

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 31, 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:

- PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on July 31, 2019.

## C-O-N-T-E-N-T-S

Call to order . . . . .	3
Consent Calendar - Expedited Review Cases	
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P-R-O-C-E-E-D-I-N-G-S

9:46 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, Northwest. This is July 31st, 2019 public hearing of the Board of Zoning Adjustment for 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 May. Copies of today's hearing agenda are available to you, and are located on the wall 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 noise 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 in by the Secretary. Also, each witness must fill out two

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1 witness cards. These cards are located on the table near the  
2 door, and on the witness table.

3           Upon coming forward to speak to the Board please  
4 give both cards to the reporter sitting at the table to my  
5 right. If you wish to file written testimony or additional  
6 supporting documents today, please submit one original and  
7 12 copies to the Secretary for distribution.

8           If you do not have the requisite number of copies  
9 you can reproduce copies on an office printer in the Office  
10 of Zoning, located across the hall. Please remember to  
11 collate your set of copies. The order of procedure for  
12 special exceptions, variances, and appeals are also on the  
13 table as you come walking in.

14           The record shall be closed at the conclusion of  
15 each case, except for any material specifically requested by  
16 the Board. The Board and the staff will specify at the end  
17 of the hearing exactly what is expected, and the date when  
18 the persons must submit the evidence to the Office of Zoning.  
19 After the record is closed no other information shall be  
20 accepted by the Board.

21           The Board's agenda includes cases sent for  
22 decision. After the Board adjourns the Office of Zoning, in  
23 consultation with myself, with determine whether a full or  
24 summary order may be issued.

25           A full order is required when the decision it

1 contains is adverse to a party, included 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  
5 orders whenever possible, an applicant may not request the  
6 Board to issue such an order.

7           The District of Columbia Administrative Procedures  
8 Act requires that the public hearing on each case be held and  
9 open for the public, pursuant to Section 405(b) and 406 of  
10 that Act.

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

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

25           Preliminary matters are those which relate to

1 whether a case will or should be heard today, such as  
2 requests for a postponement, continuance, or withdrawal. Or  
3 whether proper and adequate notice of the hearing has been  
4 given.

5           If you're not prepared to go forward with the case  
6 today, or if you believe that the Board should not proceed,  
7 now is the time to raise such a matter. Mr. Secretary, do  
8 we have any preliminary matters?

9           MR. MOY: Good morning, Mr. Chairman and Members  
10 of the Board. I do have a brief announcement related to case  
11 applications on today's docket, or in this case not. First,  
12 Application number 20019 of Christina Fisher has been  
13 withdrawn by the applicant.

14           Case Application number 20044 of Madison Heights,  
15 LLC has been postponed, rescheduled to September 25th, 2019.  
16 And Case Application number 20077 of Richard Hamilton,  
17 postponed. Rescheduled to September 11th, 2019.

18           There are preliminary matters on other cases. But  
19 staff would suggest the Board address those when I call the  
20 case.

21           CHAIRPERSON HILL: All right, great. Thank you,  
22 Mr. Moy. If anyone is here wishing to testify, if you  
23 wouldn't mind standing, and take the oath administered by the  
24 Secretary, to my left.

25           (Witnesses sworn.)

1 CHAIRPERSON HILL: Okay, great. All right.  
2 Welcome, everybody. It's a full house today. I guess you  
3 know that this is our last day before summer recess. So,  
4 we're getting all the cases today. And then we're going to  
5 go away for an entire month. And we're looking forward to  
6 it.

7 So, in terms of the order, we're going to give the  
8 order the way they are, I'm sorry, the way it's presented in  
9 the agenda, except for one application we're going to move.  
10 We're going to move Application number 20081 to second to  
11 last. So, that is the only change. And with that, Mr. Moy,  
12 you can call our first decision case, or meeting case.

13 MR. MOY: All right. Thank you, Mr. Chairman.  
14 All right. There were three case applications that are on  
15 the expedited review calendar. This is the first of the  
16 three. Case Application number 20049 of Clementine Thomas  
17 and, well, I can't spell this, I can't pronounce. I'm going  
18 to spell it. S-A-S-A-U-N, last name is V-A-S-F-I.

19 Caption, advertised for special exceptions under  
20 Subtitle D, Section 5201, 5202, and 5205, from the rear yard  
21 setback requirements of Title D, Section 1306.1. This would  
22 construct a rear addition to an existing detached principle  
23 dwelling unit. R-21 zone. This is at 5011 Garfield Street,  
24 Northwest, Square 1426, Lot 864.

25 CHAIRPERSON HILL: Okay, great. Thank you, Mr.

1 Moy. And just so everybody knows again. So, for meeting  
2 cases, or decision cases we don't take any testimony, or  
3 anything. And this is just an expedited review.

