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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

Tuesday, January 19, 2016

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220 South

Washington, D.C. 20001

Board Members:

OLENDER REPORTING, INC.
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- 1 MARNIQUE HEATH, Chairperson
- 2 FREDERICK L. HILL, Vice-Chairperson
- 3 MARCIE COHEN, Zoning Commission
- 4 ROB MILLER, Zoning Commission

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6 Also Present:

- 7 CLIFFORD W. MOY, Secretary to the Board

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1 CHAIRPERSON HEATH: Good afternoon ladies and
2 gentleman. We are located in the Jerrily R. Kress
3 Memorial Hearing Room at 441 4th Street Northwest.
4 Today's date is January 19th, 2016, and we're here
5 for the public meeting of the Board of Zoning
6 Adjustment of the District of Columbia.

7 My name is Marnique Heath, Chairperson.
8 Joining me today is Fred Hill, Vice Chair, Jeff
9 Hinkle, Board Member, and Marcie Cohen, member of the
10 Zoning Commission, sitting in as a member of the
11 Board today.

12 On our next case, we will also be joined by
13 another Zoning Commissioner, Rob Miller.

14 Please be advised that this proceeding is
15 being recorded by a court reporter -- will be
16 recorded by a court reporter, and is also being
17 webcast live.

18 Accordingly, we must ask you to refrain from
19 any noises or actions while in the hearing room
20 today. The Board's hearing procedures and how we
21 will process applications can be found on the table
22 by the back door.

23 We shouldn't have any individuals wishing to
24 testify today. So, typically we would, but since
25 this is just our meeting, we will -- I'll turn to Mr.

1 Moy to see if you have any preliminary matters coming
2 before the Board today.

3 MR. MOY: There are some preliminary matters,
4 Madame Chair, but I think that they can be addressed
5 as the case is called.

6 CHAIRPERSON HEATH: Okay.

7 MR. MOY: Should I call the first case?

8 CHAIRPERSON HEATH: Sure. You can call our
9 first.

10 MR. MOY: Okay. The first case for decision
11 is that there was a motion filed for reconsideration
12 of the -- as to application number 18938 of Eppolito
13 and Slakey, or S-l-a-k-e-y.

14 The motion for reconsideration was filed on
15 November 2, 2015. As the Board will recall, the order
16 was issued on October 15, 2015.

17 The two preliminary matters is the first
18 being that the applicants response to the motion to
19 reconsider was filed on January 4, 2014, which I
20 believe is untimely.

21 Number one -- number two, I believe that --
22 let's see -- there was a filing by the movement or
23 the person filing the reconsideration under Exhibit
24 sixty-three, which is titled as further clarification
25 for the Board to address.

1 CHAIRPERSON HEATH: All right.

2 So, this case first came before -- or
3 this reconsideration first came before us on November
4 24th, and it was at that point that it was made clear
5 to the Board that the motion hadn't been served on
6 all of the parties, and so we waived the time
7 consideration at that time in order to allow them to
8 serve the motion on all parties.

9 It -- it's been clear from the filings in the
10 record that the reconsideration was issued to all
11 parties or served on all parties on November 24th,
12 and so we have before us a motion today to accept a
13 late response from the applicant.

14 As Mr. Moy pointed out, that applicant's
15 response was received on January 4th. So, does the
16 Board have any issues with accepting the late
17 response from the applicant?

18 Okay. So, we will -- so the Board will
19 accept the applicant's response submitted on January
20 4th.

21 MR. HILL: Madame Chair, I'm sorry.

22 I just want to clarify that I reviewed
23 everything for the record prior because I wasn't here
24 for the very first one. So, I'm able to participate.

25 MADAME CHAIR: Okay. Thank you for pointing

1 that out. I also wasn't on the original hearing, but
2 I have reviewed the record, and I was here for the
3 previous hearing on the reconsideration.

4 So, now the second motion before the board is
5 to accept the Movants (phonetic) Exhibit sixty-three,
6 which was issued as further clarification.

7 I don't particularly have any issue with
8 accepting it. A lot of what's in that document was
9 repetitive based on what we had already seen. So, I
10 didn't see any particularly new information.

11 All right.

12 So, we'll accept the Movants Exhibit sixty-
13 three.

14 So, then with that, I think we can move to
15 the substance of the reconsideration. And I just want
16 to point out before we deliberate on this that
17 Section 300126.4 states that a motion for
18 reconsideration shall specifically state the respects
19 in which the Board's decision was erroneous.

20 So, I think it's important for us to keep
21 that in mind as we deliberate on this. The Movant
22 brought before us several issues, all of which we
23 discussed during the -- were discussed during the
24 hearing.

25 The sun study, which the Movant has pointed

1 out in several of their most recent filings -- they
2 feel the sun study focused on just the additional
3 four feet and not the full length of -- of the
4 addition and rear of the house.

