

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 22, 2021

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 5:27 p.m. EST, Lorna L. John, Vice Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA L. JOHN, Vice Chair (NCPC)
CARL H. BLAKE, Board Member
CHRISHAUN S. SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
KEARA MEHLERT, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
BRANDICE ELLIOTT
ANNE FOTHERGILL
MATT JESICK
STEPHEN MORDFIN
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

[The transcript constitutes the minutes from
the Regular Public Meeting held on December 22, 2021.]

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

2 5:27 p.m.

3 VICE CHAIR JOHN: Hello, everyone. I'm sorry to
4 be late. Mr. Moy, could you call us back in session for our
5 meeting calendar?

6 MR. MOY: Yes, yes. The Board is back in session,
7 and the time is at or about 5:27 p.m. And I believe the
8 Board will convene two action items in its meeting session.

9 VICE CHAIR JOHN: Thank you. Can you call the
10 first case, which I believe is 20596?

11 MR. MOY: Okay. Before the Board, the case before
12 the Board is Application No. 20596 of George Zoulias, Z-O-U-
13 L-I-A-S. This is an expedited review calendar case. It is
14 self-certified as well, for special exception from the lot
15 occupancy requirements of Subtitle E, section 304.1, pursuant
16 to: Subtitle E, section 5201, Subtitle X, section 902.1.

17 This would construct a two-story rear deck
18 addition to an existing attached, two-story with cellar,
19 principal dwelling. The property is in the RF-1 Zone at
20 premises 621 A Street, NE, Square 686, Lot 826.

21 VICE CHAIR JOHN: Thank you, Mr. Moy. Are we
22 ready to deliberate? I guess yes. So, I'll start.

23 This is an application to replace an existing
24 deck, and the lot occupancy is at 62.58 percent, and is an
25 existing non-conformity.

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1 The new deck would extend the lot occupancy to 66
2 percent, which is allowed by special exception. OP supports
3 the application. There's no report from the ANC when I last
4 checked, and DDOT does not object to the relief requested.
5 And the two adjacent property owners are in support.

6 So, I would be voting in support of the
7 application. And Mr. Moy --

8 MR. MOY: I just want to amend your statement
9 somewhat. Yesterday, so that's the 24 hour block, but the
10 ANC6C filed their letter in support under exhibit 26, so you
11 might want to take a look at that.

12 VICE CHAIR JOHN: Excellent. I will take a look
13 at that while the others are speaking. Does anyone have
14 anything to add? Anyone who has read the ANC report?

15 MEMBER SMITH: Yes, I've read the ANC report and
16 they voted 6-0, in support of the, of this particular special
17 exception.

18 VICE CHAIR JOHN: Okay and --

19 (Simultaneous speaking.)

20 MEMBER SMITH: So, they give unanimous support.
21 And I'll also state that we received a letter from the
22 Capitol Hill Restoration Society, also in support. I also
23 agree with your analysis, Madam Chair, and I will vote in
24 support.

25 VICE CHAIR JOHN: Thank you. Commissioner May?

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1 ZONING COMMISSIONER MAY: I think it's all been
2 said. Very straight forward.

3 VICE CHAIR JOHN: Thank you. Mr. Blake?

4 MEMBER BLAKE: I'm good; no additional comments.

5 VICE CHAIR JOHN: Thank you.

6 So, I will go ahead then and make a motion to
7 approve Application 20596, as captioned and read by the
8 Secretary, and ask for a second Mr. Smith?

9 MEMBER SMITH: Second.

10 VICE CHAIR JOHN: Thank you. Mr. Moy, could you
11 take the roll call?

12 MR. MOY: When I call each of your names, if you
13 would please respond with a yes, no, or abstain to the motion
14 made by Vice Chair John, to approve the application for the
15 relief requested.

