

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 23, 2018

+ + + + +

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 9:40 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ROBERT MILLER, Vice Chairperson  
MICHAEL TURNBULL, Board Member (FAIA)

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Sr. Zoning Specialist  
ALLISON MYERS, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL  
STEPHEN MORDFIN  
MAXINE BROWN-ROBERTS  
ELISA VITALE

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

PATRICK REED

The transcript constitutes the minutes from the  
Public Meeting held on May 23, 2018.

C-O-N-T-E-N-T-S

Application No. 19684 C&S Development LLC . . . . . 7  
Application No. 19249A Jennifer Wisdom . . . . . 10  
Application No. 19336A Edward Gonzalez . . . . . 13  
Adjourn . . . . . 16

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

9:40 a.m.

CHAIRPERSON HILL: All right. Good morning, everyone. The hearing will please come to order. Sorry we're starting a little late. We're going to blame it on the Metro.

We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. This is the May 23, 2018 Public Meeting -- 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; Lesyllee White and Lorna John, Board Members; and representing the Zoning Commission is Michael Turnbull as well as Rob Miller.

Copies of today's hearing agenda are available to you and are located on the wall bin near the door. Please be advised that his proceeding is being recorded by a court reported and is also webcast live. Accordingly, we must refrain -- we ask you to refrain from any disruptive noises or action 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

1 to testify either in favor or in opposition must have raised  
2 their hand and been sworn in by the Secretary. Also, each  
3 witness must fill out two witness cards. These cards are  
4 located on the table near the door and on the witness table.  
5 Upon coming forward to speak to the Board, please give both  
6 cards to the reporter 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 don't have the requisite number of copies, you can  
11 reproduce copies on an office printer in the Office of Zoning  
12 located across the hall. Please remember to collate your  
13 sets of copies.

14           The order of procedure for special exceptions,  
15 variances, and appeals is also listed as you walk into the  
16 room. The record shall be closed at the conclusion of each  
17 case except for any material specifically requested by the  
18 Board. The Board and the staff will specify at the end of  
19 the hearing exactly what is expected and the date when the  
20 persons must submit the evidence to the Office of Zoning.  
21 After the record is closed, no other information shall be  
22 accepted by the Board.

23           The District of Columbia Administrative Procedures  
24 Act requires that the public hearing on each case be held in  
25 the open before the public pursuant to Section 405-b and 406

1 of that Act. The Board may, consistent with its rules and  
2 procedures and the Act, enter into a closed meeting on a case  
3 for purposes of seeking legal counsel on a case, pursuant to  
4 D.C. Official Code Section 2-575b.4, and/or deliberating on  
5 a case, pursuant to D.C. Official Code Section 2-575b.13, but  
6 only after providing the necessary public notice, and in the  
7 case of an emergency closed meeting, after taking a roll call  
8 vote.

9 Decision of the Board in cases must be based  
10 exclusively on the public record. To avoid any appearance  
11 to the contrary, the Board requests that persons present not  
12 engage the members of the Board in conversation.

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

15 Preliminary matters are those which relate to  
16 whether a case will or should be heard today such as requests  
17 for a postponement, continuance, or withdrawal or whether  
18 proper and adequate notice of the hearing has been given.  
19 If you are not prepared to go forward with a case today or  
20 if you believe that the Board should not proceed, now is the  
21 time to raise such a matter. Do we have any preliminary  
22 matters today?

23 MS. ROSE: No.

24 CHAIRPERSON HILL: Ms. Rose, I meant you. I  
25 apologize.

1 MS. ROSE: All right. Thank you. Good morning.  
2 Mr. Chairman, yes, staff has a couple of preliminary matters.  
3 Regarding Application No. 19751 of MED Developers, LLC, the  
4 hearing has been postponed to June 6, 2018, at 9:30 a.m., at  
5 the request of ANC 3C.

6 And regarding Application No. 19731 of 1766  
7 Lanier, NW, LLC, the hearing has been postponed to June 20,  
8 2018.

9 There are other preliminary matters related to  
10 individual cases and staff suggests addressing those matters  
11 when the case is called.