5 But it was made clear during the hearing,
6 both from what the Board reviewed and stated as a
7 part of the discussion about the sun study, and also
8 from Mr. Cochrane's testimony during the hearing that
9 the sun study did reflect the entirety of the
10 building.

11 And there was just some point made about the
12 fact that the addition didn't create that much of an
13 additional shadow based on the sun studies. So I
14 didn't think that there was really an issue there.

15 The Movant also disputed the Board's legal
16 requirement to give great weight to the A and C and
17 the Office of Planning, and because this is a legal
18 requirement of the Board, I don't feel that this is
19 something that is really up for discussion as a part
20 of this reconsideration.

21 The Movant also brought up the issue of the
22 trellis, which was also discussed during the hearing.
23 And it was discussed that the trellis could be added
24 as a way -- added and planted as a way of creating an
25 additional buffer between the applicant's property

1 and the Movant's property, but that this trellis is
2 really on the applicant's property.

3 And as such, I believe this is something that
4 is almost a courtesy to the Movant, or to their
5 neighbor, as a way of creating additional privacy,
6 but that this really doesn't need to be something
7 that is deliberated upon between the Movant or that
8 the Movant shouldn't have the ability to decide
9 exactly what this trellis material is.

10 So, I just -- in looking at what the Movant
11 has presented, I first don't feel that they really
12 made a strong case for how the Board could have
13 erred, but I also -- along those lines, I feel that
14 the arguments that they've made were things that were
15 discussed during the substance of the hearing. No new
16 issues were brought forth.

17 Does anyone have any -- any thoughts on this?

18 MS. COHEN: Madame Chairman, the only thought
19 that I have -- I agree with your conclusions, but I
20 do believe that the applicant should, as a neighbor,
21 consult, and I think we did include this in our order
22 to have them consult the movement -- Movant -- sorry
23 -- regarding the trellis.

24 I think that they made the approach. I think
25 the trellis issue is still needing cooperation is my

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1 understanding.

2 CHAIRPERSON HEATH: It sounds like it does
3 still need cooperation, and you're correct, Ms.
4 Cohen, that that was in the order that the applicant
5 should work with their neighbor to come to some
6 conclusion about this.

7 So, any other thoughts on this?

8 MR. HILL: Madame Chair, I just also agree
9 with your thoughts about this. I didn't think that
10 there was anything new that was brought before us in
11 terms of reconsidering. I also wanted to mention
12 that it would be nice, you know, if the neighbors
13 were to work together for the trellis.

14 I mean, it was kind of -- it was there to,
15 you know, soften the new addition there. So, you
16 know, as neighbors kind of working together it would
17 be nice if they do, you know, continue to communicate
18 in order to get the neighbor -- I'm sorry, the Movant
19 -- participating in that discussion.

20 Then I also want to say that -- that, you
21 know, I can understand how the Movant -- they've been
22 there for forty-plus years, and that, you know, they
23 have -- in my opinion, again unfortunately, like you
24 know, changes come to the neighborhood that are good
25 for the neighborhood in terms of, you know,

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1 development of properties and kind of the changes
2 that come over forty years that I think have been a
3 benefit.

4 Some things that happened are not exactly as
5 you'd like to see them, but I think that from the
6 original discussion even in terms of like the windows
7 that were raised up to the top of the line there to
8 give them as much privacy as possible is something
9 that the neighbor -- the applicant -- the people
10 building the extension did take into consideration.

11 So, I'm still -- still of the mind that
12 nothing has been brought new for reconsideration.

13 MR. HINKLE: Thank you, Madame Chair.

14 I just tend to agree with the rest of the
15 Board here. I don't see anything that's necessarily
16 new for us to reconsider, and everything else I'm in
17 agreement with as stated.

18 CHAIRPERSON HEATH: Okay. Thank you, Mr.
19 Hinkle.

20 Then with that I will move that we deny the
21 motion for reconsideration. This is not an open
22 forum.

23 So, I would move that we deny the motion for
24 reconsideration, but that we encourage the applicant
25 to work with the neighbor to resolve the issue of the

1 trellis and how it will be treated.

2 MR. HINKLE: I'll second.

3 CHAIRPERSON HEATH: The motion's been made
4 and seconded.

5 Any further discussion?

6 All those in favor?

7 THE BOARD: Aye.

8 CHAIRPERSON HEATH: Anyone opposed?

9 So, the motion carries.

10 Mr. Moy?

11 MR. MOY: Staff manager will record the vote
12 as four to zero to one, this on the motion of
13 Chairperson Heath to deny the request for
14 reconsideration and to as for continuing -- the
15 applicant to continue working with the neighbor.

16 Second, the thing -- the motion is Mr. Hinkle
17 wants to support Ms. Marcie Cohen and Mister -- Vice-
18 Chair Hill.

19 Did I say that right?

20 And we have a Board seat vacant. Motion
21 carries four to zero.

22 CHAIRPERSON HEATH: Thank you.

23 I think we can do a summary on this. It's a
24 full order, right?

25 MR. MOY: The next application, Madame Chair,

1 for decision is Appeal number 19067 of A and C 4C.

