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REGULAR MEETING OF THE
BOARD OF ZONING APPEALS
City Council Chambers
300 Park Avenue
Falls Church, Virginia 22046
Thursday, January 15, 2009

1. CALL TO ORDER:

Chair Stoodley called the meeting to order at 7:31 p.m.

2. ROLL CALL:

Members Present: Ms. Earman
Mr. Murphy
Mr. Stoodley
Mr. Taylor
Mr. Williamson (arrived
at 7:40 p.m.)

Member Absent: Mr. Perez

Administrative Staff Present: Mr. John Boyle, Zoning
Administrator

3. MINUTES AND RESOLUTIONS:

February 21, 2008 Meeting Minutes (Revision)

Mr. Murphy had the following corrections: On line 41, the motion carried 3-1; Line 172, change from 11,000 square feet to 1,100 square feet; Line 325 and 326, should read "Since 1993, I've been the proprietor of Falls Church City Sunoco; and Line 327 should read that Sun Oil Company has the master lease.

The recording secretary asked for the corrected spelling of Krachman, on line 1384, which was provided.

MOTION: Mr. Murphy moved, and Ms. Earman seconded, to approve the minutes of the Board of Zoning Appeals for February 21, 2008, as amended.

Upon voice vote, the motion passed unanimously.

March 13, 2008 Meeting Minutes (Revision)

Mr. Murphy provided the following corrections: Page 1, Line 19, Mr. Taylor was not present or was absent at that meeting; page 4, Line 169, should be "for additional conditions"; Page 6, Line 304-305, the sentence should read "it's kind of hard to say with this background that petitions are necessarily a bad thing"; page 8, lines 389-391, the reference to 5-15 be changed to "a bill"; line 403, should say "I think the appeal would be to make sure there are funds," and the word "don't" should be removed.

MINUTES OF THE 15 JANUARY 2009 MEETING OF THE BOARD OF ZONING APPEALS
APPROVED MARCH 12, 2009

54
55 **MOTION:** Mr. Murphy moved, and Ms. Earman seconded, to
56 approve the minutes of March 13, 2008, as amended.
57

58 Upon voice vote, the motion passed unanimously.
59

60 **December 11, 2008 Minutes**
61

62 Mr. Murphy made the following corrections: Line 34, the word "can't" should be
63 changed to "can."
64

65 **MOTION:** Mr. Murphy moved, and Ms. Earman seconded, to
66 approve the minutes of December 11, 2008, as
67 amended.
68

69 Upon voice vote, the motion passed unanimously.
70

71 **4. OTHER BUSINESS:**
72

73 **Board Elections**
74

75 MR. MURPHY: I would like to nominate Howard Stoodley for Chair of the Board
76 of Zoning Appeals for the calendar year 2009.

77 MR. TAYLOR: Second.

78 CHAIR STOODLEY: All in favor?
79 (A chorus of "ayes.")

80 CHAIR STOODLEY: Approved.

81 I would like to nominate Mr. Murphy, John Murphy, for vice chair.

82 MS. EARMAN: For life.

83 MR. MURPHY: That will work.

84 MR. WILLIAMSON: Second.

85 CHAIR STOODLEY: All in favor?
86 (A chorus of "ayes.")

87 CHAIR STOODLEY: Approved unanimously.

88 MS. EARMAN: I'd like to commend the chair and vice chair. They did a
89 phenomenal job in '08 and I think the Board is in very good hands with these
90 gentlemen. So I would like to thank you.

91 CHAIR STOODLEY: I would also for the record like to thank both Mr. Perez,
92 who's not available tonight, and of course our former chairperson, for their
93 service to the City and service to the Board. I am so deeply troubled that they're
94 both leaving but they have other priorities and they've certainly done a superb
95 job, especially Ms. Earman, taught me a lot. That is the highest compliment I can
96 pay.
97

98 **Board Procedures Review**
99

100 MR. MURPHY: I'd like to raise a couple of possible changes to the Rules of
101 Procedure. I'll work backwards.

102 CHAIR STOODLEY: Give us the Section.

103 MR. MURPHY: In Section 4, Number 14, currently reads: "Resolution: The
104 action of the Board on each application or appeal considered shall be recorded by
105 Resolution."
106

