

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 22, 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 L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

PETER SHAPIRO, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 22nd, 2019.

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

(9:44 a.m.)

1
2
3 CHAIRPERSON HILL: All right. The hearing will
4 please come to order. Good morning, ladies and gentlemen.
5 We're located in the Jerrily R. Kress Memorial Hearing
6 Room at 441 4th Street, N.W. This is the May 22nd public
7 hearing of the Board of Zoning Adjustment of the District
8 of Columbia. My name is Fred Hill, Chairperson. Joining
9 me today is Carlton Hart, Vice Chair, Lesyllee White and
10 Lorna John, board members, and representing the Zoning
11 Commission on a decision case will be Rob Miller;
12 otherwise we'll have Peter Shapiro with us for the day.

13 Copies of today's hearing agenda are available
14 to you and located in the wall bin near the door. Please
15 be advised that this proceeding is being recorded by a
16 court reporter, and it's also webcast live. Accordingly,
17 we must ask you to refrain from any disruptive noises or
18 actions in the hearing room. When presenting information
19 to the Board, please turn on and speak into the
20 microphone, first stating your name and home address.
21 When you're finished speaking, please turn your microphone
22 off so that your microphone is no longer picking up sound
23 or background noise.

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

1 sworn in by the secretary. Also each witness must fill
2 out two witness cards. These cards are located on the
3 table near the door, and on the witness table. Upon
4 coming forward to the Board, please give both cards to the
5 reporter sitting to the table to my right. If you wish to
6 file written testimony or additional supporting documents
7 today, please submit one original and 12 copies to the
8 secretary for distribution. If you do not have the
9 requisite number of copies, you can reproduce copies on an
10 office printer in the Office of Zoning located across the
11 hall. Please remember to collate your copies.

12 The order of procedures for special exceptions,
13 variances, and appeals are also listed as you come into
14 the room. The record shall be closed at the conclusion of
15 each case except for any materials specifically requested
16 by the Board. The Board and the staff will specify at the
17 end of the hearing exactly what is expected and the date
18 when the person must submit the evidence to the Office of
19 Zoning.

20 After the record is closed, no other
21 information shall be accepted by the Board. The Board's
22 agenda includes cases set for decision after the Board
23 adjourns. The Office of Zoning, in consultation with
24 myself, will determine whether a full or summary order may
25 be issued. A full order is required when the decision it

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1 contains is adverse to a party, including an affected ANC.
2 A full order may also be needed if the Board's decision
3 differs from the Office of Planning's recommendation.
4 Although the Board favors the use of summary orders
5 whenever possible, an applicant may not request the Board
6 to issue such an order.

7 The District of Columbia Procedures Act
8 requires that the public hearing on each case be held in
9 the open before the public pursuant to Section 405(b) and
10 406 of that Act. The Board may, consistent with its Rules
11 of Procedures and the Act, enter into a closed meeting on
12 a case for purposes of seeking legal counsel on a case
13 pursuant to D.C. Official Code Section 2-575(b)(4) and/or
14 deliberating on a case pursuant to D.C. Official Code
15 Section 2-575(b)(13), but only after providing the
16 necessary public notice, and in the case of an emergency
17 closed meeting after taking a roll call vote.

18 The decision of the Board in cases must be
19 based exclusively on the public record. To avoid any
20 appearance to the contrary, the Board request that persons
21 present not engage the members of the Board in
22 conversation. Please turn off all beepers and cell phones
23 at this time so as not to disrupt these proceedings.

24 Preliminary matters are those which relate to
25 whether a case will or should be heard today, such as

1 requests for postponement, continuance, or withdrawal, or
2 whether proper and adequate notice of the hearing has been
3 given. If you're not prepared to go forward with the case
4 today, or if you believe that the Board should not
5 proceed, now is the time to raise such a matter.

6 Mr. Secretary, do we have any preliminary
7 matters?

8 MR. MOY: Good morning, Mr. Chairman, members
9 of the Board. I do have a brief announcement for --
10 related to the docket today for the recorder. First,
11 Appeal Number 20021 of ANC 6C was dismissed by the Board
12 on May 1st, 2019. Other than that there are some
13 preliminary matters on specific cases, and the staff would
14 suggest that the Board address those when I call the case.

15 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
16 Moy. If anyone is here wishing to testify, if you could
17 please stand and take the oath administered by the
18 secretary to my left.

19 (Witnesses sworn.)

20 CHAIRPERSON HILL: Okay. Well, welcome,
21 everybody. This is like an all-star day. I see, like,
22 every single attorney firm, you know, today, there's
23 community organizations, a former Councilmember, this is
24 just, you know, just before Memorial Day, I guess, we're
25 just going to have everybody come in. So we're going to

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1 go through the agenda, basically, as you saw it. There
2 aren't any changes. We'll see what happens in terms of
3 how far we get, but we're probably going to take a lunch
4 break at some point, and probably do lunch before the
5 appeal is what I think might end up happening. So that's
6 basically that. Mr. Moy, if you like, you can call our
7 first meeting case.

