

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

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WEDNESDAY

OCTOBER 21, 2020

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:41 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA JOHN, Vice-Chairperson
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist
SARA A. BARDIN, Director, Office of Zoning

The transcript constitutes the minutes from the Regular Public Meeting held on October 21, 2020

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

2 (9:35 a.m.)

3 CHAIRPERSON HILL: All right. The meeting will please
4 come to order.

5 Good morning, ladies and gentlemen. We're convening and
6 broadcasting this decision meeting by video conference. This is
7 the October 21st, 2020 public meeting session with the Board of
8 Zoning Adjustment of the District of Columbia.

9 My name is Fred Hill, Chairperson. Joining me today is
10 Lorna John, Vice Chair; and Chrishaun Smith, Board member; and
11 representing the Zoning Commission is Rob Miller. Later on, we
12 will also have Anthony Hood joining us.

13 Today's meeting agenda is available to you on the Office
14 of Zoning's website. Please be advised that this proceeding is
15 being recorded by a court reporter and is also webcast live via
16 WebEx and YouTube Live. The video of the webcast will be
17 available on the Office of Zoning's website after today's meeting
18 session.

19 Accordingly, everyone who is listening on WebEx or by
20 telephone will be muted during the meeting. We do not take any
21 public testimony at our decision meetings. If you are
22 experiencing difficulty accessing WebEx or with your telephone
23 call-in, then please call our OZ hotline number. I will repeat
24 the number twice at 202-727-5471. Once again, 202-727-5471 to
25 receive WebEx login or call-in instructions.

1 At the conclusion of this meeting session, I shall, in
2 consultation with the Office of Zoning, determine whether a full
3 or summary order may be issued. A full order is required when the
4 decision it contains is adverse to a party including an affected
5 ANC. A full order may also be needed if the Board's decision
6 differs from the Office of Planning's recommendation. Although
7 the Board favors the use of summary orders whenever possible, an
8 applicant may not request the Board to issue such an order.

9 Preliminary matters are those which relate to whether a
10 case will or should be heard today such as a request for a
11 postponement, continuance, or withdrawal or whether proper and
12 adequate notice of the meeting has been given.

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

14 MR. MOY: Good morning, Mr. Chairman, and members of the
15 Board. Well, we -- for this meeting session, we do have one
16 preliminary matter. But I can state that when I call the case.

17 CHAIRPERSON HILL: Okay. You want to go ahead and call
18 the case then, Mr. Moy?

19 MR. MOY: Yes, sir. This is Appeal No. 20292 of ANC 8A.
20 And this appeal is captioned and advertised as an appeal from the
21 decision made on February 6, 2020 by the Department of Consumer
22 and Regulatory Affairs that determined that the construction on
23 the property is compliant with the approved plans in the RA-2 Zone
24 at premises 1401 22nd Street, Southeast, Square 4556, Lot 66. As
25 the Board will recall, this was -- this appeal was last heard at

1 its hearing on October 14th. And the Board was -- addressed the -
2 - they addressed the motion to dismiss. So the Board after that
3 hearing set its decision date for today, October 21st, for the
4 motion to dismiss. However, prior to today -- this is the
5 preliminary matter, Mr. Chair, where the Property Owner filed a
6 motion to reopen the record and to strike.

7 CHAIRPERSON HILL: Okay. All right.

8 So I don't know what you all think. I mean, I think
9 we're kind of stuck a little bit in that -- so what happened was
10 the Property Owner submitted a motion to reopen the record and a
11 motion to strike. And I guess -- first of all, the record had not
12 been closed. So they could have submitted -- I'm just kind of
13 talking this through with you guys. So they could've submitted
14 the motion to strike. But I guess since we were going to decide
15 today or deliberate on the motions to dismiss, they were trying to
16 get in something that we would take into consideration in terms of
17 the -- striking the argument that was brought up from the
18 Appellant concerning J 207, Subtitle J 207.

