

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

FEBRUARY 9, 2022

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice, at 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER[S] PRESENT:

ROBERT MILLER, Commissioner, Zoning Commission
JOSEPH IMAMURA, Commissioner, Zoning Commission

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SARAH BAJAJ, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on February 9, 2022.

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

9:38 a.m.

CHAIR HILL: Good morning, ladies and gentlemen, to the Board of Zoning Adjustment. Today's date is 2/9/2022. The hearing will please come to order. My name is Fred Hill, Chairperson of the District of Columbia Board of Zoning Adjustment.

Joining me today are Lorna John, Vice Chair, Board Members Carl Blake and Chrishaun Smith, and Zoning Commissioner Rob Miller, as well as Commissioner, Dr. Imamura. Sorry, Joe. You're going to have to tell me how to pronounce that again. He is attending for one decision making session.

Today's meeting and hearing agendas are available on the Office of Zoning website. Please be advised, that this proceeding is being recorded by a Court Reporter, and is also Webcast live, via WebEx YouTube live. The video of the Webcast will be available on the Office of Zoning's website, after today's hearing.

Accordingly, everyone who is listening on WebEx or by telephone will be muted during the hearing. Also, please be advised, that we do not take any public testimony at our decision meeting session.

If you experience difficulty accessing WebEx or with your telephone call-in, then please call our OZ hotline

1 number at 202-727-5471 to receive WebEx login or call-in
2 instructions.

3 At the conclusion of the decision meeting session,
4 I shall, in consultation with the Office of Zoning, determine
5 whether a full or summary order may issue. A full order is
6 required when the decision it contains is adverse to a party
7 including an affected ANC.

8 A full order may also be needed if the Board's
9 decision differs from the Office of Planning's
10 recommendation. Although the Board favors the use of summary
11 orders whenever possible, an applicant may not request the
12 Board to issue such an order.

13 In today's hearing session, everyone who is
14 listening on WebEx or by telephone will be muted during the
15 hearing. And only persons who have signed up to participate
16 or testify, will be unmuted at the appropriate time. Please
17 state your name, and home address before providing oral
18 testimony or your presentation.

19 Oral presentations should be limited to a summary
20 of your most important points. When you have finished
21 speaking, please mute your audio, so that your microphone is
22 no longer picking up sound.

23 Once again, if you experience difficulty accessing
24 WebEx or with your telephone call-in, or if you forgotten to
25 sign up 24 hours prior to this hearing, please call our OZ

1 hotline number 202-727-5473, to sign up to testify and to
2 receive WebEx login, or call-in instructions.

3 All persons planning to testify, either in favor
4 or in opposition should have signed up in advance. They will
5 be called by name to testify. If this is an appeal, only
6 parties are allowed to testify. By signing up to testify,
7 all participants completed the oath, or affirmation as
8 required by Subtitle Y Section 408.7.

9 Requests to enter evidence at the time of an
10 online virtual hearing, such as written testimony, or
11 additional supporting documents, other than live video, which
12 may not be presented as part of the testimony, may be allowed
13 pursuant to Subtitle Y 103.13, provided that, the person
14 making the request to enter an exhibit explains how the
15 proposed exhibit is relevant, the good cause that justifies
16 allowing the exhibit into the record, including an
17 explanation of why the requestor did not file the exhibit
18 prior to the hearing pursuant to Subtitle Y 206, and how the
19 proposed exhibit would not unreasonably prejudice any party.

20 The order of procedure for special exceptions and
21 variances are pursuant to Y 409. The order of appeals is
22 subject to Subtitle Y 507.

23 At the conclusion of each case, an individual who
24 was unable to testify because of technical issues, may file
25 a request for leave to file a written version of the planned

1 testimony to the record within 24 hours, following the
2 conclusion of public testimony in the hearing. If additional
3 witness testimony is accepted, then parties will be allowed
4 a reasonable time to respond, as determined by the Board.

5 The Board will then make its decision at its next
6 meeting session, but no earlier than 48 hours after the
7 hearing. Moreover, the Board may request additional specific
8 information to complete the record.

9 The Board and the staff will specify at the end
10 of the hearing, exactly what is expected, and the date when
11 persons must submit the evidence to the Office of Zoning.
12 No other information shall be accepted by the Board.