16 The motion was second by Mr. Smith.

17 Zoning Commissioner Peter May?

18 ZONING COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: And, we have a Board member not

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1 participating. The staff would record the vote as 4-0-1.
2 This is on the motion of, made by Vice Chair John, to
3 approve, second by Mr. Smith. Also in support of the motion
4 to approve, Zoning Commissioner Peter May, Mr. Blake, Mr.
5 Smith, and of course, Vice Chair John.

6 The motion carries on a vote of 4-0-1.

7 VICE CHAIR JOHN: Thank you. So, Mr. Moy, can you
8 call our last case?

9 MR. MOY: Okay, so before the Board is a, is a,
10 for action is a motion, and it is, well, it is a, an
11 Emergency Motion to Stay Construction filed by the Dupont
12 East Civic Association, or rather, Civic Action Association,
13 or DECAA.

14 And that motion is in the case record under
15 exhibits 115 and 116. The property is located at 1733 16th
16 Street, NW. It is related to the appeal, this is Appeal No.
17 20453.

18 This is the appeal from the decision made on
19 November 19, 2020, by the Zoning Administrative Department
20 of Consumer Regulatory Affairs, to approve the subdivision
21 of Square 192, Lot 108, into two separate lots denoted as
22 Lots 110 and 111. And, this is in zones RA-8 and RA-9.

23 The record will show, Madam Vice Chair, that the
24 appellant in the related or companion appeal, 20452, did not
25 file a response to the motion.

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1 This particular motion was filed in the record on
2 December 7, 2021. And, again, it's the motion to stay
3 construction, which actually also included requests for
4 expedited hearing to appeal 20453, which I have not even
5 scheduled just yet.

6 So anyways, that's the quick of it.

7 VICE CHAIR JOHN: Thank you, Mr. Moy.

8 I thought I saw something in the record for April
9 for 20656.

10 MR. MOY: Yes, it is --

11 (Simultaneous speaking.)

12 VICE CHAIR JOHN: Is it?

13 MR. MOY: -- we, and the BZA process for
14 scheduling cases, Madam Vice Chair, we had a date for this
15 for April the, April the --

16 VICE CHAIR JOHN: I think it's the 23rd, or
17 something like that. No.

18 MR. MOY: I had it right here but I can't put my
19 finger on it. Gosh, hang on.

20 VICE CHAIR JOHN: I thought I had it too, but I
21 don't think it's crucial to our deliberations.

22 MR. MOY: No, it's not. But I had a target of
23 April 6 or April 13.

24 VICE CHAIR JOHN: Okay, all right, so my mistake.
25 So, wanted to find out from the Board if anyone is interested

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1 in receiving additional information from anyone?

2 Okay. So, then I'm going to see if I can have
3 someone start the discussion. Commissioner May, would you
4 mind starting us in our deliberations?

5 ZONING COMMISSIONER MAY: Sure. So, I mean the
6 guidelines for when we can stay the decision of the Zoning
7 Administrator is pretty clear, and it's pretty limited.

8 And, the first prong of the test has to do with
9 the likelihood of success of the appeal. And, I have to say
10 frankly, it falls down on that first test.

11 I think that there has been reasonable arguments
12 on both sides. We haven't decided the case, but I think it's
13 entirely possible that we will not rule in favor of the
14 appeal. And, I think on that basis alone, it's, it fails.

15 And, so we should not take action to stay this
16 decision.

17 And, the other aspects of it, you know, we can
18 argue back and forth about whether there's you know, injury
19 to one party or another. I don't think that there's a
20 compelling case in any direction on that. But, again, it
21 doesn't really matter because it fails on that, that first
22 prong in my view.

23 So, maybe that's a little more brief than you
24 might have gotten from me at 10:00 in the morning, but you
25 know, the gist of it would have been the same.

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1 VICE CHAIR JOHN: Okay, thank you.