19 So then, according to the regulations, the parties would
20 have seven days to respond. And so we did get a response from
21 DCRA, but we did not get a response from the Appellant. And seven
22 days is tomorrow. So the Appellant still has until tomorrow to
23 respond to the motion that is before us to reopen the record and
24 strike the whole thing about J 207.

25 I will -- I will mention that I don't know if -- and I'm

1 just kind of deliberating here everything with you guys, that I
2 don't know if in the motion to strike it's necessarily specific
3 enough what exactly they're asking us to strike. They just were
4 kind of saying in general, I guess, anything related to J 207.
5 And so I still would be then interested in seeing if the ANC comes
6 back with anything -- I mean, the Appellant comes back with
7 anything concerning the motion to strike.

8 So I don't think we can deliberate on this today. I
9 think we have to wait until next week to give them at least the
10 seven days. And that's kind of my thoughts, but I'll go around
11 the table.

12 Can I start with you, Commissioner Miller?

13 COMMISSIONER MILLER: That's fine with me. I understand
14 your thought process. And I would agree that the ANC/Appellant
15 should have the opportunity to respond if they so choose to do so.
16 If they were here and said they don't choose to do so, I'd be
17 prepared to go forward. That's the only thing I'd add. I don't
18 know if you wanted to open it up to ask them if they are here. I
19 don't know if they're here in the -- as an attendee or not. I
20 would think they are, but I don't -- I didn't look at the list.
21 So that's the only additional thought that I would provide, Mr.
22 Chairman. Thank you.

23 CHAIRPERSON HILL: Sure. Commissioner, like, I've tried
24 to do that before, and OAG has told me that it's not a good idea
25 in terms of we're in a meeting now. And then it would suddenly be

1 a hearing, and there's different parameters to that. So I can't
2 even bring anybody in. I know that the staff did reach out to the
3 ANC but have not heard back from them. So, I mean, I'm just kind
4 of being more -- I'm just, you know -- my hands are kind of tied
5 here in terms of the time limit for the regulations unless, of
6 course, we wanted to, you know, dismiss the whole motion to
7 strike, you know -- you know, dismiss the motion to reopen the
8 record, dismiss the motion to strike, and then it basically --
9 there is nothing to talk about, I suppose. And then we could go
10 ahead and deliberate. But I also am just kind of -- I mean, I
11 guess I would just be, you know -- I mean, we'll just wait another
12 week.

13 Ms. John?

14 VICE CHAIRPERSON JOHN: I agree with what you've said so
15 far. But we could also go ahead and decide today if anybody else
16 wanted to do that and dismiss the motion.

17 CHAIRPERSON HILL: Yeah. I know.

18 Mr. Smith?

19 MR. SMITH: I second Ms. John. But I do believe it
20 would be beneficial to give the ANC the ability to speak on this
21 matter. But I do understand Ms. John's point. But I do -- I do
22 want to give the ANC the ability to speak. So I will be in favor
23 of putting this off for a week.

24 CHAIRPERSON HILL: Okay.

25 I mean, we're having two different things on the table,

1 and this is actually turning even into a longer discussion that we
2 can have than to just say if Mr. Miller is available next week,
3 let's just come back here next week, right? And so -- because I
4 think that we could have this discussion about the whole, you
5 know, just dismiss the motion now, and then the motion -- dismiss
6 the motion to reopen the record and the motion to strike, and,
7 therefore, it doesn't prejudice anyone, right? And then have the
8 deliberation, right?

9 And so -- but I'm -- I mean, if you all think that you
10 are ready to deliberate and want to deliberate on the motions to
11 dismiss, then we can go ahead and do that as well. But I'm
12 somewhat indifferent, I got to say, you know. And so somebody has
13 to have a pretty -- somebody has to be strong about like, you
14 know, let's do this today. And if nobody's really strong about
15 let's do this today, then we'll just put it off a week. Okay. I
16 see everybody shaking their head. All right.