4 So, is the Board ready to deliberate? Okay. I  
5 can start. The first thing was, there was a waiver I guess  
6 for the posting requirement, or a request for the waiver of  
7 the posting requirement.

8 In general I'm not usually in favor of those.  
9 However, I think that in this particular case the ANC did,  
10 they did present before the ANC. And so, I think that the  
11 community at that level should have been aware of and  
12 notified of this project, as well as then the 200 foot  
13 mailing that went out.

14 So, people would have been at least aware in that  
15 situation. And so, in this particular case I don't have an  
16 issue with the waiving of the posting requirements. Does the  
17 Board have any other things that they'd like to add? Okay.  
18 So, on consensus, I'll go ahead and waive the posting  
19 requirements for that.

20 In terms of the case itself, I thought that it was  
21 relatively straightforward for me. And that I would be able  
22 to get behind the expedited review on this particular  
23 application. I thought that the Office of Planning's  
24 analysis was well founded.

25 And then also, the burden of proof from the

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1 applicant, as well as the support from the ANC. There was  
2 also support from the abutting neighbor, as well as a Urban  
3 Forestry Report, was not needed, I guess, was not needed.  
4 And so, I believe they meet the criteria.

5 So, I'll be voting in approval. Is there anything  
6 anyone would like to add? Okay. Go ahead and make a motion  
7 to approve Application number 20049 as captioned and read by  
8 the Secretary, and ask for a second.

9 VICE CHAIR HART: Second.

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

12 (Chorus of aye.)

13 CHAIRPERSON HILL: All those opposed?

14 (No response.)

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

16 MR. MOY: Staff would record the vote as five to  
17 zero, to zero. This on a motion of Chairman Hill to approve  
18 the application for the relief requested. Seconding the  
19 motion Vice Chair Hart. Also in support, Ms. John, Ms.  
20 White, and Zoning Commissioner Peter May.

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

22 MR. MOY: The second case application that's also  
23 on the expedited review calendar is Case number 20076 of  
24 Athos, A-T-H-O-S. And here again, the last name is  
25 pronounced, or rather spelled as P-A-S-H-I-A-R-D-I-S.

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1           Caption, advertised for special exceptions under  
2 Subtitle E, Section 205.5 and 5201, from the rear yard  
3 requirement, Subtitle E, Section 205.4, under Subtitle E,  
4 Section 5201, from the lot occupancy requirement, Subtitle  
5 E, Section 304.1. And from the nonconforming structure  
6 requirements of Subtitle C 202.1. This would construct a two  
7 story rear addition. RF-1 zone. This is at 122 V Street,  
8 Northwest, Square 3116, Lot 30.

9           CHAIRPERSON HILL: Okay. Great. Is the Board  
10 ready to deliberate? Okay. I can start. So again, this is  
11 an expedited review for a special exception. I thought that  
12 the applicant has met their burden of proof, as well as the  
13 analysis that was provided from the Office of Planning, I  
14 could get behind.

15           The ANC has also submitted a report, unanimous  
16 support, nine to zero, to zero. There was a request for a  
17 construction management plan with somebody who was in  
18 opposition. But they have withdrawn that opposition.

19           And in addition to that, we don't usually get into  
20 construction management plans necessarily. That's not  
21 necessarily within our purview.

22           I thought that again they did meet the criteria.  
23 I didn't have any particular issues with this application.  
24 And so, I'm going to be voting in support. Is there anything  
25 anyone else would like to add?

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1 MEMBER WHITE: Yes, Mr. Chair. I would just say  
2 that I did obviously review the record as well. And I'd just  
3 like to note that they did ask for a rear yard relief. And  
4 the relief that they're seeking is simply two feet of relief.

5 And I'm usually really sensitive to those. But  
6 there's a lot of community and ANC support. And it seems to  
7 meet the criteria. Not impact light and air. Or there don't  
8 appear to be any privacy issues. So, I would be in support  
9 of this application.

10 CHAIRPERSON HILL: Okay, great. Thank you. All  
11 right. Then I'm going to go ahead and make a motion to  
12 approve Application number 20076 as captioned and read by the  
13 Secretary, and ask for a second.

14 MEMBER WHITE: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All  
16 those in favor say aye.

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed.

19 (No response.)

20 CHAIRPERSON HILL: Motion passes, Mr. Moy.

21 MR. MOY: Staff would record the vote as five to  
22 zero, to zero. This is on the motion of Chairman Hill to  
23 approve the application for the relief requested. Seconding  
24 the motion, Ms. White. Also in support Ms. John, Vice Chair  
25 Hart, and Zoning Commissioner Peter May.