12 CHAIRPERSON HILL: Okay. Great. Thank you, Ms.  
13 Rose. And now we have Commissioner Miller joining us, which  
14 is great. All right. Let's see. Ms. Rose, if anyone is  
15 here wishing to testify, if you wouldn't mind standing and  
16 taking the oath administered by the Secretary to my left.

17 MS. ROSE: Please raise your right hand.

18 (Witnesses sworn.)

19 MS. ROSE: You may consider yourselves under oath.

20 CHAIRPERSON HILL: Okay. Just so everyone knows,  
21 we are going to follow the order that you have seen in the  
22 bins to your left as you kind of come in. And we're going  
23 to start with our meeting cases, so Ms. Rose, feel free to  
24 call the first case whenever you get a chance.

25 MS. ROSE: First case is a motion for

1 reconsideration filed the single-member District Commissioner  
2 for ANC 5E 10 and Application No. 19684 of C&S Development,  
3 LLC as amended, pursuant to 11 DCMR Subtitle X, Chapter 9,  
4 for a special exception pursuant to the inclusionary zoning  
5 dimensional modifications of Subtitle C, Subsection 1002.2  
6 to subdivide the existing lot into three new lots and  
7 construct three flats in the RF-1 Zone at premises 2610 4th  
8 Street N.E., Square 3551, Lot 801.

9           The Board members participating in this case are  
10 Mr. Hart, Ms. White, Ms. John, and Mr. Miller.

11           CHAIRPERSON HILL: Okay. Great. Thank you. As  
12 Ms. Rose just mentioned, I'm not on this one so Mr. Hart,  
13 I'll let you take it away.

14           MEMBER HART: Sure. Thank you very much, Mr.  
15 Chairman. So this case is a request for reconsideration for  
16 this particular development, C&S Development. And the  
17 request is coming from an ANC Commissioner. Her name is  
18 Nancy Jones of 5E 10. She's a single-member District, 5E 10,  
19 and she is requesting that we reconsider this approval, I  
20 guess, and for a special exception. And I mean the way in  
21 which I kind of look at them -- and we've had some  
22 conversations and some information from the Office of  
23 Attorney General regarding this, and I kind of agree with  
24 their assessment of this, which is that there really has to  
25 be -- that Commissioner Jones -- there is no indication that

1 Commissioner Jones has been authorized by the ANC to submit  
2 this motion.

3           The ANC is the -- would be the only party that  
4 we're talking about here because Ms. -- Commissioner Jones  
5 was not a party, and under our rules, there really isn't any  
6 authority for her to be able to have this reconsideration  
7 actually occur. And not only is she not a party and doesn't  
8 have the authority to do that, she didn't state how the BZA  
9 erred or state how the relief -- what relief that she is  
10 seeking for this. And because of all that, I would be making  
11 or I guess making a motion to dismiss this motion for  
12 reconsideration on those grounds. But I'd like to hear my  
13 other Board members' thoughts on this if you could.

14           MEMBER WHITE: Yes, Mr. Vice Chair. Thank you.  
15 I agree with your assessment and as you stated, Ms. Jones,  
16 who's the head of the single-member District for 5E 10, is  
17 requesting reconsideration of an order that granted  
18 permission to subdivide the existing lot and construct three  
19 flats in the RF-1 Zone at 2610 4th Street, N.E. My  
20 recollection is that for this particular case, the ANC did  
21 not submit a statement or a report or testify with respect  
22 to this case. So they did not state a position with respect  
23 to supporting or to deny the application. So as you stated,  
24 I did not see anything in the record that indicated that Ms.  
25 Jones had authorization to speak on behalf of the full ANC.

1           And in looking under Subtitle Y 700.2 and also Y  
2 403.5A, I think with respect to reconsideration of this  
3 particular case, I agree with your assessment that the  
4 criteria was not met in this particular case and that the  
5 motion for reconsideration should be dismissed based upon my  
6 review of the record.

