

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 5, 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 PRESENT:

MICHAEL TURNBULL ZONING COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 5, 2019.

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

9:47 a.m.

CHAIRPERSON HILL: All right, the hearing will please come to order. Good morning, ladies and gentlemen, we're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW.

This is the June 5, 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, Lesyllee White and Lorna John, board members. And representing the Zoning Commission is Michael Turnbull.

Copies of today's hearing agenda are available to you and located in the wall bin near the door.

Please be advised that 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 your microphone first stating your name and home address.

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

All persons planning to testify either in favor

1 or in opposition must have raised their hand and been sworn
2 in by the secretary. Also each witness must fill out two
3 witness cards. These cards are located on the table near the
4 door and on the witness table.

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

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

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

15 The order of procedures for special exceptions,
16 variances and appeals are also listed as you come into the
17 room.

18 The record shall be closed at the conclusion of
19 each case except for any materials specifically requested by
20 the board.

21 The board and the staff will specify at the end
22 of the hearing exactly what is expected and the date when the
23 persons must submit the evidence to the Office of Zoning.

24 After the record is closed no other information
25 shall be accepted by the board.

1 The board's agenda includes cases set for
2 decision. After the board adjourns the Office of Zoning in
3 consultation with myself will determine whether a full or
4 summary order may be issued.

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

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

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

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

24 The decision of the board in contested cases or
25 cases must be based exclusively on the public record. To

1 avoid any appearance to the contrary the board requests that
2 persons present not engage the members of the board in
3 conversation.

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

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

10 If you're not prepared to go forward with the case
11 today or if you believe that the board should not proceed now
12 is the time to raise such a matter.

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

14 MR. MOY: Good morning, Mr. Chairman, members of
15 the board. I do have a brief announcement related to today's
16 docket.

17 First, application number 20031 of Jesse Bricker
18 has been withdrawn by the applicant.

19 Case application number 20027 of Kara K-A-R-A
20 Benson has been postponed and rescheduled to July 17, 2019.

21 And finally, case application number 20022 of
22 Preservation DC LLC again postponed, rescheduled to June 26,
23 2019. That would be in the next two weeks.

24 Other than that any other preliminary matters I
25 would suggest the board address those when I call the case.

1 CHAIRPERSON HILL: Okay, great. Thank you. Good
2 morning, everybody. If you could please stand if you have
3 to testify before us and take the oath administered by the
4 secretary to my left.

5 (Whereupon, the witnesses were sworn.)

6 CHAIRPERSON HILL: Thank you, Mr. Moy. So just
7 so everybody knows we're going to follow the agenda that you
8 see before us and we'll see how far we get. We might take
9 lunch. If we're lucky we'll get done before lunch. But
10 we'll just see how that goes.

11 So Mr. Moy, if you could call our first decision
12 case.

13 MR. MOY: Thank you, Mr. Chairman. That would be
14 application number 19971 of GRID G-R-I-D Alternatives Mid-
15 Atlantic for the District of Columbia captioned and
16 advertised for a special exception under the use provisions
17 of Subtitle U Section 420.1(a) and 203.1(p) to permit the
18 installation of a community solar facility in the RA-1 zone
19 at South Capitol Street SE square 6274 lots 800, 801 and 802.

20 CHAIRPERSON HILL: We're just doing deliberations.
21 So you can sit down. That's okay, thank you.

22 All right, so just so everybody knows when we are
23 deliberating we don't talk to anybody, we don't take
24 anybody's testimony. So I guess basically I hope you enjoy
25 your time here.

1 So, let's see. I think again we heard everything
2 at the last hearing in terms of the application. I know that
3 we took testimony from an ANC commissioner and there was some
4 concerns with the ANC.

5 I do see we wanted to keep the record open so we
6 could hear from the ANC. We did get something from the ANC
7 in terms of their concerns, but they have voted to approve
8 the application. And so that's good that they did that.

9 There was as I said before during the testimony
10 some issues, but it seems as though those have at least been
11 somewhat resolved.

12 There was a condition from DDOT concerning the
13 closing the existing curb cut and restore the curb and tree
14 box on South Capitol Street SE. So that's something that we
15 can talk about in terms of whether or not we would want to
16 adopt that as a condition. I would be in favor of adopting
17 that as a condition.

18 In terms of the application itself I think that
19 the applicant has met the criteria for us to grant the
20 special exception for the solar facility.

21 And I think that the analysis that the Office of
22 Planning has also provided in support that is also helpful
23 and I would agree with their analysis. And again, I would
24 agree with the testimony that has been given from the
25 applicant during our public hearing.

1 And so I'll be voting in support with the
2 condition as provided by DDOT. Does anybody have anything
3 they'd like to add?

4 VICE CHAIRPERSON HART: Sure. So, we received the
5 ANC 8D report exhibit 42. It was a 4-0-1 vote, four in
6 favor, no against and one abstaining. And then two out of
7 the seven members, total seven members were absent.

8 And they were in favor. They actually had strong
9 -- strongly in favor of the application.

10 So after reviewing the record I would also be in
11 favor of the application as the applicant has provided
12 sufficient information describing how they meet the criteria
13 under Subtitle U 420.1(a) and 203.1(p).