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1           The third case application that's also a expedited  
2 review calendar item is Number 20084 of Korey, K-O-R-E-Y,  
3 Marable, M-A-R-A-B-L-E, captioned and advertised for a  
4 special exception under Subtitle D, Section 306.4 and 5201,  
5 from the rear addition requirements of Subtitle D, Section  
6 306.3, which would construct a second story addition to an  
7 existing semi detached principle dwelling unit. R-2 zone.  
8 This is at 4672 A Street, Southeast, Square 5349, Lot 30.

9           CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
10 Moy. Is the Board ready to deliberate? Okay. I can start  
11 again. Again, this is another expedited review. This one  
12 I can't, it was a little bit more complicated for me, in that  
13 they're going back 19 feet, in terms of, you know, they're  
14 going back nine feet past the ten feet.

15           However, I did take a look at everything that was  
16 before us. And I guess I would be in agreement with the  
17 analysis that was provided by the Office of Planning. We  
18 didn't get a report from ANC 7-E. However, they sent  
19 something that said that they're not going to take official  
20 action on this.

21           There was a letter from the SMD Commissioner,  
22 which we can't give great weight to. But it did say that he  
23 was in approval, or they were in approval, or he was in  
24 approval of it. And he didn't have an concerns, in terms of  
25 the, how it would affect, how this project would affect the

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1 SMD there.

2 So, I guess, you know, I guess I would agree with  
3 the analysis of the Office of Planning in this case. And  
4 that of the applicant. I just, I guess it's just kind of,  
5 I'm sometimes a little bit hesitant, in terms of the amount  
6 of how far back these things go under an expedited review.

7 But in this particular case I will agree with  
8 them, and be voting in favor. Is there anything anyone would  
9 like to add? Okay. All right. Then I'll go ahead and  
10 approve application, or I'm sorry, I'll make a motion to  
11 approve Application number 20084, as captioned and read by  
12 the Secretary, and ask for a second.

13 VICE CHAIR HART: Second.

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

16 (Chorus of aye.)

17 CHAIRPERSON HILL: All those opposed.

18 (No response.)

19 CHAIRPERSON HILL: Motion passes, Mr. Moy.

20 MR. MOY: Staff would record the vote as five to  
21 zero, to zero. This on the motion of Chairman Hill to  
22 approve the application for the relief requested. Seconding  
23 the motion, Vice Chair Hart. Also in support, Ms. John, Ms.  
24 White, and Zoning Commissioner Peter May.

25 (Pause.)

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1 MR. MOY: All right. Thank you, Mr. Chairman.  
2 So, next on the agenda for decision making is Case  
3 Application number 19988 of Rupsha 2011, LLC., as amended for  
4 area variance from the side yard requirement, Subtitle D,  
5 Section 206.2.

6 This would construct a new detached principle  
7 dwelling unit, R-2 zone. This is at 4417 Foote Street, F-O-  
8 O-T-E, Northeast, Square 5131, Lot 40.

9 CHAIRPERSON HILL: Okay. Is the Board ready to  
10 talk about this? Okay. All right. I'm going to start I  
11 guess. And we had, we heard this case last week, was it last  
12 week? Do you know? We heard this case, I think it was last  
13 week.

14 And we were about to deliberate on it, and then  
15 I had a question about the ANC, as to whether or not they had  
16 been presented to or contacted. And the applicant had  
17 indicated that the ANC had been presented to. But that the  
18 ANC had not taken a vote.

19 And so, I was a little confused as to not having  
20 anything from the ANC. Then we asked the applicant to go  
21 ahead and just, you know, reach out to the ANC. See what,  
22 if anything, they had to offer, so that we would be able to  
23 deliberate on this.

24 I know that, excuse me, they did submit something  
25 that kind of confused me a little bit more, in that the

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1 applicant submitted something that said that they were  
2 submitting something to the ANC, saying that they wanted to  
3 be able to present the cases, in order to answer any  
4 questions, and obtain a letter of support.

5 So, I get a little, again, I guess I got a little  
6 confused. If they've already presented, why are they asking  
7 to again present the cases?

8 Then, in addition to that we got something from  
9 the ANC most recently, that they were talking about how  
10 they're on, you know, break now. And that they're not able  
11 to vote on this until they come back after their break.

12 So, I mean, you know, I could deliberate on this  
13 if you guys think that that is what you would like to do now.  
14 However, I am leaning towards just go ahead and letting the  
15 ANC give us something when they get back. And then we'll go  
16 ahead and just set this for a decision after we have heard  
17 something from the ANC.

