

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 17, 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, Vice Chairman (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson

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 July 17, 2019.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

(9:47 a.m.)

1
2
3 BZA CHAIR HILL: Good morning everyone. The
4 hearing will please come to order. We're located in Jerrily
5 R. Kress Memorial Hearing Room at 441 4th Street, N.W. This
6 is the July 17th Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chairperson, Lesyllee White and
10 Lorna John, Board Members and representing the Zoning
11 Commission is Anthony Hood.

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

16 Accordingly we must refrain, or ask you to refrain
17 from any disruptive noise or actions in the hearing room.
18 When presenting information to the Board please turn on and
19 speak into the microphone first stating your name and home
20 address. When you're finished speaking please turn your
21 microphone off so that your microphone off so that your
22 microphone is no longer picking up sound or background noise.

23 All persons planning to testify either in favor
24 or in opposition must have raised their hand and been sworn
25 in by the secretary. Also, each witness must fill out two

1 witness cards. These cards are located on the table near the
2 door and on the witness table. Upon coming forward to speak
3 to the Board, please give both cards to the reporter sitting
4 to the table on my right.

5 If you wish to file written testimony or
6 additional supporting documents today, please submit one
7 original and twelve copies to the secretary for distribution.
8 If you do not have the requisite number of copies you can
9 reproduce copies on an office printer in the offices located
10 across the hall. Please remember to collate your copies.

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

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

25 A full order may also be needed if the Board's

1 decision differs from the Office of Planning's
2 recommendation. Although the Board favor's the use of
3 summary orders whenever possible, an applicant may not
4 request the Board to issue such an order.

5 The District of Columbia Procedures Act requires
6 that the public hearing on each case be held in the open,
7 before the public, pursuant to section 405b and 406 of that
8 Act.

9 The Board may, consistent with its rules and
10 procedures and the Act, enter into a closed meeting on cases
11 for purposes of seeking legal counsel on a case pursuant to
12 D.C. Official Code Section 2-575(b)(4) and/or deliberating
13 on a case pursuant to D.C. Official Code Section 2-
14 575(b)(13), but only after providing the necessary public
15 notice and in the case of an emergency, a closed meeting,
16 after taking a roll call vote.

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

23 Preliminary matters are those which relate to
24 whether a case will or should be heard today such as requests
25 for a postponement, continuance or withdrawal or whether

1 proper and adequate notice of the hearing has been given.
2 If you're not prepared to go forward with the case today or
3 if you believe the Board should not proceed, now's the time
4 to raise such a matter. Mr. Secretary, do we have any
5 preliminary matters?

6 MR. MOY: Good morning, Mr. Chairman, members of
7 the Board. I do have a brief announcement regarding today's
8 docket. First, the Case Application Number 20065 of Dillard
9 -- Dilan, D-I-L-A-N, Investments LLC has been postponed to
10 September 25th, 2019.

11 And finally, Case Application Number 20068 of
12 William Pecau P-E-C-A-U and Linda Berkeley, originally
13 scheduled on the expedited review calendar has been scheduled
14 for a full public hearing to be heard on September 18th, 2019
15 and that's it from the staff, Mr. Chair.

16 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.
17 All right, if anyone is here wishing to testify, if you could
18 please stand and take the oath administered by the Secretary
19 to my left.

20 (WITNESSES SWORN)

21 MR. ROY: Ladies and gentlemen, you may consider
22 yourselves under oath.

23 BZA CHAIR HILL: All right, good morning everyone.
24 Let's see, sorry for starting a little late. I think the
25 heat has kind of slowed us all down a little bit because it

1 is hot. And then secondly, I see a lot of familiar faces
2 here, that seem to be here every week and every other week,
3 you know, you might want to start to introduce yourselves and
4 start to hang out together outside of this room.

5 And with that, Mr. Moy, you can start our first --
6 yes, and then after that we're going to, I think the heat's
7 affecting me, we're going to follow the agenda that is in the
8 bucket, except we might move a hearing case up but we'll find
9 out that in a minute. After that I guess, Mr. Moy, if you
10 wouldn't mind starting us off with our public meeting.

11 MR. MOY: I'd be happy to, thank you, Mr.
12 Chairman. The first item for decision making by the Board
13 is Application Number 19406A, this of Paige Reffe, or Reffe,
14 R-E-F-F-E.

15 This is a request for a modification of
16 consequence to the plans approved by the BZA Order Number
17 19406 to permit and increase the height of a rear wall
18 enclosure on a rear deck addition of an existing detached
19 principal dwelling unit in the R1B zone at 3300 Lowell Street
20 N.W., Square 3091, Lot 28. And I believe, Mr. Chair, in the
21 record there's also a waiver request under Exhibit 16.

