

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JULY 14, 2009

+ + + + +

The Special Public Meeting  
convened in Room 220 South, 441 4<sup>th</sup> Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 9:30 a.m., Marc D. Loud,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson  
SHANE L. DETTMAN, Vice Chairperson

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

The transcript constitutes the minutes from the Public Meeting held on July 14, 2009.

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

APPLICATION NO. 17852 ..... 6

APPLICATION NO. 17941 ..... 10

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

2 9:46 a.m.

3 CHAIRPERSON LOUD: Good morning,  
4 ladies and gentlemen.

5 This is the July 14, 2009 Public  
6 Meeting of the Board of Zoning Adjustment of  
7 the District of Columbia.

8 My name is Marc Loud, Chairperson.

9 And joining me today are Vice Chair Shane  
10 Dettman representing the National Capital  
11 Planning Commission, Mr. Michael Turnbull,  
12 representing the Zoning Commission. To my  
13 left: Mr. Cliff Moy, Secretary, from the  
14 Office of Zoning; Ms. Lori Monroe, the Office  
15 of Attorney General; Ms. Beverley Bailey,  
16 Zoning Specialist here in the Office of  
17 Zoning.

18 Copies of today's meeting agenda  
19 are available to you and are located to my  
20 left in the wall bin near the door.

21 We do not take any public testimony  
22 at our meetings unless the Board asks someone

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1 to come forward.

2 Please be advised that this  
3 procedure is being recorded by a court  
4 reporter and is also webcast live.  
5 Accordingly, we must ask you to refrain from  
6 any disruptive noises or actions in the  
7 hearing room. Please turn off all beepers and  
8 cell phones.

9 Does the staff have any preliminary  
10 matters?

11 MR. MOY: Good morning, Mr.  
12 Chairman, members of the Board.

13 In fact we do. With only two cases  
14 for a decision, and it would be best to take  
15 it up case-by-case.

16 CHAIRPERSON LOUD: Thank you, Mr.  
17 Moy.

18 We've got two cases for the Public  
19 Meeting this morning. We'll take them a  
20 little bit out of order. Why don't we start  
21 with 17582.

22 MR. MOY: Yes, sir. That would be,

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1 as you said, Application No. 17582. This is a  
2 motion on the part of the applicant to extend  
3 the time on Board action to Order No. 17582.  
4 And this order was 656 Pennsylvania Avenue,  
5 LLC, 666 Pennsylvania Avenue Associates and  
6 327 7th Street Southeast, LLC.

7 Mr. Chairman, this is pursuant to  
8 the original application, which was pursuant  
9 to 11 DCMR § 3103.2 for a variance from the  
10 building height requirements under section  
11 770, a variance from the floor area ratio  
12 requirements under subsection 1572.3, and a  
13 variance from the off-street parking  
14 requirements under subsection 2101.1 And this  
15 was to construct an office addition to several  
16 contiguous buildings in the CHC/C-2-A District  
17 at premises 656 Pennsylvania Avenue,  
18 Southeast, 660 Pennsylvania Avenue, Southeast,  
19 325 7th Street, Southwest and 327 7th Street,  
20 Southeast. This is in Square 876, Lots 115,  
21 116 and 117.

22 This applicant, Mr. Chairman, filed

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1 his request to, again, extend the time limit  
2 on the Board action to this order. This was  
3 filed on June 19, 2009.

4 The original order would expire  
5 July 26, 2009.

6 This is in your case folder. It's  
7 identified at Exhibit 42.

8 The sought preliminary matter on  
9 this goes to 3130.6 which I'll leave to the  
10 Chair to raise.

11 So other than this preliminary  
12 matter, the Board is to act on the merits of  
13 the requests.

14 And that completes the staff's  
15 briefing, Mr. Chairman.

16 CHAIRPERSON LOUD: Thank you, Mr.  
17 Moy.

18 Good morning, colleagues.

19 I think what Mr. Moy alluded to is  
20 the fact that 3130.6a sets out the  
21 prerequisites for an extension to be granted.

22 And one of the prerequisites is that all

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1 parties are allowed 30 days to respond to the  
2 extension request. I think in this case the  
3 extension request was filed June the 19th. And  
4 we're still in that 30 day period. So this is  
5 not ripe for us to make a decision on this  
6 morning.

7 So I'm going to suggest and  
8 recommend that we put it off until the July  
9 28th as a public meeting and just deal with it  
10 the first thing on the calendar on July 28th.

