

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 27, 2019

+ + + + +

The Regular Public Meeting convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)
LORNA JOHN, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.
HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from the
Public Meeting held on February 27, 2019.

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

9:40 a.m.

CHAIRPERSON HILL: All right, good morning, everyone. The hearing will please come to order.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW. This is the February 27, 2019 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Carlton Hart, vice chair, Lorna John and Lesyllee White, board members and representing the Zoning Commission will be Rob Miller for the hearing.

Copies of today's hearing agenda are available to you and located in the wall bin near the door. Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the board please turn on and speak into the microphone first stating your name and home address.

When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition must have raised their hand and been sworn

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1 in by the secretary. Also, each witness must fill out two
2 witness cards. These cards are located on the table near the
3 door and on the witness table.

4 Upon coming forward to speak to the board please
5 give both cards to the reporter sitting to the table to my
6 right.

7 If you wish to file written testimony or
8 additional supporting documents today please submit 1
9 original and 12 copies to the secretary for distribution.

10 If you do not have the requisite number of copies
11 you can reproduce copies on an office printer in the Office
12 of Zoning located across the hall. Please remember to
13 collate your sets of copies.

14 The order of procedures for special exceptions,
15 variances and appeals are also listed as you walk in through
16 the door.

17 The record shall be closed at the conclusion of
18 each case except for materials specifically requested by the
19 board. The board and the staff will specify at the end of
20 the hearing exactly what is expected and when the persons
21 must submit the evidence to the Office of Zoning.

22 After the record is closed no other information
23 shall be accepted by the board.

24 The board's agenda includes cases set for
25 decision. After the board adjourns the Office of Zoning in

1 consultation with myself will determine whether a full or
2 summary order may be issued.

3 A full order is required when the decision it
4 contains is adverse to a party including an affected ANC.
5 A full order may also be needed if the board's decision
6 differs from the Office of Planning's recommendation.

7 Although the board favors the use of summary
8 orders whenever possible an applicant may not request the
9 board to issue such an order.

10 The District of Columbia Administrative Procedures
11 Act requires that the public hearing on each case be held in
12 the open before the public pursuant to Section 405(b) and 406
13 of that act.

14 The board may consistent with its rules of
15 procedures and the act enter into a closed meeting on a case
16 for purposes of seeking legal counsel on a case pursuant to
17 D.C. Official Code Section 2-575(b)(4) and/or deliberating
18 on a case pursuant to D.C. Official Code Section 2-575(b)(13)
19 but only after providing the necessary public notice and in
20 the case of an emergency closed meeting after taking a roll
21 call vote.

22 The decision of the board in cases must be based
23 exclusively on the public record. To avoid any appearance
24 to the contrary the board requests that persons present not
25 engage the members of the board in conversation.

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1 Please turn off all beepers and cell phones at
2 this time so as not to disrupt the proceeding.

3 Preliminary matters are those which relate to
4 whether a case will or should be heard today such as requests
5 for postponement, continuance, or withdrawal, or whether
6 proper and adequate notice of the hearing has been given.

7 If you're not prepared to go forward with the case
8 today or believe that the board should not proceed now is the
9 time to raise such a matter.

10 Mr. Secretary, do we have any preliminary matters?

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

13 First of all, before I get to that point as for
14 the record as to today's docket there's only been one change
15 and that is application number 19886 of Giuseppe and Teresa
16 Farruggio has been postponed and rescheduled to March 6,
17 2019. That's the case that had been scheduled for decision-
18 making.

19 Other than that there are other preliminary
20 matters. The staff would suggest that the board address
21 those -- attend those cases when we call those.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
23 Moy.

24 All right, so if anyone is here wishing to testify
25 in support or opposition if you wouldn't mind standing and

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1 being sworn in by the secretary to my left.

2 (Whereupon, the witnesses were sworn.)

3 CHAIRPERSON HILL: Okay. As Mr. Moy just
4 mentioned we have a lot of people here today so we're going
5 to go through this day as smoothly as we can. I think we're
6 going to be here awhile.

7 We're going to probably take a lunch break at some
8 point. And so the agenda that we're going to follow is the
9 one that was in the bins as you came walking in.

10 So there's no changes to the agenda at this point.
11 And so we are ready for our first decision case, Mr. Moy.

12 MR. MOY: Thank you, Mr. Chairman. So the first
13 case for decision is application number 19916 of Continental
14 Mortgage & Investment Corporation as amended pursuant to 11
15 DCMR Subtitle X, Chapter 10, for area variances from the
16 nonconforming structure requirements of Subtitle C Section
17 202.2(b) and the side yard requirements of Subtitle D Section
18 206.7; and for a use variance from the nonconforming use
19 requirements of Subtitle C Section 204.1, to renovate and
20 construct a rear addition to an existing six-unit apartment
21 house in the R-3 zone.

