

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 23, 2020

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:35 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

TED VAN HOUTEN
AARON ZIMMERMAN

The transcript constitutes the minutes from the Regular Public Meeting held on September 23, 2020.

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

2 9:35 a.m.

3 BZA CHAIR HILL: All right. The meeting will
4 please some to order.

5 Good morning, ladies and gentlemen. We're
6 convened and broadcasting this decision meeting by video
7 conference this being the September 23rd, 2020, Public
8 Meeting Session of the Board of Zoning Adjustment of the
9 District of Columbia. My name is Fred Hill, Chairperson.

10 Joining me today is Lorna John, Vice Chair and
11 Chrishaun Smith, Board Members. And representing the Zoning
12 Commission is the Chair Anthony Hood as well as Commissioner
13 Rob Miller presenting to participate on a case.

14 Today's meeting agenda is available to you on the
15 Office of Zoning website. Please be advised that this
16 proceeding is being recorded by a Court Reporter and is also
17 WebCast Life via WebEx and YouTube Live.

18 The video of the WebCast will be available on the
19 Office of Zoning website after today's meeting session.
20 According, everyone who is listening on WebEx or by telephone
21 will be muted during the meeting. We do not take any public
22 testimony at our Decision Meetings.

23 If you are experiencing difficulty accessing WebEx
24 or with your telephone call-in, then please call our OZ
25 Hotline number and I'll repeat it twice. At 202-727-5471.

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1 Once again, 202-727-5471 to receive WebEx Login or call-in
2 instructions. It also may be listed on this screen at some
3 point during the meeting and the hearing.

At the conclusion of this meeting session I shall
in consultation with the Office of Zoning determine whether
a fuller Summary Order may be issued. A full order is
required when the decision it contains is adverse to a party
including an affected ANC. A full order may also be needed
if the Board's decision differs from the Office of Planning's
recommendation.

11 Although the Board favors the use of Summary
12 Orders whenever possible an Applicant may not request the
13 Board to issue such an order.

14 Preliminary matters which relate to whether a case
15 will or should be heard today such as a Request for a
16 Postponement, Continuous or Withdrawal and with a proper and
17 adequate notice of the meeting has been given.

18 Mr. Secretary, do we have any preliminary matters?

19 BZA SECRETARY MOY: Good morning, Mr. Chair and
20 Members of the Board. In the meeting session of the Hearing
21 the only announcement I have is that Application Number 20266
22 at 3400 Connecticut Partners, LLC was rescheduled from today
23 to the meeting session of September 30th, 2020. And that's
24 it for me, Mr. Chair.

25 BZA CHAIR HILL: Okay, great. And if you wouldn't

1 mind, Mr. Moy, if you could call our first meeting case.

2 BZA SECRETARY MOY: That would be Application No.
3 20214 of Jason Harris and Jenna Stark. And this is a request
4 for a Special Exception under Subtitle D Section 5201 from
5 the rear yard requirements of Subtitle D, Section 306.2.
6 This would permit a rear deck addition to the existing,
7 attached principal dwelling unit in the R-3 Zone at premises
8 221 38th Street, Northwest, Square 1301, Lot 659. And
9 participating on the decision is Chairman Hill, Vice Chair
10 John, Mr. Smith and Zoning Commissioner Rob Miller.

11 BZA CHAIR HILL: Okay. Great. Thank you, Mr. Moy.

12 Mr. Smith?

13 BZA MEMBER SMITH: So, relating to the record I
14 want to tell Mr. Miller I think they have opinions of the
15 parties in opposition for reaching a compromise on the design
16 and the size of the posts that otherwise I do believe that
17 the proposed deck does meet the standards for the Special
18 Exception and we will be able to support both.

