

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 16, 2021

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:41 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LORNA JOHN, Vice Chair
- CARL BLAKE, Board Member
- CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

- ANTHONY HOOD, Commissioner
- PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

The transcript constitutes the minutes from the Regular Public Meeting held on June 16, 2021

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

I. DECISION

Case No. 20361 - Application of G3 LLC 5

II. MOTION

Case No. 20191 - Motion to reopen Record of DC for
Reasonable Development 15

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

(9:41 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentleman. The Board of Zoning Adjustment. Today's date is 6/16/2021. The public hearing (sic) will please come to order. My name is Fred Hill, I'm the chairperson of the District of Columbia Board of Adjustments. Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised, this proceeding is being recorded by a court reporter and is webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning website after today's hearing. Everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we don't take any public testimony at our decision meeting session.

If you are experiencing difficulty accessing Webex or with your call in, then please call our OZ hotline number at 202-727-5471 to receive Webex log in or call in instructions.

At the conclusion of the decision meeting session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is required when the decision it contains is adverse to a party, including an affected ANC. A full order may also be needed if the

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

5 In today's hearing session everyone who is listening on
6 Webex or by telephone will be muted during the session. Only
7 persons who have signed up to participate or testify will be
8 unmuted at the appropriate time. Please state your name and home
9 address before providing oral testimony on your presentation.

10 Oral presentations should be limited to summary of your
11 most important points. When you have finished speaking please
12 mute your audio so that your microphone is no longer picking up
13 sound or background noise.

14 Once again, if you're experiencing difficulty accessing
15 Webex or with your telephone call in, or if you forgotten to sign
16 up 24 hours prior to the hearing, then please call our OZ hotline
17 number at 202-727-5471. Once again, 202-727-5471 to sign up to
18 testify and receive Webex log in or call in instructions.

19 All persons planning to testify either in favor or in
20 opposition should have signed up in advance. They'll be called by
21 name to testify. If this is an appeal, only parties are allowed
22 to testify. By signing up to testify all participants will be
23 given the oath or affirmation as required by Subtitle Y 408.7.

1 Requests to enter evidence at the time of an online
2 virtual hearing, such as written testimony or additional
3 supporting documents other than live video, which may not be
4 presented as part of the testimony, may be allowed pursuant to
5 Subtitle Y 103.13, provided that the person making the request to
6 enter an exhibit explain, "A," how the proposed exhibit is
7 relevant, "B," the good cause that justifies allowing the exhibit
8 into the record, including an explanation of why the requester did
9 not file the exhibit prior to the hearing, pursuant to Subtitle Y
10 206, and how the proposed exhibit would not unreasonably prejudice
11 any parties.

12 The order of procedures for special exceptions and
13 variances are pursuant to Y 409. If this is an appeal, the order
14 of procedures for appeal applications are pursuant to Y 507.

15 At the conclusion of each case an individual who is
16 unable to testify because of technical issues may file a request
17 for leave to file a written version of the planned testimony into
18 the record within 24 hours following the conclusion of public
19 testimony and the hearing. If additional written testimony is
20 accepted, then parties will be allowed a reasonable time to
21 respond as determined by the Board. The Board will then make its
22 decision at its next meeting session, but no earlier than 48 hours
23 after the hearing. Moreover, the Board may request additional

1 specific information to complete the record. The Board and the
2 staff will specify at the end of the hearing exactly what is
3 expected and the date when persons must submit the evidence to the
4 Office of Zoning. No other information shall be accepted by the
5 Board.

6 Once again, after the Board adjourns, the Office of
7 Zoning, in consultation with myself, will determine whether a full
8 or summary order may be issued. A full order is required when the
9 decision it contains is adverse to a party, including an affected
10 ANC. A full order may also be needed if the Board's decision
11 differs from the Office of Planning's recommendation. Although
12 the Board favors the use of summary orders whenever possible, an
13 applicant may not request the Board to issue such an order.

