

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 16, 2020

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m. EST, 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:

PETER MAY

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACK RICE, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on December 16, 2020.

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

9:39 a.m.

1
2
3 CHAIRPERSON HILL: All right this meeting will
4 please come to order. If you all want to mute --- Peter,
5 you're not muted, sorry. The hearing will please come to
6 order. Good morning, ladies and gentleman. We are
7 convening and broadcasting this public hearing by video
8 conference. This is the December 16, 2020, public hearing
9 of the Board of Zoning Adjustment. My name is Fred Hill,
10 Chairperson.

11 Joining me today is Lorna John, Vice Chair.
12 Chrishaun Smith, Board member. And representing the
13 Zoning Commission is Peter May and Michael Turnbull.

14 Today's hearing agenda is available to you on
15 the Office of Zoning's website. Please be advised this
16 proceeding is being recorded by a court reporter, and is
17 also webcast live via Webex and YouTube Live. Webcast
18 video will be available to you on the Office of Zoning's
19 website after the hearing.

20 Accordingly, everyone who is listening on Webex
21 or by telephone will be muted during the hearing. And
22 only persons who have been signed up to participate or
23 testify will be unmuted at the appropriate time.

24 Please state your name and home address before
25 providing oral testimony or your presentation. All

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1 presentations should be limited to a summary of your most
2 important points. When you finish speaking, please mute
3 your audio so that your microphone is no longer picking up
4 sound or background noise.

5 If you're experiencing difficulty accessing
6 Webex or with your telephone call-in, or if you have
7 forgotten to sign in 24 hours prior to this hearing, then
8 please call our OZ hotline number. And I'll repeat the
9 number, 202-727-5471. Once again, 202-727-5471, to sign
10 up to testify and to receive Webex login or call-in
11 instructions.

12 All persons planning to testify either in favor
13 or in opposition should have signed up in advance. They
14 will be called by name to testify. If this is an appeal,
15 only parties are allowed to testify. By signing up to
16 testify, all participants completed the oath or
17 affirmations required by Subtitle Y, formerly .7.

18 Request to enter evidence at the time of online
19 virtual hearing such -- you know, Cliff, I don't have to
20 read all this, now that I look at it, for the meeting
21 stuff. Request to enter evidence at the time of online
22 virtual hearing, such as written testimony or additional
23 supporting documents other than live video which may not
24 be presented as part of the testimony, may be allowed
25 pursuant to Section Y103.13, provided that the persons

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1 making the request to enter an exhibit explain how the
2 proposed exhibit is relevant, a good cause that justifies
3 allowing the exhibit in the record, including an
4 explanation of why the requester did not file the exhibit
5 prior to the hearing pursuant to Y206, and how the
6 proposed exhibit would not unreasonably prejudice any
7 party.

8 The order of procedures for special acceptance
9 and variances are in Y409. If this is an appeal, the
10 order is in Y507. At the conclusion of the case, an
11 individual who is unable to testify because of technical
12 issues may file a request for leave to file a written
13 version of the planned testimony to the record within 24
14 hours following the conclusion of public testimony in the
15 hearing.

16 If additional written testimony is accepted
17 then parties will be allowed a reasonable time to respond,
18 as determined by the Board. The Board will then make its
19 decision at its next meeting, but no earlier than 48 hours
20 after the hearing.

21 Moreover, the Board may request additional,
22 specific information to complete the record. The Board
23 and staff will specify at the end of the hearing exactly
24 what is expected on that day, and the person will then
25 submit to the Office of Zoning. No other information

1 shall be accepted by the Board.

2 The Board's agenda may include previous cases
3 set for decision after the Board adjourns the hearing.
4 The Office of Zoning in consultation with myself will
5 determine whether a fuller summary order may be issued. A
6 full order is required when the decision it contains is
7 adverse to a party, including an affected ANC. A full
8 order may also be needed if the Board's decision differs
9 from the Office of Planning's recommendation.

10 Although the Board favors the use of summary
11 orders whenever possible, applicant may not request the
12 Board to issue such an order. The District of Columbia
13 Administrative Procedures Act requires that the public
14 hearing on each case be held in the open -- or in the
15 public.

16 However, pursuant to Section 405(b) and 406 of
17 that act, the Board may, consistent with its rules and
18 procedures and the act, adjourn to closed meetings on a
19 case for purposes of seeking legal counsel on a case,
20 pursuant to D.C. Official Code Section 2-5755(b)4 and/or
21 deliberating on a case pursuant to D.C. Official Code
22 Section 2-575(b)15, but only after providing the necessary
23 public notice to the case emergency closed meeting after
24 taking a roll call vote.

25 Preliminary matters are those which relate to

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1 another case which should be heard today, such as request
2 for postponement, continuance withdrawal, or other proper
3 after parts of the hearing has been given.

