

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

APRIL 3, 2019

+ + + + +

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 L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
STEPHEN MORDFIN
ELISA VITALE

The transcript constitutes the minutes from the
Public Meeting held on April 3, 2019.

(9:41 a.m.)

1
2 CHAIRPERSON HILL: All right, good morning
3 everybody. Oh, this is great, thank you.

4 The hearing will please come to order. We're
5 located in the Jerrily R. Kress Memorial Hearing Room at 441
6 4th Street, Northwest. This is the April 3, 2019 public
7 hearing of the Board of Zoning Adjustment of the District of
8 Columbia.

9 My name is Fred Hill, Chairperson. Joining me
10 today is Carlton Hart, Vice Chair; Lesyllee White; and Lorna
11 John, Board members, and representing the Zoning Commission
12 is going to be Peter -- sorry, Rob Miller for the day, and
13 Peter May on one case.

14 Copies of today's hearing agenda are available to
15 you and located in the wall bin near the door. Please be
16 advised that this proceeding is being recorded by a court
17 reporter and is also webcast live. Accordingly, we must ask
18 you to refrain from any disruptive noises or actions in the
19 hearing room.

20 When presenting information to the board, please
21 turn on and speak into the microphone, first stating your
22 name and home address. When you're finished speaking, please
23 turn off your microphone so that your microphone is no longer
24 picking up sound or background noise.

25 All persons planning to testify either in favor

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1 or in opposition must have raised their hand and been sworn
2 in by the secretary. Also, each witness must fill out two
3 witness cards. These cards are located on the table near the
4 door and on the witness table. Upon coming forward to the
5 board, please fill out both cards and give them to the
6 reporter sitting to the table on 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 do not have the requisite number of copies, you can
11 reproduce copies on our office printer in the Office of
12 Zoning located across the hall. Please remember to collate
13 your copies.

14 The order of procedures for special exceptions and
15 variances and appeals is also written as you come in through
16 the door. The record shall be closed at 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 board's agenda includes cases set for
24 decision. After the board adjourns, the Office of Zoning,
25 in consultation with myself, will determine whether a full

1 or summary order may be issued.

2 A full order is required when the decision it
3 contains is adverse to a party, including an affected ANC.
4 A full order may also be needed if the board's decision
5 differs from the Office of Planning's recommendations.
6 Although the board favors the use of summary orders whenever
7 possible, an applicant may not request the board to issue
8 such an order.

9 The decision of the board -- oh, the District of
10 Columbia Administrative Procedures Act requires that the
11 public hearing on each case be held in the open, before the
12 public, pursuant to Section 405B and 406 of that act.

13 The board may, consistent with its rules of
14 procedures and the act, enter into a closed meeting on a case
15 for purposes of seeking legal counsel on a case, pursuant to
16 D.C. Official Code Section 2-575(b)(4), and/or deliberating
17 on a case, pursuant to D.C. Official Code Section
18 2-575(b)(13), but only after providing the necessary public
19 notice, in the case of and emergency closed meeting, after
20 taking a roll call vote.

21 The decision of the board in cases must be based
22 exclusively on the record. To avoid any appearance to the
23 contrary, the board requests that persons present not engage
24 the members of the board in conversation.

25 Please turn off all beepers and cell phones at

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1 this time, so as not to disrupt the proceeding.

2 Preliminary matters are those which relate to
3 whether a case should -- whether it should or -- heard today,
4 such as requests for postponement, continuance, or
5 withdrawal, or whether proper and adequate notice of the
6 hearing has been given.

7 If you're not prepared to go forward with the case
8 today, or if you believe the board should not proceed, now
9 is the time to raise such a matter. Mr. Secretary, do we
10 have any preliminary matters?

11 MR. MOY: Good morning, Mr. Chairman, members of
12 the board. I do not have any new news. As to today's
13 docket, there are preliminary matters, but the staff would
14 suggest that the board address those when I call the case.

15 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
16 Moy. All right, everybody, if there's anyone here wishing
17 to testify, if you wouldn't mind standing please and taking
18 the oath administered by the secretary to my left?

19 (Witnesses sworn.)

20 MR. MOY: All right, ladies and gentlemen, you may
21 consider yourselves under oath.

22 CHAIRPERSON HILL: Okay. We have a pretty full
23 day today. And we are going to go in the order as you saw
24 in the -- from the bin. You know, all the paperwork that's
25 in the bin as you come through the door.

