



OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

The transcript constitutes the minutes from the Public Meeting held on December 9, 2008.

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

APPLICATION NO. 17812  
Arthur Jackson, Office of Planning 8  
Rescheduled December 16, 2008

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

10:07 a.m.

CHAIRPERSON MILLER: Good Morning, ladies and gentlemen. This is the December 9, 2008 Public Meeting of the Board of Zoning Adjustment.

We have scheduled this morning both a public meeting, which will be very quick, and then we'll go into the public hearing.

So I'm just going to read a few remarks related to the Public Meeting first, as that's what we'll be starting with.

This is the December 9th Special Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller, I'm the Chair of the BZA.

Joining me today is our Vice Chair Mr. Marc Loud, who is sitting to my right and next to Mr. Loud is Mr. Michael Turnbull who sits on the Zoning Commission. To my left is

1 Mary Oates Walker and Shane Dettman who are  
2 Board members. And next to Mr. Dettman is  
3 Cliff Moy, Office of Zoning, Mary Nagelhout,  
4 Office of the Attorney General and Mr.  
5 Beverley Bailey from the Office Zoning.

6 Copies of today's meeting agenda  
7 are available to you and are located to my  
8 left on the wall bin near the door.

9 We do not take any public  
10 testimony at our meeting unless the Board asks  
11 someone to come forward.

12 Please be advised that this  
13 proceeding is being recorded by a court  
14 reporter and is also webcast live.  
15 Accordingly, we must ask you to refrain from  
16 any disruptive noises or actions in the  
17 hearing room.

18 Please turn off all beepers and  
19 cell phones.

20 Does the staff have any  
21 preliminary matters?

22 MR. MOY: Yes, Madam Chair. But

1 we can take up when we call the case for the  
2 Special Public Meeting.

3 CHAIRPERSON MILLER: Okay. Then  
4 why don't we call the one case that's on our  
5 agenda for a Special Public Meeting.

6 MR. MOY: Good morning, Madam  
7 Chair, members of the Board.

8 That case is Application No. 17812  
9 of Pietros Kidane, pursuant to 11 DCMR §  
10 3103.2 for a variance from the use provisions  
11 to allow a catering service/bakery under  
12 subsection 701.1 in the C-1 District at  
13 premises 409 18th Street, Northeast. That's  
14 in Square 4547, Lot 809.

15 As the Board will recall at its  
16 Public Hearing on December 2, 2008 the Board  
17 convened this application. After deliberation  
18 the Board granted the applicant's request for  
19 an extension of time to file his submission.  
20 And the Board rescheduled its decision to  
21 today, December 9th.

22 That filing has not been submitted

1 into the record, Madam Chair.

2 And that completes the staff's  
3 briefing.

4 CHAIRPERSON MILLER: Thank you.

5 And as I stated before, we don't  
6 take public testimony at our meetings unless  
7 the Board specifically asks for it. So I'm  
8 wondering if Mr. Kidane is here? Okay. Not  
9 seeing that he is.

10 Mr. Jackson, I'm just wondering if  
11 you could come forward for a minute. Mr.  
12 Jackson is with the Office of Planning.

13 In this case we have the applicant  
14 time to meet with the Zoning Administrator and  
15 Office of Planning to determine whether in  
16 fact the applicant needed to seek relief at  
17 all or whether his business might be fashioned  
18 in a matter so that relief might not even be  
19 required. And we haven't heard anything back  
20 from Mr. Kidane about this yet. Do you have  
21 any information on the case that might shed  
22 some light on it?

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1 MR. JACKSON: Yes, Madam Chair.

2 Again, my name is Arthur Jackson.  
3 I'm a Development Review Specialist with the  
4 District of Columbia Office of Planning.

5 The applicant did meet with  
6 Matthew Le Grant, the Zoning Administrator.  
7 And I have copies of the letter, an email he  
8 sent me last week explaining what the results  
9 of that meeting were.