19 BZA CHAIR HILL: Okay. Vice Chair, John?

20 VICE CHAIR JOHN: So, I agree with everyone's
21 comments so far. The only thing I would add is that if your
22 encroachment is not before the Board so I think that as a new
23 design that it meets the requirement. And, of course, I was
24 in support of the application even before the reduction. But
25 I think as Commissioner Miller said we should congratulate

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1 the parties for taking another look at the design and coming
2 to an agreement. So, I'm in support.

3 BZA CHAIR HILL: Okay. Great. And, Ms. John, Vice
4 Chair John, I guess, you know, I also think that as I recall
5 how this kind of went. I mean, I also just want to be clear.
6 It's not something that the Board is necessarily trying to
7 do in order to negotiate things for just people to come to
8 a compromise. Where obviously it's easier when people
9 actually do come to an agreement but it's not what we're
10 trying to achieve. It is kind of, you know, good so I thank
11 you for your comments, Vice Chair John.

12 All right. So, that being the case I will go
13 ahead and make a motion to approve Application No. 20214 as
14 captioned and read by the Secretary and specify the exhibits
15 that how it's planning on being built in Exhibit 82A, 82B and
16 82C. And then, again, to reiterate Vice Chair John's
17 comments that the encroachment is not really before us and
18 ask for a second, Ms. John?

19 VICE CHAIR JOHN: Second.

20 BZA CHAIR HILL: The motion has been made and
21 seconded. Mr. Moy, would you please take a roll call.

22 BZA SECRETARY MOY: Thank you, Mr. Chairman.

23 When I call your names if you would please respond
24 with a yes, no, abstain from the motion made by the Chairman
25 Hill to approve the Application, seconded by Ms. John.

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1 VICE CHAIR JOHN: Second.

2 BZA SECRETARY MOY: That's Vice Chair John in the
3 affirmative.

4 Mr. Smith?

5 BZA MEMBER SMITH: Yes.

6 BZA SECRETARY MOY: Zoning Commissioner Rob Miller?

7 ZC VICE CHAIR MILLER: Yes.

8 BZA SECRETARY MOY: Chairman Hill?

9 BZA CHAIR HILL: Yes.

10 BZA SECRETARY MOY: Staff would record the vote of
11 four to zero to one. This is on a motion by Chairman Hill
12 to approve the application for the relief requested.
13 Seconded by Vice Chair John, also in support. Mr. Smith and
14 Zoning Commissioner Rob Miller. We have a Board seat vacant.
15 Motion carries, sir, 4-0-1.

16 BZA CHAIR HILL: Okay. Great. Commissioner
17 Miller, is that it for you today?

18 ZC VICE CHAIR MILLER: That's it. Have a great
19 day.

20 BZA CHAIR HILL: Thank you and enjoy your day,
21 Commissioner.

22 ZC VICE CHAIR MILLER: Thank you.

23 BZA CHAIR HILL: All right. Let's see. We have
24 Chairman -- hello, welcome, Chairman Hood.

25 ZC CHAIR HOOD: Yes, good morning.

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1 Mr. Chairman, let me just announce that I've asked
2 Paul and Pierre to look at, I received word that the
3 Department is having a problem dealing with what's going on
4 now so we need to make sure that's corrected as soon as
5 possible because we have to be accessible to the public.

6 I had a problem myself but I understand some
7 public folks are also having problems so we need to -- while
8 they're working on that I don't know if we want to take a
9 couple minutes and get that straight because I understand
10 that people are not able to view these proceedings.

11 BZA CHAIR HILL: Okay. Mr. Young, are you aware
12 of anything that we might be able to do?

13 MR. YOUNG: I passed the message along to Keira and
14 I'll just advise anyone if they're having trouble to call the
15 Hot Line number. I will repeat the number for them.

16 BZA CHAIR HILL: Okay.

17 MR. YOUNG: It should be on our website for
18 everyone.

19 BZA CHAIR HILL: Okay. This is very odd, Chairman
20 Hill. Because of like the immediacy of these things and text
21 messages I've also now received a text, you know, that has
22 now said that they're able to view it and so we could just
23 like, you know, start taking, you know, a poll as to who, you
24 know, but, yes. I won't repeat line the number that Paul had
25 given to me. If each one is having an issue and, Chairman,

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1 if you don't mind were you about to say something?

