

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 18, 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 Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on September 18, 2019.

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

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Teresa Farruggio 14

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

9:43 a.m.

1
2
3 CHAIRPERSON HILL: Good morning, everyone. The
4 hearing will please come to order. We're located in the
5 Jerrily R. Kress Memorial Hearing Room at 441 4th Street,
6 Northwest. This is the September 18, 2019, public hearing
7 of the Board of Zoning Adjustment at the District of
8 Columbia. My name is Freddie Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chair; Lesyllee White and Lorna
10 John, Board Members. Representing the Zoning Commission is
11 Rob Miller.

12 Copies of today's hearing agenda are available to
13 you and located in the wall bin near the door. Please be
14 advised this proceeding is being recorded by a court reporter
15 and is also webcast live. Accordingly, we must ask you to
16 refrain from any disruptive noises or actions in the hearing
17 room. When presenting information to the Board, please turn
18 on and speak into the microphone first stating your name and
19 home address.

20 When you're finished speaking, please turn your
21 microphone off so that your microphone is no longer picking
22 up sound or background noise. All persons planning to
23 testify either in favor or in opposition must raise their
24 hand and be sworn in by the secretary. Also, each witness
25 must fill out two witness cards. These cards are located on

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1 the table near the door and on the witness tables when you
2 come forward. Upon coming forward to speak to the Board,
3 please give both cards to the reporter sitting to the table
4 on my right.

5 If you wish to file a written testimony or
6 additional supporting documents today, please submit one
7 original and 12 copies to the secretary for distribution.
8 If you do not have the requisite number of copies, you can
9 reproduce copies on an office printer in the Office of Zoning
10 located across the hall. Please remember to collate your set
11 of copies.

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

21 The Board's agenda includes cases set for decision
22 after the Board adjourns. The Office of Zoning in
23 consultation with myself will determine whether a full or
24 summary order may be issued. A full order is required when
25 the decision it contains is adverse to a party including

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1 affected ANC. A full order may also be needed if the Board
2 decision differs from the Office of Planning's
3 recommendation.

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

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

18 The decision of the Board in cases must be based
19 exclusively on the public record. To avoid any appearance
20 to the contrary, the Board request that persons present not
21 engage the members of the Board in conversation. Please turn
22 off all beepers and cell phones at this time so as to not
23 disrupt these proceedings.

24 Preliminary matters are those which relate to
25 whether a case will or should be heard today, such as request

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1 for postponement, continuance, or withdrawal, or whether
2 proper and adequate notice of the hearing has been given.
3 If you're not prepared to go forward with the case today or
4 if you believe that the Board should not proceed, now is the
5 time to raise such matter.

6 Mr. Secretary, do we have any preliminary matters
7 for the Board?

8 MR. MOY: Good morning, Mr. Chairman, members of
9 the Board. I do have a brief announcement related to today's
10 docket for the record. Case Application No. 20111 of Trinity
11 Episcopal Church has been postponed and rescheduled to
12 October 23, 2019.

13 Application No. 20106, Jorge Ventura, has been
14 postponed and rescheduled to October 16, 2019.

15 Case Application No. 20109 of Bernard Berry has
16 been rescheduled to October 23, 2019.

17 Finally, Application No. 20033 of Matthew and
18 Claire Portolese, P-O-R-T-O-L-E-S-E, has been withdrawn by
19 the applicant.

20 That's it from the staff. Any other preliminary
21 matters, Mr. Chairman, the Board can address when I call the
22 case.

23 CHAIRPERSON HILL: Okay, Mr. Moy. Thank you very
24 much.

25 Good morning, everyone. We're going to go ahead

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1 and start by taking an oath administered by the secretary.
2 If you plan on testifying either in favor or in opposition
3 if you could please stand and take the oath administered by
4 the secretary to my left.

5 (Witnesses sworn.)

6 MR. MOY: Thank you. Ladies and gentlemen, you
7 are under oath.

8 CHAIRPERSON HILL: All right, everyone. We're
9 going to follow the agenda as you see it coming through the
10 door there. We're probably going to take a lunch break at
11 some point. I don't know exactly when. We'll just have to
12 see how that goes. Other than that, I hope the people that
13 are here at the very end of the docket enjoy their day.

