

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 5, 2021

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:53 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA JOHN, Vice Chair
CHRISHAUN SMITH, Board Member
CARL BLAKE, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, Esquire

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The transcript constitutes the minutes from the
Regular Public Meeting held on May 5, 2021

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20163 - Application of 719 6th Street, LLC
 (Rescheduled to May 26, 2021). 6

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

(9:53 a.m.)

CHAIRPERSON HILL: All right, this meeting will please come to order. Good morning, ladies and gentlemen, we are convening and broadcasting this decision meeting by video conference. This is the May 5th, 2021 public meeting session of the Board of Zoning Adjustment of District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair, and Board Members Carl Blake and Chrishaun Smith. Representing the Zoning Commission in this meeting session is Michael Turnbull.

Today's meeting agenda is available to you on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube live. The video of the webcast will be available on the Office of Zoning's website after today's meeting session.

Accordingly, everyone who is listening on Webex or by telephone will be muted during the meeting. We do not take any public testimony in our decision meetings.

If you are experiencing difficulty accessing Webex or with your telephone call in, then please call our OZ hotline number at 202-727-5471 to receive Webex log-in or call-in instructions.

At the conclusion of this meeting session, I shall, in consultation with the Office of Zoning, will determine whether a

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1 full or summary order may be issued. A full order is required
2 when the decision it contains is adverse to a party, including an
3 affected ANC. A full order may also be needed if the Board's
4 decision differs from the Office of Planning's recommendation.

5 Although the Board favors the use of summary orders
6 whenever possible, an applicant may not request the Board to issue
7 such an order.

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

12 Mr. Secretary, do we have any preliminary matters for
13 this meeting session?

14 MR. MOY: Yes, there are, Mr. Chairman. I'll identify
15 those when I call the case, sir.

16 CHAIRPERSON HILL: Okay, if you could please call our
17 meeting case, Mr. Moy.

18 MR. MOY: Right, this is a Motion for Reconsideration
19 filed by ANC 6C, and it goes to Case Application 20163 of 719 6th
20 Street, LLC.

21 This application was amended for special exceptions
22 under Subtitle E, Section 5201; from the rear addition
23 requirements of Subtitle E, Section 205.4; and from the lot
24 occupancy requirements of Subtitle E, Section 304.1 to construct a
25 three-story rear addition to an existing attached principal

1 dwelling unit, RF-1 zone at premises 719 6th Street, Square 859,
2 Lot 121.

3 As the Board will recall, at your meeting session on
4 March 31st, the Board granted the motion for the reconsideration
5 and then set a decision date for May the 5th, along with a
6 timeline for submissions.

7 And this is where I get to the preliminary matter, sir.
8 The applicant made their filing, but it was one day late, so
9 there's a one day late -- one day timeliness requiring a waiver of
10 that deadline and that was filed under Exhibit 94, dated April the
11 14th. Subsequently, ANC 6C filed a motion to strike under
12 Exhibits 95 and 95A, that's under Exhibit 96 dated April the 20th.
13 And that is it for me, sir.

14 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

15 Okay, everybody, so there's some things to talk about
16 with this and I'm going to read through some information that I've
17 been working with the Office of the Attorney General.

18 So there's still -- so there's a motion to waive the
19 filing deadline, which is in -- the filing deadline for exhibits
20 that are in Exhibit 94. And that is basically the shadow study,
21 which we requested from the applicant after the ANC had asked for
22 a reconsideration from us, so that's one issue.

23 The other then is the ANC has created a motion to strike
24 the applicant's submission because the ANC 6C argues that the
25 Board's request for supplemental filings at the 03/31 meeting

1 effectively constituted a rehearing, which the ANC argues is
2 improper because it is not timely as required by Y 700.10.

3 While the ANC acknowledges that the Board can waive this
4 Y 700.10, the ANC alleges that the Board failed to make the
5 findings of good cause and lack of prejudice required for such a
6 waiver.

7 The ANC argues that the Board is impermissibly giving
8 the applicant another quote/unquote "bite of the apple" by
9 requesting additional information and therefore the applicant's
10 Exhibit 95 and 95A should be struck from the record.

11 After speaking with the Office of the Attorney General,
12 the OAG believes that the Board's request for a supplemental
13 shadow study and request by the ANC are within the scope of a
14 reconsideration of a decision and do not constitute a rehearing.

15 When the Board granted ANC 6C's Motion for
16 Reconsideration in Exhibit 90 on 03/31, it noted that the ANC had
17 challenged the applicant's prior shadow study, which is in the
18 transcript at pages 5 through 7. The Board should note that
19 neither the applicant's original shadow study in Exhibit 63C nor
20 the ANC's in Exhibit 64 appear to have been prepared by a licensed
21 architect, nor do either of the prior shadow studies clearly
22 demonstrate the matter right option accounting for lot occupancy.

23 In order to properly reconsider the Board's decision and
24 to determine whether the Board had, in fact, erred, it requested
25 the applicant provide new professional studies with the ANC having

1 an opportunity to respond. The Board's request was specific and
2 limited in scope, so as to only respond to this one specific issue
3 under reconsideration that was specifically raised by the ANC's
4 Motion for Reconsideration and did not reopen other issues of the
5 underlying case.