18 MEMBER WHITE: Mr. Chair, I agree with that. I  
19 mean, this is a variance request. And I would like to get  
20 some feedback from the ANC regarding this. Because I don't  
21 think we have any community feedback in the record at all,  
22 unless I've missed something. So, I would concur that we  
23 wait to get something from the ANC. And then make a  
24 decision.

25 CHAIRPERSON HILL: Okay. You guys have anything

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1 else? No? Nodding. Okay. Okay. Then, Mr. Moy, I'm just  
2 trying to think, when do you think, I mean, they're back in  
3 September I guess, the ANC.

4 So then, we could set this maybe first meeting in  
5 October? Or what do you, or I'm just, I just don't know when  
6 we're going to get, I mean, I can't understand from the email  
7 when we'd get something from them, the ANC, that is.

8 MR. MOY: Well, maybe this will help you, Mr.  
9 Chairman. On the ANC website, the 7D website states that the  
10 ANC 7D meets the second Tuesday every month. And so, that  
11 date in September will be September 10th. Our hearing is  
12 September 11th. So, September 10th is not desirable, then  
13 the next ANC regular meeting will be October the 8th.

14 CHAIRPERSON HILL: Right. No. So, you're right.  
15 They have one September 11th. I'm sorry, September 10th.  
16 And then, well, let's, why don't we go ahead and put them  
17 back on for decision on the 18th of September.

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: Okay. And then try to reach  
20 out to the ANC, and see if we can get something from them.  
21 And I guess even the applicant could try to get something  
22 from them.

23 MR. MOY: All right. Thank you, Mr. Chairman.

24 (Pause.)

25 MR. MOY: Sorry, Mr. Chairman. I was waiting for

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1 my cue. Okay. So, the next action for the Board in  
2 decisions is Case Application number 19659 of the Federation  
3 of State Medical Boards. There is a filing of a motion to  
4 waive Subtitle Y, Section 700.2 and 700.4. That was filed  
5 by the parties in opposition.

6 And other than that, I think for the transcript  
7 I'm going to read the caption to this application, which  
8 reads, as amended for special exception from the use  
9 provisions under Subtitle U, Section 203.1(n), to use the  
10 existing residential building as an office for a nonprofit  
11 organization in the R-3 zone. This is at 2118 Leroy Place,  
12 Northwest, Square 2531, Lot 49.

13 CHAIRPERSON HILL: Okay. Is the Board ready to  
14 deliberate? Okay. Let's see. So, the order was issued on  
15 October 13th, 2018. And then in order to file a motion for  
16 reconsideration it's supposed to be within ten days of the  
17 issuance of that date.

18 And the motion was actually filed on June 19th,  
19 2019, which is actually almost eight months past the  
20 deadline. Under Y 101.9 we would have to show good cause,  
21 in terms of why this should be waived. And then that the  
22 waiver will not prejudice the rights of any party.

23 And so, I guess those are the two requirements.  
24 My thought is that, I mean, I understand the good cause that  
25 the, and I mean, I think that the record was pretty full, in

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1 terms of like, you know, the argument as to why they think  
2 the good cause is there and, you know, the square footage.

3           And why that square footage number is the gross  
4 floor area, which I think the applicant demonstrated, or  
5 spoke to, that that is not the same as the area that needs  
6 to be over the 10,000 square feet to be eligible for the  
7 special exception.

8           I mean, this was a very controversial application  
9 that we had. I mean, we had, you know, parties in  
10 opposition. And I understand, you know, why the community,  
11 you know, they're very vocal in terms of why they didn't  
12 think that this had met the special exception criteria.

13           And I guess, in terms of the waiver I just think  
14 that this is too late. I mean, I think that eight months is  
15 a long time past. And I didn't think that they made the  
16 case, in terms of why we should waive that time limit.

17           I also thought that in terms of, I know that this  
18 case is before the Court of Appeals now, in terms of, there  
19 is an appeal already going out.

20           And then, in addition to that, if the Zoning  
21 Administrator does actually issue a permit for this, then  
22 there would be an opportunity to appeal that decision, if the  
23 Zoning Administrator did determine that they're meeting the  
24 criteria for, you know, over the 10,000 square feet.

25           So, I think that this would also just kind of

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1 muddy it up to a certain extent. So, I wouldn't be in favor  
2 of granting this motion to waive. Does anyone have anything  
3 they would add?

4 VICE CHAIR HART: Only to echo your statement, in  
5 terms of I also believe that this is actually, is not timely.  
6 There is a time period and a procedure that you laid out, if  
7 they want, if the opposition parties want to appeal the DCRA  
8 decision, permit, anything that the DCRA brings forward. And  
9 they are, you know, able to do that.