4 Mr. Secretary, do we have preliminary matters
5 today?

6 MR. MOY: Good morning, Mr. Chairman; members
7 of the Board. For this meeting session, the only
8 announcement I have, Mr. Chairman, is that there's a line
9 item before the Board to adopt dates for Monday closed
10 meetings from January through July 2021. Typically in the
11 past, Mr. Chairman, you've handled that at the end of the
12 day before you adjourn. So I would suggest you continue
13 with that.

14 CHAIRPERSON HILL: Okay. Can you just remind
15 us so we don't forget?

16 MR. MOY: Absolutely, sir.

17 CHAIRPERSON HILL: Okay. Do you want to call
18 our first meeting case?

19 MR. MOY: Yes. This would be case, application
20 number 20320 of 5900 Foote -- F-O-O-T-E --- LLC. This is
21 caption advertised for a special exception under the use
22 restrictions of Subtitle U, Section 421.1. It's for
23 constructing a new 16-unit apartment house, RA-1 Zone at
24 premises 5900 Foote Street N.E., (Square 5256, Lot 805).

25 Board last heard this at its public hearing on

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1 November 18th, and closed the record and scheduled it for
2 hearing today, December 16. Participating on the decision
3 is Chairman Hood, Mr. Smith, and Zoning Commissioner Peter
4 May.

5 CHAIRPERSON HILL: Chairman Hood?

6 MR. MOY: Oh, what did I say?

7 CHAIRPERSON HILL: You said Chairman Hood.

8 MR. MOY: Oh my goodness, I meant --

9 CHAIRPERSON HILL: But you meant me?

10 MR. MOY: No, I need my second cup of coffee.

11 Well, let me do that. Okay, strike that.

12 So participating on the decision is Chairman
13 Hill, Mr. Smith, and Zoning Commissioner Peter May.

14 CHAIRPERSON HILL: Okay. If it's all right, so
15 there was -- is there anything that needs to be taken care
16 of in terms of preliminary matters or waivers?

17 MR. RICE: Mr. Chairman, I think there's still
18 an outstanding notice issue that needs to be waived.

19 CHAIRPERSON HILL: So they did submit the
20 notice? No.

21 MR. RICE: The publication was late, but they
22 did have timely email --

23 CHAIRPERSON HILL: Okay, all right, you're
24 talking about our publication?

25 MR. RICE: Yes, sir.

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1 CHAIRPERSON HILL: Okay. So again, the
2 publication is 25 days instead of the 40 days before the
3 hearing. But I believe that all of the other mailings and
4 affidavits are in the record. And I don't think that this
5 is going to prejudice any party or -- I don't have any
6 issues with the waiver. So I'm going to go ahead and
7 grant the waiver unless someone has an issue. And if, so
8 raise your hand. I don't see anyone raising their hand,
9 so I'm going to go ahead and grant the waiver.

10 If you don't mind, I'm going to, kind of, go
11 around the table to have someone else start the
12 deliberation. I'm going to start with the Commissioner,
13 because I'm going to pull up a couple of issues here.

14 Commissioner, would you mind beginning the
15 discussion?

16 MEMBER MAY: Yeah, sure. So I think, as of the
17 hearing, there were some neighbors who were objecting and
18 the ANC was not in support. And I think a number of the
19 issues revolved around the fact that the applicant had not
20 been, in the views of many neighbors, a good neighbor to
21 them. So they had that strange plywood fence, they were -
22 -- you know, there wasn't sufficient communication, et
23 cetera.

24 And the ANC now has submitted a letter in
25 support, based on further discussions with the applicant,

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1 and also dependent on the applicant presenting to the
2 Northeast Boundary Civic Association -- which has happened
3 -- and the NBCA has agreed to support the application as
4 well.

5 So I do feel like the concerns that --
6 certainly, the concerns that I had, at this point have
7 been addressed. The relief here is pretty minimal, so I
8 would have no problem with supporting the application as
9 it is before us.

10 CHAIRPERSON HILL: Okay. I note that the
11 issues that the ANC had raised -- or in their letter of
12 support it speaks to, I guess, discussion that they have
13 had with the NBCA. And those are things that it seems are
14 going to be with the NBCA and the applicant.

15 All right, Mr. Smith?

16 MEMBER SMITH: I concur with Mr. May. My
17 concerns at the time were about the disagreements between
18 the ANC and the developer, especially as it relates to the
19 initial push of the ANC to have a CDA agreement in place
20 at the time of the last hearing.

21 So based on the letter from the ANC, it looks
22 like they have moved past that, and they will continue to
23 work with each other going forward regarding that. But
24 because the ANC is in support, my concerns have been
25 allayed, in essence. So I would be in support of this

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1 application.

