

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 26, 2020

+ + + + +

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
CARLTON HART, Vice-Chair (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
DANIEL BASSETT, ESQ.

The transcript constitutes the minutes from the
Public Meeting held on February 26th, 2020.

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

(9:38 a.m.)

CHAIRPERSON HILL: All right, the meeting 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 the February 26th, 2020 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, and representing the Zoning Commission is Peter Shapiro.

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

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 seated
4 at 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 12 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 Office of Zoning
10 located across the hall. Please remember to collate your
11 copies.

12 The order of procedures for special exceptions,
13 variances and appeals are also listed as you walk in through
14 the room. The record shall be closed at the conclusion of
15 each case except for any materials 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 the
18 person must submit the evidence to the Office of Zoning.

19 After the record is closed, no other information
20 shall be accepted by the Board. The Board's agenda includes
21 cases set for decision after the Board adjourns. The Office
22 of Zoning, in consultation with myself, will determine
23 whether a full or summary order may be issued.

24 A full order is issued when the decision it
25 contains is adverse to a party, including an affected ANC.

1 A full order may also be needed if the Board's decision
2 differs from the Office of Planning's recommendation.
3 Although the Board favors the use of summary orders whenever
4 possible, an applicant may not request the use -- the Board
5 to issue such an order.

6 The District of Columbia Administrative Procedures
7 Act requires that the public hearing on each case be held in
8 the open before the public, pursuant to Section 405(b) and
9 406 of that Act. The Board may, consistent with its rules
10 and procedures and the Act, enter into a closed meeting on
11 a case for purposes of seeking legal counsel on a case,
12 pursuant to D.C. Official Code Section 2-575(b)(4), and/or
13 deliberate in a case pursuant to D.C. Official Code Section
14 2-575(b)(13), but only after providing the necessary public
15 notice, in the case of an emergency closed meeting, after
16 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 to the contrary, the Board requests that persons present not
20 engage the members of the Board in conversation.

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

23 Preliminary matters are those which relate to
24 whether a case will or should be heard today, such as request
25 for 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 a case today or
3 believe the Board should not proceed, now is the time to
4 raise such a matter.

5 Mr. Secretary, do we have any 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 for the record. There are two cases that have been
9 postponed and rescheduled to April 1st, 2020. These two
10 applications are 20184 of Fort Lincoln-Eastern Avenue, LLC,
11 and Murat Kayali, K-A-Y-A-L-I. Both cases rescheduled to
12 April 1st.

13 Appeal Number 20182 of Nancy Stanley has been
14 postponed, rescheduled to April 29th, 2020.

15 And finally, Application Number 20205 of
16 Christopher Cahill, which was scheduled for and placed on the
17 expedited review calendar, has been pulled off and scheduled
18 for a public hearing on April 1st, 2020.

19 Other than that, there's other preliminary
20 matters, Mr. Chairman. Staff would suggest addressing those
21 when I call the cases.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
23 Moy.

24 Well, good morning everybody. If anyone is here
25 planning to testify, if you don't mind standing and taking

1 the oath administered by the Secretary to my left.

2 MR. MOY: Good morning. Do you solemnly swear or
3 affirm that the testimony you're about to present in this
4 proceeding is the truth, whole truth and nothing but the
5 truth?

6 Thank you, ladies and gentlemen. Consider
7 yourselves under oath.

8 CHAIRPERSON HILL: Okay, a couple of things. We
9 are basically going to follow the order of the agenda, in
10 terms of both the meeting and the hearing, with the exception
11 of one item, Mr. Moy. If we could switch the first two cases
12 around, I want to do 20168 first, and then 20208 after that.
13 Other than that, we are going to follow the order.

14 And we have an appeal scheduled for this
15 afternoon, which I believe we've actually set a time at, so
16 probably we're going to get through everything before lunch.

17 Also if Ms. Lorna John, our colleague, is watching
18 or listening, we hope you get better. And if you're watching
19 or listening, why aren't you in bed?

20 Okay. Mr. Moy, whenever you like, you can call
21 our first meeting case.

22 MR. MOY: Thank you, Mr. Chairman. So, this would
23 be -- okay. For decision-making, Application Number 20192
24 of Bernice Mellstrom. Caption, advertised for special
25 exceptions under Subtitle E, Section 5201 from the lot

1 occupancy requirements, Subtitle E, Section 304.1 and
2 Subtitle E, Sections 206.2 and 5203.3, from the rooftop
3 architectural element requirement, Subtitle E, Section
4 206.1(a), and from the nonconforming structure requirement,
5 Subtitle C, Section 202, to construct a new roof deck above
6 the existing front porch of an attached principal dwelling
7 unit, RF-1 zone. This is at 617 Quebec Place Northwest,
8 Square 3034, Lot 155.

