

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

NOVEMBER 7, 2018

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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 9:44 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the Public Meeting held on November 7, 2018.

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Adjourn 16

P R O C E E D I N G S

9:44 a.m.

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2
3 CHAIRPERSON HILL: So, Mr. Moy, you can call our
4 first hearing case or meeting case.

5 MR. MOY: Yes, sir. Thank you.

6 There are three or rather four cases in the
7 public meeting session, the first for decision-making is an
8 expedited review of Application number 19859 of Alexandra
9 Veitch, V-E-I-T-C-H, as amended for special exceptions under
10 Subtitle E Section 5201 from the lot occupancy requirements
11 of Subtitle E Section 304.1, the rear yard setback
12 requirements; Subtitle E Section 306.1, nonconforming
13 structure requirements of Subtitle C Section 202.2, which
14 would construct a rear deck addition to an existing attached
15 principal dwelling unit, RF-1 Zone, 17 Rhode Island Avenue,
16 Northwest, Square 3112, Lot 88.

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

19 Is the Board ready to deliberate? Okay, I can
20 start. There are a couple of things but first, in terms of
21 the application, after looking through the record and all of
22 the issues that we have before us and then comparing that to
23 the standard of review for this application, for this
24 expedited review, I think that the applicant has met its
25 burden.

1 The Office of Planning, in their report, I
2 thought did a good job in terms of their analysis as to how
3 the applicant is meeting the standards of review.

4 The ANC 5E was also in support. DDOT had no
5 objection. There were a few letters of support as well to
6 the application.

7 There is an issue about notice, however, a
8 little bit of a blip wherein it seems as though under
9 Y401.4(a) and 401 -- oh, I'm sorry, 402.1(a), that there are
10 some requirements about public notice in the D.C. Register
11 and then also Y401.6 and 402.1(g) concerning notice to a
12 councilmember on their consent calendar.

13 I think that since the neighboring owners and
14 the ANC clearly have received notice by submitting reports,
15 as well as like submitting some testimony to the record about
16 this application, I think it is under our authority to waive
17 those, if we deem it appropriate and I would move forward
18 that the Board does waive those requirements because I think
19 that all notice has been given.

20 So first I am going to ask the Board does
21 anybody have any objection to waiving those requirements.

22 VICE CHAIRPERSON HART: No objection, Mr.
23 Chairman.

24 MEMBER JOHN: No objection.

25 CHAIRPERSON HILL: Okay. Then after that, would

1 anyone else like to say anything about the application
2 itself?

3 VICE CHAIRPERSON HART: No, I think you've hit
4 the same -- you had the same comments that I had with it.
5 I thought it was fairly straightforward and I did not have
6 any concerns about the notice issues. And I would be in
7 support of the application.

8 MEMBER WHITE: My only comment is you know they
9 are asking for a two-year time extension and I think there
10 is sufficient information in the record justifying the
11 request, one being the request for an extension based on
12 inability to --

13 VICE CHAIRPERSON HART: This is -- I think you
14 are looking at a different case. This is the 19859,
15 Alexandra Veitch.

16 MEMBER WHITE: Yes, you're right. Yes, so I
17 would concur with the chair with respect to the notice
18 requirements, as well as the request under the application
19 for this particular case. Thank you, Mr. Vice Chair.

20 CHAIRPERSON HILL: Okay. So unless anyone has
21 anything else to say, I will go ahead and make a motion to
22 approve Application number 19859, as captioned and read by
23 the Secretary and ask for a second.

24 VICE CHAIRPERSON HART: Second.

25 CHAIRPERSON HILL: Motion made and seconded.

1 All those in favor say aye.

2 (Chorus of aye.)

3 CHAIRPERSON HILL: All those opposed?

4 The motion passes, Mr. Moy.

5 MR. MOY: The staff would record the vote as
6 five to zero to zero based on the motion of Chairman Hill to
7 approve the application for the relief requested; seconding
8 the motion is Vice Chair Hart; also in support Ms. White, Ms.
9 John, and Mr. Peter Shapiro. The motion carries.