10 I just didn't think that this was the, in terms  
11 of the timeliness issue, I just didn't think that this was  
12 met, that portion of it. It's just too, way too late for us  
13 to be able to kind of waive that. But, you know, that's,  
14 those are my thoughts on it.

15 MEMBER JOHN: Mr. Chairman, I would deny the  
16 motion, because the application does not establish that there  
17 was good cause. Because it, the reasoning appears to be that  
18 by just learning about this demolition permit, with this  
19 square footage that needs to be demolished. And that is the  
20 basis for saying they don't meet the GFA requirement.

21 And I don't think that that's a reasonable  
22 argument to make. I agree with you that there is an  
23 opportunity to challenge the permit once it's issued. And  
24 so, we're not denying the applicant the right to challenge  
25 the final, or decision by the Zoning Administrator. So, I

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1 would support denying the motion.

2 MEMBER WHITE: I would concur with the comments  
3 that were made. But I would also add that another part of  
4 that rule is that you have to show that it wouldn't prejudice  
5 the parties.

6 And I think, just based on the facts, and the  
7 eight month delay, that there could be an argument made that  
8 it could potentially prejudice the parties with the  
9 applicant, in terms of being able to complete the project.

10 But again, they have the opportunity to argue  
11 these issues on appeal, if that's the route that they want  
12 to take going forward. And I think that's kind of the  
13 direction that they're, they seem to be going.

14 COMMISSIONER MAY: So, I would find the whole  
15 thing a little bit puzzling, frankly. Because the issue that  
16 they're raising doesn't have anything to do with relief that  
17 was granted by the Board of Zoning Adjustment.

18 I mean, they're focused on the 10,000 square foot  
19 minimum. And they're saying it's less than 10,000 square  
20 foot. Well, the applicant dropped the request for that  
21 relief. So, I don't understand how it's even relevant.

22 So, now maybe I missed something. But I agree  
23 with everything that has been said so far by the Board. So,  
24 I don't see any reason to grant the waiver.

25 CHAIRPERSON HILL: Okay. So, I'll make a motion

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1 to deny Application number 19659, as captioned and read by  
2 the Secretary, and ask for a second.

3 VICE CHAIR HART: Second.

4 CHAIRPERSON HILL: Motion made and seconded. All  
5 those in favor say aye.

6 (Chorus of aye.)

7 CHAIRPERSON HILL: All those opposed.

8 (No response.)

9 CHAIRPERSON HILL: Motion passes, Mr. Moy.

10 MR. MOY: Staff would record the vote as five to  
11 zero, to zero. This is on a motion of Chairman Hill to deny  
12 the motion to waive the requirement of Subtitle Y, Section  
13 200.2 and 200.4. Second the motion Vice Chair Hart. Also  
14 in support, Ms. John, Ms. White, and Zoning Commissioner  
15 Peter May.

16 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

17 MR. MOY: The next and last item before the Board  
18 for decision making is Appeal number 19961 of ANC 1C. This  
19 appeal is captioned and advertised as an appeal from the  
20 decision made on November 2nd, 2018 by the Zoning  
21 Administrator, Department of Consumer and Regulatory Affairs  
22 to issue Building Permit number B1806082, to construct a new  
23 three story building, RF-1 Zone. This is at premises 2910  
24 18th Street, Northwest, Square 2587, Lot 495.

25 CHAIRPERSON HILL: Okay, great. Thank you, Mr.

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1 Moy. Is the Board ready to deliberate?

2 VICE CHAIR HART: Sure.

3 MEMBER WHITE: Yes.

4 CHAIRPERSON HILL: Would someone else like to  
5 start?

6 VICE CHAIR HART: Sure. So, first I guess I would  
7 just acknowledge that there was a lot of work done and  
8 presented by all of the parties involved here. And speaking  
9 for myself I do really appreciate all of the amount of effort  
10 that was put into the case. They've been very helpful.

11 There were a number of issues to tease out for the  
12 case. And the, those issues were really around the addition.  
13 It was an addition, versus new construction. Determining the  
14 building height measuring location. That was tied to the  
15 pre, whether or not the case was pre Zoning Commission Case  
16 1718, or post that case.

17 And then also, protections of the existing solar  
18 energy systems, as well as a few other protections, the  
19 chimneys under, I think that's E 206.1. So, I think the  
20 first decision that we needed to make was really around the  
21 determination of the ZA, regarding the new construction,  
22 versus the addition.

23 So, I thought that the ZA provided us with, I  
24 understood the progression that they went through. And the  
25 one part that I would differ though was really in the

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1 determination of if this addition were a new building and,  
2 or if it was an, sorry, if the addition was, if it was new  
3 construction or an addition.

