

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 8, 2021

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

- ANNE FOTHERGILL
- JONATHAN KIRSCHENBAUM
- STEPHEN MORDFIN
- KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on December 8, 2021.

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

2 9:37 a.m.

3 BZA CHAIR HILL: Good morning, ladies and gentlemen
4 at the Board of Zoning Adjustment. Today's date is
5 12/8/2021. Public hearing will please come to order.

6 My name is Fred Hill, I'm the Chairperson of the
7 Board of Zoning Adjustment for the District of Columbia.
8 Joining me today is Lorna John, Vice-Chair, Board Members
9 Carl Blake and Chrishaun Smith, and Zoning Commissioner
10 Anthony Hood, Zoning Chairman Anthony Hood.

11 Today's meeting and hearing agenda are available
12 on the Office of Zoning's website. Please be advised that
13 this proceeding is being recorded by a court reporter, and
14 is also webcast live via Webex and YouTube live.

15 The video of the webcast will be available on the
16 Office of Zoning's website after today's hearing.

17 Accordingly, everyone who is listening on Webex
18 or by telephone, you will be muted during the hearing. Also,
19 please be advised that we do not take any public testimony
20 at our decision meeting sessions.

21 If you're experiencing difficulty accessing Webex,
22 or if you're telephone calling, then please call our OZ
23 hotline number at 202-727-5471, to receive Webex login or
24 call in instructions.

25 At the conclusion of a decision meeting, I shall

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1 in consultation with the Office of Zoning, determine whether
2 a full, or summary order may be issued. A full order is
3 required when the decision it contains is adverse to a party,
4 including affected ANC.

5 A full order may also be needed if the Board's
6 decision differs from the Office of Planning's
7 recommendation.

8 Although the Board favors the use of summary
9 orders whenever possible, an applicant may not request the
10 Board to issue such an order.

11 In today's hearing session, everyone who is
12 listening on Webex or by telephone will be muted during the
13 hearing, and only persons who have signed up to participate
14 or testify, will be unmuted at the appropriate time.

15 Please state your name and home address before
16 providing oral testimony or your presentation. Oral
17 presentations should be limited to the summary of your most
18 important points. When you're finished speaking, please mute
19 your audio so that your microphone is not picking up sound,
20 or background noise.

21 Once again, if you're experiencing difficulty
22 accessing anything, please call the OZ hotline number at 202-
23 727-5471. It's also listed on the screen.

24 All persons planning to testify either in favor
25 or in opposition, should have signed up in advance. They

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1 will be called by name to testify. If it is an appeal, only
2 parties are allowed to testify.

3 By signing up to testify, all participants
4 completed the oath, or affirmation, by required by subtitle
5 Y, 408.7.

6 Requests to enter evidence at the time of an
7 online virtual hearing such as written testimony, or
8 additional supporting documents, other than live video, which
9 may not be presented as part of the testimony, may be allowed
10 pursuant to Y 103.13, provided that the person may either
11 request to enter an exhibit explaining how the proposed
12 exhibit is relevant, for good cause to justify as allowing
13 the exhibit into the record, including explanation of why the
14 requester did not file the exhibit prior to the hearing
15 pursuant to Y 206, and how the proposed exhibit would not
16 unreasonably prejudice any parties.

17 You all can hear me, correct?

18 VICE CHAIRPERSON JOHN: Yes.

19 BZA CHAIR HILL: Thank you.

20 The order of procedures for special exceptions in
21 variances are pursuant to Y 409. Appeals are pursuant to Y
22 507.

23 At the conclusion of each case, an individual who
24 was unable to testify because of a technical issue, may file
25 a request to leave for file, sorry, file a request for leave

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1 to file a written version of the planned testimony to the
2 record, within 24 hours following the conclusion of public
3 testimony in the hearing.

4 If it shown written testimony is accepted, then
5 parties will be allowed a reasonable time to respond as
6 determined by the Board.

7 The Board will then make its decision at its next
8 meeting session, but no earlier than 48 hours after the
9 hearing.

10 Moreover, the Board may request additional
11 specific information to complete the record. The Board and
12 the staff will specify at the end of the hearing exactly what
13 is expected, and the date when persons must submit the
14 evidence to the Office of Zoning. No other information shall
15 be accepted by the Board.