2 Mr. Smith, do you have anything to add?

3 MEMBER SMITH: I'm going to stand on Mr. May's
4 gist. I, you know, maybe you can add more. I agree that it
5 was really. But I do completely agree with his point of view
6 on these particular tests. And I do believe based on, you
7 know, what he has stated, this particular case does not merit
8 us granting the stay.

9 So, with that, I agree with his stance.

10 VICE CHAIR JOHN: Thank you. Mr. Blake, anything
11 to add?

12 MEMBER BLAKE: I agree with those observations.

13 VICE CHAIR JOHN: Thank you. So, I just want to
14 say for the record that this appeal was filed only in Appeal
15 No. 20453, and if you will recall, we did not consolidate the
16 cases. We just for convenience, agreed to hear the cases
17 together. So, there is no corresponding motion filed in case
18 number 20452.

19 So, I agree with your comments so far. I do not
20 believe that there is any likelihood based on the record, of
21 success on the merits. Because as Commissioner Moy, May
22 stated, we do need their issues to be resolved, like the
23 building height measuring point, and that has not been
24 resolved in the pleadings.

25 Mr. May, Mr. Moy, do I have an issue?

1 ZONING COMMISSIONER MAY: No, just you closed the
2 day calling me Mr. Moy, Commissioner Moy again, and --

3 VICE CHAIR JOHN: That's how I started. I like
4 the symmetry of it.

5 ZONING COMMISSIONER MAY: Me, too, that's why I
6 smile.

7 VICE CHAIR JOHN: Yes, but it didn't continue.
8 It wasn't prolonged. It was just a slight slip. So, a
9 little bit of levity at the end even though it's been a long
10 day. So, then, I believe I need to make a motion, is that
11 right, Mr. Moy?

12 Oh, I'm sorry, let me go back. So, the motion
13 also mentioned 20656, which is a little, was a little
14 confusing, in the request for the motion to stay
15 construction.

16 And, I looked at that motion, and I didn't really
17 see where there was any substantial difference in the
18 arguments. In that case, the issue was related to, to this
19 subdivision.

20 The new permit, this is an appeal of the new
21 permit, which the main claim was that there was something
22 wrong with the subdivision. And so I think the arguments
23 would be somewhat similar in terms of whether or not there
24 is a likelihood of success on the merit, merits.

25 It all boils down to whether the subdivision is

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1 appropriate based on the, the allowances for yards, and so
2 on. Rear yard, side yard, which all relate to the building
3 height measurement point.

4 So, based on that, I also don't see any likelihood
5 of success on the merits. And before I make the motion, I
6 think we should also discuss the motion to, what was the
7 second one, Mr. Moy? It was the motion to stay, and the
8 request for the expedited hearing.

9 So, the motion to stay referred to 205, 20453 and
10 204, 20656. And, I believe we are saying that there is no
11 likelihood of success on the merits based on the pleadings
12 for either of, for staying construction in either of those
13 cases. So, I'll move on to the expedited hearing, because
14 they were combined you know, so I had to sort of step through
15 each request.

16 So, let's discuss now the motion for an expedited
17 hearing, both with respect to 20453 and 20656. And the
18 hearing on 20453 is set for February, and the permit hearing,
19 or the permit appeal, is set for April. And I don't see any
20 reason to expedite either hearing. And the appellant is very
21 -- well, they've discussed the fact that he, the property
22 owner is continuing to build, and that their construction
23 impacts that affect the public and the neighbors. And, I
24 think that they, the property owner is building at his own
25 risk, or her own risk. And so I don't see any property, any

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1 reason to expedite the hearing based on that claim.

2 Now, if someone can be more -- thank you, Mr. May.

3 ZONING COMMISSIONER MAY: Yes, I just, I'm a
4 little unclear on this. I mean, the request for the
5 expedited hearing is specific to 20656?

6 VICE CHAIR JOHN: Well, I went to --

7 ZONING COMMISSIONER MAY: Or is it for the others?
8 Because its, we have 20452 and 20453 that will be heard on,
9 in February.