13 Finally, the District of Columbia Administrative
14 Procedures Act requires that the public hearing on each case
15 be held in the open, before the public. However, pursuant
16 to Section 405(b) and 406 of that Act, the Board may,
17 consistent with its rules of procedures in the act, enter
18 into a closed meeting on a case for purposes of seeking legal
19 counsel on a case, pursuant to D.C. Official Code Section
20 2-575(b)(4), and or deliberating on a case pursuant to D.C.
21 Official Code Section 2-575(b)(13). But only after providing
22 the necessary public notice, and in the case of an emergency
23 closed meeting, after taking a roll call vote.

24 Mister Secretary, do you have any preliminary
25 mattes?

1 MR. MOY: Yes. Thank you, Mr. Chairman. Good
2 morning, and welcome back. It's lovely we have a full Board
3 again. So, everything's right as rain. So, for the record,
4 for the transcript, update on two cases that were originally
5 on today's docket.

6 These two cases, Application number 20612 of
7 Demetra Weir, has been, was granted continuance. And the
8 rescheduled date is May 4th, 2022. And finally, Case number
9 20529 of Oakwood, LLC, and granted continuance, and
10 rescheduled to May 25th, 2022.

11 And finally, there are some preliminary matters
12 to, I believe it's more efficient to address those when I
13 call a case, unless I'm told otherwise. Other than that,
14 that's all I have. Thank you, Mr. Chairman.

15 CHAIR HILL: Okay. Thanks, Mr. Moy. A couple of
16 things. First, I guess if we can kind of just reorder a
17 little bit. Meaning, I'd like to do the expedited review
18 first, Mr. Moy.

19 And then there's the decision case, 20603, which
20 I am not on, as well as 20526, which is the McKinney case,
21 which also I am not on. So, those two we'll view in order.
22 And then Vice Chair John can go ahead and take over for the
23 decision case, as well as the continued hearing of that, will
24 work for everyone. Okay.

25 I'd like to state for the record, I'd really like

1 to thank Vice Chair John sincerely for covering for me while
2 I was away. I really do appreciate it, Ms. John. And I
3 don't know how else to thank you. But I really do want to
4 publicly thank you. And very much appreciated.

5 Unfortunately now, those people that liked the way
6 that you did it, hey, I'm back. And/or those that like me,
7 hey, you're gone. So, there you go. Okay. But thank you,
8 Ms. John, very much.

9 VICE CHAIR JOHN: You're welcome, Mr. Chairman.

10 CHAIR HILL: Thank you. Thank you. All right.
11 That being the case, Mr. Moy, let's go ahead and view the
12 expedited review by calling that first.

13 MR. MOY: Yes, sir. Thank you. So, the expedited
14 review case is Application number 20642 of Kerry, K-E-R-R-Y,
15 Burgott, B-U-R-G-O-T-T. This is a request for a special
16 exception as captioned and advertised from the lot occupancy
17 requirements of Subtitle E, Section 304.1, pursuant to
18 Subtitle E, Section 5201, and Subtitle X, Section 9 through
19 2.1.

20 This would concern a rear two storey addition to
21 an existing attached two storey with basement flap, in the
22 RF1 zone. The property is located at 211 Morgan Street,
23 Northwest, Square 555, Lot 983. And that's all I have.
24 Thank you.

25 CHAIR HILL: Okay, thanks. Are you guys ready to

1 talk about it? Okay. After taking a look at the record I
2 didn't really have any issues with it. I mean, they're
3 constructing a rear addition. The spiral staircase to an
4 existing attached two storey with basement flap.

5 I would agree with the analysis the Office of
6 Planning has provided, which was in support, as was that of
7 the ANC, which is in support. It seems relatively
8 straightforward to me.

9 And I didn't have any issues with the spiral
10 stair, and has it, goes against the standards which would be
11 cause for review. Let's see. I'll go around the table, if
12 that's all right. Commissioner Miller, do you have any
13 thoughts?

14 ZC MEMBER MILLER: No. I concur with your
15 comments, Mr. Chairman. Thank you.

16 CHAIR HILL: All right. Thank you. Mr. Smith?

17 MEMBER SMITH: I don't have anything in addition
18 to add. I concur.

19 CHAIR HILL: Mr. Blake?

20 MEMBER BLAKE: I concur with the analysis as well,
21 Mr. Chair.

22 CHAIR HILL: Thank you. Vice-Chair John?

23 VICE CHAIR JOHN: I agree with the analysis, Mr.
24 Chair. I have nothing to add.

25 CHAIR HILL: Okay. And I'll make a motion to

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1 approve Application number 20642 as captioned and read by the
2 Secretary, and ask for a second. Ms. John?