2 CHAIRPERSON HILL: Ms. John, do you have any
3 comments?

4 MEMBER SMITH: She may not be participating on
5 this.

6 MR. MOY: Yeah, she's not participating on
7 this.

8 CHAIRPERSON HILL: Oh, all right, I'm sorry. I
9 didn't hear that at the beginning.

10 VICE CHAIRPERSON JOHN: Sorry, Mr. --

11 CHAIRPERSON HILL: Sorry, I didn't hear about
12 it at the beginning. I apologize.

13 I guess the only one issue is the potential
14 condition concerning the applicant should install one
15 inverted U-rack on private property or in public space
16 near the building entrance to comply with short-term
17 bicycle parking requirements. Does the Board have any
18 issues with putting that in as a condition?

19 (No audible response).

20 Okay, everybody is shaking their head. Okay.

21 I would also agree with what my colleagues have
22 put forward. I would also note that the Office of
23 Planning has provided their analysis as to how they're
24 meeting the relief requested. I also would agree with the
25 applicant's presentation as to how they're meeting the

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1 relief, the standards for us to grant the relief
2 requested.

3 So I will go ahead and make a motion to approve
4 application number 20320, with the condition that the
5 applicant should install one inverted U-rack on private
6 property or in public space near the building entrance to
7 comply with short-term bicycle parking requirements.

8 And ask for a second, Mr. Smith?

9 MEMBER SMITH: Second.

10 CHAIRPERSON HILL: The motion has been made and
11 seconded.

12 Mr. Moy, will you please take a roll call?

13 MR. MOY: Yes, thank you, Mr. Chairman.

14 When I call your name, if you would please
15 respond with a yes, no, abstain, to the motion made by
16 Chairman Hill to approve the application with the addition
17 of a condition as cited by the Chair. Seconding -- second
18 the motion is Mr. Smith.

19 Zoning Commissioner Peter May?

20 MEMBER MAY: Yes.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: Yes.

23 MR. MOY: Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: We have one seat vacant, and one

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1 Board member not participating. Staff would record the
2 vote as 3-0-2. And this is on the motion of Chairman Hill
3 to approve the application with the addition of another --
4 with an added condition. Second the motion is Mr. Smith.
5 Also in support of the motion is Zoning Commissioner Peter
6 May. And the motion carries 3-0-2.

7 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
8 Moy. All right, Commissioner May, have a good day.

9 MEMBER MAY: Thank you. See you.

10 CHAIRPERSON HILL: Mr. Young, if you could
11 bring in our next commissioner.

12 Good morning, Commissioner Turnbull.

13 MEMBER TURNBULL: Good morning. How are you?

14 CHAIRPERSON HILL: Good, thank you. How are
15 you?

16 MEMBER TURNBULL: Oh, I'm here.

17 CHAIRPERSON HILL: Good.

18 (Whereupon, the above-entitled matter went off
19 the record at 9:53 a.m. and resumed at 2:37 p.m.)

20 MR. MOY: Okay, so what we have before the
21 Board, it's an action item; it's an administrative matter
22 for the Board. I've already circulated to the Board
23 proposed dates for closed meetings from January 2021
24 through July. January through July of 2021. And as I
25 said before, these are proposed dates for closed meetings.

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1 And if adopted by the Board, then the Board
2 would direct the staff to publish it in the D.C. Register.
3 So I would need a vote.

4 CHAIRPERSON HILL: I'm in favor of all these
5 proposed meetings that has been circulated by the Board,
6 from Monday, January 11th through Monday, July 26th. And
7 so I will go ahead and make a motion to approve these
8 meetings, and have them -- did I lose Mr. Turnbull?
9 Approve these meetings and have them posted as required by
10 the regulations.

11 And ask for a second, Ms. John?

12 VICE CHAIRPERSON JOHN: Second.

13 CHAIRPERSON HILL: All right, so Mr. Moy, the
14 motion has been made and seconded. You can take the roll
15 call vote.

16 MR. MOY: Thank you, Mr. Chairman. I think Mr.
17 Turnbull has disappeared, right?

18 CHAIRPERSON HILL: Yeah, I don't know where he
19 went.

20 MR. MOY: Okay. That's all right, we still
21 have a quorum. So when I call your name, if you would
22 please respond with a yes, or a no, or abstain, to the
23 motion made by Chairman Hill to approve the proposed dates
24 for closed meetings from January 2021 through July 2021.
25 The motion is seconded by Vice Chair John.

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1 Mr. Smith?

2 MEMBER SMITH: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIRPERSON JOHN: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: And we have a fourth seat vacant, and
8 no other member. The motion carries 3-0-2.

9 CHAIRPERSON HILL: Okay, great. All right, do
10 you guys need anything from anybody? You all good?

11 (No audible response.)

12 CHAIRPERSON HILL: Okay, then we're adjourned.
13 The hearing is over. Thank you. See you all next week.

14 (Whereupon, the above-entitled matter went off
15 the record at 2:39 p.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: 12-16-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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