9 CHAIRPERSON HILL: All right, thank you, Mr. Moy.
10 Okay. Is the Board ready to deliberate?

11 Oh yes, the -- Commissioner Shapiro is not with
12 us, so you and I, Mr. Hart can speak, and then also there is,
13 I believe, an absentee ballot.

14 So as I recall, again, so there was a lot of
15 discussion about this in terms of the relief requested. In
16 particular what seemed to be a lot of discussion was the
17 architectural elements concerning the roof deck. And so,
18 there was some back-and-forth in terms of discussions with
19 the ANC, as to how they thought that there was some confusion
20 with the standards in which to necessarily evaluate what
21 would be replacing that roof deck.

22 In terms of the standards that we would go through
23 with, in Subtitle E 5201, E 206.2 and E 5203.3 concerning the
24 special exception criteria, I guess what I thought -- and I'm
25 going to just stick with this, the rooftop architectural

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1 element, that there really isn't something that describes
2 what should return there, right, or go back there.

3 And so these are the standards that we have to
4 look at, as whether or not they're meeting the test for us
5 to grant the requested relief.

6 In terms of the relief that was requested, I do
7 believe that the applicant has put forward an argument as to
8 how they're meeting those criteria. In addition to that,
9 there is the report that we received from the Office of
10 Planning that also outlines how they're meeting the standards
11 for the relief to be approved.

12 We did ask the applicant if they would be willing
13 to speak to the ANC and see if there was something that they
14 could work with the ANC about, in terms of the -- what's
15 replacing the rooftop. And it seems as though the railings
16 that the ANC had, the applicant and the ANC had come forward
17 with was, it was going to be like thin metal railings.

18 And I'm going to look for the specific language
19 in here, as I kind of listen to what you have to say, Mr.
20 Hart. But I would be in support of the application. And I
21 would also be in support of what the applicant and the ANC
22 had worked out in terms of the replacement for the rooftop
23 front porch.

24 Do you have any thoughts, Mr. Hart?

25 VICE CHAIRPERSON HART: Yes. After reviewing the

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1 record, I also thought that the applicant is meeting the
2 criteria under the zoning regs.

3 With regard to the -- it's a wrought iron railing
4 that they are looking, that they are proposing, that the
5 applicant is proposing. Those drawings are actually Exhibit
6 36. These are revised drawings after the, our last hearing
7 that we had. And they actually show the wrought iron
8 railing, and a sample, a photo sample of what that would
9 really look like.

10 This seems like it was -- this is the same example
11 that the ANC had actually used as well. And I understand,
12 as you said, that there is some, there was some question on
13 what those -- how to determine if an architectural, rooftop
14 architectural element could change, what that change might
15 be.

16 And I think that this is helpful because it is
17 something that is -- because the wrought iron is a much
18 thinner profile, the elements themselves, than what was
19 previously proposed, which was more of a wooden fence or
20 railing, that was wider and it, you know, actually looked
21 more solid, that this is definitely a better solution for
22 that railing.

23 So I would be in support of it. I think that the
24 drawings are -- help to show this. I know that the ANC had
25 a condition that they have a wrought iron, or an iron railing

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1 in there. And what they're showing now in the drawings is
2 actually showing that.

3 So I don't think that we necessarily have to use
4 the -- because the applicant is actually doing what, showing
5 in the images, or in the drawings what the ANC had, I don't
6 think that we have to then repeat that. But note that these,
7 that this is, you know, the drawings show this wrought iron
8 railing on that roof.

9 But with regard to the criteria itself, I think
10 that they, that they're meeting this. There are other roofs
11 that, porch roofs that have decks on them. I know the ANC
12 brought forward an analysis that looked at kind of the
13 sequencing, or the pattern. It did look like there was a --
14 there were other porches that had these decks on them.

15 And I think that that's helpful along the street,
16 and I thought it was helpful that the ANC brought forward,
17 you know, the information that they did, in looking at all
18 this. So, I'd be in support of it, and that's it.

19 CHAIRPERSON HILL: Okay, great. And perhaps, you
20 know, Commissioner Shapiro, you can take some language back
21 to the Zoning Commission, in terms of if there is something
22 that we -- or some way to look at whatever is going to be
23 replacing something that's removed in this capacity, we might
24 be able to do something from the Zoning Commission, because
25 there's nothing currently in the regulations that we're

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1 necessarily evaluating.