2 ZC CHAIR HOOD: Yes. The reason I know people are
3 having a problem, I just got a text, they are fine now so
4 it's been corrected. I also had the problem so I wanted to
5 make sure if I had the problem, I want to pound this. I
6 wanted to make sure we do our due diligence. Also got that
7 text from two different people now that they are able to view
8 it. So, that's been corrected. I just wanted to make sure
9 that people were able that wanted to tune in and had a case
10 were able to proceed.

11 So, I think that's a moot point now. But I --

12 BZA CHAIR HILL: Okay.

13 ZC CHAIR HOOD: Okay.

14 BZA CHAIR HILL: Okay. Well, I'm going to read the
15 number out again. It doesn't matter.

16 Mr. Smith, if you don't mind muting your line as
17 well there.

18 So, for all of those who are hearing and/or able
19 to hear which this doesn't seem to make any sense if I'm
20 going to read this and you can't hear it. But if you can see
21 it, if you can hear me the Hot Line number is 202-727-5471.
22 Once again, 202-727-5401. So, thank you very much.

23 And, Chairman Hood, thank you for pointing that
24 out.

25 ZC CHAIR HOOD: Sorry, Mr. Chairman, for all the

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1 disruption but we got to make sure we proceed according.

2 Thank you for your indulgence.

3 BZA CHAIR HILL: Sure, of course. All right.

4 So, Mr. Moy, if you wouldn't mind reading in our
5 next meeting case.

6 BZA SECRETARY MOY: Thank you, Mr. Chairman, with
7 pleasure.

8 So, this is the last decision-making case in the
9 meeting session today and this will be Application No. 20121
10 of Bridges 3 Psychological Services and Consultation LLC.
11 This is a request for a use variance from the use
12 requirements, Subtitle U, Section 201.1 to convert an
13 existing detached residential building to a medical office
14 building in the R-2 Zone at premises 639 Atlantic Street,
15 Southeast, Square 3105, Lot 72.

16 And participating on this decision is Chairman
17 Hill, Vice Chair John, Mr. Smith and Zoning Commission Chair
18 Anthony Hood.

19 BZA CHAIR HILL: Okay. Great. Thank you Mr. Moy.

20 Is everyone ready to deliberate? I don't see any
21 hands. I guess we're okay.

22 Vice Chair John was kind enough to have led this
23 but if it's all right with her and I see her nodding okay,
24 I'm just going to go ahead and kind of start us off a little
25 bit, unless Ms. John, you have an issue with that. I guess

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1 you're okay. Okay? All right.

2 So, I guess, again, I had not started originally
3 on this case but I had read in and then had an opportunity
4 to go back and review the testimony for the case and, again,
5 the issue that seemed to be a problem for me was whether or
6 not the Applicant was getting past the first prong of the
7 variance test. And, unfortunately, I wasn't able to get past
8 the first prong. I mean, I just don't see how it's unique
9 in a way that would make me comfortable granting a variance.

10 The economic hardship also, I didn't really get
11 enough -- I wasn't convinced that there was kind of an issue
12 there with DCRA. I mean, I totally see how it's a pain and
13 how the Applicant had gotten, I guess, misinformation from
14 the agent when they bought the property as to it being an
15 office or had the ability to be an office.

16 I do think that unfortunately at least from my
17 understanding of the testimony, the Applicant seemed to
18 understand that there was an issue at some point at the same
19 time that they were getting a temporary certificate of
20 occupancy from DCRA. So, DCRA was, you know, letting them
21 know that there was going to be a variance issue but if they
22 have these things fixed they could do a temporary certificate
23 of occupancy but was still going to have to go through the
24 process to come before us. And, unfortunately, I'm not
25 convinced that they need a variance. Also, that the Office

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1 of Planning also disagrees with the Applicant that they're
2 meeting the standard to grant the variance.

