remodeling and  
22 structurally altering and repairing those aspects of  
23 it.

24           That being said, Mr. Zaidain, do you have  
25 anything to add?

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1 MR. ZAIDAIN: Yeah, I was, kind of two  
2 points really. The first is the statement you made  
3 regarding the appeal of permits. I absolutely agree  
4 with the Board's direction we're going to in that  
5 regard.

6 I can't imagine what a hearing would be  
7 like if we were starting to take appeals based on  
8 correspondence. I mean, it seems almost like the  
9 extreme example is we're going to start hearing  
10 appeals based on verbal conversation and guidance  
11 given by the Zoning Administrator.

12 The bottom line is nothing is official  
13 until there is a permit issued for it. And that is  
14 where we have to start our appeal process, if appeals  
15 are going to be filed.

16 Also, in regards to the case before us,  
17 aside from that issue, I agree that we kind of got  
18 what we wanted in terms of wanting to see the plans  
19 and the permit.

20 Also there was some additional  
21 correspondence from the Foggy Bottom community  
22 regarding to lighting and the landscaping. And if you  
23 read 351.2, I really don't think the Zoning  
24 Commission was contemplating getting into that almost  
25 minutia of detail when it comes to alterations of

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1 these commercial adjuncts and the resident and the  
2 hotel's use that is in existence.

3 I mean this section is to control the  
4 expansion of these commercial adjuncts in the hotel  
5 use, and because someone alters the landscape and  
6 alters the lighting, I don't find that as a basis of  
7 going down the road and saying, well, you're expanding  
8 that restaurant inside of the hotel and therefore it's  
9 illegal.

10 I just don't, I don't buy that argument.  
11 So I am prepared to go forward in accordance with your  
12 statements.

13 CHAIRPERSON GRIFFIS: Thank you. Let me  
14 just clarify, though, because I believe that you do  
15 feel this way. That there is a level of difference  
16 between Zone Administrator's guidance, opinion,  
17 conversation, and a Zoning Administrator's letter, a  
18 signed letter that gives their interpretation.

19 As the Zoning Administrator's letter of  
20 interpretation is something that is very substantial  
21 in fact and can be used or shows a milestone in a  
22 project by which even financing may be gathered.

23 MR. ZAIDAIN: Well, yeah, sure, yeah. I  
24 don't, I mean, there's nothing wrong with, you know, I  
25 mean that's fairly common in zoning offices of

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1 developers coming in and wanting guidance, wanting to  
2 say, you know, what do you think about this?

3 And then getting it in writing for other  
4 purposes, yeah, I actually can see the validity in  
5 that. But in terms of how this Board handles appeals,  
6 we need to have that, what is the official project.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. ZAIDAIN: What exactly is going to be  
9 built so that we can proceed with assessing whether or  
10 not the Zoning Administrator was correct or not.

11 I don't think that giving guidance, albeit  
12 verbally or in writing, is what we need to do, what we  
13 need to here.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. ZAIDAIN: I think, I think there is  
16 some validity in the letter, sure, and that's from the  
17 developer's aspect, in terms of this process. I don't  
18 see it.

19 CHAIRPERSON GRIFFIS: Well, there's two  
20 additional aspects of that, in terms of the Zoning  
21 Administrator's letter. First of all, we wouldn't be  
22 able to see, we wouldn't have drawings attached to  
23 that necessarily.

24 We wouldn't have the entire project that  
25 could show how one relates, how we might look at and

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1 review whether there was an error or not error. And  
2 the other most critical piece in my mind, in not  
3 setting a precedent of that being an appealable  
4 process, is that those Zoning Administrator letters I  
5 am not sure are public or at least would not have ease  
6 of public access.

7 And so with that, how would --

8 MR. ZAIDAIN: I'm not sure about that.

9 CHAIRPERSON GRIFFIS: -- we ask  
10 communities, on the reverse, how would we ask  
11 communities to be aware of those and to be on top of  
12 those in order to appeal in a timely fashion.

13 MR. ZAIDAIN: Well, I mean kind of  
14 following that thought through, the plans that the  
15 letter is referring I guarantee are not public. I  
16 mean we're going to be going through draft cut sheets?

17 CHAIRPERSON GRIFFIS: That's exactly  
18 right. That's a good point. Okay, that being said  
19 then I can make a motion to dismiss Appeal 16984.