14 Mr. Moy, you can go ahead and start with the
15 meeting cases.

16 MR. MOY: Thank you, Mr. Chairman. There are
17 three case applications in the meeting session. The first
18 is an expedited review consent calendar, special exception
19 case. That is 20113 of Joseph Hezir, H-E-Z-I-R, captioned
20 and advertised for special exception under Subtitle D,
21 Section 5201; from the lot occupancy requirements of Subtitle
22 D, Section 1204; from the side yard requirements of Subtitle
23 D, Section 1207.2; non-conforming structure requirements of
24 Subtitle C, Section 202.2, to construct a two-story rear
25 addition to an existing semi-detached principal dwelling unit

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1 in the R-20 Zone at premises 2907 P Street, Northwest, Square
2 1268, Lot 810.

3 CHAIRPERSON HILL: Okay, great. Thank you. Is
4 the Board ready to deliberate?

5 Okay. I can start. This is here for an expedited
6 review. After reviewing the record in terms of the standard
7 of relief, as well as the report we received from the Office
8 of Planning, as well as the report from the ANC, the Office
9 of Planning had recommended their support, as well as the
10 ANC. DDOT had no objection.

11 I didn't have any issues with the analysis that
12 was provided to us and I do believe that they meet the
13 standard of relief for this expedited review, so I'll be
14 voting in favor. Is there anything else anyone would like
15 to add?

16 VICE CHAIR HART: Only that I would second your
17 support of the application. I didn't have any -- I thought
18 they met the criteria, and I thought -- I would also agree
19 with the OP report for recommending approval of the
20 application as well.

21 CHAIRPERSON HILL: Okay. I'll make a motion to
22 go ahead and approve Application No. 20113 and ask for your
23 second again.

24 VICE CHAIR HART: Second.

25 CHAIRPERSON HILL: Motion made and seconded. All

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1 those in favor say aye.

2 (Chorus of ayes.)

3 CHAIRPERSON HILL: All those opposed? Motion
4 passes.

5 Mr. Moy.

6 MR. MOY: Staff would record the vote as 5-0-0.
7 This is on your motion, Mr. Chairman, to approve the
8 application for the relief requested. Seconding the motion
9 is Vice Chair Hart. Also in support Ms. John, Ms. White, and
10 Zoning Commissioner Robert Miller.

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

13 MR. MOY: The next application before the Board
14 for decision-making is Case Application No. 19988, Rupsha
15 2011 LLC, as amended for area variance from the side yard
16 requirements of Sub title D, Section 206.2, to construct a
17 new detached principal dwelling unit in the R-2 Zone at the
18 premises at 4417 Foote Street, Northeast, Square 5131, Lot
19 40. Participating is Chairman Hill, Vice Chair Hart, Ms.
20 White, Ms. John, and Mr. Hood.

21 CHAIRPERSON HILL: Okay, great. Thank you. Is
22 the Board ready to deliberate?

23 MEMBER WHITE: Yes.

24 CHAIRPERSON HILL: Mr. Hart, would you like to
25 start us off?

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1 VICE CHAIR HART: Sure. So I understand and
2 appreciate the information that we've received on the case.
3 I understand the applicant is trying to develop this property
4 into a single family house. I'll note that OP and the
5 applicant have both noted that there is a by-right option for
6 this site. In the OP report they are recommending approval
7 for what is before us, which is a single-family house, a
8 detached single-family house with two three-foot side yards.

9 I note that there is a by-right option because
10 there is the ability to build this house on one of the lot
11 lines, have a 17-foot-wide house, and then have an eight-foot
12 side yard, which is what it required when you are including
13 a side yard. That is what is in the zoning.

14 So because I think that there is this by-right
15 option, or I understand there is this by-right option, I
16 would actually not be in support of this variance. I'm
17 saying that because I think the applicant has not proven how
18 the strict application of the regulations would result in a
19 peculiar and exceptional practical difficulty to them.

20 Again, in this instance, this lot itself it 25
21 feet wide and that would allow an eight-foot side yard as
22 well as a 17-foot wide house, which seems as though that
23 would be a -- which is the by-right option. It seems as
24 though that would be a direction that they can -- an avenue
25 that they can pursue.

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1 So I would be in denial of this application for
2 that reason. I just don't think that they have proven how
3 they pass the variance test, in my mind, so I would,
4 unfortunately, be in disagreement with the applicant and the
5 Office of Planning at this point.

6 CHAIRPERSON HILL: Okay, Mr. Hart. I guess I'll
7 follow up a little bit with you, if I could. I think that
8 I was kind of torn on this. I didn't know which way to go,
9 but after listening to your discussion, I would also agree
10 that the whole point of the variance is that you can't do
11 something else without the variance.

