

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 25, 2019

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on September 25, 2019.

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

9:46 a.m.

VICE CHAIRPERSON HART: Okay, the hearing will please come to order. Good morning, ladies and gentlemen.

We are located in Jerrily R. Kress Memorial Hearing Room at 441 4th Street N.W. This is the September 25, 2019 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Carlton Hart, Vice Chairperson. Joining me today is Lesyllee White and Lorna John, who are both Board members. Chairman Fred Hill will join us later. And representing the Zoning Commission is Anthony Hood.

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

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you are 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

1 or in opposition must have raised your hand and been sworn
2 in by the Secretary. Also, each witness must fill out two
3 witness cards. These cards are located in the table near the
4 door, and on the witness tables. Upon coming forward to
5 speak to the Board, please give both cards to the reporter
6 sitting at the table to my right.

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

14 The order of procedure for special exceptions and
15 variances pursuant to Subtitle Y 409 are included at the
16 door, excuse me, at the table at the door.

17 The order of procedure for appeals pursuant to
18 Subtitle Y -- give me a sec -- 409 are also included in the
19 -- excuse me, the order of procedure for variance appeals
20 pursuant to Subtitle Y 507 will be -- are also included at
21 the table near the door.

22 The record shall be closed at the conclusion of
23 each case except for any material specifically requested by
24 the Board. The Board and the staff will specify at the end
25 of the hearing exactly what is expected and the date when the

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1 persons must submit the evidence to the Office of Zoning.
2 After the record is closed, no other information shall be
3 accepted by the Board.

4 The Board's agenda includes cases set for
5 decision. After the Board adjourns, the Office of Zoning in
6 consultation with me will determine whether a full or summary
7 order may issue. A full order is required when the decision
8 it contains is adverse to a party, including an affected ANC.

9 A full order may be -- may also be needed if the
10 Board's decision differs from the Office of Planning's
11 recommendation. Although the Board favors the use of summary
12 orders whenever possible, an applicant may not request the
13 Board to issue such an order.

14 The District of Columbia Administrative Procedure
15 Act requires that the public hearing on each case be held in
16 the open before the public. Pursuant to Subtitles 405(b) and
17 406 of that act, the Board may, consistent with its rules and
18 procedure and the act, enter into a closed meeting on a case
19 for purposes of seeking legal counsel on a case, pursuant to
20 D.C. Official Code Subtitle 2-575(b)(4), and or deliberating
21 on a case pursuant to D.C. Official Code Subtitle 2-
22 575(b)(13), but only after providing the necessary public
23 notice and in the case of an emergency closed meeting after
24 taking a roll call vote.

25 The decision of the Board in these contested cases

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1 must be based exclusively on the public record. To avoid any
2 appearance to the contrary, the Board requests that persons
3 present not engage the members of the Board in conversation.

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

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

13 Mr. Secretary, do you have any preliminary
14 matters?

15 SECRETARY MOY: Good morning, Mr. Vice Chair,
16 members of the Board.

17 I do have a brief announcement related to today's
18 docket. We have three case applications that have been
19 withdrawn. Those are Application Nos. 20009 of Amanuel
20 Haileab, case No. 20022 of Preservation DC, LLC, and the
21 third case application that has been withdrawn is No. 19927
22 of Catholic Charities.

23 Additionally, case No. 20078 of Sig, S-I-G, LLC,
24 has been postponed rescheduled to October 23, 2019.
25 Application No. 20065 of Dilan Investments postponed,

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1 rescheduled to November 20, 2019, and finally, case
2 Application No. 20044 of Madison Heights, LLC, postponed and
3 scheduled to October 16, 2019.

4 With that, Mr. Vice Chair, we have some other
5 preliminary matters, but staff would suggest that the Board
6 address those when I call out the case.

7 VICE CHAIRPERSON HART: Thank you, that's fine.

8 So all individuals wishing to testify today,
9 please rise to take the oath and it's going to be
10 administered by the Secretary. And, Mr. Secretary, would you
11 please administer that oath.

12 SECRETARY MOY: Good morning. Do you solemnly
13 swear or affirm -- yes, you can stand, this won't hurt -- do
14 you solemnly swear or affirm that the testimony you are about
15 to present in this proceeding is the truth, the whole truth,
16 and nothing but the truth?

17 (Witnesses sworn.)