8 MR. MOY: Thank you, Mr. Chairman, that would be
9 case Application Number 19960 of MCF 1400 Montana LLC and
10 MCF1, I'm going to say, Limited Partnership. This is a
11 request for special exceptions under the zone boundary
12 line requirements, Subtitle A, Section 207.2 under the new
13 residential development requirements, Subtitle U, Section
14 421.1, and Subtitle C, Section 714.3 from the surface
15 parking screening requirement, Subtitle C, Section 714.2
16 to permit the construction of a new 106 to 108 unit
17 apartment house, MU-4/RA-1 zone. This is at 1400 Montana
18 Avenue, N.E., Square 4023, Lot 0001.

19 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
20 Moy. Is the Board ready to deliberate? Someone like to
21 start?

22 VICE CHAIRPERSON HART: Sure. So I -- I know I
23 had a number of questions and comments about the
24 application during the public hearing, and I appreciate
25 everyone for, especially the Applicant, for providing the

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1 additional information that we requested. And I
2 especially appreciate the images in Exhibit 89(a)(2) that
3 show the views of the project along Montana Avenue, the
4 sections and the shadow study. These drawings and
5 renderings, in my estimation, help me understand how this
6 proposed development meets the general and special
7 exception criteria, as it provides a greater context
8 surrounding the site. I mean, I think I knew some of
9 this, but it was helpful to see the information in the
10 record.

11 And then using this exhibit, I can see how the
12 new development will be a compatible height along Montana
13 Avenue, Evarts Street, and Saratoga Avenue as the existing
14 buildings. And I'll note that while this building is a
15 larger mass, of course, Rhode Island Avenue, which is
16 where the larger mass -- part of the larger mass is
17 located is a major artery, and this makes sense to me, and
18 also stepping down the height from -- along Montana from
19 Rhode Island moving, I guess, to the south. And so that
20 actually is also in keeping and showing how the project
21 would not tend to adversely affect the use of neighboring
22 property.

23 So we did have several neighbors talk about the
24 development being too large for the site, but I did not
25 agree with this. I'll note that the Applicant is not

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1 looking for lot occupancy relief, height relief, or floor
2 to area, or FAR, relief. So I would have to disagree with
3 the neighbor's testimony. In that I understand what
4 they're saying, I just believe that the scale of the
5 proposal is in keeping with the -- what the zone is
6 requiring.

7 The -- I'll note that the ANC report also
8 called for a reduction in the number of units. I note
9 that the apartment houses -- apartment houses are allowed
10 in this zone as a matter of right. So we didn't really
11 have an ability to reduce the number of units, and I just
12 didn't think it was appropriate either. The Applicant
13 brought the project before us, and that's what we're
14 seeking to review.

15 Regarding the special exception relief, I
16 believe that the Applicant has provided sufficient
17 information on how they meet the requirements for the zone
18 boundary line requirements, the new residential
19 development requirements, and the surface parking
20 screening requirements as described in the Office of
21 Planning Report, which is Exhibit 43. And, finally, I
22 think that the -- I'll note that DDOT had a couple of
23 conditions, excuse me, three conditions. I thought the
24 first two, which had to do -- the first one, which had to
25 do with what the entrance of the building looked like

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1 along Montana Avenue, that was actually -- I didn't really
2 have much of an issue with it. And I think that, you
3 know, I was kind of torn whether or not I thought that
4 there should be a change in the -- that we should be
5 asking for a new drawing that showed what, you know, what
6 that new change would be. I didn't really think that that
7 was necessary in this case. I know that we have asked for
8 revised plans for other projects, but I think that we
9 should basically give some flexibility to the Applicant in
10 this case because all this property is in -- all of the --
11 the question is about what's happening in public space,
12 and it's not about where cars are going or parking, it's
13 really about how the ADA ramp is -- where that's located
14 and where steps are located. And I just didn't think that
15 was necessarily a game changing, you know, issue that we
16 needed to necessarily opine about. So I think we should
17 give flexibility to the Applicant for that.

18 The other condition from DDOT was that the
19 Applicant -- that we require the implementation of the
20 Applicant's TDM plan, and I think that's fine. I didn't
21 have necessarily an issue with that. And then the third
22 condition I just felt was kind of outside of our purview,
23 which had to do with the crosswalk, and that's just not
24 something that we necessarily deal with, so those are my
25 thoughts.

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1 I would be in support of the application with
2 those -- the two conditions from DDOT, flexibility for the
3 -- what's happening in the public space, and then the
4 implementation of the Applicant's TDM plan. And those are
5 my thoughts.

6 MEMBER WHITE: I'll add some thoughts.
7 Hopefully I don't be too redundant, but -- so this case
8 was last heard on May 1st, and we requested additional
9 information, including perspective renderings showing
10 proposed development in relation to existing one-family
11 house in the area, as well as the context to the nearby
12 PUD development, and a number of other items.

13 Again, as my colleague mentioned, this is a
14 special exception request under the zone boundary line
15 requirement of A 207.2, under the new residential
16 development requirements of U 421.1, and under C, Subtitle
17 C, 714.3 from the surface parking screening requirements
18 of C 714.2 to permit construction of a new apartment house
19 in the MU-4/RA-1 zone on Montana, 1400 block of Montana
20 Avenue, N.E.

