

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 3, 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 MEMBERS PRESENT:

PETER SHAPIRO, Zoning Commissioner
MICHAEL TURNBULL, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
BRANDICE ELLIOT
ANNE FOTHERGILL
STEPHEN J. MORDFIN
CRYSTAL MYERS
KAREN THOMAS

The transcript constitutes the minutes from
the Public Meeting held on July 3, 2019.

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

(9:45 a.m.)

CHAIRPERSON HILL: Okay. The hearing will please come to order. Good morning, ladies and gentlemen.

We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. This is the July 3, 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 Peter Shapiro as well as Anthony Turnbull.

Copies of today's hearing agenda are available to you and are located on the wall bin near the door. Please be advised that this proceeding --

COMMISSIONER TURNBULL: Michael.

CHAIRPERSON HILL: -- Mike Turnbull, sorry -- sorry, I said Anthony Turnbull. Thank you. Mike Turnbull. Thank you. Copies of today's hearing agenda are available to you and are located on 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 action in the hearing room.

When presenting information to the Board, please

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1 turn on and speak into your microphone first stating your
2 name and home address. When you're finished speaking, please
3 turn your microphone off so that your microphone is no longer
4 picking up sound or background noise. All persons planning
5 to testify either in favor or in opposition must have raised
6 their hand and been sworn in by the Secretary. Also, each
7 witness must fill out two witness cards. These cards are
8 located on the table near the door and on the witness table.
9 Upon coming forward to speak to the Board, please give both
10 cards to the reporter sitting at the table to my right.

11 If you wish to file written testimony or
12 additional supporting documents today, please submit one
13 original and 12 copies to the Secretary for distribution.
14 If you do not have the requisite number of copies, you can
15 reproduce copies on an office printer in the Office of Zoning
16 located across the hall. Please remember to collate your set
17 of copies.

18 The order of procedure for special exceptions,
19 variances, as well as appeals is also listed as you come into
20 the door. The record shall be closed at the conclusion of
21 each case except for any material specifically requested by
22 the Board. The Board and the staff will specify at the end
23 of the hearing exactly what is expected and the date when the
24 persons must submit the evidence to the Office of Zoning.
25 After the record is closed, no other information shall be

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1 accepted by the Board.

2 The Board's agenda includes cases set for
3 decision. After the Board adjourns, the Office of Zoning,
4 in consultation with myself, will determine whether a full
5 or summary order may be issued. A full order is required
6 when the decision it contains is adverse to a party including
7 an affected ANC. A full order may also be needed if the
8 Board's decision differs from the Office of Planning's
9 recommendation, 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. The Board may, consistent with its rules and
16 procedures and the Act, enter into a closed meeting on a case
17 for purposes of seeking legal counsel on a case pursuant to
18 DC Official Code Section 2-575b.4 and/or deliberating on a
19 case pursuant to DC Official Code Section 2-575b.13 but only
20 after providing the necessary public notice, and in the case
21 of an emergency closed meeting, after taking a roll call
22 vote.

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

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1 engage the members -- not engage the members of the Board in
2 conversation.

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

5 Preliminary matters are those which relates to
6 whether a case will or should be heard today such as requests
7 for a postponement, continuance, or withdrawal, or whether
8 proper and adequate notice of the hearing has been given.
9 If you are not prepared to go forward with a case today, or
10 if you believe that the Board should not proceed, now is the
11 time to raise such a matter. Mr. Secretary, do we have any
12 preliminary matters today?

13 SECRETARY MOY: Good morning, Mr. Chairman,
14 members of the Board. I do have a brief announcement
15 regarding the case applications on today's docket. Regarding
16 three case applications, the first is Case Application Number
17 19978 of 775 Fairmont Street NW LLC; this has been postponed,
18 rescheduled to July 24, 2109. Application Number 19917A of
19 Sean Ward and Audrey Tomason has been postponed, rescheduled
20 to July 10, 2019, and Case Application Number 20051 of Kevin
21 and Lauren McDermott rescheduled to July 10, 2019. And
22 finally, we do have an application that has been withdrawn
23 by the applicant, and that Application Number 20000 of
24 Shannon Richter.

