

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

OCTOBER 31, 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 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

- MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MARY NAGELHOUT, ESQ.
- MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the Public Meeting held on October 31, 2018.

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

(9:43 a.m.)

1
2
3 CHAIRMAN HILL: Good morning ladies and
4 gentlemen we are located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street, N.W. This is the October
6 31, 2018 public Hearing of the Board of Zoning of District
7 Columbia. My name is Fred Hill, Chairperson. Joining me
8 today are Carlton Hart Vice Chair, Lesyllee White and
9 Lorna John. Board Members and representing the Zoning
10 Commission is Michael Turnbull.

11 Copies of today's hearing agenda are available
12 to you and located in the wall bin near the door. Please
13 be advised that this proceeding is being recorded by a
14 court reporter, and is also web cast live.

15 Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the hearing room.
17 When presenting information to the board please turn on
18 and speak into the microphone first stating your name and
19 home address.

20 When you're finished speaking turn off your
21 microphones, so that your microphone is no longer picking
22 up sound and background noise. All persons planning to
23 testify either in favor or opposition must have raised
24 their hand and been sworn in by the secretary.

25 Also, each witness must fill out two witness

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1 cards. These cards are located on the table near the door
2 and on the witness table. Upon coming forward to speak to
3 the board, please give both cards to the reporter sitting
4 at the table at my right.

5 If you wish to file written testimony or
6 additional supporting documents today, please submit one
7 original and twelve copies to the secretary for
8 distribution. If you do not have the requisite number of
9 copies, you can reproduce copies on an office printer in
10 the Office of Zoning located across the hall. Please
11 remember to collate your set of copies.

12 The order of procedures for special exceptions,
13 variances, and appeals is also listed as you come into the
14 door. The record shall be closed to the conclusion of
15 each case except for any materials, specifically,
16 requested by the board. The board and the staff will
17 specify at the end of the hearing exactly what is expected
18 and the date when the persons must submit the evidence to
19 the Office of Zoning.

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

25 A full order is required when the decision it

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1 contains is adverse to a party including an affected ANC.
2 A full order may also be needed if the board's decision
3 differs from the Office of Planning's recommendation.

4 Although the board favors the use of summary
5 order whenever possible, an applicant may not request the
6 board to issue such an order. The District of Columbia
7 Administrators Procedures Act requires that the public
8 hearing on each case be held in the opening before the
9 public pursuant to Section 405(b) and 406 of that act.

10 The board may consistent with its rules and
11 procedures and the act. And turn to a closed meeting on a
12 case for purposes of seeking legal counsel on a case,
13 pursuant to DC Official Code Section 2-575(b)(4), and in
14 or deliberating on a case pursuant to DC Official Code
15 Section 2-5775(b)(13), but only after providing the
16 necessary public notice, and in the case of an emergency
17 closed meeting after taking a roll call vote.

18 The decision of the board, in cases, must be
19 based, exclusively, on the public record to avoid any
20 appearance of the contrary the board requests the persons
21 present not engage the members of the board in
22 conversation.

23 Please turn off all beepers and cell phones at
24 this time so as to not disrupt the procedures.

25 Preliminary matters of those relate to whether a case will

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1 or should be heard today such as requests for postponement
2 continuous withdrawal, or whether proper adequate notice
3 of the hearing has been given.

4 If you're not prepared to go forward with the
5 case today or believe that the board should not proceed,
6 now is the time to raise such matter.

7 Mr. Secretary, do we have any preliminary
8 matters?

9 SECRETARY MOY: Good morning, Mr. Chairman and
10 members of the board. We do, very briefly, but first
11 Happy Halloween establishes the board more treats than
12 tricks.

13 Apart from that, I want to apologize for the
14 agenda because the computer listed two cases twice. There
15 is a preliminary matter to Case Application Number 19848
16 of Kinney Ajiboye, I believe that's pronounced, but that
17 is a preliminary matter because there's an ANC request to
18 postpone that application.

19 And finally, as the board will recall in the
20 public meeting session there's advanced consideration of
21 party status request to Application Number 19886. That's
22 it.