4           The ZA noted that they thought that it was not an  
5 existing building, because that building collapsed several  
6 years ago. And the interior of that building was demolished.  
7 They did provide us some images showing the bracing, and  
8 everything. That was in Exhibit 73A.

9           And the thing that struck me though that was, that  
10 there was a structure that was remaining. And that while  
11 there wasn't a roof, and the rear wall was there, there was  
12 structure that was remaining.

13           And the Zoning, the regulations under Subtitle E  
14 206.1, that really talks about whether or not you're adding  
15 to -- Well, it doesn't say really what you're adding to. And  
16 there was a lot of discussion about whether or not that was,  
17 if it was a building that you're adding to, or a structure  
18 that you're adding to.

19           I think you can come down either way on this. I  
20 actually came down thinking that it was a structure. And  
21 that this, that the project that was being, moving forward  
22 with was a structure. And that this was, this project was  
23 being added to that.

24           And because of that I thought that, I did not  
25 think that it was new construction. And because of that I

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1 thought that Subtitle E 206 is applicable to this project.  
2 Because it is an addition. And I thought that the appeal  
3 regarding E 206.1 was valid. And that should be upheld. Or  
4 at least it should be, I was in support of that.

5 I think that the applicant, the appellant made a  
6 case that they're solar system on top of their house was  
7 being affected by that, by the new building. And that if  
8 the, and that the owner of this, the project, they'd have to  
9 I guess seek relief under Subtitle E 206.1 if they want to  
10 move, I guess move forward with their project.

11 The only part of that, the only aspect of the  
12 appeal that I was not supportive of -- But it wasn't really  
13 supportive of. I think that it's, actually the issue is  
14 moot, was around the building height measuring point.

15 And this is really because early on the Board  
16 decided that we would be using pre, we call it 1718, but pre  
17 Zoning Commission Case 1718 zoning regulations, which would  
18 have allowed greater flexibility regarding the measuring  
19 point for building heights.

20 And so, that part of the appeal I was, I guess I  
21 would be denying that. Because I just think that it's moot.  
22 So, I would be supportive of the rest of the appeal, except  
23 for that building height measuring point issue.

24 MEMBER JOHN: So, oh, go ahead. Go ahead. So,  
25 Mr. Chairman, I take a different view. And I agree that with

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1 respect to the building height measuring point that the DCRA,  
2 that the Zoning Administrator correctly determined where the  
3 BHMP was. So, I would agree with that part of the  
4 application.

5 But I struggled greatly about whether or not this  
6 was new construction or an addition. And I think if we say  
7 this is an addition, when there is so little of the building  
8 remaining, then I don't know where that ends, you know.

9 If you just have front steps, is that an addition?  
10 If you have, you know, one half of a wall left, is that an  
11 addition? There is something remaining. So, there is so  
12 much of the building that was demolished, not demolished,  
13 that was destroyed because of the storm, which caused the  
14 roof to collapse.

15 And the only reason that there's anything standing  
16 is because DCRA stepped in to brace the structure. So,  
17 what's remaining are the two party walls. There's no roof,  
18 no floor. And just a, the lower portion of the building,  
19 maybe about four feet up or less, I don't quite remember, in  
20 the front of the building.

21 But nevertheless, to me this looks like new  
22 construction. And primarily because there is so little of  
23 the original building. And I have to believe that the  
24 regulations contemplated that there would be more of a  
25 building in place in order to have an addition. So, I would

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1 look at this a little differently.

2 MEMBER WHITE: Thank you, Mr. Chair. This was a  
3 difficult case. And again, this was an appeal of the Zoning  
4 Administrator's decision made on November 2nd, 2018, to issue  
5 Building Permit B1806082, to construct a new three story  
6 building in the RF-1 zone at 2910 18th Street, Northwest.

7 The property at issue here is a mid-block row  
8 house. It collapsed in January 2016, requiring DCRA's  
9 construction of a temporary brace frame to stabilize the  
10 structure.

11 So, there was a lot of information in the record.  
12 But I just tried to go through and pull out issues that deal  
13 with the primary, the matter that we have to decide today.  
14 So, the facts of the case in the record provide that the  
15 structure was left with a roofless front porch, a damaged  
16 masonry facade, and a portion of the original first floor.

17 The ZA determined that the project proposes new  
18 construction, and not an addition on what was left of the  
19 structure. The appellant and the intervener are arguing that  
20 the ZA erred in not treating the property as an addition,  
21 resulting in an incorrect building height measuring point,  
22 and construction that would circumvent the rooftop  
23 architectural element and solar panel interference  
24 requirements.

25 The project structure is next door to a gentleman

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1 that testified, Mr. Rueda. So, but these requirements only  
2 apply to additions, and not to new construction. So, as you  
3 know, this is a very unique case, and it's landed in our lap.