22 This is at 1217-1219 Division Avenue NE, square
23 5203, lot 861.

24 CHAIRPERSON HILL: Okay. Is the board ready to
25 deliberate? Would someone else like to start? Okay, sure.

1 MEMBER WHITE: I don't know why I said yes to that
2 but I'll give it a go.

3 So, this is an application to renovate and
4 construct a three-story rear addition to an existing six-unit
5 apartment house in the R-3 zone located at 1217-1219 Division
6 Street NE as Mr. Moy indicated.

7 The applicant is requesting a variance under
8 Subtitle C 202.2(b) for nonconforming structures and a second
9 variance under Subtitle C 204.1 for nonconforming uses.

10 As you know, as we know the use variance is to
11 continue the six-unit apartment house use on the property and
12 also an area variance. They wanted to expand on the
13 nonconforming side yard as well.

14 They're proposing to keep the footprint of the
15 existing building, but extend it back 25 feet. And it would
16 be three stories.

17 The main issue that I just wanted to kind of raise
18 is to kind of talk about a little bit the use variance
19 standard versus the area variance standard that we had to
20 apply because the applicant is requesting both.

21 The use variance standard, you have to show an
22 undue hardship which is a higher bar than the area variance
23 standard.

24 The use variance standard would basically be to
25 allow them to continue the six-unit apartment to establish --

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1 is to establish undue hardship which is a higher standard
2 than the area variance standard where the applicant needs to
3 show an exceptional circumstance resulting in a practical
4 difficulty.

5 To meet the use variance standard of undue
6 hardship the applicant has to show that there's no reasonable
7 use that could be made of the property that would be matter
8 of right.

9 The applicant is arguing under -- arguing undue
10 hardship in that they would not be able to continue the use
11 of the building as a six-unit apartment house.

12 The issue is whether the financial hardship is
13 sufficient to meet this standard. And also just the
14 parameters of the building would be sufficient to meet that
15 standard.

16 In the record which is full the applicant
17 submitted a copy of the certificate of occupancy that was
18 issued I believe in September of 2011.

19 This was issued by DCRA. This was issued when
20 this was a non-matter of right use.

21 The applicant argued that the six-unit apartment
22 house was established prior to 1958 regulations. So they did
23 not show that was the case with the C of O issued in 2011.

24 There's nothing on the certificate of occupancy
25 issued by DCRA that specifically explains the basis of the

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1 issuance.

2 In the R-3 zone a matter of right development
3 would be a semi-detached or detached row dwelling. There's
4 not a lot of evidence in the record that shows that there was
5 nothing else they could do with the property, that there was
6 an undue hardship.

7 However, the Office of Planning which I paid
8 particular attention to with respect to analyzing the case
9 is recommending approval of the application.

10 Also, I paid particular attention to the fact that
11 in the record there appeared to be no opposition in this
12 particular case and that Office of Planning was also
13 persuaded that the use had been existing as they state in the
14 record for approximately 78 years.

15 I'm also persuaded by the fact that with the
16 building becoming quite dilapidated and vacant over the years
17 the additional gross floor area would allow the building to
18 be renovated to modern standards and continue to be operated
19 as a six-unit apartment house.

20 The property would not be out of character based
21 upon my review of the record and it's also bordered by other
22 large multifamily developments in the area.

23 So with respect to the area variance I was
24 persuaded by the response from the Office of Planning that
25 the applicant meets the area variance standards since the lot

1 has dimensions -- since the lot is of dimensions that present
2 a practical difficulty for the building to expand even though
3 the 25 rear addition was a concern to me.

4 But there was no opposition in the record by the
5 Office of Planning, by the ANC, or the community more broadly
6 to have this completed as a six-family unit development.

7 The lot's dimensions also present from my
8 perspective a practical difficulty for the building to expand
9 and still conform to the R-3 side yard requirements.

10 It would not be based upon my review a detriment
11 to the public good since it would still be similar to the
12 original building and compatible to the surrounding area
13 while allowing the revitalization to the existing building.

14 I don't see any particular harm to the zoning
15 regulations. The 3 foot 3 inch side yard would still provide
16 adequate separation between the lots and space for
17 maintenance.