3 I want to be very -- I'm disappointed, again, in
4 that I think that these services are needed. I think that
5 the ANC was in support and so that is something that we give
6 great weight to. However, the variance bar is a very high
7 standard. I mean, getting through that first hoop in terms
8 of whether or not they can meet the test, I mean, I just
9 don't think they've done so. So, I don't think I'm going to
10 be able to vote in favor.

11 And if it's all right, I know I usually kind of
12 go around -- currently what I've been doing is going to the
13 Zoning Commission and then ending with Ms. John. So, I'm
14 going to go ahead and start with you, Chairman Hood, if
15 that's all right?

16 ZC CHAIR HOOD: Mr. Chairman, I am troubled by the
17 events of this case. I would agree with your comments not
18 getting past the first prong.

19 I was going to try to figure out how to get past
20 the first prong. But I want to make sure that what should
21 be relied on as far as information is correct. But on the
22 14th of September when the Applicant admitted that DCRA told
23 her that she needed the use variance the same day and that
24 she claimed that she was misled in her discussion with us
25 which really had -- I had a problem. That's why I asked in

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1 the hearing about predictability and making sure that there
2 was no fault to the government.

3 So, I don't see -- I would agree with your
4 assessment. I don't see where I could find that she can even
5 meet the first prong while I wanted to look at the hardship
6 case. But I believe she was told in advance in the sequence
7 of events although that may not properly be before us, so I
8 don't see where the merits of this case would warrant
9 approval in this case and I'll just leave it at that.

10 And these kind of cases trouble me but at the end
11 of the day we have regulations that we need to follow.
12 That's what I'm thinking, Mr. Chairman.

13 BZA CHAIR HILL: Thank you, Chairman Hood.

14 No, it is very disappointing that the Applicant
15 has found themselves in this position.

16 Mr. Smith?

17 BZA MEMBER SMITH: To reiterate both of your points
18 it is a difficult situation for the Applicant. I want to
19 reiterate with both of you, you both stated that medical
20 offices would be a beneficial required use within any
21 neighborhood I would say but I do struggle with the three
22 prongs, especially, the first one, just reiterate what you
23 all have said. The economic hardship prong.

24 I reiterate again in the R-2 Zone that the
25 Applicant does have the ability to pursue other permitted

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1 uses within that zone. Also potentially sub-dividing the
2 property to two conforming lots to having a semi-detached
3 dwelling on the property. So, the Applicant does have other
4 options here. So, I'm struggling with that first prong of
5 the test so I wouldn't be able to support the variance
6 because of that.

7 BZA CHAIR HILL: Thank you. Vice Chair John? Vice
8 Chair John, you're on mute.

9 VICE CHAIR JOHN: Oh, okay, thank you. So, I agree
10 that the Applicant has to meet the exceptional conditions of
11 the variance test. And that this exception condition causes
12 undue hardship to the Applicant.

13 At the hearing, the Applicant made the argument
14 that there's a conference of factors affecting the --
15 creating this exceptional condition that the property is the
16 only single-family detached dwelling in the neighborhood
17 developed with semi-detached dwelling and apartment
18 buildings. And that the lot is larger. It's 8,000 square
19 feet. And most of the lots in the neighborhood are 3,000
20 square feet. Argument also saying it was built as a
21 community based residential facility and has commercial text
22 classification, a commercial grade fire suppression system,
23 self-closing door, commercial exit signs, wide corridors and
24 other accessibility features required for CBRS.

25 I don't agree with the Applicant that these

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1 conditions are exceptional or unique. The Applicant also
2 stated that she made repairs to the building in order to
3 obtain a conditional occupancy permit, and that the cost of
4 making those repairs to the rental property at residential
5 market rates sufficient to cover the mortgage create an
6 economic hardship. However, this hardship relates to the
7 potential use of the property and not the condition of the
8 property itself.