16 Finally, the District of Columbia Administrative
17 Procedures Act, requires that the public hearing on each case
18 be held in the open, before the public.

19 However, pursuant to section 405(b) and 406 of the
20 Act, the Board may, consistent with its rules and procedures,
21 and the Act, enter into an emergency closed meeting on a case
22 for purposes of seeking legal counsel on a case pursuant to
23 D.C. Official Code section 2-575(b)(4), and/or deliberating
24 a case pursuant to D.C. Official Code section 2-575(b)(13),
25 but only after finding that serving public notice in the case

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1 emergency meeting, closed meeting, after taking a roll call
2 vote.

3 Mr. Secretary, do we have any preliminary matters
4 today?

5 MR. MOY: Good morning, Mr. Chairman, members of
6 the Board.

7 There are preliminary matters, but staff would
8 suggest that the Board address those matters when the case
9 is called.

10 Other than that, I would like to cite for the
11 record, case applications that will not be heard today.

12 First, case application number 20481, this is the
13 application of Scott Anderson and Elizabeth Arkell, has been
14 withdrawn by the applicant.

15 Case application number 20552. This is the appeal
16 of Brian Jordan. It has been rescheduled to be heard on
17 January 12, 2022.

18 We have two applications that have been continued
19 to March 9, 2022. These two cases are 20567, of Hillsdale
20 College, and 20505. This is the application of Michael
21 Farquhar.

22 Finally, there are two applications that have been
23 continued to March 23, 2022. These two are 17429A. This is
24 the application of St. Patrick's Episcopal Church and Day
25 School, as well as case application number 18465A. This is

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1 the application of St. Patrick's Episcopal Church and Day
2 School.

3 And, that's it from me, Mr. Chairman.

4 BZA CHAIR HILL: Okay, great. All right, thank you
5 everybody.

6 Good morning everyone, nice to see everyone.

7 Once again, I would like to thank Vice-Chair John
8 for covering for me the past few times. I really do
9 appreciate it, and thank you for the ability to be able to
10 be away.

11 Thank you to Ms. John.

12 VICE CHAIRPERSON JOHN: Your welcome, Mr. Chairman.
13 I won't say anytime.

14 (Laughter.)

15 BZA CHAIR HILL: And, let's see. Mr. Moy, if you
16 want to go ahead and call our first expedited review.

17 MR. MOY: Thank you, Mr. Chairman.

18 So, there are two cases before the Board for
19 decision making in its meeting session.

20 The first is an expedited review case, which is
21 application number 20569, of Bradley Halligan, H-A-L-L-I-G-A-
22 N.

23 This is an application for special exception from
24 the side yard requirements, so sub-title D, section 206.2,
25 and sub-title D, section 206.7.

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1 This would construct a two-story with basement,
2 rear addition to an existing semi-detached two-story with
3 basement, principle dwelling unit in the R-1, in the R-1-B
4 zone.

5 The property is located at 5182 Fulton Street
6 Northwest, Square 1419, Lot 838.

7 BZA CHAIR HILL: Okay, thank you.

8 Are we all ready to deliberate?

9 (No audible response.)

10 BZA CHAIR HILL: Okay.

11 After reviewing the record and the statement from
12 the applicant, concerning how they're meeting the standards
13 and the criteria for us to grant the relief requested, and
14 then also the reports that we've received from the Office of
15 Planning, and that of the ANC.

16 I didn't actually have any issues with this
17 application. I also did think they met the criteria for us
18 to grant the special exception.

19 I would agree with the analysis that the Office
20 of Planning has provided in support, as well as that that
21 DDOT had no objection, as well as the report that the ANC had
22 provided, also in support.

23 There also are multiple neighbors' letters that
24 were in support. But I personally believe that they're
25 meeting the standard for us to grant the relief requested,

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1 and I don't have any issues with it.

2 Let's see. Mr. Smith, do you have any comments?

3 MEMBER SMITH: No, I completely concur with your
4 analysis of this, of this particular case, and I will also
5 support the special exception for it.