22 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.
23 Is the Board ready to deliberate? Okay. I can start. Let
24 me just first talk about this waiver request. I think that
25 they've, you know, demonstrated good cause in terms of the

1 waiver request, so I don't really particularly have an issue
2 with that unless anyone else has an issue with that?

3 MEMBER WHITE: No, I don't, Mr. Chair.

4 BZA CHAIR HILL: Okay. Then we will approve the
5 waiver. Outside of that, I was kind of, I guess we still
6 didn't get an ANC report I think, correct? But we did have
7 an email from the ANC which is dated the 11th, which seemed
8 to be indicative that they've at least been notified and that
9 they didn't seem to have any issues with it.

10 In terms of the actual modification and
11 consequence, I thought that it was relatively
12 straightforward. I thought that the analysis that was
13 provided by the Office of Planning was pretty clear and also,
14 then, DDOT didn't have any objection so, I don't have issue
15 with it and then also the applicant's already contacted the
16 HPRB regarding the modification.

17 So, I would be in favor of the modification. Does
18 anyone else have anything they'd like to add? Okay. I'm
19 going to make a motion to approve Application Number 19406A
20 as captioned and read by the Secretary and ask for a second?

21 VICE CHAIRPERSON HART: Second.

22 BZA CHAIR HILL: Motion made and seconded. All
23 those in favor say aye.

24 (Chorus of aye.)

25 BZA CHAIR HILL: All those opposed. Motion

1 passes, Mr. Moy?

2 MR. MOY: Staff would record the vote as 5-0-0.
3 This on the motion of Chairman Hill to approve the request
4 for a modification of consequence, seconding the motion, Vice
5 Chair Hart. Also in support Ms. John, Ms. White, and Zoning
6 Commissioner Anthony Hood.

7 VICE CHAIRPERSON HART: I think, Mr. Moy, that the
8 next case I, I was overseeing a case 20006 of T-Mobile.

9 MR. MOY: Yes, thank you. Again, to read into the
10 transcript, this is Case Application Number 20006 of T-Mobile
11 Northwest LLC. This is an application for a special
12 exception under the use provision, it's a subtitle C, Section
13 1313.2 to erect a monopole and RA1 zone. This is at 3675 Ely
14 Place. That's E-L-Y Place S.E., Square 5438 lot 801.

15 And as the Board is aware, this was last heard on
16 July 31st and rescheduled its decision to today, July 17th.
17 And participating on the vote is the Vice Chair Hart, Ms.
18 White and Ms. John and Zoning Commissioner Robert Miller.

19 VICE CHAIRPERSON HART: Okay. Thank you, Mr. Moy.
20 Is the Board ready to deliberate on this? Okay. So, I can
21 start. So, while the applicant focused on Subtitle C
22 1313.11, I actually think that the Subtitle C 1313.2 and C
23 1313.6 are more appropriate, and I would be supportive of
24 approving this case under those, under that, under those
25 regs.

1 In particular, the applicant is looking -- there
2 are several criteria that the applicant has to adhere to, the
3 first is whether or not there's a significant gap in the
4 wireless service. The applicant has provided information
5 during the public hearing and in the record that this is a
6 significant gap in coverage. B of the criteria is that the
7 proposed antennae tower or monopole would fill the gap.

8 And it's clear that this, the applicant has
9 provided that information as well. No other mounting options
10 are available is C. They are mounting the lighting to a new
11 monopole that would allow the antennae to be disguised as one
12 of the lights. This is again, a project that is a antennae
13 on a monopole near the Fort DuPont ballfields and so, this
14 would be a, would literally replace one of the lighting
15 stanchions and the light would be attached to that pole so
16 that it would almost be kind of disguised.

17 And it really wouldn't be that visible because
18 there are already all, there are already tall light
19 stanchions in that area as well. So, this light is the only,
20 this site is the only location for the gap, for it to be
21 filled or if other sites are available the antenna or tower
22 at the proposed location will generate the least adverse
23 impacts.

24 Again, this is disguised to be really a light pole
25 and I thought that it met that criteria as well. That the

1 height and other physical designs characteristics of the
2 proposed antenna, tower or monopole do not exceed those which
3 are minimally necessary to fill the gap in wireless service.
4

5 Again, this antenna, while it is tall, I think 82
6 feet, it is not much taller than the other light poles that
7 are in the area for the baseball field and the applicant
8 stated that the minimal size is to provide the coverage but
9 also provide the light for the adjacent field. That it's the
10 least intrusive means to provide wireless service necessary
11 to fill the gap in service.