7           MEMBER JOHN: Mr. Vice Chair, I also agree that  
8 the motion for reconsideration should be dismissed because  
9 the requester was not a party in the original proceeding and  
10 has made no request for a waiver of the requirement that  
11 motions may be made only by parties.

12           MEMBER HART: Mr. Miller?

13           ZC VICE CHAIR MILLER: Thank you, Mr. Vice Chair.  
14 Yes, I concur with my colleagues and think a dismissal would  
15 be consistent with the Board's past practices.

16           MEMBER HART: So sounds like we are in agreement  
17 in -- I'll make a motion to dismiss the request for  
18 reconsideration for Application 19684 of C&S Development,  
19 LLC. Do I have a second?

20           MEMBER WHITE: Second.

21           MEMBER HART: Hearing a second, all in favor, say  
22 "aye."

23           (Chorus of ayes.)

24           MEMBER HART: Any opposed? The motion to dismiss  
25 carries.

1 MS. ROSE: Staff will record the vote as four to  
2 zero to one to dismiss the motion for reconsideration with  
3 the motion by Mr. Hart, seconded by Ms. White, with Ms. John  
4 and Mr. Miller in support of the motion, and Mr. Hill not  
5 participating.

6 MEMBER HART: Thank you very much. Mr. Chair?

7 CHAIRPERSON HILL: Okay. Ms. Rose, whenever you  
8 like you can call the next one.

9 (Off the record comments.)

10 MS. ROSE: The next matter on the consent calendar  
11 is a request for time extension in Application No. 19249A of  
12 Jennifer Wisdom, pursuant to 11 DCMR Subtitle Y, Subsection  
13 705.1, for a two-year time extension of BZA Order No. 19249  
14 approving variances from the limit on number of story  
15 requirements under Subsection 400.1, the lot occupancy  
16 requirements under Subsection 403.2, the rear yard  
17 requirements under Subsection 404.1, and the off-street  
18 parking requirements under Subsection 2101.1, to construct  
19 a new one-family dwelling on an unimproved lot in the R-4  
20 District at premises 1850 5th Street N.W., Square 3093, Lot  
21 43 -- 46 -- sorry.

22 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose.  
23 And thank you, Mr. Turnbull for joining us again. The  
24 applicant is looking for a time extension, and under Y705.1A,  
25 the applicant did serve the ANC 1B, which is the only party

1 to the underlying application, on April 19th. The applicant  
2 also served HPRB under Y705.1B. The applicant claims that  
3 there is no substantial change in any of the material facts  
4 upon which the Board based its original approval of the  
5 application. The Office of Planning also agreed with that  
6 assessment and is in support of the time extension. The  
7 applicant, under Y705.1C, claims that there is good cause for  
8 it because to an inability to obtain sufficient project  
9 financing due to economic and market conditions beyond the  
10 applicant's reasonable control, and that was also in Exhibit  
11 4.

12           Since this is the first time extension request,  
13 and also I do believe in the justification that the applicant  
14 has put forth for the time extension as well as the other  
15 items that I just mentioned, I'd be in favor of the time  
16 extension. Does the Board have any other thoughts?

17           MEMBER WHITE: Mr. Chair, I would be in favor of  
18 the time extension as well. She met the criteria, as you  
19 stated, under Subtitle Y705.1. And I would just add that,  
20 you know, she also provided some specific facts related to  
21 her situation having to do with needing more time to get  
22 project financing, as you stated, due to economic conditions,  
23 but also, it's been drawn out a little longer because of  
24 change in her employment, a change that she made with another  
25 employer, which has also added to the time needed to kind of

1 get that project financing under wrap. So I think she's met  
2 the criteria in this particular case.

3 COMMISSIONER TURNBULL: I would just add that I  
4 concur with the two of you on this.

5 CHAIRPERSON HILL: Okay. Great. Now I'm going  
6 to make a motion to approve Application No. 19249A of  
7 Jennifer Wisdom as announced and captioned -- as captioned  
8 and read by the Secretary and ask for a second.