25 Other than that, Mr. Chairman, there are

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1 preliminary matters to specific cases and staff would suggest
2 that the Board address those matters when I call that case.

3 SECRETARY MOY: Okay. Thank you, Mr. Moy. All
4 right. Good morning, everyone. If you could -- please, if
5 you plan on testifying, if you could please stand and take
6 the oath administered by the Secretary here to my left.

7 SECRETARY MOY: Good morning.

8 (Witnesses sworn.)

9 SECRETARY MOY: Ladies and gentlemen, you may
10 consider yourselves under oath.

11 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
12 Moy. All right. So welcome to July 3rd. In terms of the
13 agenda, we are going to follow the agenda as they came in
14 here through the -- as in your -- as in you came -- you know,
15 when you pulled it from the door here walking in. And we are
16 going to probably take lunch at some point. Is 20016,
17 Richard Leavy, here by any chance?

18 (No response.)

19 CHAIRPERSON HILL: Okay. I was going to say that
20 that's going to be a long day for you, so I guess you're
21 going to come in at some point later. So all right, Mr. Moy,
22 if you'd like to call our first case when you get a chance?

23 SECRETARY MOY: Yes, sir. Thank you. That would
24 be before the Board one application which is on the expedite
25 review consent calendar. That is Application Number 2004 of

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1 Antonio Monteiro, captioned and advertised for special
2 exception under Subtitle D, Section 306.1. This would allow
3 a second-story rear addition to an existing two-story
4 principal dwelling in the R-1-A Zone. This is at 4505
5 Foxhall Crescent, Northwest, Square 1397, Lot 851.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
7 Board ready to deliberate? Okay. I can start. I didn't
8 really think that there was anything controversial to this
9 in terms of the application in terms of it being an expedited
10 review. I thought that it was a pretty minor addition. I
11 agree with the analysis provided by the Office of Planning
12 as well as that the ANC 3D was in support without any
13 objections. DDOT also had no objection to the application.
14 I was -- there was -- you know, we were waiting to see about
15 affidavit of posting and affidavit of maintenance which we
16 did get. So I don't have any issues with this, and I will
17 be voting to approve. Does anyone else have anything they
18 would like to add?

19 (No response.)

20 CHAIRPERSON HILL: Okay. I'll go ahead and make
21 a motion -- oh, sorry -- I'll go ahead and make a motion to
22 approve Application Number 20043 as captioned and read by the
23 secretary and ask for a second.

24 MEMBER WHITE: Second.

25 CHAIRPERSON HILL: Motion been made and seconded.

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1 All those in favor, say aye?

2 (Chorus of ayes.)

3 CHAIRPERSON HILL: Aye.

4 CHAIRPERSON HILL: All those opposed?

5 (No audible response.)

6 CHAIRPERSON HILL: The motion passes, Mr. Moy.

7 MR. MOY: Staff would record the vote as 5-0-0.

8 This is on the motion of Chairman Hill to approve the
9 application for the relief requested; seconded the motion,
10 Ms. White, also in support, Ms. John, Vice Chair Hart, and
11 Commissioner Peter Shapiro.

12 All right. The next application before the Board
13 for a decision-making is Case Application Number 19966 of
14 District Properties.com, as amended, for area variance from
15 the side yard requirements of Subtitle D Section 206.3. This
16 would construct a new detached principal dwelling unit. This
17 is the R-2 Zone at premises 917 43rd Place NE, Square 5096,
18 Lot 20.

19 VICE CHAIRPERSON HART: So is the Board ready to
20 deliberate on the case?

21 Okay. So this case we actually hard last week,
22 and we closed the record except for -- I guess there was an
23 email from the ANC that -- or at least one of the ANC members
24 -- well, this is the Chair, I guess, of the ANC, and we
25 wanted to get that into the record. That is now in the

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1 record at Exhibit 49. And the case is a variance request and
2 particularly, because of the side yard or side yards for the
3 project are not -- would not allow the construction of a
4 building that was of a large enough size to, I guess, to be
5 able to construct.