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1 And I'm glad to see so many people here. Okay,
2 all right, and, Mr. Moy, you can start us off whenever you
3 like on our meeting case.

4 MR. MOY: Thank you, Mr. Chairman. There are, as
5 the board is aware, two cases, and it's a public decision
6 meeting session.

7 The first case application for a decision is
8 Application Number 19334 of Shahid Q. Qureshi. This is a
9 request from the -- well, this is a motion for
10 reconsideration of the board's decision that denied Appeal
11 Number 19334 of an April 19, 2016 decision by the Zoning
12 Administrator, Department of Consumer and Regulatory Affairs,
13 to revoke Certificate of Occupancy Number C00901692, that
14 granted to permit a parking lot in the R-1-B District at
15 premises 2200 Channing Street, Northeast, Square 4255, Lot
16 28.

17 And participating on this decision is Chairman
18 Hill, Vice Chair Hart, Ms. White, and Mr. Robert Miller.

19 CHAIRPERSON HILL: Okay. Are you guys all ready
20 to deliberate?

21 Okay. I guess the first thing is the waiver of
22 the ten day filing. And I suppose -- I mean, my thoughts on
23 this is, you know, we heard this case on 9/20/16, 12/7/16,
24 4/5/17, and 7/12/17. We've basically almost decided it two
25 years ago.

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1 I thought that in terms of the time filing, I
2 mean, the party who is requesting the reconsideration is
3 represented by counsel. And so I feel that the counsel, you
4 know, should know about the filing deadline, and this thing
5 has gone on and on for, you know, a long time.

6 And so I'm not interested in waiving the filing
7 deadline, but if you guys want to waive the filing deadline,
8 then we can go ahead and do that, and I can also deliberate
9 on the merits of the reconsideration. But what does the
10 board say?

11 VICE CHAIRPERSON HART: Yeah, I would agree with
12 you. The order was issued January 16, and we had the motion
13 in February 1.

14 Again, we do have our regulations so that we can
15 give everyone the -- a chance to be able to do that. I
16 wasn't particularly moved by the motion or the rationale for
17 why this was late. So I think we could deny it on this being
18 just late filing. So that's it.

19 MEMBER WHITE: Mr. Chair, I would agree with your
20 assessment. This is the motion for reconsideration, you
21 know, which goes to the appeal.

22 You know, the first issue, as you stated, is
23 whether the motion for reconsideration was late. As you
24 know, you're required to file within ten days. He was
25 required to file by Monday, January 28, 2019 under Subtitle

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1 Y 204.3. And it wasn't filed until February 1, 2019.

2 We can waive the ten-day filing requirement, but
3 it has to be based on good cause. So and you also have to
4 make a finding that the waiver won't prejudice the rights of
5 any of the parties under Y 101.9.

6 The appellant is represented by counsel. He
7 should have been aware of the time requirements, and the
8 request doesn't address whether or not the waiver won't
9 prejudice any of the rights of any party. So I would not be
10 in favor of waiving the time deadline in this particular
11 case.

12 COMMISSIONER MILLER: I concur with my colleagues.

13 CHAIRPERSON HILL: All right, then I guess it's
14 a motion. I'll go ahead and make a motion to deny the waiver
15 for the ten-day filing deadline and therefore dismiss the
16 application. And ask for a second?

17 VICE CHAIRPERSON HART: Second.

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

20 (Chorus of aye.)

21 CHAIRPERSON HILL: Aye. All those opposed?

22 Motion passes. Mr. Moy?

23 MR. MOY: Staff would record the vote as 4-0-1.

24 This is on the motion of Chairman Hill to deny the request --
25 the waiver of the timeliness of their filing.

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1 Seconded the motion, Vice Chair Hart. Also in
2 support, Ms. White and Mr. Robert Miller. Motion carries.

3 CHAIRPERSON HILL: Thank you, Mr. Moy.

4 MR. MOY: All right, Mr. Chairman, this is the
5 second and last of the cases for decision-making. This goes
6 to Application Number 19886 of Giuseppe and Teresa Farruggio.