18 So finally, Mr. Chair, I would just say that with
19 the ANC support the application that I've reviewed also
20 indicated that the ANC was extremely supportive of the
21 development. I'm just quoting, they use the word "applaud"
22 the modern architectural design that conforms to the existing
23 buildings in the neighborhood and building market rate
24 housing to foster economic diversity in the community.

25 So based on my review of the application I'm

1 leaning towards supporting their request for variance relief.

2 CHAIRPERSON HILL: Great, thank you. That was
3 great. I'm going to go last more often.

4 VICE CHAIR HART: Yes, no, I appreciate Board
5 Member White's very thorough description and discussion.

6 And I understand that the Office of Planning is
7 in support of this application. And noting what Board Member
8 White stated regarding the -- how I believe that the
9 applicant had met both the use and area variance standards,
10 prongs I guess.

11 And I didn't want to add a whole lot to that. The
12 only piece that I just wanted to note was the Office of
13 Planning also added in the issue of the building needing to
14 be modernized to meet code standards.

15 One of the issues is regarding that there -- some
16 of the rooms didn't actually have any windows at all and they
17 were trying to ensure that there were some windows through
18 the reconfiguration or the expansion of the site.

19 And that they were single units, single bedroom
20 units that they were going to be then making into multiple
21 bedroom units for families.

22 And I just wanted to make sure that that was also
23 part of the reasoning for -- the rationale for the Office of
24 Planning in making their determination or their
25 recommendations for approval of this variance relief.

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1 And with that I'm not going to add a whole lot
2 more to it but I would concur with my colleague.

3 CHAIRPERSON HILL: Board Member John. Do you have
4 anything?

5 MEMBER JOHN: Yes, Mr. Chairman, I have a couple
6 of comments. Not much.

7 CHAIRPERSON HILL: Okay, please.

8 MEMBER JOHN: Just to say that I would be able to
9 support the application as well. Also based on the very
10 thorough analysis of the Office of Planning.

11 The variance -- in looking at this case the
12 variance test for the use relief was the most difficult.
13 However, the applicant did produce a certificate of occupancy
14 showing that the building was used as a six-unit building
15 since the early two thousands.

16 And in that case I would think that it would make
17 sense to view this as meeting the standard for granting
18 relief.

19 I also note that the project meets all of the
20 other development standards as to lot width, lot area, height
21 and rear yard.

22 With respect to lot occupancy the applicant is
23 still at 27 percent even though there could be a 40 percent
24 maximum lot occupancy.

25 So I support what my other board members have said

1 and I'm able to support the application.

2 CHAIRPERSON HILL: Okay, great. Thank you. I
3 don't have anything additional to add. I also would be in
4 support of this application.

5 I think that the one thing -- DDOT had no
6 objection but there was noting that the applicant proposed
7 six parking spaces some of which were located on the adjacent
8 property and would require an easement to access. So I just
9 wanted to kind of put that on the record.

10 Although -- I guess it is a high bar for us to get
11 past in terms of this particular application. I know that
12 it being an area variance there was some thought about it
13 being you could make it four units or something, or try and
14 figure out how you could squeeze that in there in that way.

15 And so there could have been a discussion I think
16 about that as well. However, it seems that the board is in
17 favor of this application so I'm going to go ahead and make
18 a motion to approve application number 19916 as captioned and
19 read by the secretary and ask for a second.

20 MEMBER WHITE: Second.

21 CHAIRPERSON HILL: Motion made and seconded. All
22 those in favor say aye.

23 (Chorus of ayes)

24 CHAIRPERSON HILL: All those opposed? Motion
25 passes, Mr. Moy.

1 MR. MOY: Before I read the final vote count, Mr.
2 Chairman, we do have an absentee ballot vote from another
3 participant on this application who is Mr. Peter Shapiro.
4 And his absentee ballot vote is to approve and if there are
5 any conditions then such conditions as the board may impose.

6 So, that would give a final vote of 5-0-0. This
7 on your motion, Mr. Chairman, to approve the application for
8 the relief requested. Seconding the motion, Ms. White. Also
9 in support Ms. John and Vice Chair Hart and of course Mr.
10 Peter Shapiro. The motion carries.

11 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

12 MR. MOY: The next and final case for decision-
13 making is application number 19919 of Jaz, J-A-Z,
14 Construction, LLC as amended.

15 This is for special exceptions under the
16 residential conversion requirements of Subtitle U Section
17 320.2, under Subtitle E Section 5201 from the extension of
18 an existing nonconformity requirements of Subtitle C Section
19 202.2, and the rear yard requirements of Subtitle E Section
20 306.1, and under Subtitle C Section 703.2 from the minimum
21 parking requirements of Subtitle C Section 701.5.