10 VICE CHAIR JOHN: So, there's nothing filed for
11 20452.

12 ZONING COMMISSIONER MAY: Okay.

13 VICE CHAIR JOHN: Mr. Hayes did not respond, and
14 he did not file anything.

15 ZONING COMMISSIONER MAY: Right.

16 VICE CHAIR JOHN: We're only looking at 205,
17 20453.

18 ZONING COMMISSIONER MAY: Right.

19 VICE CHAIR JOHN: When I looked at the pleadings,
20 the two cases, the permit case which is 20656, was discussed
21 in the case with 20453.

22 And then I looked at 20456, and the arguments in
23 20456 were the same as the ones proposed in 20453 except for
24 the issue --

25 ZONING COMMISSIONER MAY: Right.

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1 VICE CHAIR JOHN: -- one is the subdivision.

2 ZONING COMMISSIONER MAY: So, I mean it occurs to
3 me that if we already have a hearing scheduled for 20453, and
4 at the same time 20452, that we might as well hear 20656 at
5 the same time since we'll be hearing the same arguments.

6 VICE CHAIR JOHN: Thank you. Now, Mr. Moy, are
7 you trying to say something?

8 MR. MOY: Yes, yes. Commissioner May is correct
9 so the only, only concern I have is I have this thing that's,
10 that deals with public notice requirements.

11 ZONING COMMISSIONER MAY: Yes.

12 MR. MOY: So, when that appeal of 20656 was filed,
13 I have to allow the 51 days. So, which meant that you know,
14 I was targeting it for April 27.

15 Obviously, I could do it sooner so long as I do
16 it within the 51 days. But the earliest I could do it if I
17 went right on the edge, would be that last hearing in March.

18 VICE CHAIR JOHN: Okay.

19 ZONING COMMISSIONER MAY: Can I ask then the
20 request for expedited hearing, if we were to grant that for
21 20656, would that allow you to cut the 51 days?

22 MR. MOY: I'll leave that to your counselor, Mary
23 Nagelhout.

24 ZONING COMMISSIONER MAY: Yes, I mean I'm just,
25 I'm trying to be efficient with everybody's time, right?

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1 VICE CHAIR JOHN: Right.

2 ZONING COMMISSIONER MAY: Let's try to deal with
3 this all as quickly as we can and get it over with.

4 VICE CHAIR JOHN: Thank you. Counselor?

5 MS. NAGELHOUT: Yes, unfortunately, that, that 51
6 day notice requirement is not waivable. It comes from the
7 ANC Act.

8 ZONING COMMISSIONER MAY: Okay, all right.

9 VICE CHAIR JOHN: Yes. So, I mean it's a
10 possibility that the permit might be moot by the time we get
11 through the hearing on 20452 and 20453. We'll see.

12 ZONING COMMISSIONER MAY: Right. Can I, may I ask
13 another question of our attorney?

14 VICE CHAIR JOHN: Sure.

15 ZONING COMMISSIONER MAY: If the case were, if
16 202, 20452 and 20453, once, if they were, say they were
17 decided on February 23, would it be possible for, for either
18 the appellant or the, or the, or DCRA, or the intervener, to
19 move for a summary dismissal based on, of 20656 based on
20 decisions made on 20452 or 20453?

21 Is that something that we do? I don't remember.

22 MS. NAGELHOUT: No, summary dismissal is not
23 something that you do. Under the Zoning Act, if someone
24 files an appeal, they're entitled to a hearing and decision
25 on the appeal unless it's dismissed before the hearing.

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1 So, for example, if the new appeal does not
2 represent a challenge of a new zoning decision, if it's the
3 exact same zoning decision at issue in 20452 and 20453, then
4 there would be no need to take up the new appeal.