17 So Mr. Miller, we will see you again then next week.
18 Okay.

19 And Mr. Moy, let's go ahead and put this off until first
20 thing next Wednesday to discuss the motions to dismiss. And,
21 therefore, the ANC, the Appellant, will have the required amount
22 of time to reply to the motion to dismiss and strike. I'm sorry,
23 the motion to reopen the record and strike.

24 MR. MOY: Thank you, Mr. Chairman. So I'll be -- so the
25 Board is rescheduling its decision on this motion to dismiss to

1 next week which is October 28th in its meeting session. Thank
2 you.

3 CHAIRPERSON HILL: Hey, Mr. Moy, just out of curiosity -
4 -

5 Sorry, Mr. Miller, for 30 seconds.

6 How many cases do we have next week?

7 MR. MOY: We have -- we have eight. That's not so bad.

8 CHAIRPERSON HILL: There's eight cases.

9 MR. MOY: There is one case for decision. So if you
10 want to include that, that would be nine.

11 CHAIRPERSON HILL: Right. So this is the tenth?

12 MR. MOY: Yeah. We went up double digits.

13 CHAIRPERSON HILL: I'm just trying to understand. Okay.

14 All right, Mr. Miller. We'll see you then next week.

15 VICE CHAIRPERSON JOHN: Mr. Chairman, before we move on,
16 I have a question for OAG.

17 CHAIRPERSON HILL: Sure. Ms. John?

18 VICE CHAIRPERSON JOHN: If the motion to strike is not
19 (audio interference) as one would like, which is what I think we
20 are saying, I'm not sure what's the value in having the ANC
21 respond to something that's not specific. Do we give the Property
22 Owner an opportunity to cure that motion to make it more specific?
23 Or do we allow the ANC to reply to what's on the record? I'm
24 just not sure. I wanted to put it out there.

25 CHAIRPERSON HILL: Yeah. You can ask OAG, Ms. John. I

1 mean, my opinion on it all is I'm just trying to get to the point
2 where we're deliberating. And so if this now happens again, then
3 that's another seven days.

4 VICE CHAIRPERSON JOHN: Okay.

5 CHAIRPERSON HILL: I'm not interested in anything else
6 to be added to the record for any clarification. I just wanted to
7 make sure the ANC, the Appellant, had the appropriate time that
8 they're required to have to respond to what has been put in the
9 record. I don't want anything new, otherwise it'll reset the
10 clock.

11 VICE CHAIRPERSON JOHN: Right. Neither do I. I was
12 just throwing that out there for some sort of clarification. Ms.
13 Nagelhout?

14 MS. NAGELHOUT: Yeah. Good morning. This is Mary
15 Nagelhout, OAG. I think the -- the Property Owner has put in a
16 motion that they characterized as a motion to strike, and the ANC
17 can respond to that. What they seem to want to strike, although
18 they were not specific about striking exhibit or any particular
19 exhibit, they -- the rest of the motion is that they don't want
20 the appeal amended to include a claim of violation of J 207. They
21 want to stick to the appeal as stated in the original filings,
22 Exhibits 1, 2, and 3. That was my take on the motion. But I
23 think you could -- I think you can read the motion and understand
24 what they're getting at without a whole lot of specificity needed.

25 VICE CHAIRPERSON JOHN: Okay.

1 CHAIRPERSON HILL: Okay.

2 So to be clear to people that are watching, we don't
3 want anything new, okay? Just if the Appellant is watching, they
4 have until tomorrow to reply to the motion to reopen the record
5 and the motion to strike. Okay.

6 Mr. Miller, do you have something to add? Okay. All
7 right. All right, Commissioner. All right. Okay. Take care.
8 Have a good day.

9 COMMISSIONER MILLER: Thanks.

10 CHAIRPERSON HILL: Bye, bye.

11 (Whereupon, the above-entitled matter went off the
12 record at 9:48 a.m.)

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: DCBZA

Date: 10-21-20

Place: Teleconference

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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