23 CHAIRMAN HILL: Okay. Great. Well, thanks Mr.
24 Moy. Thanks for wishing us Happy Halloween. I hope there
25 is also more treats than tricks. Does anybody want to --

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1 well, anyway. So I'd like to welcome everybody here as
2 well. Happy Halloween to everybody. If you would like to
3 stand, if you're going to participate and give testimony,
4 and take the oath administered by the secretary to my left
5 please.

6 SECRETARY MOY: Good morning. Do you solemnly
7 swear or confirm that -- affirm rather that the testimony
8 you're about to present in this proceeding is the truth,
9 the whole truth, and nothing but the truth? Ladies and
10 gentlemen you may consider yourselves under oath.

11 (Witnesses Sworn)

12 CHAIRMAN HILL: Okay. Great. So once again,
13 everyone we are going to follow the agenda of the way it
14 is in the bin as you, kind of, walk into the room there to
15 the right, and I hope that we all have a pleasant day
16 together.

17 We're going to be here pretty late probably.
18 We're going to take lunch break I would assume at some
19 point in time, and we're going to conclude at the end of
20 the day with an appeal, so we've saved that for last
21 because it's going to be fairly time consuming. So after
22 that, Mr. Moy, you can go ahead and call our first meeting
23 case.

24 SECRETARY MOY: Okay. Then in the public
25 meeting session then, the first is the -- this Case

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1 Application Number 19886 of Giuseppe and Teresa Fara -- I
2 should know how to pronounce this, but it's F-A-R-R-U-G-G-
3 I-O.

4 This is advance consideration of party status
5 request, and this application, for the record, is
6 requesting special exception relief under Subtitle D
7 Section 1206.4, and the 5201 from the rare addition
8 requirements of Subtitle D Section 1206.3 to construct a
9 rare addition to an existing attached principal dwelling
10 unit in R-20 Zone at premises at 3602 Prospect Street N.W.
11 Square 1202, Lot 838.

12 CHAIRMAN HILL: Okay. Great. Thank you, Mr.
13 Moy. Is the Board ready to deliberate on this preliminary
14 matter?

15 VICE CHAIR HART: Sure.

16 CHAIRMAN HILL: Sure, Bob, I mean, I can --
17 yes, guess we're going to start Vice Chair Hart. I mean,
18 after reading through the record, I mean, I think that the
19 applicant meets the requirements under Y404.13, and you
20 know, as they are the direct adjacent neighbor.

21 And also, in addition, to that there hasn't
22 been any opposition to the party status requests, but I do
23 think they meet the criteria, so I'll be voting in
24 approval of the party status request. Does anybody have
25 anything else they want to add?

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1 VICE CHAIR HART: Just one point. We do have to
2 make sure that they are actually here; is that correct?
3 I'm asking OAG. Okay. So does that mean that we have to
4 have them stand to come to the table.

5 MS. NAGELHOUT: They don't need to come to the
6 table, but the regulations do say that the person should
7 be in attendance.

8 VICE CHAIR HART: Okay. Then do we say that
9 they are -- that we see them in attendance. I just
10 didn't know how we affirm that they -- that portion of it.

11 COMMISSION TURNBULL: How about if they raised
12 their hand?

13 VICE CHAIR HART: Oh, they can do that. Okay.
14 So I just wanted to make sure that we acknowledge that
15 they were actually here. So that's it.

16 CHAIRMAN HILL: Thank you, Vice Chair. All
17 right. Does anybody else have anything else they would
18 like to add?

19 MEMBER WHITE: Well, the only comment is that I
20 think they make the criteria under the regulations for
21 party status. They're uniquely impacted by this
22 application, so I would be -- this is a procedural matter,
23 so I would be in support of granting their requests, their
24 an adjacent neighbor as well, so those are my comments
25 with respect to that application.

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1 CHAIRMAN HILL: Okay. So we're going to have -
2 - Mr. Moy, we're going to have -- go ahead and approve
3 their party status request, okay, by consent. All right.
4 So if you want to call the next one when you get a chance
5 you can, and I am not on it, so I'm going to let Vice
6 Chair Hart lead.

7 Oh, one thing, Mr. Moy, when is that case being
8 heard, the one we just approved party status for, do you
9 know? If not, it's okay.