5 ZONING COMMISSIONER MAY: Okay. So, and these
6 will be different decisions by the Zoning Administrator,
7 right?

8 MS. NAGELHOUT: Well, they're the current appeals
9 20452 and 3, involve the subdivision.

10 ZONING COMMISSIONER MAY: Right.

11 MS. NAGELHOUT: 20656 involves a permit --

12 ZONING COMMISSIONER MAY: Right.

13 MS. NAGELHOUT: -- that was issued on the basis
14 of that subdivision. So, if they can, if it's the exact same
15 zoning decision, you know, then there's no need to take it
16 up in a new appeal.

17 ZONING COMMISSIONER MAY: Oh, okay. So, it could,
18 it could be that.

19 MS. NAGELHOUT: If the appellants are alleging
20 something wrong with the building permit besides that it's
21 based on an allegedly improper subdivision, you would have
22 to take it up.

23 ZONING COMMISSIONER MAY: Got it. Okay, that's
24 very helpful. Thank you.

25 VICE CHAIR JOHN: So, there's a one month

1 difference between February 23 and March, what was that date,
2 Mr. Moy?

3 MR. MOY: Possibly, I believe it was, I was
4 looking at possibly. Assuming that I can get the public
5 notice out to the D.C. Register within the appropriate amount
6 of time, conceivably I could have this for a date toward the
7 end of March. I don't have the exact date at the moment, but
8 it was the middle and late March possibly.

9 VICE CHAIR JOHN: So, considering how tight our
10 schedule is, our hearing schedule is, is anyone opposed to
11 continuing all of case, all of the cases and have everything
12 heard in March?

13 Commissioner May?

14 ZONING COMMISSIONER MAY: No, I mean I really
15 think that we should take it up, the, the original two cases
16 as quickly as we possibly can.

17 VICE CHAIR JOHN: Okay.

18 ZONING COMMISSIONER MAY: Because it's already
19 been going on for you know, almost a year.

20 VICE CHAIR JOHN: Okay.

21 ZONING COMMISSIONER MAY: Or maybe more than a
22 year. It's been going a really long time. So, I wouldn't
23 want to defer it any longer.

24 VICE CHAIR JOHN: Okay, thank you. I am
25 persuaded. So, then I want to make sure I make the right

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1 motion. I believe I hear us saying that we would like to
2 deny the motion to stay construction and request for
3 expedited hearing in appeals 20453 and 20656. Okay?

4 ZONING COMMISSIONER MAY: I'll second that.

5 VICE CHAIR JOHN: Okay, so I did make the motion.
6 Seconded. So, may I ask you to call the roll, Mr. Moy?

7 MR. MOY: Yes. Yes. When I call each of your
8 names, if you were to respond with a yes, no, or abstain, to
9 the motion made by Vice Chair John. The motion to deny the
10 motion to stay construction. That motion was second by
11 Zoning Commissioner Peter May.

12 Mr. Smith?

13 MEMBER SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MR. MOY: Zoning Commissioner Peter May?

17 ZONING COMMISSIONER MAY: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: And we have a Board member not present.
21 The motion carries on a vote of 4-0-1. This is the motion
22 made by Vice Chair John to deny, seconded by Zoning
23 Commissioner Peter May. The motion carries.

24 VICE CHAIR JOHN: Thank you, Mr. Moy. Do we have
25 anything else before the Board?

1 MR. MOY: Nothing before the Board except that,
2 on behalf of the BZA staff and the OZ staff, we wish each of
3 you a very merry, happy, and safe holidays, as well as a
4 great coming New Year of 2022. And stay safe.

5 VICE CHAIR JOHN: Thank you, Mr. Moy. And I would
6 be remiss if I didn't say on behalf of the Chairman and
7 myself, I wish you all a wonderful holiday and that you will
8 be safe, and you will wear your masks. And I thank everyone
9 for all of their labor of love this year. And just be safe.

10 (Whereupon, the above-entitled matter went off the
11 record at 5:53 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: 12-22-21

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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