10 CHAIRPERSON HILL: Thank you, Mr. Moy.

11 MR. MOY: The next case for decisionmaking is
12 case application number 19099A of RP 3701 NW LLC. This is
13 a request for a two-year time extension with respect to the
14 time periods in Subtitle Y, Section 702.1 of BZA Order number
15 19099 that approved variances from the lot occupancy
16 requirements of Section 772.1 and the off-street parking
17 requirements of Section 2101.1, allowing the construction of
18 a new mixed-use building with 21 residential units and ground
19 floor retail, GA/C-2-A Zone District. This is at 3701 New
20 Hampshire Avenue, Northwest, Square 3030, Lot 805.

21 CHAIRPERSON HILL: Is the Board ready to
22 deliberate?

23 MEMBER WHITE: Yes.

24 CHAIRPERSON HILL: Would someone else like to
25 start?

1 MEMBER WHITE: Yes, let me start on this one,
2 since I was confusing this with the other one.

3 Yes, so this is a two-year time extension under
4 Subtitle Y 702.1 for BZA Order 19099. This is a property
5 located at 3701 New Hampshire Avenue, Northwest.

6 The original order it granted a variance from
7 the parking and lot occupancy requirements with conditions.
8 As you know, that particular subtitle requires that the
9 building permit application be submitted within two years.
10 But under the standards of review under Subtitle Y 705.1,
11 there are certain requirements that have to be met.

12 After reviewing the record, I found that it
13 seemed to be a pretty clean record. The Certification of
14 Service was made on all the parties. There is no change to
15 the property's exceptional condition or regulations. So the
16 material facts are pretty much the same.

17 And good cause arguments have been established
18 in the record in reviewing Exhibit 3C, where they are
19 requesting this one because of the increasing construction
20 costs, which, in essence, caused -- is causing a delay.

21 And also, finally, they also need to satisfy the
22 government approvals, which they need to get under WMATA.
23 The Office of Planning is recommending approval, as well as
24 the ANC. I believe they did not submit a response in
25 relation to this. So there is really nothing to give great

1 weight to.

2 But based on those findings, I would be in
3 support of this particular application for a time extension.

4 CHAIRPERSON HILL: Anyone else?

5 Okay, I don't have anything to add. Actually,
6 I thought Ms. White that was well said. Thank you for your
7 thorough analysis and I would concur with your thoughts.

8 And I will go ahead and make a motion to approve
9 Application number 19099A, as captioned and read by the
10 Secretary and ask for a second.

11 MEMBER WHITE: Second.

12 CHAIRPERSON HILL: Motion made and seconded.

13 All those in favor, say aye.

14 (Chorus of aye.)

15 CHAIRPERSON HILL: All those opposed?

16 Motion passed, Mr. Moy.

17 MR. MOY: The staff would record the vote as
18 four to zero to one. This was on the motion of Chairman Hill
19 to approve the request for the two-year time extension. The
20 second on the motion was Ms. White. Also in support, Ms.
21 John and Vice Chair Hart. Mr. Shapiro is present but not
22 participating today on this application.

23 The motion carries.

24 CHAIRPERSON HILL: Thank you, Mr. Moy.

25 MR. MOY: The next case application is

1 Application number 19254A of 1612 Seventh Street, Northwest,
2 LP. This is a request for a two-year time extension with
3 respect to the time periods in Subtitle Y, Section 702.1 and
4 a modification of consequence to the plans approved in BZA
5 Order number 19254, which would convert the second floor
6 commercial space to a ninth residential unit in a mixed-use
7 building, MU-4 Zone at 1612 through 1616 7th Street,
8 Northwest, Square 420, Lot 38.