10 SECRETARY MOY: No, I can tell you. I was
11 afraid you're going to -- I was thinking about it as I was
12 speaking. That's going to be heard -- give me a second, I
13 have the list. It is -- because it's coming up. Here we
14 go. December the 12th.

15 CHAIRMAN HILL: Okay. Great. Thank you.

16 SECRETARY MOY: Okay. With that then the case
17 application for decision making is Number 19821 of 1322
18 Randolph Street N.W. LLC request for special exception
19 under the residential conversion requirements Subtitle U
20 Section 320.2.

21 This would construct a third-story and three-
22 story rear addition to an existing principal dwelling unit
23 and convert it to a three-unit apartment house RF -1 Zone.
24 This is a 1322 Randolph Street N.W. Square 2825, Lot 127.
25 Participating on the vote is Vice Chair Hart, Ms. John,

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1 and Mr. Peter May.

2 VICE CHAIR HART: Thank you, Secretary Moy. So
3 we did hear this case at our -- is the board ready to
4 deliberate? I can --

5 MEMBER JOHN: Yes.

6 VICE CHAIR HART: -- begin. We did hear this
7 case at our October 24th, 2018 hearing. At the time the
8 applicant provided a brief description of the case, and we
9 asked several questions about how they're meeting -- their
10 special criteria, in particular, how they are about
11 impacts to the next door neighbors roof top solar system
12 is required under Subtitle U 320.2 G. The board did
13 request a few items to be able to make our final decision.
14 We set that decision for it today.

15 We did request the shadow study and the
16 accompanying report that discussed it, as well as the
17 agreement that the applicant had with the next door
18 neighbor.

19 We subsequently also asked for an updated
20 drawing of the building section that shows which is now in
21 Exhibit 44C Page 7. That shows in more accurate roof
22 slope that will indicate how the roof will drain since it
23 was not apparent in the drawing that the applicant
24 provided at the time which was Exhibit 40C.

25 Since the last meeting the applicant has

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1 provided the documents that we requested after reviewing
2 these new documents showing how the neighbors solar array
3 would be impacted. The applicants proposal will impact
4 the rooftop solar array for the neighbor by reducing it by
5 an average of 18 percent per year before the -- for the
6 year.

7 The subsequent -- the Subtitle U 320.2 requires
8 that an applicant not significantly impact the operation
9 of existing rooftop solar energy system unless they agree
10 to compensate the adjacent owner.

11 While I do believe that the -- that there is an
12 impact, a significant impact, I also note that the -- on
13 the record, there is an agreement between the owner and
14 adjacent property owner on compensation for impacting this
15 system.

16 I'll also note that ANC and the Office of
17 Planning both recommended an approval of this application.
18 The ANC conditioned their approval on several items that
19 included contributing to an affordable housing trust fund,
20 permeable pavers for an impervious area, reimbursing the
21 adjacent neighbor with the solar array and replacing the
22 service line, the lead service line to the house.

23 The only condition that I felt that actually
24 pertained to the zoning is the reimbursement of the
25 adjacent neighbor and I've -- as I noted there's already

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1 an agreement which is in Exhibit 44A. So kind of taking
2 all of that into account I would be in support of this
3 application and would like to hear if my colleague has any
4 other things to add.

5 MEMBER JOHN: Mr. Vice Chair, I believe you've
6 done a very thorough review and analysis of the case. So
7 far I do agree that the record is quite full, and the
8 applicant meets the developmental standards for the
9 conversions, and so, the question is whether or not -- for
10 the addition, and so, the question was whether or not he
11 meets the special -- the applicant meets the special
12 exception criteria for conversion.

13 I do agree that the outstanding issue is the
14 solar panel and the impact that the addition would have on
15 the solar panel of the neighbor. However, the neighbor
16 has signed an agreement, which is fairly clear about how
17 reimbursement will occur, and so, I also agree that the
18 other conditions are not specifically related to the
19 zoning relief requested, and so, are not appropriate to be
20 included in the BZA order.

21 And so, I also note the ANC supports the
22 application, and I will give great weight to their issues
23 and concerns, and great weight to the recommendation of
24 the Office of Planning, and so, I can support this
25 application.