6 We, the Board, specifically, then offered the ANC the
7 opportunity to respond to the applicant's filing to afford it
8 equal opportunity to address the issues and avoid prejudice to the
9 case. The applicant now provided updated shadow studies in
10 Exhibit 95A, which now clearly demonstrate the matter of right
11 option accounting for the lot occupancy requirements, as well as
12 the specific angle of the sun at the standard study times. I've
13 actually got that exhibit pulled up now.

14 The ANC did not respond to the substance of the
15 applicant's submission, but rather raised these procedural issues,
16 which you could have filed as soon as the Board requested the
17 applicant provided the supplemental shadow studies.

18 So, basically, what's happening is we asked the Board --
19 I'm sorry, there was a Request for Reconsideration, we asked the
20 applicant to clear up any issues with the shadow study, so that we
21 can have the reconsideration, which is what the applicant -- I'm
22 sorry, the ANC had asked us to reconsider. And now the ANC is
23 saying that -- well, the ANC -- I wouldn't give the ANC an
24 opportunity to respond to the shadow studies. They didn't respond
25 to the shadow studies, they just responded to their procedural

1 | issues.

2 | So, again, I think that we asked for the information
3 | that we needed to reconsider. And so I would be in favor of
4 | approving the applicant's -- first of all, waiving the applicant's
5 | -- the deadline for the submission in terms of the one day late,
6 | so that we can actually see the shadow studies. So since this has
7 | started to become a little bit of a procedural issue now, I'm
8 | going to ask Mr. Moy to go ahead -- I'm going to make a motion,
9 | ask for a second, and then we can go ahead and take a roll call so
10 | that everything is on the record and that everyone agrees with me.

11 | So I'm going to make a motion to approve the one day
12 | late filing deadline of Exhibit 94 and ask for a second, Ms.
13 | John?

14 | VICE CHAIR JOHN: Second.

15 | CHAIRPERSON HILL: The motion being made and seconded;
16 | Mr. Moy, could you please take a roll call?

17 | MR. MOY: Yes, sir. So when I call your name, if you
18 | would, please, respond with a yes, no, or abstain to the motion
19 | made by Chairman Hill to grant the waiver for timeliness for the
20 | filing of the applicant's -- the document under Exhibit 95, the
21 | motion was seconded by Vice Chair John.

22 | Zoning Commissioner Michael Turnbull?

23 | COMMISSIONER TURNBULL: Yes.

24 | MR. MOY: Mr. Smith?

25 | BOARD MEMBER SMITH: Yes.

1 MR. MOY: Mr. Blake?

2 BOARD MEMBER BLAKE: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as 5-0-0, that is
8 on a motion made by Chairman Hill, seconded by Vice Chair John.
9 Also in support of the motion is Mr. Blake, Mr. Smith, and Zoning
10 Commissioner, Michael Turnbull -- and I think that adds up to
11 five. So the motion carries on the vote of 5-0-0.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. The next
13 preliminary matter is ANC 6C's motion to strike the applicant's
14 submission in Exhibit 96 and 96A. What the ANC is asking us to
15 strike is the information that we asked, so that we could actually
16 have the reconsideration and that this reconsideration, as I read
17 earlier after, consulting with the Office of the Attorney General,
18 does not constitute a rehearing. So this is the information that
19 we actually asked for, so I'm going to make a motion to deny ANC
20 6C's motion to strike the applicant's submission and ask for a
21 second, Ms. John?

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Thank you. Mr. Moy, could you take a
24 roll call, please. I'm sorry. Thank you, Ms. John.

25 Mr. Moy, could you take a roll call, please?

1 MR. MOY: When I call your name, if you would please
2 respond with a yes, no or abstain to the motion made by Chairman
3 Hill to deny ANC 6C's motion to strike Exhibits 95 and 95A. The
4 motion was seconded by Vice Chair John.

5 Zoning Commissioner Michael Turnbull?

6 COMMISSIONER TURNBULL: Yes.

7 MR. MOY: Mr. Smith?

8 BOARD MEMBER SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 BOARD MEMBER BLAKE: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Staff would record the vote as 5-0-0, this is
16 on the motion made by Chairman Hill to deny, seconded by Vice
17 Chair John. Also in support of the motion is Mr. Blake, Mr.
18 Smith, and Zoning Commissioner Michael Turnbull. Again, the
19 motion to deny is -- yeah, it's approved, 5-0-0.

20 CHAIRPERSON HILL: Okay. All right. And then finally,
21 so this I know was set for reconsideration today, and I know that
22 we've all reviewed the record as well as the shadow studies that
23 we've been given, and I was prepared to discuss it today.
24 However, since the ANC basically just brought up procedural issues
25 and they did not respond to the shadow study that was put in the

1 record, I want to let the ANC have time to respond to that. And
2 so I would propose that we go ahead and give the ANC two weeks and
3 I'll let the secretary reach out to the ANC -- although I'm sure
4 they're probably listening -- give the ANC an additional two weeks
5 to respond to those exhibits.

