

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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WEDNESDAY

FEBRUARY 17, 1999

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The Special Public Meeting was held in Hearing Room 220, 441 4th Street, N.W., Washington, D.C., at 12:45 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson
BETTY KING, Vice Chair
REGINALD GRIFFITHS, Board Member

ZONING COMMISSION MEMBERS PRESENT:

JOHN F. PARSONS, Commissioner

STAFF PRESENT:

Sherri Pruitt-Williams, Interim Dir., Office. of Zoning
Paul Hart, Office of Zoning
Beverly Bailey, Office of Zoning
John Nyarku, Office of Zoning
Alan Bergstein, Office of Corporation Counsel

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P R O C E E D I N G S

(Whereupon, the foregoing matter went on the record at 1:23 p.m.)

MS. REID: Good afternoon, prior to us starting our hearing for the afternoon, we do have a brief meeting that we will engage in for a few moments, so please indulge us. And we apologize for the delay. We should be done in a few minutes.

MR. HART: Case 16383, request for reduction of the fee in the application of the Cote D'Ivoire, pursuant to 11DCMR 1002.1, to permit the subdivision and the expansion of an existing chancery, and the construction of a new portion of the chancery used by the Embassy of the Republic of Cote D'Ivoire, in an -- R-3 District at premises 2412 to 2424 Massachusetts Avenue, N.W., at Square 2507, Lots 806, 807, 808, 809, 810, 811, and 816; and Square 2500, Lot 831.

MS. REID: In regard to this particular issue we have asked Corp counsel, Alan Bergstein to weigh in on it, and to basically give his interpretation as to what in fact the issues are, and how we should best proceed.

MR. BERGSTEIN: My name is Alan Bergstein. I'm an assistant Corporation counsel. And what I'll do is briefly state the concerns that I expressed to the Board, and then the Board is free to accept my views or not.

The first question is whether or not the Board has the authority to weigh its fees. I had stated in another proceeding that in fact it does not.

The fee provisions that were promulgated by the Board were promulgated several years after the other provisions that

1 are in Chapter 33, and contained a self-contained provision on
2 administration of fees, which is 3381, that allow for appeal of fees,
3 based upon errors in the application of the schedule fee, but do not
4 permit waivers of fees. And absent an expressed authority to waive a
5 fee, it's my opinion that the Board doesn't have that authority.

6 Second. Even if it did, I'm concerned about whether
7 in fact this is an appropriate request for a waiver. The arguments that
8 have been made by the applicant are not unique to the applicant, but
9 would apply to any chancery within the zone that the applicant is
10 located.

11 And therefore, the type of arguments which have
12 been made here, which are first, that it would be more appropriate to
13 use a fee that's in the schedule for special exceptions, and second,
14 that the fee is too high because it's a legislative and not a adjudicatory
15 proceeding are arguments that apply across the board, and are
16 arguments that I would have expected to have been made at the time
17 that the rules were promulgated. And not to say that the applicant
18 is -- precluded -- for making those types of views known, but the
19 appropriate way of doing that would be to request the Board to
20 reopen, or to institute a rulemaking proceeding to determine whether
21 or not the current schedule fees are appropriate.

22 I'm concerned that if a waiver is granted like this, it
23 would amount to a de facto rulemaking, since any chancery in this
24 zone could come in, and based upon this precedent, demand that this
25 new fee, which would it would amount to, be applied to it.

26 That's a rulemaking type of device, and not a
27 contested case-by-case type of device. And I'm fearful that if the
28 Board did that it would be violating the APA, which requires that
29 before any rule is promulgated there be notice and comment before

1 the rule is adopted.

2 I don't think any member of the community has any
3 awareness that the Board would be about to embark upon a decision
4 that would in fact amount to a de facto amendment of its rules.

5 So those are the concerns that I have, and of course
6 the Board is free on its own to determine whether or not it would be
7 appropriate to revisit its schedule fees for chancery applications of this
8 kind. But I don't think that it's an appropriate subject for a waiver in a
9 case of this kind.

10 MS. REID: Thank you. Board members, discussion?

11 MS. KING: Madam Chair, I move that we deny the
12 request for a waiver in the case of the Cote D'Ivoire chancery.

13 MR. PARSONS: Second.

14 MS. REID: Further discussion?

15 All in favor? I abstain.

16 MS. KING: May I suggest, Madam Chair --

17 MS. REID: Let me ask oppositions. No oppositions.

18 MS. KING: May I suggest Madam Chair that we ask
19 the staff to brief us of, as soon as it's possible for them to do so, on
20 the history of the establishment of the fees for chancery case, and we
21 can examine whether the whole background of how they were
22 established and why they were established at the rate that they are
23 now, and look into this case for the future.

24 MR. GRIFFITHS: Madam Chair, as I understand the
25 comment that was just made, that it amounts to, while we are denying
26 the current application in terms of a change in fee, the door is open for
27 some future consideration which would be dependent upon the work
28 that the staff does, and coming back to us with, and then we consider.

29 MS. REID: Yes. Mr. Parsons, did you have any

1 comments?

2 MR. PARSONS: No comment, thank you.

3 That completes that.

4 MR. HART: The staff reports the vote as 3 to 1, Ms.

5 King, Mr. Griffiths, Mr, Parsons to deny; Ms. Reid, abstention.

6 MS. REID: Okay. No further comment?

7 (Whereupon, the foregoing matter went on the record

8 at 1:23 p.m.)