9 And again, Mr. Chair, there are two actions
10 here. There's the modification of consequence and then the
11 request for a two-year time extension.

12 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
13 Moy.

14 Is the Board ready to deliberate? Okay, I can
15 go ahead and start, I guess.

16 After reading the record, you know I would agree
17 with the arguments that are being given by the applicant for
18 the time extension and also the modification of consequence
19 to the plans. I thought that the Office of Planning's
20 analysis was pretty thorough. I'm also glad to see that the
21 ANC recommended approval with no issues or concerns.

22 The only comment that I would make is that if
23 this were to pass, just again point out that the conditions
24 that were in the previous order would continue to remain in
25 effect.

1 Does anyone have anything they would like to
2 add? Okay, very quiet up here today.

3 I'll go ahead, then, and make a motion to
4 approve Application number 19254 A, as captioned and read by
5 the Secretary, including the specification that the
6 conditions from the previous order are going to remain in
7 effect, and ask for a second.

8 VICE CHAIRPERSON HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded.

10 All those in favor, say aye.

11 (Chorus of aye.)

12 CHAIRPERSON HILL: All those opposed?

13 The motion passes, Mr. Moy.

14 MR. MOY: All right, staff would -- I'm sorry,
15 Mr. Chair. I had a momentary lapse.

16 So the motion was for the modification of
17 consequence?

18 CHAIRPERSON HILL: The modification of
19 consequence and the time extension.

20 MR. MOY: And the time together, okay.

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: All right. That was where my clarity
23 was going to.

24 All right, so on the -- this is the motion of
25 the Chair, as he has stated, along with the conditions from

1 the previous order that would carry over. Seconding the
2 motion was Vice Chair Hart. Also in support, Ms. White, Ms.
3 John. Mr. Shapiro, present but not participating today.

4 The resulting vote is four to zero to one. The
5 motion carries.

6 CHAIRPERSON HILL: Thank you, Mr. Moy.

7 The next decision -- actually, I don't think Mr.
8 Shapiro is on it anyway.

9 MR. MOY: That's correct.

10 CHAIRPERSON HILL: Right, okay.

11 MR. MOY: So the last case for decisionmaking is
12 Case Application number 19822. This is Blue Sky Development,
13 Inc., captioned and advertised for an area variance from the
14 front setback requirements of Subtitle B, Section 315.1(b).
15 This would construct a new detached principal dwelling unit
16 in the R-1-B Zone. This is at 3724 30th Place, Northeast,
17 Square 4304, Lot 34.

18 And as the Board will recall, the hearing was
19 conducted on October 31, 2108, closed the record and
20 requested additional information from -- let me see. Okay,
21 and that's in the case record and I'll leave it at that, Mr.
22 Chair.

23 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.

24 Is the Board ready to deliberate?

25 MEMBER WHITE: Yes.

1 VICE CHAIRPERSON HART: Sure.

2 CHAIRPERSON HILL: Would someone like to start?

3 VICE CHAIRPERSON HART: Sure, I can start.

4 So the Board -- the BZA had a full hearing on
5 this case already, as the Secretary said. We requested that
6 the applicant provide us with some new plans, basically a
7 landscape plan showing how they might be able to prevent the
8 building to be viewed from the adjacent homeowner.

9 The adjacent homeowner, her name was Ms. Dumas,
10 she had requested that -- she was concerned that there were
11 going to be views or she'd be able to see this new building,
12 which was going to be built on a flag lot behind another
13 building, another house, and she wanted to have some way of
14 -- she was either in opposition to it or would be willing to
15 work with the applicant on some landscaping plans.

16 So that kind of gets us to where we are today.
17 The applicant has submitted plans and they submitted those
18 on November the 5th. And generally, they added five shrubs
19 -- these are Leyland cypress, very large shrubs -- between
20 the applicant's property and Ms. Dumas' property, which is
21 north of this site.