21 Couple of comments, the ANC 5C on May 15 voted
22 4 to 2 in support of the project. The Applicant proffered
23 a number of amenities to the community, including 11
24 inclusionary zoning units distributed proportionally
25 throughout the project. ANC's position included comments

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1 that the appearance of the project be congruent with the
2 nearby residences. And I know that the community had
3 concerns about the scale of the building.

4 I found that the Applicant did take steps to
5 make the project blend well with the surrounding
6 neighborhood. It is larger than some of the single-family
7 homes, but I did find that the building did blend fairly
8 well with the neighborhood. DDOT, as Mr. Vice Chair
9 indicated, is proposing three conditions involving public
10 space, the TDM plan, and a new crosswalk. I'd be in
11 support of accepting DDOT's conditions, except for the
12 creation of the new crosswalk, which I don't think is
13 within the purview of the BZA. DDOT noted in Exhibit 34
14 that the building entrance will need to be revised to
15 comply with the regulations because the ramp and the side
16 projections exceed 10 feet, and the entrance will need to
17 be revised before public space. I do recommend that we
18 adopt the conditions proposed by DDOT to give the
19 Applicant flexibility, but we shouldn't adopt the
20 condition for the new crosswalk requirement for the
21 reasons that I just stated.

22 The conditions raised by ANC 5C in the record
23 to reduce the number of units, the Board would not have
24 grounds to require the Applicant to reduce the number of
25 units. Apartments are permitted by right in this

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1 particular zone. There's also a construction management
2 plan. I think that's very helpful, that was submitted to
3 address construction related issues with respect to this
4 project. But with respect to weighing in on that I also
5 think that that's also outside of the Board's purview as
6 well.

7 The ANC wanted to impose conditions related to
8 the landscaping and the exterior appearance of the
9 development. I think that the plan, including the
10 landscaping of the project, will be improved as indicated
11 in the Applicant's post-hearing filing that I reviewed in
12 Exhibit 89, A through E, to mitigate any adverse impacts
13 to the neighborhood.

14 So for those reasons I would be in support. I
15 believe that they've met the criteria for the special
16 exception relief that they're seeking, and I'd be in
17 support. There was also -- I'd like to note that there
18 was also a letter of support that I reviewed that was from
19 the historic Berean Baptist Church who is currently an
20 occupant on the building -- of the building on that
21 particular site, so, Mr. Chair, I'd be in support of the
22 application.

23 CHAIRPERSON HILL: Okay. Thank you.

24 MEMBER JOHN: Mr. Chairman, I'm also in support
25 of the application. I think Board Member Hart and Ms.

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1 White have done a very thorough analysis of the issues
2 involved. I have also listened to the testimony and
3 reviewed the Applicant's post-hearing submissions, as well
4 as the Office of Planning's great analysis and
5 recommendations, and I agree with the recommendation to
6 incorporate DDOT conditions as discussed by Mr. Hart. And
7 for all of those reasons I support the Applicant.

8 CHAIRPERSON HILL: Okay, great. Thank you. I
9 don't really have much to add. I mean, I think that you
10 guys said everything well. I also would be in support of
11 the application. I do agree with the analysis that was
12 provided by the Office of Planning. And in terms of the
13 conditions I agree with everything that was being said
14 here by the Board members. I mean, the thing that I was
15 most interested, and what we asked about, was the
16 construction management plan. At least that's one that I
17 was kind of interested in seeing, and even though we don't
18 normally include that as a condition, it has been
19 something that was submitted for the community there and
20 the ANC, and hopefully then that will help mitigate any
21 adverse impacts that might come about from the
22 construction.

23 So I'll go ahead and make a motion to approve
24 Application Number 19960 as captioned and read by the
25 secretary, including the two conditions that -- two of the

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1 three conditions that DDOT had put forward, which was --
2 one was the proposed condition to give flexibility for the
3 public space issue and the other was the TDM plan included
4 as a condition. And ask for a second.

5 VICE CHAIRPERSON HART: Second.

6 CHAIRPERSON HILL: Motion made and seconded.

7 All those in favor say aye.

8 (Chorus of aye.)

9 All those opposed? Motion passes. Mr. Moy.

10 MR. MOY: Mr. Chair, before I give a final
11 vote, we do have an absentee ballot vote from Mr. --
12 Commissioner Robert Miller, and his vote is to approve
13 with such conditions as the Board may impose. So that
14 would give a final vote count of 5-0-0, this is on your
15 motion, Chairman Hill, to approve the application for the
16 relief requested, along with the conditions as cited in
17 your motion. Seconding the motion is Vice Chair Hart.
18 Also in support Ms. John, Ms. White, and, of course, Mr.
19 Miller. Motion carries.

20 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
21 Moy.

22 (Whereupon, the above-entitled matter went off
23 the record at 10:03 a.m.)

24

25

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 Board of Zoning Adjustment

Date: 05-22-19

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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