6 And so they're requesting this variance so that
7 they are able to construct on this record lot. The ANC did
8 provide -- well, we have some information from the ANC
9 through this -- this email. In the email, they said they
10 were not in support, but there is no vote that was taken for
11 the case. They wanted to have some additional time to
12 investigate how the project could be -- I don't know, they
13 say "salvaged." I'm not exactly what "salvaged" means. They
14 didn't really provide a lot of information. It was about,
15 I don't know, three, four sentences, so it's not a lot of
16 detail that we have for the case.

17 In hearing the case, I did believe that the
18 applicant had provided sufficient information for me to be
19 able to support the variance. I do understand that the ANC
20 has some issue with it, but it is a lot, again, that is kind
21 of a irregularly-shaped lot. It tapers and it wouldn't
22 permit the required side yard for the building. And I guess
23 there's a alley on one side and a vacant lot on the other
24 side of the existing property.

25 But as I said, I thought that the applicant had

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1 provided information as to describe how they are meeting the
2 variance test in that it is an odd-shaped lot, would not
3 allow for a project to be kind of constructed on it without
4 relief, a variance relief. And it was just a regular kind
5 of -- regular-looking house. It did not look like it was
6 really out of the ordinary. And so for that reason, I would
7 be supportive -- in support of the application. The Office
8 of Planning, in their report, was also in support of the
9 application. I didn't have a whole lot to add to that, but
10 I'd like to hear your thoughts on this case.

11 MEMBER WHITE: Thanks, Mr. Vice Chair. So I agree
12 with your comments. You know, the applicant was asking for
13 eight feet of side yard relief, and they're proposing zero
14 feet of side yard. There was -- I think they met the
15 variance standard. It's a very high bar, as you know. I
16 think that there was an exceptional situation resulting in
17 a practical difficulty being that the property that's the
18 subject of this case is the smallest, undeveloped property
19 within the square, narrowing from the west to the east.

20 There were concerns, you know, that were raised
21 by the ANC but there were no substantial detriments to the
22 public good that I could see in the record. There is minimum
23 impact of the reduced side yard on the use of the other
24 residential yards, and it maintains an open space for light
25 and air, which means that there's no substantial harm to the

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1 intent or integrity of the zoning regulations. The relief
2 allows for the development of a small unusually-shaped vacant
3 property with a one-family dwelling, which is permitted in
4 this particular R-2 zone.

5 I am in support of the application. As I
6 mentioned, I did look at the NAC's comments. They didn't
7 take a formal vote so I couldn't give it great weight, but
8 for this particular application, reviewing the entire record,
9 I would be in support of granting the variance.

10 MEMBER JOHN: I'm in support of granting the
11 variance for the reasons you have stated, Mr. Vice Chair Hart
12 and my colleague, Ms. White. There is an existing -- two
13 existing non-conformities lot within the lot area. And as
14 you stated, because of the very narrow lot, there's an
15 exceptional condition in that the applicant would not be
16 able to meet the -- to build a usable building. And so I can
17 support the variance request.

18 VICE CHAIRPERSON HART: Okay. So with that, I
19 will make a motion to approve Application 19962 of District
20 Properties as read and captioned by the Secretary. Do I have
21 a second?

22 MEMBER JOHN: Second.

23 VICE CHAIRPERSON HART: All those -- hearing a
24 second, all those in favor, say aye.

25 (Chorus of ayes.)

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1 VICE CHAIRPERSON HART: Any opposed?

2 (No audible response.)

3 VICE CHAIRPERSON HART: Motion carries. Mr. Moy?

4 SECRETARY MOY: Before I give the final vote
5 count, Mr. Vice Chair, we do have an absentee ballot from
6 another participant who is Zoning Commissioner Robert Miller,
7 and his absentee ballot vote is to approve and with any
8 condition status the Board may oppose, so that would give a
9 final vote of 4-0-1 on the motion of Vice Chair Hart to
10 approve the application for the relief requested; seconding
11 the motion, Ms. John; also in support, Ms. White; and then,
12 of course, the absentee ballot vote of Zoning Commissioner
13 Robert Miller.