11 That will give also the applicant an  
12 opportunity to take a look at section 3130.6  
13 and particularly the part about the  
14 substantial evidence language. Because one of  
15 the things the applicant did for the extension  
16 request is submit a letter on the lawyer's  
17 letterhead articulating the justification for  
18 the extension. And I think the new test would  
19 require a little bit more. Perhaps an  
20 affidavit from the applicant, perhaps an  
21 actual letter that speaks to market conditions  
22 or speaks to inability to get government

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1       approvals that are necessary. But clearly it  
2       would require more than a letter on the  
3       lawyer's letterhead.

4               So, hopefully, if the applicant is  
5       watching us by webcast, they will take note of  
6       that and then by July 28 we can make the  
7       decision and we can also, hopefully, have the  
8       applicant supplement the record with an  
9       affidavit or other appropriate evidence.

10              Board members, did you have any  
11       comments on that? Okay.

12              Anything further on this case?

13              MR. MOY: No, sir, except that the  
14       staff will follow-up with the applicant --

15              CHAIRPERSON LOUD: Okay.

16              MR. MOY: -- with respect to his  
17       responsibilities.

18              CHAIRPERSON LOUD: Thank you, Mr.  
19       Moy.

20              You can call the next case when  
21       you're ready.

22              MR. MOY: That would be Application

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1 No. 17941 of 1332 Vermont Avenue Partnership,  
2 pursuant 11 DCMR § 3103.2 for a variance from  
3 the floor area ration requirements under  
4 section 402, a variance from the lot occupancy  
5 requirements under section 403, a variance  
6 from the rear yard requirements under section  
7 404, a variance from the court requirements  
8 under section 406, and a variance from the  
9 nonconforming structure provisions under  
10 subsection 2001.3. This is to allow  
11 additions, including an enclosed parking  
12 structure, to an existing five unit apartment  
13 house in the R-5-B District at premises 1332  
14 Vermont Avenue, Northwest. Square 242, Lot  
15 89.

16 As the Board will recall on June  
17 30, 2009 the Board completed public testimony,  
18 closed the record and scheduled its decision  
19 on July 14th. The Board did not request  
20 additional information to supplement the  
21 record since the record was full. However,  
22 the applicant has made a filing to reopen the

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1 record to allow their filing. The filing  
2 includes revision to the proposed deck and for  
3 further clarification of the practical  
4 difficulty test.

5 That filing, Mr. Chairman, is in  
6 your case folders identified as Exhibit 30,  
7 dated July 7, 2009.

8 This is a preliminary matter, so  
9 that the Board is to act on the preliminary  
10 matter and after which, then to act on the  
11 merits of the request for multiple variances.

12 So that completes the staff's  
13 briefing, Mr. Chairman.

14 CHAIRPERSON LOUD: Thank you, Mr.  
15 Moy.

16 Then as I understand it where we  
17 are procedurally is that we had the initial  
18 hearing on it, we closed the record, we set  
19 today for the decision on the case.

20 Since then a pleading was filed, a  
21 supplemental pleading was filed dated July 7,  
22 that's Exhibit 30, that was filed after the

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1 record was closed. And I think under our  
2 rules we can't even waive the requirement that  
3 once the record closed no additional filings  
4 be made. In fact, I think the Director is  
5 supposed to return filings automatically.  
6 However, there is a Rule 3124.2, which I think  
7 this pleading references, that allows us sua  
8 sponte before a final decision is made to  
9 reopen the record on an oral motion and then  
10 require further hearing on any designated  
11 issues.

12 I've taken a look at the second  
13 little pleading from July 7, as well as  
14 reviewed the proceedings of our initial  
15 hearing. And I think the direction I'm moving  
16 and we're going to recommend to colleagues is  
17 that the supplemental pleading does bring into  
18 our review some additional issues that were  
19 not addressed at the initial hearing that bear  
20 upon the variance test, particularly the  
21 discussion about the sewer lines creating some  
22 practical difficulty. And additionally, some

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1 information about creating a true green space  
2 as opposed to the planters that were part of  
3 the original design.

4 So although it's extraordinary for  
5 counsel to ask the administrative judicial  
6 body to sua sponte something, I think in this  
7 case it might be appropriate that we, on our  
8 own motion, reopen the record for the limited  
9 purpose of allowing this additional  
10 information in on the variance test.