14 This criteria included determining whether or not
15 the -- if the following were true -- is an electronic
16 equipment and facility shall not be permitted. This is not
17 applicable since that's not what's before us.

18 Any requirements for setback, screening, or other
19 safeguards for the protection of the neighborhood. This is
20 the one part of the criteria that is applicable.

21 And then they talk about -- the criteria talk
22 about any new construction, a freestanding structure for use
23 as a -- it's about construction and that's not applicable
24 either in this instance.

25 So, the applicant described how this facility

1 would be screened from South Capitol Street which is really
2 the main street that it would be seen from. The rest of the
3 site is fairly inaccessible in terms of where the public can
4 see from.

5 And they are including screening along South
6 Capitol Street and they're placing trees along a portion of
7 the roadway that really can be seen from the roadway.

8 The rest of the site actually cannot be seen from
9 South Capitol Street because there's an existing commercial
10 buildings that block the view of the remainder of the site.
11 So I think that the screening is appropriate and I'd be in
12 support of that.

13 And I'll also note that the agency that I work for
14 National Capital Planning Commission also reviewed the
15 project and they approved it back in February of 2019. So
16 I would be in support of the application and those are my
17 comments.

18 MEMBER WHITE: I'll add a few comments, Mr. Chair,
19 if that's okay.

20 I thought that this was a very interesting
21 application. I think what they're proposing, the applicant
22 is proposing is very positive.

23 At the May 22 hearing we heard as you noted
24 testimony from ANC Chair Olivia Henderson who laid out some
25 concerns, but they did post an ANC 8D resolution in the

1 record that we reviewed. And it is in support.

2 So in their resolution in the record they were --
3 it was supported. And they added a few comments just for the
4 record that I'll just note that the applicant will continue
5 to work with the Department of Energy and Environment to
6 ensure that the residents within ANC 8D receive the reduction
7 in energy costs that the system will produce.

8 They also noted that the applicant will secure the
9 property with an 8 foot tall fence located around the
10 perimeter of the site which you noted along with security
11 measures such as lighting, security monitors, lockable gate
12 of Southern Avenue.

13 They also resolved that there would be -- they
14 will continue to have ongoing conversations with the MPD
15 Environment Crime Unit to eliminate the much -- illegal
16 dumping that this area is really known for.

17 So essentially they're creating a solar farm in
18 this area and historically that area had a reputation in the
19 neighborhood for a lot of illegal dumping.

20 So we wanted to make sure that they were going to
21 be monitoring that site and to prevent future dumping of that
22 site.

23 They proposed in the application that there would
24 be an 8 foot no climb chain link fence which was detailed in
25 the record I believe in exhibit 38. And that was to help

1 secure the area.

2 So these conditions I believe kind of mitigate the
3 adverse impacts of the proposed utility use for the
4 protection of the neighborhood under the special exception
5 criteria that they were requesting.

6 And the applicant is also proposing a landscaping
7 plan which I believe also will mitigate any adverse impacts
8 to the particular area.

9 But overall the proposed solar community facility
10 would further the District's renewable energy goals and
11 provide financial benefits of solar energy production to low-
12 income residents in the area.

13 So the farm is being used to create energy, but
14 it would also have the impact of reducing the energy costs
15 for selected neighbors in that immediate area.

16 So one of the things that I also wanted to note
17 for the record is that I believe that this proposal is also
18 positive because the applicant is going to support ongoing
19 training of neighborhood residents in order to enhance their
20 knowledge and skills in that particular industry.

21 So from my position I believe that the adverse
22 impacts have been mitigated and that this application should
23 be supported, Mr. Chair.

24 CHAIRPERSON HILL: Okay. So everybody's onboard
25 with the DDOT condition?

1 MEMBER WHITE: Yes.

2 VICE CHAIRPERSON HART: I don't think they
3 actually need that curb cut. So I'd be fine with it.
4 There's access to the site along Southern Avenue.

5 CHAIRPERSON HILL: Okay.

6 VICE CHAIRPERSON HART: South Capitol Street.

7 CHAIRPERSON HILL: Okay. All right. Then I'll
8 make a motion to approve application number 19971 as
9 captioned and read by the secretary including the DDOT
10 condition to close the existing curb cut and restore the curb
11 and tree box on South Capitol Street SE and ask for a second.

12 VICE CHAIRPERSON HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded. All
14 those in favor say aye.

15 (Chorus of ayes)

16 CHAIRPERSON HILL: All those opposed. Motion
17 passes, Mr. Moy.

18 MR. MOY: Before I give the final vote count, Mr.
19 Chairman, we do have an absentee ballot from Zoning
20 Commissioner Peter Shapiro who voted by absentee ballot. And
21 his vote is to approve with such conditions as the board may
22 impose.

23 So that would give a final vote of -- final result
24 of 5-0-0. This is on your motion, Mr. Chairman, to approve
25 the application for the relief requested including the

1 conditions, DDOT conditions as you cited in your motion.
2 Seconding the motion is Vice Chair Hart. Also in support Ms.
3 John, Ms. White and of course Mr. Peter Shapiro.

4 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
5 Moy. Thank you. You can let the director know how efficient
6 we are.

7 Okay. Mr. Moy, whenever you're ready.

8 (Whereupon, the above-entitled matter went off the
9 record at 10:02 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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: DCBZA

Date: 06-05-19

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701