22 This would construct a three-story side addition
23 and a three-story rear addition, and convert the existing
24 semi-detached principal dwelling unit to a three-unit
25 apartment house.

1 This is in the RF-1 zone at 436 Park Road NW,
2 square 3044, lot 54.

3 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
4 board ready to deliberate? Okay. Let's see.

5 So we heard this case on 2/13 and it was set for
6 decision today. There was pending some resolutions that we
7 had asked them in terms of discussing about the non-compliant
8 parking space issue.

9 There were two options that I guess the applicant
10 had. One was keep the original request for special exception
11 relief from the required single parking space with the ANC
12 changing its recommended condition. I think we talked about
13 either a covenant or written consent or something that a
14 parking space even if substandard be provided because if they
15 needed to have that space there they were going to then have
16 to do a variance request to have the parking added.

17 And so the applicant did choose the first option
18 which was to remove the parking space from the diagrams and
19 just have the open space there.

20 And then we did get some feedback from the ANC
21 that they're in agreement with this process. And so this is
22 before getting even to the merits of the case.

23 So, the -- and if we were to, depending upon where
24 we get with this, you know, the board is not actually
25 requiring that to be a parking space. That's not something

1 that we would do. It's just if the ANC and the applicant has
2 agreed to something then I think that's what's going to have
3 to be sufficient in this case.

4 In terms of the analysis for the standards of
5 relief I think that after hearing the testimony from the
6 applicant that I was convinced that they have met the
7 criteria for us to grant the relief.

8 The Office of Planning's report I thought was also
9 quite thorough in their analysis, and their analysis was
10 again in support.

11 The ANC again is in support of this application
12 the way that we have now worked through it. And then DDOT
13 also didn't have any objections.

14 So, I did from the testimony on 2/13 feel as
15 though the applicant met their burden of proof and I'll be
16 voting to approve. Anyone else?

17 VICE CHAIR HART: Yes, I actually also would be
18 in support of the application as well. I thought that we had
19 had a fairly full discussion with the applicant when they
20 were here during the hearing to describe kind of -- they
21 described what they were doing as well as this parking issue.

22 I think that the drawings that they've provided
23 to us are helpful and I'd be in support of it as well.

24 And regarding the rooftop element, the
25 architectural element that they're kind of changing I thought

1 that that was actually fine. I think it's a nice addition and
2 I think that I'd be in support of the application as a whole.

3 But just wanted to point out that they are making
4 that change. But I didn't think that it was -- I thought it
5 was a change that was a very good change for the project, for
6 what was happening at the roof. But that's it.

7 MEMBER WHITE: Yes, Mr. Chair, I'm in support of
8 the application as well. I don't want to be redundant, but
9 I think they met the standards for the relief that they're
10 seeking for special exception.

11 So I would be in support of the application as
12 well.

13 MEMBER JOHN: Mr. Chairman, I'm also in support
14 of the application. I thought that the record is very full
15 and the applicant also did quite a good job in describing how
16 it meets the burden of proof.

17 And I was appreciative of the pre-hearing slides
18 at exhibit 49, particularly slides 8 through 14 that describe
19 in detail how the applicant met the criteria.

20 I also thought that OP's analysis was very good
21 in stepping through each type of relief requested and why the
22 application met the criteria.

23 And I just wanted to say that I appreciated that
24 the information from the neighbors and their concerns, but
25 would just note that because this is a request for special

1 exception relief and the applicant meets the criteria the
2 rule is that the board should grant the application where
3 that standard is met.

4 So, I can support the application.

5 CHAIRPERSON HILL: Okay. I'm going to go ahead
6 and make a motion to approve application number 19919 as
7 captioned and read by the secretary and ask for a second.

8 VICE CHAIR HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All
10 those in favor say aye.

11 (Chorus of ayes)

12 CHAIRPERSON HILL: All those opposed? Motion
13 passes, Mr. Moy.

14 MR. MOY: Before I read the final vote, Mr.
15 Chairman, again we have an absentee ballot vote from another
16 participant. And again it's Mr. Peter Shapiro. And his vote
17 is to approve the application for the relief being requested.

18 So that would give a final vote of 5-0-0. This
19 is on your motion, Chairman Hill, to approve the application
20 for the relief as amended. And seconding the motion is Vice
21 Chair Hart. Also in support Ms. White, Ms. John and of
22 course Mr. Peter Shapiro. The motion carries.

23 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

24 (Whereupon, the above-entitled matter went off the
25 record at 10:09 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Meeting

Before: DC BZA

Date: 02-27-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

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