14 VICE CHAIRPERSON HART: Thank you. And I guess
15 we can call the next case, which is 20006.

16 SECRETARY MOY: Yes. Thank you, sir. Again, that
17 is Application Number 20006 of T-Mobile Northeast LLC. This
18 -- this is an application that was captured and advertised
19 for special exception under the use permissions of Subtitle
20 C Section 1313.2, to erect a monopole in the RA-1 zone, and
21 this is at 3675 Ely Place, E-L-Y Place SE, Square 5438, Lot
22 801.

23 VICE CHAIRPERSON HART: Okay. So it looks like
24 there's a preliminary matter about a report from the Office
25 of Planning?

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1 SECRETARY MOY: Yes.

2 VICE CHAIRPERSON HART: And that's a request to
3 reopen the record from the Office of Planning, and that's
4 Exhibit -- oh, good gracious -- 42. Yes. I don't have a
5 problem reopening the record for the Office of Planning. I
6 think that there is some other kind of discussion that we
7 need to have after this, but does anybody else have an issue
8 with reopening the record for OPP?

9 MEMBER WHITE: No.

10 VICE CHAIRPERSON HART: Okay. So it looks like
11 the -- that motion is -- it carries, I guess.

12 SECRETARY MOY: Yes, sir.

13 VICE CHAIRPERSON HART: So with regard to the
14 application itself, last week we heard the case and we had
15 started some discussion and there was some issue regarding
16 Subtitle C 1310.11 or 10. Wait a second. I'm sorry,
17 1313.11G regarding the co-location of antennas on a monopole.
18 And we wanted the apt to provide some additional information
19 regarding that. They did provide the information. I did
20 have a couple of additional questions now, and after talking
21 to OAG, it looks like we will not have the ability to waive
22 this. So we have to figure out how to kind of deal with
23 this.

24 In Subtitle C 1313.6, there is a way that we can
25 give a special exception if they can't meet the other

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1 criteria, but we don't have response from the applicant on
2 1313.6 at this time. So I think it would be helpful for us
3 to request that information from them and, therefore, then
4 we could meet -- then we could describe -- then we could have
5 the information to be able to make the decision. I don't
6 think we need to reopen the record on it. I just think we
7 need to get a response on that.

8 And then there is another question. Talking to
9 OAG, there was a question on whether or not the project is
10 subject to any federal telecommunications law, specifically
11 the Spectrum Act and any FCC regulations and whether or not
12 -- not providing colocation would be in violation of any
13 federal law. And I'm not exactly sure if it would or
14 wouldn't. I think it -- well, I should -- I just don't know,
15 and I think that they need to provide that information to us
16 as well. So it's really how do they -- whether they are
17 subject to any federal telecommunications law and whether or
18 not they are -- they need to provide for a co-location which
19 might be in violation of -- of, you know, those laws. So
20 those laws that I'm thinking about are the Spectrum Act and
21 any of the FCC regulations. And honestly, I just don't know.

22 I think if we get that, maybe give them some time
23 to get the -- send the information to us -- and I don't know,
24 what's our calendar like next week or the following week, Mr.
25 Moy?

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1 SECRETARY MOY: Well --

2 VICE CHAIRPERSON HART: For decision, that is.

3 SECRETARY MOY: Yes. Well, as the Board is well-
4 aware, we're really full but for a decision, there's always
5 room for that since there's no testimony from the audience.

6 VICE CHAIRPERSON HART: Great.

7 SECRETARY MOY: But I would remind you that we
8 should establish a timeline for the applicant to submit as
9 well as responses.

10 VICE CHAIRPERSON HART: Yes.

11 SECRETARY MOY: And if you care for any responses,
12 a supplemental from the Office of Planning as well.

13 VICE CHAIRPERSON HART: Is either date -- the 10th
14 or the 17th, is either date better?

15 SECRETARY MOY: Well, that's -- that's relative.

16 VICE CHAIRPERSON HART: Always is.

17 SECRETARY MOY: You can use either one. I think
18 the --

19 VICE CHAIRPERSON HART: Okay. And that's the
20 case, I think the 17th is probably better just so that we
21 have -- give time for the applicant to respond and then see
22 if OP wants to opine on that as well since they are
23 responding to -- the applicant would be responding to a
24 different regulation, which is 1313.6.