20 MR. MOY: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. MOY: I'm sorry to interrupt you, but  
23 I just received, from the Foggy Bottom West End ANC,  
24 an additional photograph to this case application.

25 They are asking for the waiver of the late

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1 submission, so I just wanted to alert the Board to  
2 that fact.

3 CHAIRPERSON GRIFFIS: Do we do waivers in  
4 mid motion?

5 MR. MOY: Sorry.

6 CHAIRPERSON GRIFFIS: Well, let's look at  
7 it.

8 MR. ZAIDAIN: Maybe it shows a big  
9 billboard in front of the restaurant.

10 CHAIRPERSON GRIFFIS: Okay. The  
11 photograph is showing the entrance with the new  
12 canopy. I would imagine it has The River Inn on it.  
13 And the letter indicates that they want the photo in  
14 the record to illustrate the contrast between the  
15 submission of Alamac in this case, where the canopy  
16 was shown plain with no lettering.

17 But there's nothing that precludes them  
18 from putting lettering announcing the Inn on the  
19 canopy. Isn't that your understanding, Mr. Zaidain?

20 MR. ZAIDAIN: Yeah, I don't, if you read  
21 the last, I mean if we're going to humor this for a  
22 second. Read the last sentence in the second  
23 paragraph.

24 CHAIRPERSON GRIFFIS: Oh, I see, okay.  
25 Well, I think there is, there is voiced concern from

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1 the community of further commercialization of the  
2 area. But their letter, and Mr. Zaidain, you pulled  
3 out a pertinent piece to it.

4 And that is The River Inn very large white  
5 lettering on three sides facing 25th Street. While  
6 this advertising, I'm reading the letter.

7 While this advertising of the hotel is not  
8 forbidden under 351.2(c), well, that's about as far as  
9 we need to go with that.

10 In which case I can bring back the motion  
11 that was set aside for a brief moment. And that was  
12 to dismiss Appeal 16984 as moot. I would ask for a  
13 second.

14 MR. ZAIDAIN: I'll second.

15 CHAIRPERSON GRIFFIS: Thank you. And I  
16 think the issue comes down to the fact of looking  
17 directly and distinctly at the regulations that speak  
18 to repair, renovation, remodeling, and structurally  
19 altering, 350.4.

20 I think the plans, as submitted, are  
21 exactly that. And we actually need to go no further,  
22 although we have taken our deliberations substantially  
23 in to address the other issues.

24 If the glass line had moved, also this  
25 little monkey wrench in there, we may have been doing

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1 a different calculation and manipulation. That, of  
2 course, is not what we are looking at at this point.  
3 And I can have other speak to the motion.

4 MR. ZAIDAIN: Just, I would agree with  
5 you. I mean if they were to move forward with  
6 extending the glass line, then we would have a whole  
7 different case, I'm sure.

8 CHAIRPERSON GRIFFIS: Very well. Then I'd  
9 ask for all those in favor of the motion signify by  
10 saying aye.

11 (Chorus of ayes.)

12 CHAIRPERSON GRIFFIS: And opposed?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Do we have a proxy  
15 on that, Mr. Moy?

16 MR. MOY: Yes, sir. Mr. Parsons' proxy is  
17 to dismiss the appeal as moot. Also, my understanding  
18 is Mr. Etherly was not present at the April 29th,  
19 hearing so he is not voting on this appeal, case  
20 application.

21 So that would make the final vote as  
22 three, zero, two. Three to dismiss the appeal as  
23 moot, the Chair, Mr. Zaidain and Mr. Parsons. And the  
24 other two, well, mayoral appointee not present and not  
25 voting and, of course, Mr. Etherly.

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1                   CHAIRPERSON GRIFFIS:     Good.     Thank you  
2 very much.     Any other issues for us for this Special  
3 Public Meeting on the 13th of May, 2003?     If not, then  
4 I will adjourn the Special Public Meeting at this  
5 time.

6                   We will resume and call Public Hearing, I  
7 would imagine in five minutes.     We are awaiting the  
8 potential of being joined by a new member and also our  
9 Zoning Commission member.

10   (Whereupon, the foregoing matter  
11   was concluded at 9:45 a.m.)

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