12 Again, this is blending into the area as it is
13 disguised as a light pole. And finding that the proposed
14 antennae tower and monopole even when supporting all the
15 possible co-locators will be in full compliance with federal,
16 the FCC, cumulative and individual RF emissions levels.

17 The applicant has noted that it will be in
18 compliance with all the FCC regulations and since those are
19 the criteria that we would have to use, under 1313.6, I would
20 be in support of this, of approving this case. And I just
21 felt that they met all of that, all of those criteria.

22 I think, as we realize, under 1313.11 the issue
23 was whether or not -- that they needed to provide more
24 service for other service providers or a space for other
25 service providers on that same pole. Since they weren't able

1 to do that, I think that 1313.6 is the more appropriate
2 regulation that they should be going under.

3 So those are my thoughts and I'd like to hear from
4 my other Board members.

5 MEMBER WHITE: Yes, I agree with you Mr. Vice
6 Chair. You know, as you know we postponed the decision on
7 July 17th to allow the applicant time to submit additional
8 information that we requested. They submitted a partial
9 response to our request. And OP submitted a supplemental
10 response which is in Exhibit 46, which I also reviewed.

11 The applicant doesn't respond whether or not
12 whether they'll be in compliance with the Federal
13 Telecommunications Laws but does address special exception
14 criteria of Subtitle C 1313.6 and requests waivers from
15 provisions of C 1313.11 F through G which deals with co-
16 location, as you stated. But after discussing the case
17 internally and just kind of reviewing it with OAG, there is
18 a legal mechanism for granting the waiver, as you stated,
19 under 1313.11.

20 We can grant this special exception subject to
21 1313.2 and 1313.6, and not 1313.11, as a way to grant a
22 special exception if they meet the criteria. Just to add,
23 OP solution was to approve the application with conditions,
24 but I think that this is really a cleaner way to approve the
25 relief under 1313.6 and they're not willing to, you know, co-

1 locate under 1313.11.

2 So, I would grant the relief for special
3 exception. As you stated, they met the criteria there.
4 There is support and approval from the ANC, I believe and
5 DDOT is also submitted information in the record stating no
6 objection and also I think it's also important to note that
7 there was no community opposition that I could identify in
8 the record. So, I would be in support of the application,
9 Mr. Vice Chair.

10 VICE CHAIRPERSON HART: Thank you.

11 MEMBER JOHN: Mr. Vice Chair, I don't have a lot
12 to add. I agree that the applicant meets the criteria for
13 special exception, under 1313.2, as OP stated in the
14 supplemental report dated July 1st. And I will give great
15 weight to OP's recommendation. However, I believe OP also
16 recommended a condition and I don't know if we want to
17 discuss that separately or you want to address it now?

18 VICE CHAIRPERSON HART: You can address it right
19 now.

20 MEMBER JOHN: So, the condition is that only one
21 wireless carrier be located on the pole, and I don't believe
22 that that's indicated in the regulation.

23 VICE CHAIRPERSON HART: Yes, I don't think I'd be
24 in support of it. I just think that right now we have what
25 we have. And I think that subtitle C 1313.2 and 1313.6,

1 which provide those criteria, are sufficient for us to be
2 able to approve it without any of the conditions so, that's
3 my, my viewpoint.

4 MEMBER WHITE: I agree.

5 VICE CHAIRPERSON HART: Okay. So, I will make a
6 motion to approve Application Number 20006 of T-Mobile
7 Northeast as read and captioned by the --

8 MR. MOY: Do you want to amend that to include
9 this?

10 VICE CHAIRPERSON HART: Yes, I was going to say
11 to, as read and captioned by the Secretary, but to include
12 C, Subtitle C 1313.6, because .2 is already there. And do
13 I have a second?

14 MEMBER JOHN: Second.

15 VICE CHAIRPERSON HART: Hearing a second. All
16 those in favor say aye.

17 (Chorus of aye.)

18 VICE CHAIRPERSON HART: Any opposed? Motion
19 carries, Mr. Moy?

20 MR. MOY: Yes, Mr. Vice Chair, before I give a
21 vote count we do have an absentee ballot from Commissioner
22 Robert Miller and his vote is to approve. With any such
23 condition as the Board may impose. So that would give a
24 final vote of 4-0-1. This is on your motion, Vice Chair
25 Hart, to approve the application as amended. Seconding the

1 motion Ms. John. Also in support Ms. White and of course
2 Zoning Commissioner Robert Miller and we do have one member
3 not participating but the motion carries.

4 VICE CHAIRPERSON HART: Thank you.

5 (Whereupon, the above-entitled matter went off the
6 record at 10:05 a.m.)

7

8

9

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: 07-17-19

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