25 SECRETARY MOY: All right. That's -- let's see,

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1 today's July 3rd so if we give the applicant, say, a week to
2 -- to -- to submit -- which would take us to July 10th and
3 that puts it close for the OP to write in responses. We can
4 have the OP respond by, let's say, Monday, July 15th?

5 VICE CHAIRPERSON HART: I think that's fine. I
6 just think we need to get that information on the record, and
7 then we can move forward on the case so.

8 SECRETARY MOY: Okay, done.

9 VICE CHAIRPERSON HART: Thank you. And I think --
10 I think we may want to do -- okay, so I think that's it for
11 that case. I think we may want to move to 20044 first and
12 then do the appeal, 19938 next.

13 SECRETARY MOY: All right. The team is together
14 here so this -- Mr. Chairman, as you are aware, this is
15 before the Board because there was a filing for advanced
16 party status to Case Application Number 20044 of Madison
17 Heights LLC. Let me just read the -- the -- the caption into
18 the record. This application is for a special exception
19 under the inclusionary zoning requirements, Subtitle C
20 Section 1001.2(e)(3), to covert an existing detached
21 principal dwelling unit into an 8-unit apartment in a RA-1
22 zone. This is at premises 1214 Madison Street NW, Square
23 2934, Lot 35. And again, Mr. chair, there's an advanced
24 consideration request for party status, and I believe both
25 the -- both the parties are in the audience.

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1 CHAIRPERSON HILL: Oh, great. Okay. Then, I
2 guess, can the parties come forward? If you could please
3 just introduce yourselves for the record from my right to
4 left?

5 MR. BROWN: Good morning, Mr. Chairman David
6 Brown, Knopf and Brown, representing Michael Yeats,
7 requesting advance party status.

8 CHAIRPERSON HILL: Okay. Great. Thank you.

9 MR. CROSS: Michael Cross, architect on behalf of
10 the --

11 CHAIRPERSON HILL: Okay. Great, Mr. Cross. I'm
12 sorry, I'm cutting you both off because you guys have both
13 been here before. Mr. Brown, I understand the party status
14 request. I think that we can basically deal with everything
15 that's in the record, but I know that, as you know, the
16 regulations, you have to actually be here for this request,
17 so you're here. Mr. Cross, since you're here as well, I mean
18 do you have an objection to the party status?

19 MR. CROSS: No objection.

20 CHAIRPERSON HILL: Okay. So is the Board ready
21 to go deliberate?

22 Okay. Then I think that, again, you know, this
23 is the adjacent neighbor that's right next door to the
24 property. I think that they are uniquely affected, and I
25 would be in favor of granting the party status request. Does

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1 the Board have anything else they'd like to add?

2 MEMBER WHITE: No. I would just say that I agree
3 with you Mr. Chair. The proximity is very close so I think
4 there is a unique impact here because of the proximity to the
5 project.

6 CHAIRPERSON HILL: Okay. Great. Then we're going
7 to go ahead and grant your party status for your client, Mr.
8 Brown, and then the date, I think, is the September 25th --
9 is that right, Mr. Moy?

10 SECRETARY MOY: That's correct, Mr. Chair.

11 CHAIRPERSON HILL: Okay. So we'll see you guys
12 back here on September 25th.

13 MR. BROWN: Thank you very much, Mr. Chairman.

14 CHAIRPERSON HILL: Sure. Have a nice 4th of July.
15 Bye-bye. Mr. Brown, if you'd turn off the microphone or me?
16 Thanks.