I'd like to find out if the Board is interested in adding into our Rules of

107 Procedure an agreement that we had reached earlier this year and add "The Zoning
108 Administrator shall prepare draft resolutions for each action item on the agenda in
109 advance for modification during the meeting as required."
110 MR. BOYLE: That is worthwhile I think, whether I prepared them or John did.
111 CHAIR STOODLEY: Okay.
112 MS. EARMAN: Can we add other things to your job description?
113 MR. BOYLE: Sure. I think if I'm the subject of an agenda item though, I
114 think I deferred to -- I think one of those items was an appeal. So rather than me
115 draft the resolution, we deferred to a member of the Board. It worked well. The
116 idea of preparing a draft --
117 MS. EARMAN: A resolution dealing with a decision the Zoning Administrator
118 makes?
119 CHAIR STOODLEY: A resolution other than those questioning the conduct of
120 the Zoning Administrator.
121 MR. MURPHY: I understand --
122 MR. BOYLE: That's what I'll do.
123 MR. MURPHY: I understand your concern and trepidation. But I don't think
124 it matters as far as the Board will be -- it will be a neutral resolution to begin
125 with because before the Board acts, we just need a draft that gets all the facts
126 down and the points down. Then the reasons for any action that we take can be
127 added in or modified. Our decision will be our decision. It won't come, although
128 it would be kind of nice to see John submitting resolutions that all say we agree
129 100 percent with everything the Zoning Administrator has ever done.
130 MS. EARMAN: I think that's all it will ever say.
131 MR. MURPHY: I think I'm comfortable having you defer in
132 those cases where it's an appeal of a decision and that someone on the Board will
133 fill in and do that. But as far as our Rules of Procedure, I think it would be
134 useful to have draft resolutions prepared at the time of our meeting so that in
135 some cases we can have them done that night as well and not have to come back, the
136 person who's the beneficiary of our action or not, will at least have something to
137 act on shortly after the meeting and won't have to wait another month to get a
138 resolution.
139 CHAIR STOODLEY: I think it's a good idea.
140 MR. WILLIAMSON: I was thinking the same thing.
141 CHAIR STOODLEY: Provide that to the recording secretary. Do we need a
142 motion for this?
143 MR. MURPHY: Let's do it all together.
144 CHAIR STOODLEY: What is the next one?
145 MR. MURPHY: Moving backwards, under number 7, 4-7, the second to last line,
146 "The application will be advertised for a hearing before the Board." I would like
147 to change that to "shall."
148 CHAIR STOODLEY: That's good.
149 MR. MURPHY: "Shall" is much more mandatory rather than discretionary.
150 "Will", there could be some question.
151 MR. BOYLE: It's usually "shall" or "may."
152 MS. EARMAN: I've never heard anyone be upset with "will". I don't care.
153 That's fine.
154 CHAIR STOODLEY: What's next?
155 MR. MURPHY: Possibly to insert between 6 and 7, a 6.5. "The Zoning
156 Administrator shall forward all applications to the Board as required by law."
157 CHAIR STOODLEY: Why is that necessary?
158 MR. MURPHY: We've had some discussions in the past about appeals that have
159 been turned down by the Zoning Administrator and I think the Code is clear and I

MINUTES OF THE 15 JANUARY 2009 MEETING OF THE BOARD OF ZONING APPEALS
APPROVED MARCH 12, 2009

160 think the law is clear that on issues of law and anything other than completeness,
161 that the Zoning Administrator shall forward them to us. And I'm just attempting to
162 bring our Rules of Procedure into line with my understanding of what the law is on
163 this.

164 MS. EARMAN: Shall we have the city attorney review that before we put it in
165 there? I know it's your understanding. I won't really be here but I'm just --

166 MR. MURPHY: If the Board feels --

167 CHAIR STOODLEY: You may be here for another two years.

168 MR. WILLIAMSON: I think it would be useful to have. The more clarity we
169 have on documents being forwarded to us in a timely manner, I think that's fine. I
170 wouldn't object to it.

171 MR. TAYLOR: I don't see the point.

172 CHAIR STOODLEY: My view is that this is our set of procedures and so unless
173 it violates the law, then we can probably go ahead with it. I can't imagine that
174 violates any city code or state law.

175 MR. TAYLOR: I'm not sure what the point would be to have the attorney
176 review that one sentence. I can see maybe perhaps the whole document.

177 MS. EARMAN: The statement was it's required by law.

178 MR. MURPHY: 38-11 B, "The Zoning Administrator shall forthwith transmit to
179 the Board all records upon which an appeal action is based."

180 CHAIR STOODLEY: That is pretty clear.

181 MS. EARMAN: So if anything, we renumbered, right?

182 MR. MURPHY: Yeah. That will be renumbered or you can add a 6.5.

183 CHAIR STOODLEY: I wouldn't even add a 6.5 I would just add it to the end
184 of 6.

185 MR. MURPHY: Okay. To the end of 6.

186 CHAIR STOODLEY: Any others?

187 MR. MURPHY: That's all I have.

188 Move to amend the procedures, a motion to move to amend the Rules of
189 Procedure?

190 MR. MURPHY: So moved.

191 MS. EARMAN: Second.

192 CHAIR STOODLEY: All in favor?

193

194 Upon voice vote, the motion passed unanimously.

195

196 CHAIR STOODLEY: And you will provide that to the secretary.

197

198 **2008 Annual Activity Report (Draft)**

199

200 CHAIR STOODLEY: First of all I'd like to once again thank Mr. Murphy for
201 his outstanding effort on this work. He and I talked about it a little bit and I
202 think it's very well put together and I think it is not inflammatory in any way and
203 yet it does provide the City Council with our thanks for giving us the help that we
204 needed.