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1 VICE CHAIR HART: Okay. So with that I would
2 make a motion to approve Application Number 19821 of 1322
3 Randolph Street N.W. LLC as read in caption by the
4 Secretary.

5 And I was not going to add any conditions, so I
6 want to make sure that was clear. I think that the one
7 condition was not pertaining to the reimbursement, which
8 was already taken care of, so I didn't think to -- that
9 we needed to add that. I just wanted to make sure you're
10 okay with that.

11 MEMBER JOHN: Mr. Vice Chair, I do not know. I
12 would ask OAG to clarify if -- because there's an
13 agreement, in the record, do we need to make it a
14 condition since really it's already been satisfied?

15 MS. NAGELHOUT: I think the regulations require
16 that you find that the addition would not interfere with
17 solar panels unless the owner has given permission, so --

18 MEMBER JOHN: Right.

19 MS. NAGELHOUT: -- if you wanted to make it a
20 condition you could, but otherwise, your finding is that
21 there's not going to be any interference because the
22 agreement has been reached.

23 MEMBER JOHN: Thank you.

24 VICE CHAIR HART: So I'll make the motion to
25 approve the application and without any conditions. Do I

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1 have a second?

2 MEMBER JOHN: Second.

3 VICE CHAIR HART: So by hearing a second, all
4 those in favor say aye. Aye.

5 MEMBER JOHN: Aye.

6 VICE CHAIR HART: Any opposed?

7 SECRETARY MOY: Mr. Vice Chair, before I give -
8 - before the staff gives a final vote count, we do have an
9 absentee ballot from Mr. Peter May, and his absentee vote
10 is to approve with any such conditions as the board may
11 impose, which is not the case here, so that would give a
12 final resulting vote of three to zero to two. Then on the
13 motion of Vice Chair Hart to approve the application for
14 the relief request seconded by Ms. John. Also, in support
15 Mr. Peter May, two board members not participating motion
16 carries.

17 VICE CHAIR HART: Thank you, Mr. Moy. I hand
18 it back to you Mr. Chairman.

19 CHAIRMAN HILL: Thanks. So Mr. Moy, I guess
20 actually, there is another preliminary matter that you had
21 mentioned earlier that maybe we'll go ahead and take out
22 of order now in order to address that.

23 SECRETARY MOY: Yes, thank you, Mr. Chairman.
24 And that would be -- okay. That would be Case Application
25 Number 19848 of Kinney Ajiboye. Caption advertised for

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1 area variance from the side yard requirements Subtitle D
2 Section 303.1 to construct a new principal dwelling unit
3 R-2 Zone. This is at 519 48th Place N.W. Square 20 --
4 Square 5243, Lot 3.

5 As I said earlier there's a preliminary matter
6 in the ANC 7C who requested a postponement, and also, in
7 the record the applicant under the Exhibit 48 objects to
8 that motion.

9 CHAIRMAN HILL: Okay. Could the applicant and
10 the ANC please come forward? All right. Okay. I guess,
11 if you could both introduce yourselves for the record.
12 You need to push the button there Commissioner.

13 MS. WOODS: Catherine Woods, ANC Commissioner
14 7C03.

15 MR. AJIBOYE: My name is Kinney Ajiboye.

16 CHAIRMAN HILL: Ajiboye?

17 MR. AJIBOYE: Yes, sir.

18 CHAIRMAN HILL: Okay. So Commissioner Woods,
19 you guys have asked for a postponement and the -- Mr.
20 Ajiboye?

21 MR. AJIBOYE: Ajiboye.

22 CHAIRMAN HILL: Ajiboye?

23 MR. AJIBOYE: Ajiboye.

24 CHAIRMAN HILL: Ajiboye. Wait if you know how
25 to say it -- so Mr. Ajiboye, there's an objection to the

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1 postponement. So Commissioner Woods, could you just kind
2 of elaborate a little bit? I'm sure you've read the
3 record in terms of that Mr. Ajiboye believes that he has
4 been trying to reach out as best as he could, and you
5 know, we have gotten all of the different aspects in terms
6 of what we need to kind of go ahead here at the hearing
7 today, but you can you just elaborate a little bit about
8 why you would like a postponement.

9 MS. WOODS: We would like a postponement
10 because there have been numerous, I want to say mud slides
11 or whatever in the area, as you know Ward 7, at least in
12 that area is built on top of a spring of water.