17 SECRETARY MOY: All right. The next item before
18 the Board for decision making is Appeal Number 19938. This
19 is of -- this is the appeal of ANC 1C, captioned and
20 advertised as an appeal from the decision made on October 5,
21 2018 by the Zoning Administrator, Department of Consumer and
22 Regulatory Affairs, to issue building permits B1900300,
23 B1900301, and B1900302, to renovate three, existing, attached
24 principal dwelling units in a RF-1 Zone. This is at
25 1630-1634 Argonne Place NW, Square 2589 Lot 480.

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1 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
2 Board ready to deliberate?

3 VICE CHAIRPERSON HART: Sure.

4 CHAIRPERSON HILL: Would you like to start, Mr.
5 Hart?

6 VICE CHAIRPERSON HART: Sure. After the review
7 of the full record and listening to the applicants, the
8 owners -- I'm sorry -- the appellants, the owners, and the
9 DCRA testimony, and carefully considering the evidence, I
10 have come to the, I guess, conclusion that I believe that the
11 ZA -- the Zoning Administrator did err. And I guess it was
12 -- the real question that I had during the hearing was really
13 around how could you have three principal dwelling units,
14 principal units on one lot in an RF-1 zone. And I know that
15 the DCRA, the ZA had a -- the Zoning Administrator had a
16 response for that, and their response was simply that it was
17 non-conforming uses and that they became non-conforming when
18 the original apartment building that was proposed for the
19 site was abandoned.

20 So I just disagree with the Zoning Administrator.
21 I believe that they -- they believe that the way in which to
22 move forward with this or he believes the way in which to
23 move forward with this was to have this as a non-conforming
24 lot or non-conforming uses on the site and then to be able
25 to then do the work that the owner wanted to move forward

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1 with. Because this is an RF-1 zone, there are only two
2 dwellings or -- or principal units that are allowed on the
3 zone. And really, the way in which to remedy these three
4 units on this lot is to really seek zoning relief through a
5 variance at the BZA.

6 And, you know, I didn't come to the decision
7 lightly. I just -- I think that the zoning regulations --
8 that there was some ambiguity, I guess, that the Zoning
9 Administrator was trying to deal with or at least some
10 ambiguity because of how the three lots were, I guess,
11 subdivided, or the subdivision process made that into one lot
12 a number of years ago, back in 2015. And trying to deal with
13 that, I think the Zoning Administrator was trying to figure
14 out how to move forward with this, and I believe that the way
15 in which they need to move forward is actually through a BZA
16 process seeking a variance.

17 And, you know, there were a lot of facts in the
18 case. You know, the three principal dwelling units were
19 constructed in 1923. They had their own lot. In 2015, the
20 previous owner subdivided the three record lots and created
21 one new lot in, really, anticipation of creating this 12-unit
22 apartment house. That project was abandoned and then in
23 October 2018, three separate building permits were issued,
24 one for each of the buildings, for renovation of three
25 principal dwellings. Unfortunately, as I said earlier, the

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1 three principal dwellings could not be included on one lot.

2 And so the issue was really that was -- that was
3 really an illegal situation that should have been rectified.
4 And again, the way to rectify it is through a BZA process
5 and, you know,- the zoning regulations, they set forth that
6 if you want to -- if you're outside of zoning, then you get
7 a variance that will enable you to move forward with the
8 project if you are able to show that you meet the variance
9 test. And I think that that is the direction that the owner
10 should move in.

11 And, you know, just I think that there were a lot
12 of different facts in the case. There were a lot of
13 different arguments being made, but I think that, to me, it
14 boils down to this particular issue and I think that it's
15 fairly clear that the way in which to move forward, it would
16 be going for a variance to be able to go back to the three
17 lots and then move forward with the whatever -- I mean, I
18 guess, the renovations. I'm not sure how much -- how far
19 they've gone along, but they could then move forward with
20 those, and they could then, you know, sell and do whatever
21 they all -- whatever they wanted to with it. But it just
22 seems like that's the direction that I think that they should
23 be moving in so, that's it.

24 MEMBER JOHN: I'll make a few comments. So as you
25 noted, Mr. Vice Chair, the most relevant facts in this case

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1 are not disputed. The appellant and DCRA agree that at the
2 time the property owner -- property owner purchased the
3 property, there were three principal dwellings and one record
4 lot. The previous owner subdivided three record lots into
5 one record lot to build an apartment building, and that
6 permit was abandoned, and the lot continued to exist as one
7 record lot. The property owner subsequently obtained tax lot
8 designation for each lot without subdividing the lots into
9 three separate lots.