7 As amended for special exception, relief under
8 Subtitle D, Section 1206.4, and 5201 from the rear yard --
9 rear addition requirements of Subtitle D, Section 1206.3, and
10 under Subtitle C, Section 1504 from the penthouse setback
11 requirements of Subtitle C, Section 1502.1(b), and pursuant
12 to Subtitle X, Chapter 10, for variances from the front
13 setback requirements of Subtitle B, Section 315.1(c), and
14 Subtitle D, Section 1205.2, and from the non-conforming
15 structural requirements of Subtitle C, Section 202.2, which
16 would construct a rear addition to the existing attached
17 principal dwelling unit, R-20 Zone, at premises 3602 Prospect
18 Street, Northwest, Square 1202, Lot 838.

19 Let's see. For the board's -- as you know, there
20 have been filings in the record only yesterday, Tuesday,
21 April the 2. And they begin with Exhibit 88, which is the
22 response from the party in opposition, through Exhibit 90,
23 which is the applicant's updated architectural plans and
24 elevations.

25 CHAIRPERSON HILL: Okay. Is the board ready to

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1 deliberate?

2 Okay. I can go ahead and start. So, you know,
3 this -- we've heard this -- well, this case has kind of gone
4 on for quite some time. We heard it a few times. It got
5 postponed. The decision was postponed.

6 I was happy to see that at least the neighbors had
7 tried to work together to try to come up with a solution in
8 terms of the disagreements they were having with respect to
9 light and air on the neighboring properties.

10 I guess -- the property is non-conforming because
11 of the -- well, first for the special exception relief, to
12 extend the existing non-conforming rear addition.

13 Well, first of all, overall I thought that the
14 design -- the second design that was submitted, I was also --
15 I was comfortable with the first design, and how the analysis
16 at the Office of Planning had come to believe that they were
17 meeting the relief that was being requested.

18 The ANC, what they had -- they basically pushed
19 on it, I think. They didn't, you know, give us a
20 recommendation one way or the other, although they did say
21 to try to -- they had concerns about some of the light and
22 air for the neighboring properties.

23 In terms of the special exception, I think that
24 the applicant meets the criteria, and I agree with the OP's
25 analysis in the original report, that the third floor

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1 addition would tend not to cast shadows that would
2 significantly block light and air to 3604 Prospect Street.

3 I also thought that the variance relief -- I would
4 agree with OP's analysis again in the original report. The
5 property faces an exceptional condition or practical
6 difficulty because the existing front setback of the house
7 is much greater than either adjacent property.

8 The property sits back 21.5 feet from the front
9 of 3600 Prospect, and 24 feet from the front of 3604
10 Prospect. Any addition requires zoning relief. And so I
11 think that the small footprint of the house requires this
12 relief.

13 Also, the property is in the Georgetown Historic
14 District, and although it's not a contributing structure, the
15 Old Georgetown Board has indicated that they wouldn't approve
16 an addition going forward, in terms of infilling that lot.
17 So I think that they meet the test for the variance relief,
18 as well.

19 Because the applicant revised the design, a
20 special exception was also required from the one-to-one
21 penthouse setback requirement to allow a guard rail on the
22 third story. The applicant filed a submission to the record
23 in Exhibit 87A, addressing the criteria for this relief.
24 OP's supplemental report also recommends supporting this
25 relief, and I again agree with OP's findings in terms of the

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1 applicant.

2 I am, you know, disappointed that the applicant
3 was not able to come to agreement with the neighbor because
4 that would have also helped out the applicant in terms of not
5 having to be a full order, rather than a summary order, but
6 at the same time, I think that the design that the party in
7 opposition was interested in -- I just think it was too small
8 a design to even make it worthwhile for the applicant, in my
9 opinion.

10 And also, as I said in my analysis here, I didn't
11 think that -- I think that they met the variance standard.
12 I also think that the light and air is not that unduly
13 affected for the adjoining properties.

14 So I am again thankful that the applicant has
15 tried to work with the neighbors. And also I -- one of the
16 attorneys for the applicant submitted something about being
17 confused about the deliberations that we do, and that we
18 don't take any actual testimony during these meetings, and
19 I appreciate that letter that was submitted as well.

20 So I will be voting in favor of the application.
21 And I will look to my fellow board members to give me their
22 opinions.