11 Now that being said, once this  
12 information is allowed in under our Rule  
13 3121.6, I believe. Let me just find it right  
14 quick. Yes, 3121.6. Once we reopen the  
15 record and allow this filing if in fact that's  
16 what we're going to do this morning, then all  
17 parties are given an opportunity to file an  
18 written responses to what we're going to allow  
19 in. And 3121.7 gives a seven day period for  
20 that to happen.

21 So if we were allow this in this  
22 morning, this being July 14, then under 3121.6

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1 and 3121.7 the Office of Planning, which was a  
2 party in the case and ANC which was a party in  
3 the case, would under these rules begin the  
4 seven days. And these are not permissive;  
5 it's not "may," it's "shall." So I think we  
6 would be required to give both of those  
7 parties seven days to respond.

8 Then I would suggest if we move in  
9 that direction, we allow it in, give the seven  
10 days for a response, that perhaps we schedule  
11 this for a limited hearing on the 28th just on  
12 the specific issues raised in this  
13 supplemental pleading and any questions that  
14 Board members may have regarding the  
15 information in this pleading, or the Office of  
16 Planning may have with respect to it.

17 We're not going to get into any of  
18 that this morning, regardless of which  
19 direction we move on, because this is a  
20 decision meeting. But that's sort of the  
21 direction that I would place before colleagues  
22 to consider.

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1                   And let me just open it up to Mr.  
2                   Turnbull and Mr. Dettman.

3                   COMMISSIONER TURNBULL:    There's a  
4                   hearing that morning.    I take it this would  
5                   take place before the hearing?

6                   CHAIRPERSON LOUD:    I took a look at  
7                   the calendar briefly, and I thought it might  
8                   fit best in the afternoon.

9                   COMMISSIONER TURNBULL:    Oh, in the  
10                  afternoon?

11                  CHAIRPERSON LOUD:    Yes.

12                  COMMISSIONER TURNBULL:    So the  
13                  other case we mentioned earlier would also be  
14                  in the afternoon?

15                  CHAIRPERSON LOUD:    No, I think we  
16                  can do that in the morning.    That's a  
17                  decision.

18                  COMMISSIONER TURNBULL:    That's a  
19                  decision?

20                  CHAIRPERSON LOUD:    That's a  
21                  decision.    So we can put that right the first  
22                  thing in the morning.    This would be a limited

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1 hearing. And I think the afternoon calendar  
2 on the 28th is fairly light. And I don't  
3 think this hearing --

4 COMMISSIONER TURNBULL: Would that  
5 be the first item?

6 CHAIRPERSON LOUD: -- would last  
7 long.

8 It could be. I'm not looking at the  
9 calendar right now. But if that works better  
10 for you.

11 Mr. Dettman, if we could put it  
12 first.

13 COMMISSIONER TURNBULL: Okay. Yes.  
14 If you could do that.

15 CHAIRPERSON LOUD: Okay.

16 COMMISSIONER TURNBULL: I would  
17 appreciate that.

18 CHAIRPERSON LOUD: Okay.

19 Mr. Dettman, did you have any  
20 questions or concerns? Okay.

21 So then I think what we'll do then  
22 is we will, on our motion, allow in Exhibit 30

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1 and reopen the record for that limited  
2 purpose. And then we're going to postpone the  
3 decision meeting this morning on this. Set up  
4 a limited hearing on July 28th. And at that  
5 limited hearing the only issues that the Board  
6 will entertain any testimony one are the issue  
7 of the green roof as relates to the variance  
8 test and the issue of providing the interior  
9 access between the first and ground floors,  
10 and the impact of the additional information  
11 in this July 7 pleading.

12 Is that fairly clear? All right.

13 Is there anything else, Mr. Moy,  
14 that I would need to do with this case or that  
15 we would need to do?

16 MR. MOY: No, sir. I think that was  
17 very comprehensive.

18 CHAIRPERSON LOUD: Okay. So then  
19 we'll see those parties on July 28th and look  
20 forward to finalizing the hearing in this  
21 case.

22 CHAIRPERSON LOUD: Do I need to

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1 officially adjourn the Public Meeting?

2 MR. MOY: Yes. I thought you struck  
3 the gavel.

4 CHAIRPERSON LOUD: Meeting  
5 adjourned.

6 (Whereupon, at 10:01 a.m. the  
7 Public meeting was adjourned.)

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