4 On June 19th we closed it, after receiving a lot  
5 of information, barring receiving, receiving a lot of  
6 testimony. We decided to grant DCRA's request to file an  
7 amended response. We also established that as Mr. Vice Chair  
8 mentioned, we would apply pre 1718 zoning regulations to the  
9 analysis.

10 So, the main issue here is whether or not this is  
11 an addition or new construction. So, this is really the  
12 central issue of the case. And in determining this I looked  
13 at what happened to the property to leave it in its current  
14 condition. And what currently remains of the property to be  
15 added to, as defined by Webster's dictionary.

16 In this case small portions of the original  
17 building, in addition to the two shared side party walls  
18 remain, despite the collapse. It wasn't a demolition. They  
19 did not demolish the building.

20 With respect to the building height measuring  
21 point, the property owner had more flexibility because of  
22 that, to address the grade, and determine the building  
23 height, since we made a finding that pre 1718 language  
24 controls.

25 So, with respect to the requirements under E 206,

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1 dealing with the rooftop architectural and solar panels, my  
2 analysis supports that this is an addition, and that the ZA  
3 erred in issuing the permit, since the property owner would  
4 be required to obtain a special exception from E 206  
5 requirements before a building permit can be issued.

6 So, I'm not going to consider the merits of the  
7 rooftop architectural elements and solar panels, since in my  
8 view they would need to be addressed during a special  
9 exception hearing.

10 But with respect to the decision about whether or  
11 not this was new construction, versus an addition, I believe  
12 that the facts of this case support that it is an addition.  
13 And I would be voting to, that the, in this particular case,  
14 which was very unusual, that the Zoning Administrator erred  
15 with respect to that issue.

16 COMMISSIONER MAY: Thank you, Mr. Chairman. So,  
17 I have a few comments. Now I have to find them. Okay. So,  
18 I agree with Commissioner White and Vice Chair Hart that this  
19 is not new construction, but an alteration and addition to  
20 an existing building.

21 We had a lot of discussion of different  
22 terminology, zoning terminology, et cetera. I think that,  
23 and I don't know that the case hinges on this, but the  
24 decision on a zoning raise would be unfounded. And DCRA  
25 conceded as much in the discussion, since there is more than

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1 50 percent of the walls remaining, three walls and a  
2 foundation. So, there it a building there. It may not be  
3 a functional building, but there is a building.

4 I do not accept the notion that it was demolished  
5 as a result of an act of God, as DCRA had, or the ZA had  
6 suggested. I think that it was a result of illegal  
7 demolition and neglect. And I don't think that, you know,  
8 if that neglect had not occurred, then the building would  
9 still be standing.

10 The initial permit was for alteration and repair.  
11 And the switch to new construction was incorrect, and should  
12 not have been, the permit shouldn't have been granted.

13 I think that there is, we've seen other cases  
14 where the Zoning Administrator has argued that a certain  
15 percent of building walls, exterior building walls were  
16 sufficient to allow a permit to be considered in alteration,  
17 in addition, rather than new construction, which allowed pre-  
18 existing, but subsequently demolished nonconformities to be  
19 reconstructed in a non conforming fashion. So, I think that  
20 the Zoning Administrator is on both sides of this issue.

21 And in this case is, you know, calling it new  
22 construction because that helps the, well, I don't know why.  
23 But they determined it's new construction. But that's  
24 inconsistent with some of their other treatments, in other  
25 cases where they've granted permits when the building is

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1 almost completely demolished. And yet, they're calling it  
2 an addition there, and allowing, as I said, reconstruction  
3 of pre-existing nonconformities.

4 I think that furthermore, to consider this new  
5 construction would be inconsistent with the intention of the  
6 Zoning Commission when it approved Zoning Commission Case  
7 1411. I understand that the Zoning Administrator cannot act  
8 on intention, but must follow the words of the regulations.

9 But in this case not all the words were there.  
10 Or in, as usually happens, not all the words are there. It's  
11 not always completely clear. But I think it's important to  
12 understand why the Zoning Commission passed these regulations  
13 in the first place, which is to retain the character and  
14 quality of existing RF-1 neighborhoods.

15 And to allow this case to proceed as new  
16 construction I think flies in the face of that intention.  
17 I think considering it new construction would also, in effect  
18 incentivize similar actions to avoid compliance with the new  
19 regulations intended to protect the character of RF-1. So,  
20 I think this would be a troublesome precedent.

21 I also think that it's an area where the Zoning  
22 Commission probably needs to clarify the intent, and to  
23 remove any potential incentives to do further demolition, and  
24 therefore avoid the requirements under 1411.