13 We don't have any objection to Mr. -- I'm going
14 to call him Kinney -- building a home there, but what we
15 would like to do is to have DC Water Authority investigate
16 the damage that's there because there's a lot of drainage
17 and water flowing into the basements of people's homes.

18 The lot that Mr. Kinney wishes to build on, and
19 he admits himself, that there's a drain there that is
20 clogged and it's old, and he believes that DC Water is
21 responsible for taking care of that.

22 So we need DC Water to investigate that area
23 and correct it. And I've contacted WASA, they sent me to
24 DCRA, DCRA sent me to water zoning and here we are.

25 CHAIRMAN HILL: Okay. Commissioner Woods, so

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1 your ANC was hopeful that DC Water would provide some
2 feedback, and then you were going to have a meeting, and
3 then give something one way or another in terms of your
4 support or whatever non-support?

5 MS. WOODS: Well, we wanted to hear what DC
6 Water had to say about the area because it's a very
7 dangerous situation, and if you start digging there then
8 you're going to have water flowing into other homes that's
9 right next -- adjacent to those other lots, so it's a
10 serious problem.

11 CHAIRMAN HILL: Okay. I was going -- okay. so
12 first, I was going to ask OAG a question at some point as
13 to whether -- what DC Water has to do with us but --
14 because there's no -- I'm just saying I understand your
15 requests.

16 I mean, that and I'm just trying to get to when
17 we would actually hear the case, and so, I'm going to go
18 with the Commissioner, Mr. Kinney. So you have an
19 objection to this postponement, can you explain why
20 please?

21 MR. AJIBOYE: Yes, Chairman Hill, good morning.
22 Commissioners, good morning. I objected to the request of
23 the ANC because the reason why they are asking for the
24 postponement, actually, has nothing to do with the
25 particular lot that I'm building on. We have a 2500

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1 square feet. The issue that it have in that neighborhood
2 has been in the system for a while now.

3 When it rains the water collects at the back of
4 the public alley, which is not my lot. It has nothing to
5 do with our lot. It's on the public 15 foot alley on the
6 back of the neighbors. What the SMD has suggested is to
7 have water to come there, to look at, investigate it and
8 see what he can do, but I don't see why they tie me to the
9 problem of the neighborhood.

10 She has to say she has no objection for us to
11 build, she just wants to know what was I going to do, when
12 was I going to do it. She doesn't know. So I would love
13 to have for us to move forward ahead in this case or at
14 the very least, I'm going to have a meeting with them
15 again for the 5th time on the 8th of November for the July
16 meeting. I've been there in August, twice in September.
17 I've been there in October, so the meeting on --

18 CHAIRMAN HILL: Okay. I'm going to interrupt
19 you for just one second. So Commissioner, you guys
20 haven't heard the proposal yet at your ANC?

21 MS. WOODS: The proposal for the half of the
22 home?

23 CHAIRMAN HILL: Yes. Yes.

24 MS. WOODS: He presented that proposal but --

25 CHAIRMAN HILL: Okay. And the, ANC, didn't

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1 vote on that.

2 MS. WOODS: We refused to vote on that.

3 CHAIRMAN HILL: Okay. Because of the DC Water
4 thing. So again, I don't know if OAG has a comment. I'm
5 just trying to understand what DC Water has to do with us
6 and zoning.

7 MS. WOODS: Well, he --

8 MS. NAGELHOUT: I'm not sure, either. This is
9 a request for an area variance, and so, part of the burden
10 of proof would be to show no substantial detriment to the
11 public good, and if there's some connection between what
12 this applicant is proposing in the water situation, and
13 then it could be relevant if it's effecting the alley and
14 not tied to his particular lot I would think it's not
15 relevant.