205 And so unless any discussion or changes to the annual report?

206 MR. WILLIAMSON: I read through it. I thought it was very well done.

207 CHAIR STOODLEY: I don't think it requires a motion. We'll just go forward
208 with it.

209 Thank you again, Mr. Murphy, for your excellent efforts.

210 MS. EARMAN: I have a question. When the new code comes to play, are we
211 going to see instead of variances, are we going to see special exceptions, special
212 use permits? What's going to go on with that?

213 MR. MURPHY: I don't know yet.
214 We have not received the first or second sections of the code from the
215 consultant that were due in November or December.
216 MS. EARMAN: So shall we comment that it would be nice to have a working
217 code?
218 MR. MURPHY: We could. I'm currently chair of the committee that's looking
219 at this and I'm doing what I can to get it speeded up and make sure that it's out
220 there and to keep the Zoning Ordinance Advisory Committee ready to go.
221 One of the things I'm definitely looking at and that I'll be providing input
222 on as a citizen, not as a BZA member, is the special authority we have in our
223 charter for other modifications to the Code that currently we use in 38 10 C.
224 Using that and expanding that to the extent that it's reasonable and acceptable
225 from a policy standpoint, I think that's our charter, giving us some of the leeway
226 that local counties, Arlington and Fairfax in particular, have been taking with
227 special exceptions or modifications or other things that are not variances per se.
228 MS. EARMAN: It's called by a different name. It's been a way around
229 Cochran.
230 MR. MURPHY: We have much clearer authority to do that from our charter.
231 And that is certainly something that I will do my absolute best to see stays in as
232 we move forward, because that is a very powerful tool that is available for
233 consideration as we do this Code. It's not something I will overlook.
234 MS. EARMAN: Right. I just don't know how the Board feels. Coming into
235 this year this will be ten -- my tenth year on this board, five years before that
236 on the Planning Commission, and we needed a new Code then. And I don't know if
237 this is the right forum but saying everything is great, thank you for the money,
238 but we need to push it. There needs to be a little bit more.
239 MR. MURPHY: My understanding is this is a high priority for the City
240 Council in the coming year. When we asked, the Zoning Ordinance Advisory Committee
241 expired December 31st and when we asked to be renewed, we asked for 18 months
242 because that is how long the committee thought it was going to take to review the
243 new code, to have the public hearings, get the public input and get it nailed down
244 and before the Council. The Council extended us for a year because 18 months was
245 too much. So the process is well under way. Our holdup right now is not the City.
246 We have not gotten the materials from the consultant.
247 MS. EARMAN: However, the City can push the consultant.
248 CHAIR STOODLEY: Yeah. I'm not sure though that it's the proper thing for
249 the Board of Zoning Appeals.
250 MS. EARMAN: Well, that's my question. I wouldn't mind saying that it's --
251 we would encourage the completion of the Code. I mean to the best efforts.
252 CHAIR STOODLEY: My personal angst with that is we try to distance ourself
253 from setting policy. We try to say, hey, the Code is what it is. We interpret the
254 Code as the City Council has seen fit to put it together. I'm not sure we can play
255 both sides of the fence.
256 MS. EARMAN: Well, in years past we've certainly said we needed a new code.
257 We're almost there but --
258 CHAIR STOODLEY: We never said it in the annual report though.
259 MS. EARMAN: Yes, we did.
260 MR. MURPHY: We never had one.
261 MS. EARMAN: Before I was chair, I made a report. It wasn't as formal but I
262 was given permission to do so and it talked about that the Code didn't work and it
263 didn't work for a number of reasons. I just want to bring it up. I understand
264 that it's in the -- if the consultant is being paid and not being pushed, then why
265 would they work any harder? They can work on something else.

266 MR. MURPHY: There were a number of issues that did come up for the
267 consultant that I'm aware of that are probably not necessarily appropriate to
268 discuss in a public forum. But I understand. I'm personally getting a little
269 annoyed waiting for it as well, but my feeling at this time is that to the best of
270 my knowledge this is a sufficient priority item for the Council and I strongly
271 suspect that if something doesn't come soon, it may get raised at the Council level
272 sometime soon in the future. I'd hate to put it in the annual report and have the
273 stuff come next week before the report gets presented.

274 MR. WILLIAMSON: I think our objective is to use the Code and interpret
275 things that are coming before the Board and so I don't think it's appropriate for
276 the annual report.