14 Finally, the District of Columbia Administrative
15 Procedures Act requires that the public hearing on each case be
16 held in the open, before the public. However, pursuant to Section
17 405(b) and 406 of the Act, the Board may, consistent with its
18 rules and procedures of the Act, then turn to a closed meeting on
19 a case for purposes of seeking legal counsel on a case pursuant to
20 DC official code Section 2-575(b)4, and/or deliberating on a case
21 pursuant to DC official code section 2-575(b)13, but only after
22 providing the necessary public notice in the case of an emergency

1 closed meeting after taking a roll call vote. Mr.
2 Secretary, do we have any preliminary matters today?

3 MR. MOY: Thank you, Mr. Chairman, members of the Board.
4 We do, but as is customary, I will call those preliminary matters
5 to the specific case when it's called. Other than that, Mr.
6 Chairman, I'd like to take a moment to, for the record, announce
7 the cases that are not on today's docket. Number one, we do have
8 a withdrawal, a case that's been withdrawn, put it that way, and
9 that is case number 20409. This is the application of Joseph and
10 Elizabeth Lunsford.

11 Number two, we have three cases that have been
12 administratively rescheduled to July 14, 2021, and those three
13 cases are as follows: 20410, application of Mamma Lucia of Chevy
14 Chase, LLC; 20479, application of 212 56th Place, Northeast, LLC;
15 20480, the application of 214 56th Place, Northeast LLC. Hmm,
16 okay.

17 And finally, rescheduled, two cases rescheduled to July
18 21, 2021. Those two cases are 20478. This is the application of
19 Taliza, T-A-L-I-Z-A, Bins Johnson, and application number 20482,
20 the application of KAJ Ventures. And that's it, Mr. Chairman.

21 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.
22 Could you go ahead and call our first hearing case -- I'm sorry,

1 meeting case, which I believe Mr. Chairman Hood is involved in.
2 Your mic is muted, Mr. Moy.

3 MR. MOY: I'm sorry. Okay. Strike one for me. All
4 right. Case application number 20361 of G3, LLC. This is an
5 application captioned for area variances from the lot subdivision
6 requirements, Subtitle C, Section 302.1, minimum side yard
7 requirements, Subtitle D, Section 206.3; and the minimum lot
8 dimension requirements, Subtitle D, Section 302.1. This would
9 subdivide a vacant lot and construct a two semi-detached principal
10 dwelling unit into the R-2 Zone. The property is located at 5135
11 Lee Street, Northeast, Square 5200, Lot 113. And as the Board
12 will recall, this was last heard on June the 9. And participating
13 is not only zoning classification Chair Anthony Hood, but Chairman
14 Hill, Vice Chair John, and Mr. Smith.

15 CHAIRPERSON HILL: Okay, great. Thank you. Let's see,
16 one moment. Yes, Mr. Blake. Okay. You're going to say goodbye
17 there. Okay. All right. Does somebody else want -- I can start.

18 So even though I like the project, I mean, I think it
19 makes somewhat sense in that, you know, there's an alley on one
20 side and there's a parking lot on the other side. I was having
21 difficulty getting onboard with it because of the explanation that
22 also the Office of Planning provided in that we're basically going
23 from, they had two nonconforming lots, they turned it into one

1 conforming lot, and now they want to go back to two nonconforming
2 lots. And the whole point -- one point of the whole thing of the
3 zoning was like to bring things into conformity. And this would
4 be going the opposite way. So I would be -- even though I like
5 the project and I don't really see a harm in it, I think that it
6 does go against what the standards are that we're supposed to look
7 at to review the project.

8 So unless you all think any differently, I'm going to be
9 voting to deny the application. If I could kind of go around the
10 table. Perhaps I could start with you Chairman Hood.

11 MR. HOOD: Yes, Mr. Chairman. First, let me thank my
12 colleagues for indulging me for the corporation counsel letter.
13 Again, as you stated, the applicant's counsel who represented a
14 few things for us, and to me it felt like it was an easy fix.
15 And, you know, we went from two nonconforming lots to a conforming
16 lot. Well, why couldn't we go back? You know, fortunately, after
17 consulting with counsel and looking at the corporation counsel
18 letter, which I think actually already gets the point that was
19 made. If I didn't have all these regulations in front of me, I
20 would think this should be easily done. I think it's a simple
21 fix. But one of the things in the corporation counsel letter says
22 effective control. And this is to note, I think it's the last
23 sentence, effective control of the (indiscernible) is by recorded

1 | lot and an existing record lot cannot be subdivided in
2 | incorporating to a new lot or in violation of the zoning
3 | regulations.