10 And then DCRA issued permits for each structure
11 for alteration and repair. The buildings were never
12 connected in such a way that they could be considered one
13 principal structure. External and internal modifications
14 were made to each structure, which I believe is consistent
15 with what was approved as alteration ad repair.

16 During the course that this -- or since this
17 application was filed, there were two revised permits that
18 were incorporated into the appeal and the parties agreed that
19 the only remaining issue before the Board is whether the
20 permits were improperly issued under 11A DCMR 301.3 which
21 requires a separate record lot for the proposed erection,
22 construction, or conversion of any principal structure or for
23 any addition to any principal structure.

24 I agree with ZA's analysis that Section A301.3,
25 that the scope of work involved alteration and repair that

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1 was not prohibited by this section. As the property owner
2 demonstrated, there are many tax lots in the city that are --
3 that are allowed to receive permits for alteration and
4 repair. But this argument, I think, misses the point that
5 at the time the permit was issued, the zoning regulations did
6 not permit three principal dwellings on one record lot as a
7 matter of right. After the property was rezoned as RF-1, the
8 property owner at that time could have built a flat as a
9 matter of right or seek zoning relief.

10 When the ZA allowed three principal dwellings, he,
11 in effect, granted a change of use on that lot which is
12 inconsistent with the RF-1 zone. And that conversion then
13 violated Section 8301.1 which prohibits conversions that is
14 a change a use which is inconsistent with the -- prohibits
15 a conversion such as a change of use which is inconsistent
16 with the regulations. Reverting to the tax lot -- I call it
17 a workaround -- while it is expedient, it does ignore the
18 regulations and that there would have -- there would still
19 have ben three principal dwellings on one record lot. And
20 I could never square that during all of the discussion we've
21 had where we looked at every issue that was raised. And that
22 one point was a sticking point for me, that there -- there
23 still would be three principal dwellings on one record lot.
24 And because of the history of this project and the unique
25 circumstances, I believe the property owner is entitled to

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1 zoning relief consistent with the regulations and that the
2 property owner should pursue relief under the regulations.

3 So I would not -- I would support the appeal and
4 hold that the Zoning Administrator erred in making this --
5 in issuing these three permits.

6 MEMBER WHITE: Hopefully, I won't be too redundant
7 but since it's an appeal, I just wanted to make sure, just
8 for the record, I just made certain points. So in framing
9 my analysis and decision, I looked at, again, whether
10 Sections Subtitle A 301.3 was violated, which states that a
11 building permit shall not be issued for the proposed
12 erection, construction, or conversion of any principal
13 structure, for any addition to any principal structure unless
14 the land for the proposed erection, construction, or
15 conversion has been divided so that each structure will be
16 a separate lot of record.

17 The facts, again, involve three attached principal
18 dwellings built on record Lots 461, 462, and 463. And in
19 2015, a prior owner subdivided into three record lots -- the
20 three record lots into one record lot, to Lot 480, because
21 the plan was to convert the property to a 12-unit apartment
22 house which was permitted at the time.

23 The previous owner obtained the building permit
24 application, applied the permission to create an apartment
25 house. However, they abandoned the application. The

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1 subdivision took effect before the property owner abandoned
2 the permit application. The property became non-compliant
3 because there were three principal dwellings on, again, one
4 record lot. The property was rezoned to RF-1 where the
5 maximum number of dwelling units on a single record lot is
6 two.

7 On October of 2018, there were three permits that
8 were issued, one for each principal dwelling, for significant
9 renovation using the old subdivision lot numbers reflecting
10 three buildings on one lot when only two-family flat was
11 permitted as a matter of right. The permits were not
12 consistent with the zoning requirements and a variance relief
13 in this case may have remedied the situation of granting and
14 if, obviously, they met the criteria for getting that grant
15 -- that variance.