23 MEMBER JOHN: Mr. Chairman, I have a few
24 additional thoughts. And I will just go ahead and read what
25 I think.

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1 So the applicant proposes to add a one story rear
2 basement addition, a three foot bay addition to the rear of
3 the first and second floors, and a third floor rear addition
4 at 3602 Prospect Street, Northwest, in the R-20 Zone.

5 This property has a non-conforming front setback
6 which is about 21 feet from 3600 Prospect Street and 24 feet
7 from 3604 Prospect Street. Because of this long front
8 setback, the existing rear of 3602 Prospect Street currently
9 extends 21.2 feet beyond 3604 Prospect Street, but is aligned
10 with 3602.

11 As redesigned, this is applicant's second
12 submission. The applicant now proposes to add a new third
13 floor that would extend 24 feet from the adjacent rear wall
14 of 3604 Prospect Street, instead of 34.7 feet as originally
15 proposed, which is a significant improvement. There would
16 also be a ten foot deep roof deck on the second floor, with
17 a guard rail that does not meet the required one-to-one
18 setback.

19 Because of the non-conforming front setback, the
20 applicant seeks relief from Section B 315.1(c) for an
21 interior lot attached building that faces a street lot line,
22 to be further forward or further back than the building
23 facade of one immediately adjoining building.

24 Applicant also needs two variances, one from the
25 requirements of D Section 1205 for the front setback in the

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1 R-20 Zone, to not be consistent with at least one of the
2 immediately adjacent properties, and a variance from the
3 requirements of C 202.2 to increase or extend the existing
4 non-conforming front setback to the addition on the third
5 floor, as well as the new bay and rear additions; a special
6 exception from the one-to-one penthouse setback requirements
7 of Section C, 1502.1(b) for the guard rail on the third floor
8 addition, which is not set back one-to-one from the edge of
9 the building or below; and finally, a special exception from
10 D 1206.3 for a rear addition that is more than ten feet from
11 the farthest rear wall of an adjacent property.

12 This is a very full record, with testimony from
13 the applicant and the opposing party. The applicant argues
14 that it faces an exceptional condition because of the
15 existing front setback, and this causes a practical
16 difficulty in conforming with the regulations.

17 This is an unusual situation, where the existing
18 front back is so deep that it places the house at 3200
19 Prospect Street so far beyond the rear of 3604 Prospect
20 Street. This condition creates a smaller footprint for the
21 subject property, which can only be expanded by the third
22 floor addition at the rear of the house.

23 The option to extend the house at the front is not
24 available because of the opposition by the Old Georgetown
25 Board, which is not controlling but is worthy of

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1 consideration.

2 OP has provided a very thorough analysis of the
3 applicant's initial and supplemental proposal, and recommends
4 approval of both plans. The most contentious issue, and I
5 think the one that was the most important, was the loss of
6 light and air to the neighbor at 3604 Prospect Street -- I
7 would say the potential, because of the rear wall extension.

8 I have looked at both sets of sun studies, and
9 also giving consideration to the opposing party's alternative
10 design that reduces the third floor to five feet, and the
11 opposing party's response to the applicant's revised design,
12 and I accept the applicant's arguments that the five foot
13 deep third floor addition is impractical for reasons related
14 to cost and structural design changes.

15 I also agree with OP's analysis of the sun studies
16 because while there is increased shadowing during the morning
17 hours in December and March, as shown in Exhibit 65, 66, and
18 67, that impact would be lessened by the reduced size of the
19 rear addition in the second set of plans, which I call the
20 revised plans.

21 And no one is saying that there is no impact, but
22 that it is not unduly -- I don't want to say -- burdensome,
23 but that's sort of what I'm thinking.

24 In the interest of time, I will not address the
25 issues related to the basement addition and the special

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1 exception for the guard rail, which are fully discussed in
2 OP's report, and is fairly straightforward. Both of those
3 requests for relief are fairly straightforward.

4 So because of -- for all of these reasons, and
5 based on the full record and OP's analysis, I believe the
6 relief request is supported by the facts and the applicable
7 regulations, and I can support this application.

8 The rear yard relief admittedly is more than the
9 ten foot matter of right allowed, but there are unique
10 circumstances affecting this particular property, and I
11 believe the applicant has made a good faith effort to
12 accommodate the adjacent party to reduce potential adverse
13 impact.