12 That's something that I think is -- we have made
13 different decisions in terms of -- like, what we thought in
14 terms of what the Office of Planning has said even if there
15 was a by-right option. However, in this case, I think since
16 there is the alley and they would be able to do, as you say,
17 build up against that, and then still have the -- because of
18 the alley it makes it more possible for them to do what they
19 want to do as a by-right option and not need to get the area
20 variance.

21 Actually, also my hesitation with this applicant
22 is that we tend to get this applicant every now and -- well,
23 we get this applicant for this particular type of project and
24 I still haven't heard from the ANC. We asked for the ANC's
25 feedback and I know that we reached out to the ANC several

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1 times in terms of what their thoughts were. I didn't see
2 anything from the applicant even after we postponed this so
3 that we could actually get something from them other than,
4 I think, like an email that still was a little unclear as to
5 how they presented.

6 Besides that fact, I kind of mention that again
7 just because as this applicant possibly comes forward again
8 and again, if we could make sure that everything has been
9 satisfied for us in order to make a decision moving forward.
10 In this case, I would agree with you, Mr. Hart, and be voting
11 to deny this application because of, as you mentioned, the
12 by-right option.

13 MEMBER WHITE: Mr. Chair, Mr. Vice Chair, I concur
14 with your opinion on this particular case. As you mentioned,
15 the variance test is a very high test. Because of the
16 configuration of that lot, I did not feel as though they met
17 the test of establishing exceptional situation resulting in
18 a practical difficulty. They did have other options in terms
19 of being able to develop that property.

20 I would also concur that we delay the decision on
21 this case to give the ANC an opportunity to respond. I
22 remain a little disappointed that we did not get formal
23 community feedback from the ANC with this particular case.
24 I don't know what their formal position, or if they took any
25 type of vote on this particular case, but given those

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1 circumstances, I would concur with your opinions as well.

2 MEMBER JOHN: Mr. Chairman, I also agree that we
3 should deny the application for a variance. When I initially
4 looked at this case, I was inclined to go along with the
5 Office of Planning's recommendation because it made sense to
6 me on a 25-foot-wide lot that the applicant would need a
7 variance. Having two side yards three feet each on each side
8 would be reasonable under the circumstances and the applicant
9 would end up with, I believe, a 19-foot-wide house.

10 But, you know, as I thought about it some more,
11 that's really not a good reason to approve the application
12 because I think it's better to have a larger house. The
13 regulations require that the applicant not be able to comply
14 with the regulations as written in order to create that
15 exceptional condition. I have to reluctantly recommend that
16 we deny the application.

17 CHAIRPERSON HILL: Okay. Thank you all for your
18 input. I'll go ahead and make a motion to deny Application
19 No. 19988 as captioned and read by the secretary and ask for
20 a second.

21 MEMBER WHITE: Second.

22 CHAIRPERSON HILL: Motion made and seconded. All
23 those in favor say aye.

24 (Chorus of ayes.)

25 CHAIRPERSON HILL: All those opposed? The motion

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1 passes.

2 Mr. Moy.

3 MR. MOY: Before I record the vote, Mr. Chairman,
4 we do have an absentee ballot from Zoning Commission Chairman
5 Anthony Hood and his vote is to deny the application, so that
6 would give a resulting vote of 5-0-0. This is on the motion
7 of Chairman Hill to deny the application. Seconding the
8 motion, I believe, was Ms. White. Also in support of the
9 motion Ms. John, Vice Chair Hart, and Zoning Commissioner
10 Hood. The motion carries, sir.

11 CHAIRPERSON HILL: Thank you, Mr. Moy.

12 MR. MOY: The next and last application for
13 decision-making is Application No. 19886 of Giuseppe and
14 Teresa Farruggio, as amended, for special exception under
15 Subtitle D, Section 1206.4 and 5201; from the rear addition
16 requirements of Subtitle D, Section 1206.3; and under
17 Subtitle C, Section 1504 from the penthouse setback
18 requirements of Subtitle C, Section 1502.1(b); and pursuant
19 to Subtitle X, Chapter 10, for variances from the front
20 setback requirements of Subtitle B, Section 315.1(c) and
21 Subtitle D 1205.2; and from the nonconforming structure
22 requirements of Subtitle C, Section 202.2, to construct a
23 rear addition to the existing attached principal dwelling
24 unit in the R-20 Zone at premises 3602 Prospect Street,
25 Northwest, Square 1201, Lot 838. Participating on this vote

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1 is Chairman Hill, Ms. White, Ms. John, Zoning Commissioner
2 Robert Miller.