2 All right. So I'm going to go ahead and make a
3 motion to approve Application Number 20192, as caption read
4 by the Secretary and ask for a second.

5 VICE CHAIRPERSON HART: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All
7 those in favor say aye. Aye.

8 VICE CHAIRPERSON HART: Aye.

9 CHAIRPERSON HILL: All those opposed? The motion
10 may pass, Mr. Moy. I don't know what the Commissioner who's
11 sending the absentee ballot has to say.

12 MR. MOY: Okay. I can help you there, Mr.
13 Chairman. So, I'm in receipt of an absentee ballot from
14 Zoning Commissioner Peter May. And his absentee vote is to
15 approve, with such conditions as the Board may impose.

16 If I may, Mr. Chair, I'd like to read Mr. May's
17 comments for the record.

18 Quote, I appreciate the applicant's modification
19 to the proposed design. And I agree with the ANC that the
20 proposal to use a metal rail for the porch roof is
21 appropriate, and with the ANC's concern that the rails be
22 mounted in such a way as to not interfere with the reading
23 of the cornice and frieze of the porch roof.

24 I will also note that while I understand the
25 source of the ANC's frustration with the special exception

1 process for porch modifications, their conclusion that the
2 Board views OP reports as, quote, infallible, end quote, and
3 that the Board seeks to avoid forwarders at all costs is at
4 a minimum, unfounded. End quote.

5 So that's Zoning Commissioner Peter May's vote and
6 comments.

7 So with that, Mr. Chairman, I would record the
8 vote as 3 to 0 to 2. And this is on the motion of Chairman
9 Hill to approve the application for the relief requested.
10 Seconding is Vice Chair Hart. And also in support of the
11 motion, of course, Zoning Commissioner Peter May. And we
12 have two members, one who is participating but not present
13 today and the other member is not here. But the motion
14 carries, sir.

15 CHAIRPERSON HILL: All right, thanks Mr. Moy.

16 MR. MOY: The next and last case for decision-
17 making is Application Number 19695-A of KWHP DC, LLC. This
18 is a request for a one-year time extension of BZA Order
19 Number 19695, to allow the applicant to file the proposed
20 structure plans to the Department of Consumer and Regulatory
21 Affairs for the purpose of securing a building permit in the
22 MU-15 zone at premises 1315 16th Street Northwest, Square
23 195, Lot 846.

24 In addition to the motion for a time extension,
25 Mr. Chairman, there's also a request to waive the filing

1 deadline for time extension, which is 30 days' notice. And
2 I believe they're off by one day.

3 In the record also, as a reminder, Mr. Chairman,
4 there is a letter from ANC 2B under Exhibit Number 9 in
5 support.

6 CHAIRPERSON HILL: All right. Is the Board ready
7 to deliberate?

8 VICE CHAIRPERSON HART: Yes.

9 CHAIRPERSON HILL: Okay. So, after looking
10 through the record, I do not have an issue with the time
11 extension. I believe that the applicant, in their statement
12 in Exhibit 4, meets the criteria for us to grant the
13 extension, the one-year extension.

14 But before actually we go through that, in terms
15 of the waiver, they did present before the ANC, they were
16 late by one day. So instead of 30 days, it was 29 days. So
17 I don't have an issue with the one-day waiver. Does anyone
18 else?

19 VICE CHAIRPERSON HART: No.

20 CHAIRPERSON HILL: All right, so Mr. Moy, we're
21 going to waive that time limit. And so, then in terms of
22 again the time extension, we did get something from the ANC
23 2B, in terms of their support, and also that of the Office
24 of Planning. And as I had mentioned, I thought that the
25 applicant met the criteria, so I don't have any issues with

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1 the time extension.

2 Does anyone else have anything they'd like to add?

3 VICE CHAIRPERSON HART: No, sir.

4 CHAIRPERSON HILL: I'm going to make a motion to
5 approve Application Number 19695(a) as caption read by the
6 Secretary and ask for a second.

7 VICE CHAIRPERSON HART: Second.

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

10 VICE CHAIRPERSON HART: Aye.

11 CHAIRPERSON HILL: All those opposed?

12 Motion passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 3 to 0
14 to 2. And this is on the motion of Chairman Hill to grant
15 the motion for a time extension, one-year time extension.
16 Seconding the motion is Vice Chair Hart. Also in support,
17 Zoning Commissioner Peter Shapiro, and we have two other
18 members not present. Motion carries, sir.

19 CHAIRPERSON HILL: Thank you, Mr. Moy.

20 (Whereupon, the above-entitled matter went off the
21 record at 9:57 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: 02-26-20

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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