16 CHAIRMAN HILL: Okay. Okay. Does the board
17 have any thoughts?

18 VICE CHAIR HART: Just one question.
19 Commissioner Woods?

20 MS. WOODS: Woods.

21 VICE CHAIR HART: Woods.

22 MS. WOODS: W-O--O--D--S.

23 VICE CHAIR HART: Thank you. Did you have a --
24 did the ANC actually have a discussion about any concerns
25 that the neighbors, the next door neighbors, might have

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1 and --

2 MS. WOODS: Yes.

3 VICE CHAIR HART: -- did they bring up any
4 concerns that you're also --

5 MS. WOODS: Well, we met with neighbors on both
6 sides. Let me preference my remarks by saying that that
7 area is -- on one side you have a family of Hispanic
8 nature and didn't quite or don't quite understand what the
9 problem is, so we had to have -- had to get an interpreter
10 to really explain the situation, and I've tried, you know,
11 to get in touch with the owner of that house, and so, we
12 haven't been able to really talk with him for him to
13 understand.

14 On the other side of the house one party said
15 well, you know, I don't know I think maybe we need to get
16 this thing straight before -- because water is coming in
17 and if he starts digging maybe more water will come in or
18 it may be a slide, so that's why we wanted WASA to come in
19 and say what's going on back here.

20 VICE CHAIR HART: Okay. Thank you.

21 MEMBER WHITE: I guess part of my question is
22 whether or not the Office of Planning has been involved in
23 any aspect of this at all as it relates to whether or not
24 that impacts the variance standard criteria?

25 MS. BROWN-ROBERTS: Maxine Brown-Roberts from

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1 the Office of Planning. Actually, no, this is the first
2 time I'm hearing about that there is a problem with that,
3 but this is a side yard variance. They're not having the
4 -- they're asking to reduce the side yard. and just
5 preliminarily, I don't see how that, you know, would
6 affect the water situation whether there's a, you know, if
7 he was providing the eight foot side yard and coming in as
8 a matter of right that situation would still be there.

9 MEMBER JOHN: So Mr. Chairman, I agree with the
10 Office of Planning on that issue. At the same time, I
11 also recognize that the applicant has made a very serious
12 effort to appear before the ANC. When is the next
13 hearing?

14 MS. WOODS: November the 8th.

15 MR. AJIBOYE: November the 8th.

16 MEMBER JOHN: So perhaps armed with this new
17 information you could go back and present -- and I'm
18 suggesting something Mr. Chairman, to Mr. Chairman
19 actually, for his consideration that the applicant could
20 perhaps go back to the ANC and explain what transpired
21 here and what our discussion was about the fact that
22 the relief he's requesting would not impact or would most
23 likely not impact the issue of the water drainage.

24 Of course, in building, and here I'd ask the
25 architects to chime in. In building the project they

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1 would have to pay attention to things like drainage, so I
2 don't think that the fact that in the neighborhood, in
3 general, there is a water problem should be part of the
4 applicant's issue to resolve, and I don't know if there's
5 any evidence that the water is draining from this property
6 to the alley, so I'm not sure that -- I think a brief
7 continuance to discuss these issues might be helpful.

8 CHAIRMAN HILL: Okay. Let's just think here
9 for a second, okay. So I don't know -- now, Mr. Kinney,
10 do you have any witnesses here or are you just here
11 yourself?

12 MR. AJIBOYE: Chairman, I'm here myself, and
13 also, to go back on the word of SMD, both houses, I guess,
14 they both have already issued a letter of support, and the
15 issue --

16 CHAIRMAN HILL: Okay. I'm just going to
17 interrupt you right now because I don't want to get into
18 the hearing just yet. I'm just trying -- we're trying to
19 figure out whether we're going to get to the hearing.
20 Now, the reason that I'm asking is are there other people
21 here other than yourself presenting today?

22 MR. AJIBOYE: No, Chairman, I'm the only
23 person.

24 CHAIRMAN HILL: Okay. And so because it sounds
25 like Commissioner Woods, you're trying to just understand

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1 the water situation whether or not there would or would
2 not be an issue there, and what I'm understanding from
3 everyone here on the board as well as the Office of
4 Attorney Generals as well as the Office of Planning --
5 whether or not the water would affect this application
6 we're -- I'm not clear on yet, and so, what -- and I don't
7 -- well, I'm kind of throwing this is out for the board.
8 We can see how this goes. We can go ahead and hear the
9 hearing with Mr. Kinney, and since the Commission is here
10 now she can also participate as being part of the ANC,
11 then we wouldn't necessarily have a decision or not and we
12 go ahead and let -- and I'm sorry, Mr. Kinney, I'm just
13 going to keep calling you Mr. Kinney, but Mr. Kinney
14 presented to the ANC again about the water issue on the
15 9th, and then we can have a decision perhaps after
16 getting something from the ANC.