4 | And there are two cases where he, that Mr. Bello
5 | mentioned. I thought it was an apples to apples comparison. In
6 | that case the applicant referenced at the presentation concern
7 | relief for existing nonconforming record lots. Whereas, the
8 | applicant in this case is seeking to create two new nonconforming
9 | lots. If the prior two lots, I believe, had been retained, which
10 | I think you mentioned going back to retaining how it was
11 | previously, it was definitely going to ease your -- it would
12 | almost be identical to what was granted here in the case 19834.
13 | But I think what's in place and the regulations goes against is
14 | argument. The corporation counsel letter, the way I read it, and
15 | after consulting with counsel, I don't think -- because I thought
16 | on the service -- that's why I wanted to elaborate. Because I
17 | think, as you mentioned, it's a great project. I think it should
18 | be able to be done. But there are reasons these regulations are
19 | in place. And just basically the memo, just basically the
20 | session, the tax lots and record lots, you know, it talks
21 | minimally about ownership restriction for assessment and tax
22 | purpose. So I will try -- I can tell you I've been thinking about
23 | this and trying to figure out a way to make this work. But it

1 looks like all of the options, especially the corporation counsel
2 letter goes against what the request is. And also, I was trying
3 to get to where Mr. Bello is, and I just don't see it with what I
4 have in front of me. So thank you, Mr. Chairman.

5 CHAIRPERSON HILL: Thank you, Chairman Hood. Mr. Smith?

6 MR. SMITH: Hello. Based on the facts in this case,
7 from Office of Planning also, as I understand Mr. Bello, I am with
8 you, with everyone else where I just can't get to this particular
9 property meeting the various variance tests.

10 So I'll start off with the first one. Other
11 extraordinary or exceptional situation or condition of a specific
12 piece of property. So I'm not understanding how the property size
13 and shape create an extraordinary situation where the applicants
14 can't construct. The property was made a conforming lot. So the
15 applicant -- already the applicant can construct a conforming
16 single-family house on that property.

17 I do not believe that the size and shape of the property
18 are unique within the square. This is a fairly large -- I mean,
19 it is a large lot. Just because it's a large lot doesn't mean
20 that it's creating an exceptional situation where they're close to
21 being able to construct to (indiscernible). I don't believe that
22 the zoning regulations should contemplate that. I think if you

1 have a conforming lot that you can build on, you should proceed to
2 construct in a conforming manner.

3 The second test, the strict application of the
4 regulations would result in peculiar and exceptional practical
5 difficulty to the owner of the property. Going back to what I
6 just said, first of all, the applicant has not demonstrated that
7 they have practical difficulty in developing (indiscernible).

8 Relief can be granted without substantial detriment to
9 the public good. I believe that (indiscernible) would be a
10 detriment to the public good. The developmental character within
11 that square (indiscernible).

12 Are there ample semi-detached dwelling units in the
13 immediate area of the units in question? Those are located on
14 larger lots than the application before us today. And I believe
15 those will create an entity that is out of character with the
16 family development (indiscernible).

17 And lastly, would the request substantially impair the
18 intent, purpose and intent of the zoning plan? To me the request
19 will substantially impair and be contrary to the intent and
20 purpose of the zoning plan. The zoning regulations speak to
21 nonconformity going. This nonconformity went away not two years
22 ago, not three years ago, it went away nearly 30 years ago. So
23 for us to grant the applicant's request to convert this back into

1 | what would be the original state to a nonconforming would, to me,
2 | set a farce of the zoning regulations.

3 | With that, I'm not in support of the requested variance.

4 | CHAIRPERSON HILL: Thank you, Mr. Smith. I was just
5 | trying to -- I mute or muted this. I mean, Vice Chair John?