18 SECRETARY MOY: Thank you. Ladies and gentlemen,
19 you may consider yourselves under oath.

20 VICE CHAIRPERSON HART: Thank you. So welcome,
21 everyone.

22 So we have a few meeting cases and several hearing
23 cases, or five or six hearing cases. I guess, Mr. Moy, we
24 can start with the hearing cases. And I think 20062 we may
25 decide later in the day. So I think that we'll do the one

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1 application for the meeting 20103 first, and then start the
2 hearing cases, and then come back to the, the 20062.

3 SECRETARY MOY: Okay, very good.

4 So, with that, then that -- this case application
5 20103 is a expedited review case, and this is of David
6 Machledt, M---A-C-H-L-E-D-T and Lauren Carruth, C-A-R-R-U-T-
7 H. Again, this is a request for a special exception under
8 Subtitle D, Section 5201 from the rear yard requirements,
9 Subtitle D, Section 306.2. This would construct a rear
10 addition to an existing semi-detached principal dwelling
11 unit, R-3 zone.

12 This is at premises 1377 Rittenhouse Square --
13 sorry, Rittenhouse Street, I'm thinking different city --
14 Northwest, Square 2789, Lot 29.

15 VICE CHAIRPERSON HART: Thank you. Yes, Rittenhouse
16 Street; we're not in Philly. So is the Board ready to
17 deliberate?

18 Oh, excellent. I can start.

19 So after reviewing the record, including the
20 applicant's burden of proof and the OP report, which
21 recommends approval of this application, I would agree with
22 the OP report and would also recommend, or would be voting
23 to approve. This project is straightforward with really for
24 a replacement rear deck on existing house in an R-3 zone.

25 In this case, the applicant is replacing a four

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1 foot deck with a 12 foot deck, so they're extending it I
2 guess another eight feet.

3 The deck is allowed as a matter of right in the
4 zone, but the applicant needs relief from the rear yard
5 setback. This setback is 20 feet, and this is a somewhat of
6 a shallow lot. The existing house is actually at the 20 foot
7 setback distance, so anything that they added to the back
8 would require some relief.

9 So I also note that the ANC is in support of this
10 application as well. I felt that the applicant met the
11 criteria for the -- for the relief, and I didn't have really
12 much else to say about that.

13 Do my fellow Board members have any other
14 comments?

15 MEMBER WHITE: I would just add that we did also
16 have the affidavits of posting of maintenance filed, so we
17 wanted to make sure there was sufficient community notice
18 about this.

19 The record also has community support, there are
20 four letters of support in exhibit 37, including the adjacent
21 neighbor and nearby neighbors. As you noted, the ANC
22 supported this. There's including the support from the SMD
23 representative that's noted in the record.

24 I think it was full record under 5201.3, as far
25 as the special exception criteria. I believe that they met

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1 that criteria for the rear deck addition.

2 Light and air is not unduly affected. The
3 privacy, the use and enjoyment of the neighboring properties,
4 from my review, it doesn't seem to be unduly compromised.
5 And it doesn't visually intrude upon the character and
6 pattern of the houses along the street frontage.

7 And the deck does use wood materials similar to
8 the nearby rear decks in the neighborhood and doesn't affect
9 the existing height of the house, which is under the
10 permitted use.

11 So, Mr. Vice Chair, I would be in support of this
12 application for those reasons, in addition to the reasons
13 that you stated.

14 VICE CHAIRPERSON HART: Thank you. Any others?

15 ZC CHAIR HOOD: Mr. Chairman, I just would say
16 that while I, the ANC report mentions that it's 7 of 7
17 commissioners, but the vote is recorded 7-0-1. I just want
18 to -- I think it's very minor, but I think we want to make
19 sure we record that on the record. It should be 7-0-0 if
20 there were only 7 commissioners there; it was unanimous.

21 VICE CHAIRPERSON HART: Okay. Thank you very
22 much. The one thing that I wanted to bring up as well is I
23 think the Office of Planning report also noted that they
24 thought that C202 was -- may be required. But I didn't agree
25 with that, so I didn't think that the applicant needed to,

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1 you know, to address that. I just wanted to make sure that
2 was --

3 MEMBER JOHN: I agree as well. I agree as well.
4 It's an existing nonconforming aspect I think.

5 VICE CHAIRPERSON HART: So with that I will make
6 a motion to approve Application No. 20103 as read and
7 captioned by the Secretary.

8 Do I have a second?

9 MEMBER JOHN: Second.

10 VICE CHAIRPERSON HART: Hearing a second, all
11 those in favor say aye.

12 (Chorus of aye.)