25 So, I would also note in the end that because we

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1 had made the determination that Zoning Commission Case 1718  
2 did not apply in this circumstance, it means that the  
3 property owner can manipulate the adjacent finish grade, and  
4 can still have a cellar, which means that they could do a  
5 third floor addition.

6 But they would need to comply with E 206.1, in  
7 order to achieve that. And of course they would need relief  
8 in order to accomplish what they, that third floor addition.  
9 So, long winded way of saying I would vote to grant the  
10 appeal.

11 CHAIRPERSON HILL: Okay. Well, I guess this is  
12 a majority anyway. So, I think that, yes, I don't know. I  
13 was stuck with the new construction versus the addition. And  
14 I think that, you know, based upon now I guess this  
15 deliberation.

16 And in particular I suppose some of the things  
17 that Commissioner May just mentioned, in terms of what, that  
18 there were things before that the Zoning Administrator had  
19 actually, you know --

20 I can remember some cases where, you know, they,  
21 the building was actually there. And so, therefore, the  
22 nonconforming. There was expansion on nonconforming. And  
23 there was different things that you were able to do.

24 I would be in agreement, I suppose, with the  
25 analysis that three of the Board Members here kind of

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1 participated with, in terms of, I would also agree that this  
2 is an addition, and not new construction.

3           However, I can completely see why it could also  
4 be considered new construction. I mean, where we get to  
5 this, and whether we'll see more stuff together, as we see  
6 more and more cases together, as to whether or not we  
7 determine, you know, what is or isn't new construction.

8           But in this case I guess I will agree with some  
9 of my Board Members, and agree that this was an addition.  
10 I also agree that I think, you know, we did determine that  
11 this was pre 1718.

12           And so therefore, there is the ability to lower  
13 the grade by, I think it was like six inches or something,  
14 so that there could be a cellar, rather than a basement. And  
15 so then, they could get again the three storys.

16           So, what I'm a little confused by, I guess, is  
17 what, and I might turn to OAG, I don't know, in terms of like  
18 if we were to approve this appeal, you know, I would be, and  
19 I don't know whether there's anything necessarily in even the  
20 caption that regards, that speaks to the building height  
21 measuring point.

22           And, you know, if it is actually a moot issue to,  
23 you know, is it just that, you know, you approve the appeal,  
24 and that the building height measuring point issue is moot?  
25 Or do you deny the building height measuring point part of

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1 the appeal, and then approve the remainder of the appeal?  
2 And I'll ask OAG.

3 MR. RITTING: I would suggest that you grant in  
4 part and deny in part. Because I don't believe that it is  
5 technically moot. I believe that the decision to apply the  
6 pre 1718 rules largely determines the outcome. Because it  
7 changes the rules so that you're measuring from the finished  
8 grade, which does allow the manipulation.

9 However, to call it moot would mean that it's no  
10 longer an issue at all, which I don't think is the case here.  
11 So, I would recommend that you make a motion to grant the  
12 appeal with respect to the alleged errors of E 206.1, and to  
13 deny the appeal with respect to the alleged errors regarding  
14 the building height measuring point.

15 CHAIRPERSON HILL: Okay. All right. So, that's  
16 what we're going to try and do. I'm going to go ahead and  
17 make a motion to approve in part with regard to the appeal  
18 and an error by the Zoning Administrator under E 206.1. And  
19 deny in part of the appeal 19961, with regard to the building  
20 height measuring point, because it was pre 1718. And so,  
21 yes. So, that's my motion under Appeal 19961. And I think  
22 that's pretty clear. So, I'll ask for a second.

23 COMMISSIONER MAY: Second.

24 CHAIRPERSON HILL: Motion made and seconded. All  
25 those in favor say aye.

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1 (Chorus of aye.)

2 CHAIRPERSON HILL: All those opposed?

3 MEMBER JOHN: Nay.

4 CHAIRPERSON HILL: Mr. Moy, the motion passes the  
5 way it was read.

6 MR. MOY: Staff would record the vote as four to  
7 one, to zero. This on the motion of Chairman Hill to approve  
8 in part and deny in part, as the motion as you have stated,  
9 which I'm not going to repeat, because I may screw it up.

10 Second the motion is Zoning Commissioner Peter  
11 May. Also in support of the motion Ms. White, Vice Chair  
12 Hart. In opposition is Ms. John.

13 CHAIRPERSON HILL: Okay, great. So, we've  
14 finished all of our meeting cases, everybody. We're actually  
15 going to take a break before we go into our hearing cases.  
16 We're probably going to take lunch at some point, and  
17 hopefully not have to take dinner. Thank you.

18 (Whereupon, the above-entitled matter went off the  
19 record at 10:36 a.m.)

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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: 07-31-19

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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