17 After the 9th we can have a decision the
18 following week. And if, at that time, after hearing from
19 the ANC if we want to reopen the record we can bring the
20 ANC in and talk about that.

21 So that's kind of where just I'm thinking about
22 right now. Before I ask the witnesses what their thoughts
23 are does the board have any thoughts on that?

24 VICE CHAIR HART: Yes, I think I could support
25 that. I did have a question though. Commissioner Woods

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1 raised the issue about getting some feedback from DC
2 Water, and I'm not sure if you have a or at least some
3 understanding from them -- I'm not sure if you have a
4 particular idea about when you would be getting -- I mean,
5 are you thinking that you might be getting some feedback
6 from them before your ANC meeting because otherwise, it
7 just seems like you're going to run into the same issue
8 you had before.

9 MS. WOODS: No, I'm very hopeful that by the
10 end of this week I should hear -- the Commissioner should
11 hear from WASA. And I need to clarify it's an alley, but
12 it's not a paved alley. It's all woods, so you don't
13 know what you're going to get when you start digging.

14 VICE CHAIR HART: No, no, I understand that
15 what I was trying to --

16 MS. WOODS: But I do expect to hear from WASA
17 even if I have to go there. I do expect to hear from them
18 this week.

19 VICE CHAIR HART: Okay. So I think that,
20 Mr. Chairman, that your suggestion would be one that I
21 could support that we got to hear -- you have the hearing
22 today, we have subsequent hearing after the Commissioner
23 has the ANC meeting, and then hear what the ANC has at
24 that point, so that way we can at least be able to begin
25 this process and then conclude it mid -- sometime mid to

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1 late November.

2 MEMBER WHITE: Mr. Chair, I would agree with
3 that as well. I mean, I just need to make sure that, you
4 know, the variance standard has been met with respect to
5 the problem dealing with, you know, whether or not there's
6 any specific detriment to the public good, and I would
7 like to kind of get -- give the ANC an opportunity to
8 weigh on -- in on that issue by getting some additional
9 feedback from WASA, but to the extent that we can
10 accomplish some aspects of fact finding on the hearing
11 today I would be supportive of that as well.

12 COMMISSIONER TURNBULL: Mr. Chairman, I would
13 agree with the rest of the board. It's your proposal to
14 set it up the way that you're looking at it.

15 And in one way I'm not -- the alley is a
16 separate issue, I think in one circumstance, but my only
17 concern is because I think the applicant is going to need
18 to address. I'm just looking at the photograph of the old
19 OP report of the property, and it looks like there's a
20 significant swale on the property. It looks like there's
21 a gully near the one brick building. It looks like it's
22 significant, and one of the thing that the board is going
23 to be really look at is that when you lay out this
24 property we'll need a civil drawing shows that there's no
25 water going to be going onto the adjacent properties.

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1 I mean, that's going to be a key item for us to
2 look at, and so, when I just look at this picture it looks
3 like there's a significant depression on one side of the
4 property, which I think you're going to need to talk about
5 and explain, at least to myself.

6 CHAIRMAN HILL: Okay. All right. So I think
7 we have a plan moving forward then. So what we're going
8 to go ahead and do is hear the case, and then we'll go
9 ahead and we will make a decision today. And we'll let --
10 Mr. Kinney, we'll let you go ahead and present to the ANC
11 on November 9th, and hopefully, Commissioner Woods is
12 saying that she might get -- have to, you know, I'm
13 thinking you're probably going to have to go down there if
14 you want to try to get something from them before then.

15 MS. WOODS: I will.

16 CHAIRMAN HILL: And then at least you'll have
17 enough information to take back to your ANC to, kind of,
18 figure out what your position is. And so, I guess we're
19 here now so you guys are -- jumped to the front of the
20 line.

21 (Whereupon, the above-entitled matter went off
22 the record at 10:18 a.m.)

23
24
25

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: Board of Zoning Adjustment

Date: 10-31-18

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.



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