6 | VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
7 | with the comments so far. I agree with Mr. Hood's analysis of the
8 | corporation counsel opinion. It does not help the applicant at
9 | all in this case. And I agree that the requested convert the
10 | conforming into two units of nonconforming lots does not comply
11 | with the regulation. And there is no exceptional condition. I
12 | would also give great weight to the Office of Planning's analysis.

13 | CHAIRPERSON HILL: Okay. All right. Then I'm going to
14 | make a motion to deny application number 20361 as captioned and
15 | read by the secretary and ask for a second, Ms. John?

16 | VICE CHAIR JOHN: Second.

17 | CHAIRPERSON HILL: Motion has been made and seconded,
18 | Mr. Moy. Could you please take a roll call vote?

19 | MR. MOY: Thank you, Mr. Chairman. When I call your
20 | name if you would please reply, respond with a yes, no or abstain
21 | to the motion made by Chairman Hill to deny the request for zoning
22 | relief to application number 20361. The motion was seconded by
23 | Vice Chair John.

1 Zoning Commission Chair Anthony Hood?

2 MR. HOOD: Yes to the motion.

3 MR. MOY: Mr. Smith?

4 MR. SMITH: Yes to the motion.

5 MR. MOY: Vice Chair John?

6 VICE CHAIR JOHN: Yes to deny.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes to deny.

9 MR. MOY: Staff would record the vote as 4 to 0 to 1.

10 And this is on the motion made by Chairman Hill to deny, seconded
11 by Vice Chair John. Also in support of the motion to deny is
12 Zoning Commission Chair Anthony Hood, and Mr. Smith. We have no
13 other members participating. Motion carries on a vote of 4 to 0
14 to 1.

15 CHAIRPERSON HILL: Okay, great. Thank you.

16 Chairman, is that it for you today?

17 MR. HOOD: That's it for me. You all have a great day.

18 CHAIRPERSON HILL: You have a good day also, sir.

19 Commissioner Shapiro, can you hear me?

20 MR. SHAPIRO: I can.

21 CHAIRPERSON HILL: Good morning, sir.

1 MR. SHAPIRO: Good morning, Mr. Chair. I'm having a
2 video issues on my side. So I'm having trouble seeing everybody.
3 But I can hear everybody. Can you see me okay?

4 CHAIRPERSON HILL: Yes. We can see and hear you okay.

5 MR. SHAPIRO: Okay. Then I'm going to -- everything is
6 fine. Continue. I just wanted to see all your pretty faces as we
7 have this conversation, but I can hear everyone.

8 CHAIRPERSON HILL: If it gets weird we'll let you know.
9 Okay?

10 MR. SHAPIRO: Okay. Thank you.

11 CHAIRPERSON HILL: And maybe after the meeting session
12 if you want to log off and log back in, or when we take a break
13 you can log off and log back in.

14 MR. SHAPIRO: I've already tried it twice.

15 CHAIRPERSON HILL: Oh, really. Okay. Well, then there
16 you go.

17 All right, Mr. Moy, can you call our next meeting case?

18 MR. MOY: Thank you, Mr. Chairman. This is the next
19 meeting case, as well as the last meeting case in this session.
20 So this is a motion to reopen the record filed by the appellant to
21 appeal number 20191 of DC for Reasonable Development. For the
22 record, the appeal was from the division -- was from the decision
23 made on August 16, 2019, by the zoning administrator, Department

1 of Consumer and Regulatory Affairs, to issue demolition permit
2 number D1600814, and from the decision made on August 27, 2019, by
3 the zoning administrator, Department of Consumer and Regulatory
4 Affairs, to issue foundation permit FD1800040. This is pursuant
5 to 11 DCMR, Subtitle Y, Section 302. The project in that appeal
6 was to raze, RAZE, several aspects of the McMillan Sand Filtration
7 Site and to construct the foundation of a new community center in
8 the RA-2 Zone. The property is located at 2940 North Capitol
9 Street, Northwest, Square 3128, Lot 800. Again, this is the
10 motion to reopen, filed by the appellant. Participating is
11 Chairman Hill, Vice Chair John, Mr. Smith and Zoning Commission
12 Peter Shapiro.