6 BZA CHAIR HILL: Thank you. Vice-Chair John?

7 VICE CHAIRPERSON JOHN: I have nothing to add. I
8 thought your analysis was quite clear.

9 Thank you.

10 BZA CHAIR HILL: Mr. Blake?

11 MEMBER BLAKE: Chair, I have nothing to add. I
12 believe the analysis is quite clear, and I feel comfortable
13 supporting the special exception request.

14 BZA CHAIR HILL: Chairman Hood?

15 MR. MOY: I would agree with everything I have
16 heard thus far.

17 Thank you, Mr. Chairman.

18 BZA CHAIR HILL: That being the case, I'll go ahead
19 and make a motion to approve application number 20569, as
20 captioned and read by the Secretary, and ask for a second,
21 Ms. John.

22 VICE CHAIRPERSON JOHN: Second.

23 BZA CHAIR HILL: The motion made and seconded, Mr.
24 Moy. If you could take a roll call.

25 MR. MOY: Your names, if you would please respond

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1 with a yes, no, or abstain, to the motion made by Chairman
2 Hill to approve the application for the relief requested.

3 The motion to approve was seconded by Vice-Chair
4 John.

5 Zoning Commission Chair Anthony Hood?

6 ZC CHAIR HOOD: Yes.

7 MR. MOY: Mr. Smith?

8 (No audible response.)

9 MR. MOY: Mr. Blake?

10 MEMBER BLAKE: Yes.

11 MR. MOY: Vice-Chair John?

12 (No audible response.)

13 MR. MOY: Chairman Hill?

14 BZA CHAIR HILL: Yes.

15 MR. MOY: Staff would record the vote as 5:0:0, and
16 this is on the motion made by Chairman Hill, to approve. The
17 motion to approve was seconded by Vice-Chair John.

18 Also in support of the motion to approve, Zoning
19 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice-
20 Chair John, and Chairman Hill.

21 Staff would record the vote as 5:0:0, and the
22 motion carries.

23 BZA CHAIR HILL: Thank you, Mr. Moy.

24 When you have an opportunity, you can call our
25 next one.

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1 MR. MOY: All right, the next application is also
2 an expedited review application. Application number 20570,
3 of Janelle and Jonathan Hurwitz, H-U-R-W-I-T-Z.

4 This is a request for special exceptions from the
5 lot occupancy requirement, sub-title D, section 304.1,
6 pursuant to sub-title D, section 5201, and sub-title X.

7 Section 902.1 and rear yard requirements, sub-
8 title D, section 306.1. Pursuant to sub-title D, section
9 5201, and sub-title X, section 902.1.

10 This would construct a second-story rear addition
11 to an existing, detached two-story principle dwelling unit
12 in the R-1-B zone.

13 The property is located at 3201 15th Street
14 Northeast, Square 4013, or yes, 4013, Lot 28. And, what else
15 should I say?

16 For you to alert you, Mr. Chairman, there was a
17 filing recorded yesterday, December 7, from, a letter from
18 ANC 5B, citing no comments on a vote of 5:0:0, even though
19 the form, the ANC form, was dated November 18.

20 So, that's before you as well, Mr. Chairman.

21 BZA CHAIR HILL: Okay. Well, unless the Board has
22 any issues, I would like to go ahead and allow the ANC report
23 into the record.

24 And, so if you have any issues, please raise your
25 hand.

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1 (No audible response.)

2 BZA CHAIR HILL: Seeing none, we'll go ahead and
3 let that into the record, Mr. Moy.

4 In terms of the application, as I went ahead and
5 reviewed the record, and that of the arguments from the
6 applicant as to why they believe they should be granted the
7 special exception. They also had some sun/shadow studies
8 that I thought were helpful.

9 I also reviewed the Office of Planning's report
10 that was in support, and their analysis, as well as that of
11 DDOT.

12 Both adjacent properties that I thought were the
13 most, you know, that were the ones that were going to be most
14 affected by this work, had signed off in support stating that
15 they didn't have any concerns.