9 And the Applicant has also not shown that and Mr.
10 Smith said the Applicant wasn't able to find any other
11 permitted use for the property in the zone. The Applicant
12 also stated that she made repairs to the property in order
13 to obtain a conditional permit based on advice from DCRA.
14 And the record does not bear that out especially Exhibit 80
15 and the Applicant's own statements at the hearing show that
16 she understood that BZA approval was required being even if
17 she made the repairs.

18 The Office of Planning has consistently
19 recommended denial because as the OP's analysis shows that
20 the Applicant did not meet that first prong of the variance
21 test and I give great weight to OP's analysis and
22 recommendations.

23 The ANC supports the application but, Mr.
24 Chairman, I don't believe the ANC's letter meets the standard
25 to be given great weight because the statement does not state

1 that there was a properly noticed meeting and that the
2 requirements pro quo were met, but I can state that even if
3 it did meet the requirements for great weight I for the
4 reasons I stated before I do not believe that the Applicant
5 met the first prong of the variance test.

6 And so based on the full record I cannot support
7 that application although I agree with my colleagues that the
8 use of the property for a medical facility would be
9 beneficial to the community. But if the Applicant does not
10 meet the first prong of the variance test it's not possible
11 to meet the requirement of the regulation.

12 BZA CHAIR HILL: Okay. Thank you, Vice Chair John.

13 I also thank you for pointing out that, yes, the
14 ANC report did not meet the criteria for us to actually give
15 it great weight but we did, at least, acknowledge it or at
16 least I knew that it was there and understood that we
17 technically couldn't give it great weight.

18 All right. So, I'm going to go ahead and make a
19 motion then to deny Application 20121 as captioned and read
20 by the Secretary and ask for a second, Ms. John?

21 VICE CHAIR JOHN: Second.

22 BZA CHAIR HILL: The motion has been made and
23 seconded. Mr. Moy, if you could please take a roll call
24 vote.

25 BZA SECRETARY MOY: Okay. Thank you, Mr. Chairman.

1 When I call your names if you would please respond
2 with a yes, no, abstain to the motion made by Chairman Hill
3 to deny the application.

4 Zoning Commission Chair Anthony Hood.

5 ZC CHAIR HOOD: Yes.

6 BZA SECRETARY MOY: Yes, to deny.

7 Mr. Smith.

8 BZA MEMBER SMITH: Yes, to deny.

9 BZA SECRETARY MOY: Vice Chair John.

10 VICE CHAIR JOHN: Yes, to deny.

11 BZA SECRETARY MOY: Chairman Hill.

12 BZA CHAIR HILL: Yes, to deny.

13 BZA SECRETARY MOY: Staff would record the vote as
14 4-0-1 and this is on the motion to deny the application for
15 the relief being requested. This is the motion made by
16 Chairman Hill, seconded by Vice Chair John. Also in support,
17 Mr. Smith and Zoning Commission Chair Anthony Hood. We have
18 a Board seat vacant.

19 The motion is carried, sir, 4-0-1.

20 BZA CHAIR HILL: Okay. Thank you, Mr. Moy.

21 You guys, I know we're kind of running a little
22 fast today. Still I don't know if we want to like I can read
23 into the hearing and then we can take a quick ten-minute
24 break of what do you all feel like doing?

25 VICE CHAIR JOHN: A quick break would be good, Mr.

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1 Chairman.

2 BZA CHAIR HILL: Okay. Great. Thank you, Vice

3 Chair John.

4 All right. Then I'm going to read into the
5 hearing, Mr. Moy, and then we're going to take a break.

6 (Whereupon, the above-entitled matter went off the
7 record at 10:02 a.m.)

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In the matter of: Public Meeting

Before: DCBZA

Date: 09-23-20

Place: teleconference

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Court Reporter

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