14 The ANC in this case did not oppose the
15 application and noted that there was the potential for light,
16 air, and privacy issues, which I have considered. So I can
17 support the application.

18 CHAIRPERSON HILL: Okay, great. Thank you very
19 much for your analysis.

20 MEMBER WHITE: Mr. Chair, I agree with the
21 analysis that both you and board member John submitted. So
22 I'm not going to be redundant and add anything other than the
23 fact that the relief being requested for both special
24 exception from the rear addition requirements that the
25 applicant has filed -- I agree that they did meet the

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1 criteria under Subtitle D 20 -- 1206.4 and 5201.

2 Also, with respect to the special exception
3 request in the application, with respect to the penthouse
4 setback under C 1504, I believe that they met the criteria
5 under that regulation, as well as the area variance request
6 that they made both for front setback requirements and non-
7 conforming structure requirements.

8 I'd also like to note that I did review the record
9 thoroughly and the sun studies, which I paid particular
10 attention to to see whether or not there was any, you know,
11 dramatic impact with respect to the proposed additions, as
12 well as the existing condition of the property, and I could
13 not see from those exhibits that there was any substantial,
14 undue impact to the light and air for the adjacent neighbor.

15 And finally, I would note that I reviewed OP's
16 report, both their supplemental and their original support,
17 and I think that they also support the fact that the criteria
18 was met for the application.

19 And finally, I just want to note that the Old
20 Georgetown Board noted in the application, Board of the U.S.
21 Commission of Fine Arts had no objections to the concept
22 design that was submitted in the record. So for those
23 reasons, I would concur with your thoughts, as well as
24 support the application that's being filed in this particular
25 case.

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1 COMMISSIONER MILLER: Thank you, Mr. Chairman.
2 I support all of the relief that's being requested, both the
3 variance and the special exception relief. I think the
4 Office of Planning -- both reports did provide sufficient
5 justification that the criteria is being met.

6 I initially did have some concern with the special
7 exception for the third floor rear addition, but the
8 applicant did revise that third floor rear addition to extend
9 24.4 feet beyond the rear wall of 3604 Prospect, 14.4 feet
10 beyond the ten feet allowed, but it is a reduction of 10.3
11 feet from the original request.

12 I initially was concerned that it still did impact
13 the light and air of the -- and use and enjoyment of the
14 neighboring property, particularly in the morning sun. But
15 looking at the studies, I think it is pretty -- it's not a
16 significant impact from what the existing condition is or
17 what any kind of a reduced addition would be.

18 So I can support this going forward. It is a
19 unique property, 30 feet back from the property line, and
20 that does present challenges for the applicant's enjoyment
21 of the property with the Old Georgetown Board's -- and the
22 neighbors don't want anything done in the front, either.

23 That would be even worse, I think, for them. So,
24 in terms of the windows that are there, and so. So anyway,
25 I agree with my colleagues and can support this going

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1 forward.

2 CHAIRPERSON HILL: Okay. Well, thank you all very
3 much. And I think that again, as far as the applicant, they
4 did work with the neighbor. I mean, I don't know whether
5 they would have had you-all's vote in terms of the original
6 design, but they did pull back the updated plans the 10.3
7 feet. So, I mean, we're all in agreement that it's the
8 updated plans that we're approving, in terms of the 10.3
9 feet, and I see everyone nodding.

10 So I'll go ahead and make a motion to approve
11 Application Number 19886, as captioned and read by the
12 secretary, for the updated plans that reduce the third story
13 by 10.3 feet and ask for a second.

14 MEMBER JOHN: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All
16 those in favor, say aye.

17 (Chorus of aye.)

18 CHAIRPERSON HILL: Aye. All those opposed?

19 Motion passes. Mr. Moy?

20 MR. MOY: Staff would record the vote as 4-0-1.
21 This is on the motion of Chairman Hill to approve the
22 application for the amended relief requested.

23 Seconding the motion is Ms. John, and also in
24 support of the motion, Ms. White and Mr. Robert Miller. No
25 other board members participating. Motion carries.

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1 CHAIRPERSON HILL: Okay, great. Thanks Mr. Moy.
2 And we're going to switch out commissioners here.

3 (Whereupon, the above-entitled matter went off the
4 record at 10:09 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: 04-03-19

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

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