16 I'm glad to see that we did get something from the
17 ANC officially giving us their position. There was something
18 in the record in Exhibit 9, that was speaking to how they,
19 the ANC commissioner had been contacted, and there was some
20 back and forth with them and the applicant. But I am glad
21 that something came from the ANC.

22 That being the case, I do agree with the arguments
23 from the applicant, concerning how they're meeting the
24 requirements for us to grant the relief requested, as well
25 as the analysis from the Office of Planning that was in

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1 support.

2 And, as I mentioned, DDOT and the ANC's, and the
3 adjacent property owners.

4 So, I didn't really have any issues with this
5 application, so I will be voting in favor.

6 Mr. Smith, do you have anything you would like to
7 add?

8 MEMBER SMITH: And, I agree with your analysis.

9 BZA CHAIR HILL: Thank you.

10 Vice-Chair John?

11 VICE CHAIRPERSON JOHN: I don't have anything to
12 add. I would just note I would also give great weight to the
13 Office of Planning's report and recommendations.

14 BZA CHAIR HILL: Thank you.

15 Mr. Blake?

16 MEMBER BLAKE: Yes, sir. I have nothing to add.
17 I would be prepared to support as well, for the following
18 reasons.

19 BZA CHAIR HILL: Thank you.

20 Chairman Hood?

21 ZC CHAIR HOOD: I think the case is made, and I
22 will be voting to support this application.

23 BZA CHAIR HILL: Thank you.

24 That being the case, I'm going to make a motion
25 to approve application number 20570, as captioned and read

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1 by the Secretary, and ask for a second, Ms. John.

2 VICE CHAIRPERSON JOHN: Second.

3 BZA CHAIR HILL: The motion has been made and
4 seconded. Mr. Moy, if you could take a roll call?

5 MR. MOY: Again, when I call each of your names,
6 if you would please respond with a yes, no, or abstain, to
7 the motion made by Chairman Hill to approve the application
8 for the relief requested. The motion was seconded by Vice-
9 Chair John.

10 Zoning Commission Chair Antony Hood?

11 ZC CHAIR HOOD: Yes.

12 MR. MOY: Mr. Smith?

13 (No audible response.)

14 MR. MOY: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MR. MOY: Vice-Chair John?

17 (No audible response.)

18 MR. MOY: Chairman Hill?

19 BZA CHAIR HILL: Yes.

20 MR. MOY: Staff would record the vote at 5:0:0.

21 And, this is on the motion made by Chairman Hill
22 to approve. The motion to approve seconded by Vice-Chair
23 John.

24 Also in support of the motion to approve, Zoning
25 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice-

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1 Chair John, and Chairman Hill.

2 Motion carries on a vote of 5:0:0.

3 BZA CHAIR HILL: Thank you, Mr. Moy.

4 When you get a chance, you can call our next
5 meeting issue. Okay, yes, meeting issue.

6 (Pause.)

7 MR. MOY: The last action before the Board in its
8 meeting session is case application number 20564, of Jemal's
9 Prospects, LLC.

10 Mr. Chairman, this is a request for advance
11 consideration of a request for party status in opposition to
12 the application.

13 And, this is pursuant to sub-title Y, section 404.

14 And, I should add that the party status in
15 opposition, is by a person by the name of Benjamin Persina.

16 BZA CHAIR HILL: Okay, thanks. Thanks, Mr. Moy.

17 Mr. Moy, when are we supposed to hear this case,
18 do you know?

19 MR. MOY: Yes, I do. It is scheduled for,
20 scheduled for, hold on.

21 (Pause.)

22 MR. MOY: It's coming up. It's scheduled for
23 December 22.

24 BZA CHAIR HILL: Okay.

25 All right, okay, in general I guess, you know,

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1 even though people are within the 200 feet, that doesn't
2 necessarily grant them party status.

3 I mean what we have to do is see whether or not
4 they are uniquely affected, as to whether or not they meet
5 the criteria for party status.

6 In this case, I was a little bit unclear as to my
7 thoughts. But after further reviewing the proximity of their
8 location to the property that's requesting the relief, and
9 then also that some of the witnesses are even closer to the
10 property that's requesting relief, as well as the ANC is
11 opposed, I guess I would be in favor of granting party status
12 so that we could hear more from the neighbors as to the case.