22 I am aware that these shrubs are quick-growing.
23 They are evergreen plants, and have dense foliage, and will
24 provide a thick barrier that will help reduce the visibility
25 between the applicant's property and Ms. Dumas.

1 So after reviewing the full record, I could
2 support the application because I think the applicant has
3 provided sufficient information on how it meets the three
4 prongs of the variance test. As I noted earlier, this is a
5 flag lot that would make it impossible to meet the front
6 setback requirements under Subtitle B 315.1(b) of the Zoning
7 Regs. The Office of Planning also recommends approval, as
8 does the ANC 5C. And the ANC's vote was six to zero to zero
9 in support of the application.

10 As I noted, Ms. Dumas was one of the neighbors
11 that came that said that she was in opposition to it but,
12 toward the end of the hearing, she also noted that she would
13 be willing to work with the applicant and actually has signed
14 on to the plans that we have in the file for the case. And
15 those plans are at Exhibit 54A. She has signed onto those.
16 So she is, with that signature, saying that she is supporting
17 that particular plan.

18 So I think we should be voting to support it and
19 I could make a motion on that but I will listen to the --
20 yes.

21 And because we want to make sure that the
22 applicant is following through on the plans that they have
23 drawn up, I think we should also include a condition that the
24 applicant should provide evidence as part of any building
25 permit application submitted in reliance on this order that

1 the applicant has installed the trees and guardrail in
2 compliance with the landscape plan, Exhibit 54A, prior to the
3 submission of the building permit application. And this is
4 really to make sure that they kind of solidify that the
5 applicant is providing the elements that they have indicated
6 in their plan.

7 So that's the one condition that we have with
8 it.

9 MEMBER WHITE: I was just going to comment, Mr.
10 Vice Chair, that I was pleased with the dialogue that
11 occurred between the applicant and Ms. Dumas. I think it was
12 very important that we addressed her issues and that with her
13 signature on the plans that are in Exhibit 54A, I am
14 comfortable with supporting this application for the variance
15 relief that the applicant is seeking for an area variance.

16 CHAIRPERSON HILL: I have nothing to add.

17 VICE CHAIRPERSON HART: Okay, so I will make a
18 motion to approve Application number 19822 of Blue Sky
19 Development, as read and captioned by the Secretary, with the
20 condition that the applicant shall provide evidence as part
21 of any building permit application submitted in reliance on
22 this order that the applicant has installed the trees and
23 guardrail in compliance with the landscape plan, Exhibit 54A,
24 prior to the submission of the building permit application.

25 CHAIRPERSON HILL: Second.

1 The motion has been made and seconded.

2 All those in favor, say aye.

3 (Chorus of aye.)

4 CHAIRPERSON HILL: All those opposed.

5 The motion passes, Mr. Moy.

6 MR. MOY: Before I record the final vote, Mr.
7 Chair, we have an absentee ballot from another participant
8 on this application, who is Michael Turnbull. And his
9 absentee vote is to approve the application, with such
10 conditions as the Board may impose.

11 He also adds in his comments, quote, I have
12 reviewed the new plant screen plan with Ms. Dumas' signature
13 on it, where she agrees or accepts the plan. And yes, so
14 that's it.

15 So that would give a final vote of five to zero
16 to zero, this on the motion of Vice Chair Hart to approve the
17 application for the relief, with one condition, as he has
18 stated. And this is as shown on the revised landscape plan
19 under Exhibit 54A. Seconding the motion, Chairman Hill; also
20 in support, Ms. White, Ms. John, and of course, Mr. Michael
21 Turnbull.

22 The motion carries.

23 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.

24 We actually just finished our decision cases but
25 just before we go into our hearing cases, we are just going

1 to take a little quick break.

2 Thank you.

3 (Whereupon, the above-entitled matter went off
4 the record at 10:04 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: DC BZA

Date: 11-07-18

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.



Court Reporter

NEAL R. GROSS

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