2 This was the appeal of a May 18, 2015
3 decision by the zoning administrator to issue
4 building permit number B1505734 to allow the
5 construction of a rear two-story addition and
6 conversion of a one-family dwelling into a three-unit
7 apartment house in R4 (phonetic) district.

8 1117 Allison Street Northwest, Square 2918,
9 Lot 59.

10 A couple preliminary matters, Madame Chair.

11 The first is -- well, the Board had requested
12 post-hearing documents, and those are exhibited in
13 your case folders, Madame Chair, which includes a
14 filing from DCRA, Exhibits 65 through 65B, proposed
15 findings of the fact and conclusions of law from the
16 property owner, DCRA, and the appellate.

17 What is not clear are additional filings from
18 the appellate, which is noted under Exhibits 67 and
19 71.

20 Finally, this morning there was a letter that
21 was submitted to the record from Councilmember Orange
22 (phonetic) with request to reopen the record to allow
23 his letter into the record.

24 That completes the staff's briefing, Madame
25 Chair.

1 CHAIRPERSON HEATH: Thank you, Mr. Moy.

2 All right.

3 So, the few motions that we have before us --
4 first is the motion to accept additional information
5 into the record, which is the expert report submitted
6 as Exhibit number 67.

7 I believe this information was already in the
8 record, and so I don't have any issues with accepting
9 this.

10 So, the Board will accept this additional
11 information, which was a part of an original filing.

12 Then there's also before us the motion to
13 reopen the record to include the -- what is now a new
14 permit, the December permit.

15 If the Board will recall, we accepted the
16 October permit into the record. There was a motion
17 before us at the hearing, and we accepted that.

18 So, I think if we're going to -- if -- I
19 don't know how the Board feels about this, but there
20 have continued to be modifications to errors or
21 clarifications within this set of permit documents.

22 And so we accepted revisions or
23 clarifications in the October -- I believe there are
24 additional clarifications that are included within
25 the December permit.

1 I'm inclined to accept the December permit as
2 well.

3 MR. MILLER: Madame Chair, I would agree
4 because at DCRA's request we accepted the October --
5 the (unintelligible) we should accept the December,
6 and I don't think that serves any harm to the parties
7 -- any of the parties by accepting it.

8 CHAIRPERSON HEATH: Okay. I believe that --
9 and I'll consult with counsel to confirm, but I
10 believe that if we are going to reopen the record for
11 the December permit that we have to allow time for
12 the other parties to respond to this.

13 Is that correct, Mary?

14 MS. NAGELHOUT: Yes. If you look at 31-21.6,
15 the Board must allow all parties an opportunity to
16 file written responses to any exhibits, information,
17 or briefs submitted after the close of hearing.

18 CHAIRPERSON HEATH: Okay. All right.

19 One -- before we revisit this issue, there's
20 another motion before the Board to accept a letter
21 that was submitted, I believe, just today from
22 Councilmember Orange, and I'm also inclined to accept
23 this.

24 I don't believe it's in our file yet. We may
25 just have hard copies.

1 MR. MOY: No, it's not.

2 My procedure is to -- is to hold that until
3 the Board allows it into the record, but I do have
4 copies since you're logged into the record for you to
5 review.

6 CHAIRPERSON HEATH: Okay. Given that we are
7 going to need to -- we're not going to be able to
8 deliberate on this today in order to allow the other
9 parties to respond to the new December permit, which
10 we are going to admit to the record, I think we can
11 just hold that letter, Mr. Moy, and just we'll have
12 it in the record.

13 When we do put this on for a new date, that
14 will be in the filings.

15 So, based on the time requirements for
16 submissions from the other parties, when would we --
17 when would you recommend continuing this?

18 MS: NAGELHOUT: The written responses shall
19 be filed within seven days after the date by which
20 the exhibits were due, unless otherwise directed, but
21 these were not due.

22 CHAIRPERSON HEATH: Right.

23 MS. NAGELHOUT: You know, seven days is kind
24 of a guideline, unless you want to pick a longer
25 time.

1 CHAIRPERSON HEATH: I would say let's stick
2 with seven days. I don't know where that puts us.

3 MR. MOY: Well, on the cutting edge then, the
4 earliest the Board can revisit this then would be at
5 its February 2nd meeting. That would be two weeks from
6 today.

7 CHAIRPERSON HEATH: Okay. Does that work for
8 the Board?

9 Okay. All right.

10 So, we will put this back on for decision
11 from February 2nd, and it will be at the beginning of
12 our agenda that day as one of our decision cases.

13 Are there any other matters coming before the
14 Board today, Mr. Moy?

15 MR. MOY: Not from the staff manager.

16 CHAIRPERSON HEATH: Okay. All right.

17 Then we are adjourned. Thank you.

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