13 VICE CHAIRPERSON HART: Any opposed?

14 Motion carries, Mr. Moy.

15 SECRETARY MOY: Staff would record the vote as 4-
16 0-1. This is on the motion of Vice Chair Hart to approve the
17 application for the relief requested. Seconding the motion,
18 Ms. John. Also in support Ms. White and Zoning Commissioner
19 -- Chair Hood, and no other Board members participated or
20 were voting. So the vote count is 4-0-1.

21 VICE CHAIRPERSON HART: Thank you. So I think the
22 next case that we'll hear, we'll go into the hearing case.
23 Maybe we'll come back to the 20062 after our first break.
24 That may be a good time to do that. I think we'll be able
25 to hear it at that point.

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1 (Whereupon, the above-entitled matter went off the
2 record at 9:58 a.m. and resumed at 10:54 a.m.)

3 BZA CHAIR HILL: Also, since I have the mic, I
4 just wanted to share some -- I was going to say bittersweet,
5 it's actually sad news.

6 So Ms. Lesyllee White, who's been a Board member
7 for us now for several years, this is going to be your last
8 not official day perhaps, but your last regular day with us.

9 I guess, you know, there's a possibility you might
10 be called in to pinch hit every now and again since you still
11 might have a little bit of time left on your clock, but I
12 know that your time has expired, and I just wanted to say
13 sincerely it's been an absolute pleasure working with you.

14 You brought a lot of knowledge to the Board. I've
15 really enjoyed and appreciate all of your analysis in terms
16 of the decision making, and I'm sorry to see you go. But I
17 do know that, I know that, you know, the mayor would be,
18 would wish you her best in terms of also your service.

19 And, again, thank you very much for being with us,
20 and I don't know if any of my colleagues have anything else
21 they might like to add.

22 VICE CHAIRPERSON HART: Yes, I just really echo
23 your thoughts, Mr. Chairman. Ms. White has been just the
24 uber professional. So you're very -- it's great to work with
25 you in this setting, and I'm -- I know we will miss having

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1 you up here, and I just, you know, wish you well in the
2 future, and, you know, maybe we'll see each other down the
3 road a bit.

4 MEMBER JOHN: So I'd like to join my colleagues
5 in thanking Ms. White for her service. And, Ms. White, I
6 want you to know I enjoyed working with you very much. I
7 appreciated how you were always thorough and well prepared
8 and very interested in the work of the Board, notwithstanding
9 your amazing other position and how difficult it was to do
10 the two things.

11 And I -- as a -- I want to also say that I'm truly
12 grateful to you for how you welcomed me as a new girl when
13 I joined the Board, and that was really very helpful to me.

14 And I wish you all the best and Godspeed.

15 ZC CHAIR HOOD: So on behalf of the Zoning
16 Commission, Board member White, I wanted to just mention that
17 I guess I misunderstood our conversation that we had when you
18 were leaving. So I didn't know this was -- so I'm actually
19 caught that today is officially your last day you'll be
20 joining -- maybe I misunderstood. It won't be the first time
21 that I misunderstood something, but I really appreciate your
22 attitude and your personality and your smile.

23 Regardless of the issues, regardless on where we
24 fall on the different cases, you've always at least spoke to
25 me. You didn't ask to be moved away from me like Chairman

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1 Hill did. He didn't want to sit by me one time. So I wanted
2 to put that, put that up for full disclosure.

3 But we wanted to, I think on behalf of the City,
4 you've done a great job. Your personality, you've always
5 been even keeled, you've made some great decisions. Your
6 spirit will be missed, but you've made a major impact for the
7 City, and I think you've served the residents of the District
8 of Columbia very well, and may you continue to keep on
9 keeping on in your future endeavors. You will be missed.

10 Thank you though.

11 SECRETARY MOY: Okay, well I'd be remiss if I
12 didn't say anything for the record. On behalf of the Office
13 of Zoning, the director of the zoning office and myself,
14 thank you for your contributions.

15 I found your deliberations spot on, very
16 professional. Apart from that, I thought that you brought
17 a refreshing tone to this Board. And we wish you well.

18 ZC CHAIR HOOD: So with that, Mr. Chairman, I
19 don't want to take over the Board of Zoning Adjustment, but
20 normally what I do is I usually ask everyone to give a round
21 of applause, if that's appropriate.

22 If that's appropriate, Mr. Chairman.

23 (Laughter.)

24 BZA CHAIR HILL: Sure. If anyone would like to
25 clap, please do.

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1 (Laughter.)

2 (Applause.)