13 CHAIRPERSON HILL: So Mr. Blake is not on this, or he
14 is? He wasn't on the original appeal I guess.

15 MR. MOY: He was not. But this is the motion to reopen
16 the record. I don't believe you go into the merits of this
17 appeal.

18 CHAIRPERSON HILL: So Mr. Blake can participate?

19 MR. MOY: Yeah, I would have a concurrence from
20 Alexandra Cain, if that's all right.

21 CHAIRPERSON HILL: Ms. Cain?

22 MS. CAIN: I would agree with Mr. Moy. I think it's
23 fine for Board member Blake to participate because it's not a

1 substantive of matter, it's simply a procedural issue for the
2 Board.

3 CHAIRPERSON HILL: Okay, great. All right. I'm going
4 to kind of go around the table a little bit on this one. If
5 possible, and if it's all right to start with the Vice Chair, if
6 that's okay, Ms. John?

7 VICE CHAIR JOHN: Thank you, Mr. Chairman. So this
8 motion request that the Board reopen the record to accept an
9 emergency letter, and this letter asks the Board specifically to
10 write and publish the order in this case as soon as possible. And
11 the motion does not raise any new substantive issues, and it also
12 asks the Board to take action in a procedural matter that is
13 inappropriate and would set an improper precedent if allowed.
14 The Board issues written decisions in the order that cases are
15 decided. And there are many similar situations, appellants and
16 applicants who are waiting on decisions by the Board. And this
17 request would provide an unfair advantage to the appellant if
18 granted. So I would deny the motion.

19 CHAIRPERSON HILL: All right. Let's see, Commissioner
20 Shapiro?

21 MR. SHAPIRO: Yeah, I would agree with the Vice Chair.
22 I have nothing further to add, Mr. Chairman.

23 CHAIRPERSON HILL: Mr. Smith?

1 MR. SMITH: I agree with the Vice Chair.

2 CHAIRPERSON HILL: Mr. Blake?

3 MR. BLAKE: I would concur with the Vice Chair and
4 offer no comment.

5 CHAIRPERSON HILL: Okay. I also concur with the Vice
6 Chair. The only stipulation I think is that, what I thought was
7 interesting is that in the motion to reopen it specified what they
8 were asking for. So that's why I don't think it's necessary for
9 us to grant the motion to reopen. They're telling us why they
10 want to reopen it. And we know that we're not going to do that.
11 Therefore, there's no need for us to reopen the record to find out
12 what it is they want us to do. They're telling us right away what
13 it is they want to do. So we don't have to reopen the record.

14 So I would go ahead and make a motion to deny the motion
15 to reopen appeal number 20191, as captioned and read by the
16 secretary and ask for a second, Ms. John?

17 VICE CHAIR JOHN: Second.

18 CHAIRPERSON HILL: Mr. Moy, the motion has been made
19 and seconded. If you could take a roll call, please?

20 MR. MOY: Thank you, Mr. Chairman. When I call your
21 name if you would please respond with a yes, no or abstain to the
22 motion made by Chairman Hill to deny the motion to reopen the

1 record by the Appellant. This motion was seconded by Vice Chair
2 John.

3 Zoning Commissioner Peter Shapiro?

4 MR. SHAPIRO: Vote yes to deny.

5 MR. MOY: Mr. Smith?

6 MR. SMITH: Yes to deny.

7 MR. MOY: Mr. Blake?

8 MR. BLAKE: Yes to deny.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes to deny.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes to deny.

13 MR. MOY: Staff would record the vote as 5 to 0 to 0.

14 And this is on the motion made by Chairman Hill to deny the motion
15 to reopen the record, seconded by Vice Chair John. Also in
16 support of this motion is Zoning Commission Peter Shapiro, Mr.
17 Smith and Mr. Blake. Motion carries on a vote of 5 to 0 to 0.

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

19 (Whereupon, the above-entitled matter went off the
20 record at 10:00 a.m.)

21

22

C E R T I F I C A T E

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 06-16-21

Place: Teleconference

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

KATHLEEN A. COYLE