9 MEMBER HART: Second.

10 CHAIRPERSON HILL: Motion has been made and  
11 seconded. All those in favor, "aye."

12 (Chorus of ayes.)

13 CHAIRPERSON HILL: All those opposed? Motion  
14 passes. Ms. Rose.

15 MS. ROSE: Staff will record the vote as five to  
16 zero to zero to approve the time extension with a motion by  
17 Mr. Hill, seconded by Mr. Hart, with Ms. White, Ms. John, and  
18 Mr. Turnbull in support of the motion.

19 CHAIRPERSON HILL: Summary order.

20 MS. ROSE: Thank you. The next case is  
21 Application No. 19336A of Edward Gonzalez, pursuant to 11  
22 DCMR Subtitle Y Section 703, for a minor modification to the  
23 plans approved by BZA Order No. 19336 to convert office space  
24 to a residential -- to residential apartments on the first  
25 floor of an existing building in the R-17 Zone at premises

1 2405 I Street, No. 1-A., N.W., Square 28, Lots 157 and 2001.

2 CHAIRPERSON HILL: Thank you, Ms. Rose. Is the  
3 Board ready to deliberate?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. I can start. I thought  
6 the record was pretty full in terms of this minor  
7 modification and whether or not it was a minor modification.  
8 I would agree that it is a minor modification. After again  
9 reviewing the record and the drawings, I'd also agree with  
10 the Office of Planning's analysis and also that they were in  
11 support. Also, the ANC 2A was in support of this original  
12 request and so, you know, we didn't get anything from them,  
13 I think, for the minor modification but they were in support  
14 of the original request, and I believe that there hasn't been  
15 any changes to this, therefore, to allow us to approve it as  
16 a minor modification. Would any -- so I would be in support.  
17 Is there anything else anyone would like to add?

18 MEMBER WHITE: I would just add that, you know,  
19 in the previous decision, our focus was on the external  
20 impacts of the proposed non-conforming use, not the internal  
21 layout that she's -- that Edward Gonzalez is raising in this  
22 particular application, which doesn't change the material  
23 facts of this particular case.

24 CHAIRPERSON HILL: Okay. Great. Anyone else?

25 MEMBER JOHN: Mr. Chairman, I did not participate

1 on the original hearing, but I reviewed the record and  
2 reviewed the original proposal and the modifications, and I  
3 agree with everything everyone said.

4 CHAIRPERSON HILL: Okay. Great. Thank you. All  
5 right.

6 ZC VICE CHAIR MILLER: And I did participate with  
7 you, Mr. Chairman, in the original, and I concur with my  
8 colleagues.

9 CHAIRPERSON HILL: Okay. Great. Mr. Hart?

10 MEMBER HART: Yes. I'm just letting you know  
11 also, Mr. Chairman, that I read into the record as well so  
12 I can participate in this.

13 CHAIRPERSON HILL: Okay. All right. Then that  
14 being the case, I'll go ahead and make a motion to approve  
15 Application No. 19336A of Edward Gonzalez as captioned and  
16 read by the Secretary and ask for a second.

17 ZC VICE CHAIR MILLER: Second.

18 CHAIRPERSON HILL: Motion made and seconded. All  
19 those in favor, "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON HILL: All those opposed? The motion  
22 passes. Ms. Rose.

23 MS. ROSE: Staff would record the vote as five to  
24 zero to zero to approve the minor modification, with a motion  
25 by Mr. Hill, seconded by Mr. Miller, with Mr. Hart, Ms.

1 White, and Ms. John in support of the motion.

2 CHAIRPERSON HILL: Okay. Great. Summary order,  
3 Ms. Rose.

4 MS. ROSE: Thank you.

5 (Whereupon, the above-entitled matter went off the  
6 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: Public Meeting

Before: DCBZA

Date: 05-23-18

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.

*Neal R Gross*

-----  
Court Reporter

**NEAL R. GROSS**

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