6 And then what I'd also like to mention is that -- and
7 I'm speaking to my fellow Board members, if you all are in
8 agreement that this is the last time that I think we should
9 postpone this. I mean, the applicant now has gone through the
10 process, they've had a hearing and I don't even know what's going
11 to happen. I mean, we -- the ANC has asked for reconsideration.
12 We have not deliberated yet upon that reconsideration. But I do
13 believe that the applicant now, you know -- we don't want to
14 prejudice the applicant either, right?

15 So I don't want to prejudice the ANC, so go ahead and
16 give them two weeks to respond to these shadow studies or the
17 exhibits that we now have in the record and then we'll go ahead
18 and set this for decision in two weeks. And so unless the Board -
19 - Mr. Moy, you had your hand up?

20 MR. MOY: I was going to make a suggestion, Mr.
21 Chairman, because of Michael Turnbull, because it might be more
22 convenient for him if you move this to May 26th.

23 CHAIRPERSON HILL: Is that in three weeks?

24 MR. MOY: That's three weeks, but I believe that's when
25 Mr. Turnbull is going to be back.

1 CHAIRPERSON HILL: Okay.

2 MR. MOY: But if he has the time, then of course, you
3 can keep your timeline of May 19th.

4 CHAIRPERSON HILL: I mean, I just don't know, Mr.
5 Turnbull, what do you what do you want to do?

6 COMMISSIONER TURNBULL: I can do whatever meets the
7 pleasure of the Board. I can come back on the 19th.

8 CHAIRPERSON HILL: Okay. Then let's do two weeks,
9 because, again, this was set for discussion -- I mean, we're all
10 ready to deliberate now, right?

11 COMMISSIONER TURNBULL: Yeah, why drag it on longer than
12 it has to be.

13 CHAIRPERSON HILL: Right. So let's go ahead, Mr. Moy,
14 and reschedule this now for the 19th. And then you can let -- oh
15 no, I'm sorry. So the ANC, when can we give them an additional
16 two weeks to respond -- right, so hold on. So if we give them two
17 weeks, that takes us to 19th, so then the 26th is really when we
18 would be deliberating this anyway. So fine.

19 So the ANC -- and Mr. Moy, you can confirm this by just
20 letting me -- either nod or -- that the ANC can have until the
21 19th for filings. Okay, so the ANC can have until the 19th and
22 then Mr. Turnbull we'll come back for a decision with this on the
23 26th.

24 MR. MOY: Okay. I just note that Exhibit 95A totally
25 meets the requirements that we asked of the applicant that all of

1 the drawings of the shadow studies are stamped with the
2 professional license stamp of Matthew David Lee, who's a
3 registered architect in the city. So I'm just saying it meets our
4 requirements.

5 CHAIRPERSON HILL: Okay. Thank you, Commissioner. Ms.
6 Cain, are you there?

7 MS. CAIN: Yes, Mr. Chair.

8 CHAIRPERSON HILL: Is there anything that I missed?

9 MS. CAIN: No, I think you got everything.

10 CHAIRPERSON HILL: Okay. All right. Okay then,
11 Commissioner Turnbull, I guess that's it for you today.

12 COMMISSIONER TURNBULL: Okay, folks, I'll see you in
13 three weeks -- well, I think, unless I have something else that
14 comes up in the next few weeks, like one or two cases. Well, you
15 guys enjoy the rest of your day.

16 CHAIRPERSON HILL: Thank you, you as well, sir. One
17 second. All right.

18 Commissioner May, are you still there?

19 COMMISSIONER MAY: Yes.

20 CHAIRPERSON HILL: You said you have to go at 11?

21 COMMISSIONER MAY: Yeah, but I'm flexible there, too.

22 CHAIRPERSON HILL: Okay. All right. Well then, okay.
23 Then you can be the wallflower then for a little bit longer.

24 COMMISSIONER MAY: Okay.

25 CHAIRPERSON HILL: That's an old term, Wallflower.

1 That's probably not PC anymore.

2 COMMISSIONER MAY: It's also the name of a band.

3 CHAIRPERSON HILL: There you go. Mr. Young, you can
4 mute Mr. May if you'd like. All right. I'm just kidding, don't
5 mute him. All right.

6 Commissioner Shapiro, thank you for joining us. I have
7 to read into the next thing.

8 (Whereupon, the above-entitled matter went off the
9 record at 9:45 a.m.)

10

C E R T I F I C A T E

This is to certify that the foregoing transcript

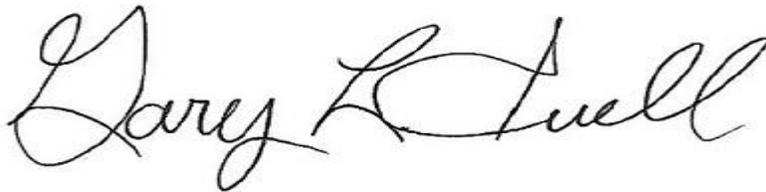
In the matter of: Public Meeting

Before: DCBZA

Date: 05-05-2021

Place: Teleconference

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