16 The revised permits issued in December 2018 and
17 March 2019 attempted to correct the zoning error but in my
18 opinion, it did not. DCRA, in the record, argues that there
19 was nowhere under A 301.3 and didn't require a separate
20 record lot for renovation of the three buildings because
21 there was -- because they argued that there was no
22 construction of the principal structure, no addition, no
23 conversion or change of use. I believe, however, that there
24 was a conversion in the use permitted -- in the use permitted
25 when lots were subdivided into one.

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1 Also, the building permits attempted to convert
2 again by allowing three principal dwellings on one lot in the
3 RF-1 zone that only permitted two dwellings on one lot. This
4 is not permitted as a matter of right, and I believe it was
5 in -- also in violation of Subtitle A 301.3. So for this
6 reason and also for the reasons that my colleagues have
7 stated, I would argue that there was an error on the part of
8 the ZA, and I would be voting in support of Appeal 19938.

9 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
10 don't want to repeat all of the comments that the members of
11 the Board have already mentioned, but I would agree with
12 their comments and their analysis. I think that the ZA did
13 make an error, I guess, by -- when we talk about the -- and
14 I went through all these documents and the ZA -- the permits
15 continued to refer to the one lot. And I think, as the Vice
16 Chair has said, one of the remedies was to do a variance,
17 only I think that would be a high bar. I think there's a lot
18 of things you would have to do to get the variance. the only
19 other thing would be to be in compliance with the
20 regulations. As have done before, there was a conversion.
21 There could be another conversion to go back to three record
22 lots and then the -- then the -- then the -- then the
23 buildings would be compliant with the regulations. So I
24 think there's several ways to go with this on behalf of the
25 applicant, but I think you really -- I mean some of them, I

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1 think, are more difficult than others to do, and it will be
2 -- but that's up to the applicant to pursue.

3 But I do agree with my colleagues in that and like
4 I said, I don't want to repeat everything that we've done
5 before for the sake of everyone here in the room. But I
6 would agree that the ZA erred in his analysis of this, and
7 I would be in support of the appeal.

8 CHAIRPERSON HILL: Okay. Thank you all very much.
9 I'm not going to add anything either. I mean, the only
10 thing, I guess, I would add is I just think that it's a
11 disappointing situation, is that I don't think -- I just
12 don't really, you know, understand exactly -- I mean as we
13 heard, I mean it was like four hours of testimony or five
14 hours of testimony, and -- and so I suppose, you know, as the
15 applicant is watching this, I'm sure, in terms of like a
16 conversion, or I don't know, you know, how easy or not, Mr.
17 Turnbull -- Commissioner Turnbull, the variance test might
18 be met. You know, again, it doesn't make any sense to me,
19 right, from a practicality standpoint. I mean you had three
20 buildings. They turned it into one building. They abandoned
21 the permit. You still have three buildings there and even
22 the ANC Commissioner that was here, they don't want to see
23 it torn down and turned into one building. So I don't know
24 what the solution is.

25 I guess I'll agree with you guys in terms of why

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1 the Zoning Administrator erred. I totally understand how the
2 Zoning Administrator thought that this was a solution, and
3 so -- but I still am not happy with it, but there you go.
4 Okay. So I'll make a motion to approve Appeal Number 19938
5 as captioned and read by the secretary and ask for a second.

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: Motion made and seconded. All
8 those in favor, say aye?

9 (Chorus of ayes.)

10 CHAIRPERSON HILL: Aye. All those opposed?

11 (No audible response.)

12 CHAIRPERSON HILL: Motion passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 5-0-0.
14 This is on the motion of Chairman Hill to grant the appeal
15 of Application 19938. Seconding the motion is Ms. White;
16 also in support, Ms. John, Vice Chair Hart, and Commissioner
17 Michael Turnbull.

18 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
19 Moy. I know that Commissioner Turnbull is with us for the
20 next case. As soon as you're ready, you can go ahead and
21 call it.

22 (Whereupon, the above-entitled matter went off the
23 record at 10:29 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 BZA

Date: 07-03-19

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.

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