13 Yes, so those are, so I mean I'm in favor I guess,
14 of granting the party status based on you know, just kind of
15 looking at the application and you know, the standards and
16 criteria as to how we grant party status.

17 Mr. Smith, do you have any thoughts?

18 MEMBER SMITH: No. I largely agree with your
19 analysis. You know, I, at first glance, I shared your same
20 concerns.

21 But in doing a deep dive with the information that
22 we had received, and you know, as you had stated, some of the
23 witnesses that will testify if the party status was granted,
24 are even closer to this property listed, a person opposition
25 here.

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1 But and granted that the ANC is opposed, I am also
2 willing to grant party status given that all of them are
3 within 200 feet.

4 So, I agree with your analysis.

5 BZA CHAIR HILL: Vice-Chair John?

6 VICE CHAIRPERSON JOHN: Mr. Chairman, I have been
7 on the fence with this one, but I think that all things
8 considered, I would be in favor of granting party status.

9 BZA CHAIR HILL: Thank you.

10 Mr. Blake?

11 MEMBER BLAKE: I would be in favor of granting
12 party status considering the issues are traffic and trash,
13 and the location of the requestor is within that block.

14 It seems to me that they would be more greatly
15 impacted than the general public. So, I would be comfortable
16 supporting their participation.

17 BZA CHAIR HILL: Chairman Hood?

18 ZC CHAIR HOOD: I would agree with my colleagues.
19 I think the key terms is in our statutes says uniquely
20 affected, and I think there's a case to be made that they are
21 uniquely affected.

22 It's a case, it's a tipping scale. You can go in
23 both ways but I think in this specific case, they are
24 uniquely affected.

25 BZA CHAIR HILL: Thank you.

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1 And, I guess I'm going to have a little bit more
2 deliberation about it, or discussion about it, because you
3 know, being uniquely affected like, just because it's traffic
4 and trash, and they're in that 200-foot radius doesn't mean
5 that they are more uniquely affected than any of the other
6 people that are in the 200-foot radius, right?

7 And, the ANC is there to represent that area. So,
8 I don't know, that's why maybe Vice-Chair John was also on
9 the fence, as I was as well, as to whether or not they should
10 or should not be given party status.

11 However, I think due to some of the other issues
12 that we had brought up, it would be you know, we're going to
13 go ahead and I guess, vote in favor of that party status.

14 I guess what I would like to kind of mention is
15 that if the applicant could, I know that they had proposed
16 some conditions about some of the concerns that the party
17 status had, as well as the ANC.

18 Just if there is any dialogue that could take
19 place between now and then, I would encourage them to
20 continue to try to have some kind of dialogue.

21 So, that being the case, I'll go ahead and make
22 a motion to approve the party status application request, for
23 application number 20564 as the Secretary has put forward,
24 and asked for a second, Ms. John?

25 VICE CHAIRPERSON JOHN: Second.

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1 BZA CHAIR HILL: The motion was made, and seconded.
2 Mr. Moy, if you could please take a roll call?

3 MR. MOY: Your names, if you would please respond
4 with a yes, no, or abstain, to the motion made by Chairman
5 Hill to grant the request for party status in opposition to
6 a Benjamin Persina.

7 The motion was seconded by Vice-Chair John.
8 Zoning Commission Chair Anthony Hood?

9 ZC CHAIR HOOD: Yes.

10 MR. MOY: Mr. Smith?

11 (No audible response.)

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Vice-Chair John?

15 (No audible response.)

16 MR. MOY: Chairman Hill?

17 BZA CHAIR HILL: Yes.

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

19 And, this is on the motion made by Chairman Hill,
20 to grant. Motion to grant was seconded by Vice-Chair John.

21 Also in support of the motion is Zoning Commission
22 Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice-Chair John,
23 Chairman Hill.

24 The motion carries on the vote of 5:0:0.

25 BZA CHAIR HILL: Okay, thanks, Mr. Moy.

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1 (Whereupon, the above-entitled matter went off the
2 record at 9:59 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: Regular Public Meeting

Before: DC Board of Zoning Adjustment

Date: 12-08-21

Place: video-teleconference

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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