10 As you recall, the issue was  
11 whether or not this could be possibly be  
12 considered an accessory use or whether or not  
13 there is some other way that this could be  
14 considered to be de minimis in terms of the  
15 catering or the delivery function of the  
16 bakery, that it could be considered de minimis  
17 to the overall operation of the bakery. The  
18 result of their meeting, which was early last  
19 week, was that the Zoning Administrator  
20 determined that this is actually a wholesale  
21 and manufacturing bakery instead of an  
22 accessory retail use. He debated this

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1 determination based on the fact that based on  
2 their discussions the majority of the bakery  
3 actually makes most of their product for sale  
4 in the cafe. So there's very little sales on  
5 site.

6 In addition, they deliver goods to  
7 remote locations in response to orders. To  
8 someone might order 200 on an item, they  
9 produce it and deliver it or have it picked  
10 up.

11 So in his determination it's more,  
12 as I say, a wholesale manufacturing bakery and  
13 with accessory sales and deliveries.

14 I've talked to the Zoning  
15 Administrator and I've talked to the  
16 applicant. And the applicant expressed some  
17 surprise about that. But what I explained to  
18 him and what the Zoning Administrator  
19 explained to him that it would still be  
20 possible to make this accessory use, it would  
21 just have to be combined with his cafe use  
22 under one Certificate of Occupancy. And,

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1 Madam Chair, that would be the only way this  
2 could be considered accessory use based on his  
3 definition.

4           You'll also note that we had some  
5 discourse where we discussed, the Zoning  
6 Administrator suggested that he open a hole in  
7 the wall between the two uses to stay with the  
8 meaningful connection between the two uses.  
9 And then it could be considered accessory. I  
10 asked whether or not it would be possible  
11 maybe to make an exterior connection in the  
12 back of the buildings such that the rear doors  
13 were connected by a hallway to make it a  
14 meaningful connection. And his response was  
15 as long as the connection was such that both  
16 buildings could be under one Certificate of  
17 Occupancy. Then the wholesale bakery use  
18 could be seen as accessory cafe. And under  
19 those circumstances he could move forward.

20           I've asked the applicant about  
21 whether or not they wanted to move forward  
22 with that. He was uncertain at the time

1 because he owns both buildings, but businesses  
2 in those buildings are under different  
3 ownership. He's an owner, but then there are  
4 different partners. And I think there were  
5 some legal questions that he had where he was  
6 unclear about how to proceed. But after we  
7 talked, I explained that this before your  
8 meeting on Tuesday. And he had gotten a call  
9 from the Office of Zoning indicating that the  
10 BZA wouldn't be able to hear his case that day  
11 because you hadn't gotten in advance to  
12 consider. And so I suggested that he write up  
13 the materials he had given to Mr. Le Grant,  
14 the interpretation that it received and put  
15 that into the record.

16 So at that point I haven't had any  
17 further discussions with him. But I think the  
18 Zoning Administrator did provide an option for  
19 him to pursue. And at this point I'm not sure  
20 what further actions he's taken since the  
21 meeting.

22 CHAIRPERSON MILLER: Okay. That

1 was very informative.

2 Do Board members have any  
3 questions?

4 MEMBER DETTMAN: Just one  
5 question, Madam Chair.

6 Mr. Jackson, did I understand you  
7 correctly that the only way this thing can be  
8 considered an accessory use to the neighboring  
9 cafe is that if there's some sort of  
10 connection created between the two of them?

11 MR. JACKSON: Right. I think the  
12 term he used was "a meaningful connection."

13 MEMBER DETTMAN: Well, I know that  
14 meaningful connection shows up in the regs to  
15 consider something as one building. Under the  
16 definition of accessory use, it just says that  
17 they have to be located on the same lot. So  
18 I think the neighboring cafe is on a separate  
19 lot. I'm just wondering why the applicant  
20 just couldn't subdivide or basically combine  
21 the two properties and not have to put in the  
22 added expenditure of creating a connection

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1 between the two uses?

2 MR. JACKSON: That would still  
3 lend itself to being under one Certificate of  
4 Occupancy. So that would appear to be an  
5 option that could be considered. Of course,  
6 noting both buildings are under common  
7 ownership at this point and both businesses  
8 are under common ownership to a large degree.

9 CHAIRPERSON MILLER: Okay. And  
10 then it sounds like there's been some good  
11 progress in this case. But at this point it's  
12 not clear how the applicant wants to proceed.  
13 Whether or not still the applicant will need  
14 relief from this Board, and certainly in the  
15 nature of the relief that was sought in the  
16 original application.