3 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Is
4 the Board ready to deliberate?

5 Okay. I can start. So, we voted to approve the
6 application on April 3, 2019. Then, on June 19, 2019, we
7 rescinded that vote because we were interested in some
8 further clarification on the dimensions of the revised design
9 for the proposed new third floor.

10 A procedural order was issued on July 5th asking
11 the applicant to provide some more specific information. The
12 applicant submitted a narrative in Exhibit 94 and 95 and
13 revised plans in Exhibit 94(a) and 94(d), 95(a) through 95
14 -- sorry, 94(a) through 94(d), as well as 95(a) through
15 95(d).

16 The procedural order also asked the Office of
17 Planning to provide a second supplemental report. Their
18 revised second supplemental report is in Exhibit 81. I'm
19 sorry, the revised is on Exhibit 96. They continue to
20 recommend approval after the submissions. The other parties
21 that were in opposition were provided the opportunity to file
22 as well, and the party in opposition remains in opposition,
23 and they are in Exhibit 97.

24 I suppose, for me, you know, when we first
25 deliberated through this on April 3rd, I had thought that the

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1 applicant had met the burden of proof and the standards in
2 order for them -- in order for us to grant the application.
3 I mean, I think it's kind of a unique situation, actually,
4 in terms of the large front yard that they have, and the
5 ability that they can't move forward, as I had mentioned in
6 the previous deliberations. I haven't changed my mind in
7 terms of walking through the deliberations that I had from
8 the previous time we did that on April 3rd.

9 So, after getting further clarification from the
10 applicant, I continue to agree with the analysis provided by
11 the Office of Planning. I continue to also believe that the
12 applicant has met the standard for us to grant the relief
13 requested.

14 I do see that the parties in opposition comments
15 are continuing to be in opposition to the application and I
16 don't think that would necessary have changed even with the
17 further clarifications of the drawing, but I do appreciate
18 and I'm sorry that they are in opposition. And I'm going to
19 continue to vote the way that I'm voting, which is to be
20 voting in approval of the application.

21 Is there anything that anyone would like to add?

22 MEMBER JOHN: Just briefly, Mr. Chairman. So, I
23 looked at the clarifications that were provided in Exhibits
24 95(a) through (d). In particular, I thought that Exhibit
25 95(d) clarified the length of the addition and showed the

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1 relationship to the other two residents. In particular,
2 3604 Prospect Street, which was the property that appeared
3 to have some potential impact from the third floor addition.
4 I was aware at the time that we deliberated that the third
5 floor had been stepped back and that the length was about
6 17.6 feet. I didn't see anything in the drawings that would
7 cause me to change the basis for my earlier decision, so I
8 continue to support the application.

9 MEMBER WHITE: Mr. Chair, I also support the
10 application. I think they met the criteria for the special
11 exception variance relief that they are seeking, especially
12 with the supplemental information that clarified some points.

13 I also, for the record, just wanted to note that
14 we did not receive ANC feedback on this particular case, I
15 don't think. They did not submit a response with respect to
16 their position on this particular application.

17 I concur with your opinions and given the
18 information in the record, I would be in support of the
19 application.

20 COMMISSIONER MILLER: Thank you, Mr. Chair. I
21 concur with my colleagues.

22 CHAIRPERSON HILL: Okay. I'll go ahead and make
23 a motion to approve Application No. 19886 as captioned and
24 read by the secretary and ask for a second.

25 MEMBER WHITE: Second.

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1 CHAIRPERSON HILL: Motion made and seconded. All
2 those in favor say aye.

3 (Chorus of ayes.)

4 CHAIRPERSON HILL: All those opposed. The motion
5 passes.

6 Mr. Moy.

7 MR. MOY: Staff would record the vote as 4-0-1.
8 This is on the motion of Chairman Hill to approve the
9 application for the relief requested. Seconding the motion
10 Ms. John. Also in support Ms. White and Zoning Commissioner
11 Robert Miller. Vice Chair Hart not participating on this
12 application. The motion carries, sir.

13 CHAIRPERSON HILL: Thank you, Mr. Moy.

14 (Whereupon, the above-entitled matter went off the
15 record at 10:06 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: 09-18-19

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.



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