3 BZA CHAIR HILL: I'm sure the Office of Planning
4 would, you know, also, you know but, Ms. John -- I mean Ms.
5 White?

6 MEMBER WHITE: Yes. You won't be able to make
7 those mistakes anymore.

8 (Laughter.)

9 No, I just want to say that this is really a
10 remarkable opportunity to serve the District. I love the
11 City, and I've tried to do my best, you know, here to
12 represent the Board, and, you know, you may not be able to
13 tell, but I actually really like these guys.

14 You know, they -- we don't always agree, but I
15 like the intellectual exchanges that we have, and it's an
16 incredible team, this Board. The Office of -- including the
17 Office of Zoning, OAG. But it's also the, you know, ANC and
18 the community, you know.

19 But here, we've really developed some really close
20 relationships, and there's a lot of commitment. And there's
21 actually a lot of work that goes into preparing for these
22 cases.

23 I wish I could stay, but I also have some other
24 professional responsibilities that I have to kind of
25 prioritize, but there are some, you know, things that we do

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1 that will keep me thinking in terms of zoning.

2 But, you know, but behind the scenes there's just
3 a lot of work that goes on in reviewing these applications
4 and prepping everything, and we really couldn't do the work
5 that we do without the entire team kind of rallying around
6 to kind of deal with these zoning issues that -- whether they
7 be rear additions or hotels, I mean we take all of these
8 cases seriously.

9 And, you know, I decided to do this, I think it
10 was probably at the last presidential election, and I, I kind
11 of wanted a distraction, and I decided to try to give back
12 to the City. And so when I was asked, I sort of jumped at
13 the opportunity, and I'll never regret it, and it's been a
14 pleasure to serve on the Board with all of you.

15 So I'd like to thank everybody, you know,
16 including, you know, DCRA and Office of Planning and all the
17 familiar faces that I see weekly.

18 But I will definitely miss you guys, and I will
19 stay in touch.

20 BZA CHAIR HILL: Great. Now back to the sausage
21 making.

22 MEMBER WHITE: Yes.

23 BZA CHAIR HILL: Let's see, Mr. Moy, you want to
24 call our meeting case?

25 SECRETARY MOY: Yes, sir. I'll read this for the

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1 record. I believe this is the second of the decision cases.

2 This is Application No. 20062 of Mid City
3 Builders. This is the filed request for a special exceptions
4 under the penthouse requirements, Subtitle C, Section 1500.4,
5 and under Subtitle C, Section 1504 from the penthouse setback
6 requirements, Subtitle C, section 1502.1(C)(1)(A) to
7 construct a new three-story flat with a cellar level, roof
8 deck and a rooftop access penthouse.

9 RF-1 zone, this is at 802 10th Street N.E., Square
10 933, Lot 47.

11 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.
12 So this is normally when I ask the Board if we are ready to
13 deliberate. However, I don't think -- I'd like to pose a
14 different option at this point.

15 The Zoning Commissioner who was here at the time
16 during the hearing was Peter May, and I know that he had some
17 questions concerning some of the submissions that he was
18 looking for. So I would prefer to deliberate with him
19 present.

20 I don't know, and also we didn't get, I guess,
21 something from the ANC. I know that there was an attempt and
22 there was several emails sent in terms of getting on the
23 ANC's agenda, however, you just can't -- we're here for
24 deliberations so we don't take any testimony during this
25 portion of the hearing or the meeting, I should say.

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1 And so I would like to go ahead and postpone this
2 deliberation until Mr. May is with us again. And then there
3 would be an opportunity for the applicant to -- and actually
4 I'm not really sure actually how this works, Mr. Moy. I mean
5 that would be if we would keep the record open perhaps for
6 the applicant to still submit something from the ANC?

7 Because we -- I -- because we officially close the
8 record after a certain time, correct?

9 SECRETARY MOY: Yes.

10 BZA CHAIR HILL: Okay. So then I'd go ahead and
11 say that we'd keep, you know, the record open for any
12 communication with the ANC, or any further clarification from
13 the applicant in terms of the ANC, and wait for Mr. May in
14 order to deliberate.

15 When is Mr. May back, Mr. Moy?

16 SECRETARY MOY: He's scheduled for participating
17 with the Board on October the 9th.

18 BZA CHAIR HILL: Okay, great. So is that -- what
19 does the Board think of that?

20 Okay, I see as people are nodding their heads
21 that's okay. Then we'll go ahead and postpone the decision
22 to October 9.

23 (Whereupon, the above-entitled matter went off the
24 record at 11:04 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: 09-25-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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