17 So --

18 MR. JACKSON: Madam Chair?

19 CHAIRPERSON MILLER: Yes.

20 MR. JACKSON: Based on the  
21 interpretation by the Zoning Administrator he  
22 needs the same relief. He needs a use

1 variance because the wholesale bakery is also  
2 not allowed in a C-1. So the circumstance of  
3 the case pretty much remains the same.

4 CHAIRPERSON MILLER: Okay. He  
5 would need a use variance because it's a  
6 wholesale bakery? A wholesale bakery in that  
7 District?

8 MR. JACKSON: Yes.

9 CHAIRPERSON MILLER: As opposed to  
10 was it catering before that it was described  
11 as?

12 MR. JACKSON: Right, which is also  
13 not allowed in C-1. And the reason he'd need  
14 the wholesale bakery because it has to be  
15 considered a principal use with accessory  
16 retail based on the interpretation by the  
17 Zoning Administrator.

18 CHAIRPERSON MILLER: Okay. But  
19 there's also still the possibility that he may  
20 not need relief?

21 MR. JACKSON: There are options to  
22 eliminate the need for relief for another

1 principal use on this site that is consistent  
2 with the Zoning Regulations, yes.

3 CHAIRPERSON MILLER: Okay. In any  
4 event, I think our record is not complete on  
5 this case and we need to hear from the  
6 applicant with respect to how he intends to  
7 proceed. And I think also if he intends to  
8 proceed with seeking a use variance to give  
9 him the opportunity to set forth his arguments  
10 specifically related to the factual scenario  
11 that's actually going to go forward.

12 So I just wondered, perhaps we  
13 should set a date for when the applicant  
14 should file a supplemental pleading on this  
15 application. And I think we should put it far  
16 enough in advance so that we don't run into  
17 the problem where he hasn't figured it out  
18 yet. Because we have not heard from him. So  
19 let me just look at the calendar and we can  
20 kind -- Mr. Jackson, unless you have an idea  
21 of how much time the applicant might need to  
22 make this decision?

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1           There was also a question about  
2 the owner being out of the country or  
3 something to that effect?

4           MR. JACKSON: Yes. At this point,  
5 I couldn't guess at this point.

6           MR. MOY: Madam Chair, if I could  
7 suggest without any additional information,  
8 certainly from the applicant, our next regular  
9 decision is January 6 in the morning of  
10 January 6. And if staff learns otherwise, then  
11 we could communicate or reschedule a date,  
12 unless you want to do a Special Public  
13 Meeting.

14           CHAIRPERSON MILLER: I mean, does  
15 the Office of Zoning have any other  
16 information, you know like a phone call from  
17 the applicant or anything that would lead you  
18 to believe that he's going to be ready to  
19 proceed on the 6th? My only concern is, you  
20 know here we set it for today and we didn't  
21 hear anything. And the holidays are coming and  
22 I just -- I don't know whether that's too

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1 soon.

2 MR. MOY: Well, what I could also  
3 do, Madam Chair, is we have a regularly  
4 scheduled Public Hearing next Tuesday. Staff  
5 can contact the applicant and then so I can  
6 report back to the Board next week as to the  
7 next available date for the applicant.

8 CHAIRPERSON MILLER: Okay. That  
9 might be a good idea. So if the Board members  
10 agree, that we will just take this up next  
11 week for the purpose of setting a date for the  
12 applicant to file supplemental pleadings and  
13 anything else we want to schedule on that case  
14 so that by then we might have at least some  
15 indication from the applicant whether January  
16 6th is the realistic date in which to schedule  
17 him.

18 Would that be amenable to  
19 everybody? Okay. So that's what we'll do  
20 then. Okay.

21 Any other comments on this case?

22 Thank you, Mr. Jackson.

1 Do we have anything else on the  
2 agenda for this morning's Special Public  
3 Meeting?

4 MR. MOY: No, Madam Chair. That  
5 completes this Board's action.

6 CHAIRPERSON MILLER: Okay. Then  
7 this meeting is adjourned.

8 (Whereupon, the Special Public  
9 Meeting was adjourned at 10:21 a.m.

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