277 MR. TAYLOR: Well, perhaps a compromise. It seems like we have two
278 different views here. Maybe something acknowledging or saying that we in some way
279 look forward to.

280 CHAIR STOODLEY: That's perfect. That is a wonderful thing. The Board
281 looks forward to some resolution at the earliest convenience.

282 MR. MURPHY: Page 2, there is a heading called Participation in Zoning Code
283 Changes in 2008. That carries over to page 3. We could add a sentence at the end.

284 CHAIR STOODLEY: Is everyone comfortable with that? He's going to read it.

285 MR. MURPHY: I would add a sentence at the end. Guiding or influence of
286 policy consideration of the Planning Commission, the City Council and its
287 legislative process period. The BZA does however look forward to a revised Zoning
288 Code and fully supports the process in place.

289 MS. EARMAN: By the end of the year.

290 MR. MURPHY: As soon as possible.

291 MR. WILLIAMSON: We've got this sentence here where we look forward to
292 commenting on any technical issues that may arise during the Zoning Code review
293 process, but do not wish to comment as a Board on any policy issues. I interpret
294 that as being neutral on the zoning code review process, in fact.

295 MR. MURPHY: And what --

296 MR. WILLIAMSON: The implication here is that is, in fact, not the case.

297 MR. MURPHY: I think the Board has been in the past in favor of the zoning
298 code revision process. I think the Board has said numerous times that there are
299 problems with the Zoning Code. The Zoning Code is out of date. It's confusing.
300 It's hard to use and I know that we have sent letters. I know the chair sent
301 letter to the Council with BZA approval on a couple of issues that had come up with
302 heights and setbacks and other things that essentially said this piecemeal chopping
303 up of the Code is a waste of time, we need a new code, to paraphrase the chair on
304 that one.

305 So the Board has gone on record as being in support of a new Zoning Code. I
306 think what the Board has been trying to avoid to the extent possible are some of
307 the policy implications that may come with a new Zoning Code, whether that's the
308 type of development or size, density, location of different things, etcetera, that
309 we don't want to get involved in that type of policy issue. But if there are
310 technical issues, how does this work? How does that work? This is something that
311 could be interpreted or used consistently, that we'd be perfectly happy to provide
312 those types of comments.

313 MR. WILLIAMSON: I think frankly I'm looking forward to resolution just
314 because I don't like having been in deliberations on things that have come before
315 us and looking ahead, you know, if there will be a new code. So if the statement
316 is around resolution of the process, then I support that. I don't want to -- I
317 want to be careful not to weigh it too heavily.

318 MS. EARMAN: Can we use a different word than resolution? It sounds too

319 much like how we end our meeting.
320 MR. WILLIAMSON: Yeah. Feel free to choose a new word. But having the new
321 code and moving ahead.
322 MS. EARMAN: Completion.
323 MR. WILLIAMSON: That's the kind of thing I'd like us to --
324 MR. MURPHY: The BZA however looks forward to a revised zoning code soon and
325 fully supports the process in place.
326 CHAIR STOODLEY: That's innocuous.
327 MR. WILLIAMSON: Okay.
328 MR. MURPHY: Susan doesn't like that.
329 MS. EARMAN: I don't know if I fully support the process in place. It's not
330 working fast enough.
331 MR. MURPHY: Okay. The BZA does however look forward to a revised zoning
332 code soon. Period.
333 MS. EARMAN: Yesterday. Last year.

334
335 5. OLD BUSINESS: None.

336
337 6. PETITIONS: None.

338
339 7. NEW BUSINESS:

340
341 CHAIR STOODLEY: Once again I want to thank Susan and Gene on the record for
342 his service to the City and to the Board and I hope that both of those individuals
343 will go out and recruit substitutes.

344 MR. BOYLE: We've been working with the City Clerk. There were a number of
345 applications for other boards and historically we've been able to raid the groups.

346 MS. EARMAN: One place there were a lot of time vying for Planning
347 Commission. This would be a nice way to step into it without over taxing yourself
348 with meetings.

349 MR. BOYLE: In the meantime I know it's a burden for Gene and Susan to
350 continue indefinitely. It would be nice to organize, if we know a date certain
351 when your participation is going to end, we need to do a handing over of the name
352 plate ceremony.

353 CHAIR STOODLEY: What I heard was 2013.

354 MR. MURPHY: March. That's a nice date.

355
356 8. ADJOURNMENT:

357
358 CHAIR STOODLEY: Do we have a motion to adjourn please?

359 MS. EARMAN: So moved.

360 CHAIR STOODLEY: Second?

361 MR. WILLIAMSON: Second.

362 CHAIR STOODLEY: Meeting's adjourned. (8:07 p.m.)

363

364

365

366 Respectfully Submitted, Noted and Approved:

367

368

369

370 Ann Hieber

371 Recording Secretary

372

373

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