3 VICE CHAIR JOHN: Second.

4 CHAIR HILL: Motion has been made and seconded.
5 Mr. Moy, please take a roll call.

6 MR. MOY: Yes. Thank you, Mr. Chairman. When I
7 call each of your names, if you will please respond with a
8 yes, no, or abstain to a motion made by Chairman Hill to
9 approve the application for the relief requested. The motion
10 to approve was second by Vice-Chair John. Zoning
11 Commissioner Rob Miller.

12 ZC MEMBER MILLER: Yes.

13 MR. MOY: Mr. Smith.

14 MEMBER SMITH: Yes.

15 MR. MOY: Mr. Blake.

16 MEMBER BLAKE: Yes.

17 MR. MOY: Vice-Chair John.

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: Chairman Hill.

20 CHAIR HILL: Yes.

21 MR. MOY: Staff will record the vote as five, to
22 zero, to zero. This is on a motion made by Chairman Hill to
23 approve. The motion to approve was second, and in support
24 by Vice-Chair John. Also in support of the motion to
25 approve, Zoning Commissioner Rob Miller, Mr. Smith, Mr.

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1 Blake. The motion carries with a vote of five, to zero, to
2 zero.

3 CHAIR HILL: Okay. All right. Thanks, Mr. Moy.
4 All right, Vice-Chair John, if it's okay I'll jump off for
5 20603, as well as 20526, and then rejoin you guys. Okay?

6 VICE CHAIR JOHN: Thank you.

7 CHAIR HILL: Thank you.

8 VICE CHAIR JOHN: Good morning. So, we did call
9 the case, right, Mr. Moy?

10 MR. MOY: Not yet. I was waiting for your signal.

11 VICE CHAIR JOHN: Okay. Please go ahead and call
12 the case. I haven't had coffee yet. So, it's early.

13 MR. MOY: Okay. Yes. All right. The next and
14 last case for decision making in the Board meeting session
15 is Case Application number 20526 of 4248 LLC. As the Board
16 will recall, the Board heard this at its public hearing on
17 February the 2nd, 2022.

18 Again, this application has been amended for a
19 special exception from the side yard requirements of Subtitle
20 D, Section 206.3, pursuant to Subtitle D, Section 5201,
21 Subtitle X, Section 901.2.

22 This would construct a new three storey semi-
23 detached principle dwelling unit in the R2 zone. The
24 property is located at 1227 47th Place, Northeast, Square
25 5160, Lot 49. And participating on the decision is Vice-

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1 Chair John, Mr. Blake, Mr. Smith, and Zoning Commissioner,
2 Dr. Joe Imamura.

3 VICE CHAIR JOHN: Thank you, Mr. Moy. So, are we
4 ready to decide? I'm going to go ahead and ask Board Member
5 Smith to begin the discussion.

6 MEMBER SMITH: So, just for clarification, are we
7 deciding 20603, or 226?

8 VICE CHAIR JOHN: No. This is 20603.

9 MEMBER SMITH: Okay. I think he read the caption
10 for 20526.

11 VICE CHAIR JOHN: Thank you for catching that.
12 It's 20603.

13 MR. MOY: Yes. Chair, we read that. I made a
14 mistake in my reading. Madame Vice-Chair.

15 VICE CHAIR JOHN: Yes. Thank you. Please go
16 ahead and read the caption again.

17 MR. MOY: Yes. Let me do that. Yes. I just had
18 my pieces of paper piled. I, so, about here. Okay. All
19 right. I see what I did. Okay. Okay. It makes sense now.
20 All right. Here we go. All right.

21 This is Case Application number 20603 of Abdollah
22 Poozesh. I'm sorry if I pronunciation, P-O-O-Z-E-S-H. And
23 caption advertised for a special exception from the rear yard
24 requirements of Subtitle G, Section 605.2, pursuant to
25 Subtitle G, Section 609.1, Subtitle G, Section 1200, and

1 Subtitle X, Section 902.1.

2 This would construct a rear addition to an
3 existing attached three storey with basement mixed use
4 building in the MU-18 zone. Property located at 1709 17th
5 Street, Northwest, Square 178, Lot 87.

6 And this was last heard by the Board on February
7 2nd, 2022. We're just waiting on a decision with Vice-Chair
8 John, Mr. Blake, Mr. Smith, and Dr. Joe Imamura. Yes, I
9 think we got it this time. Thank you, Mr. Smith.

10 VICE CHAIR JOHN: Thank you. So --

11 MEMBER SMITH: No problem.

12 VICE CHAIR JOHN: Mr., Board Member Smith, were
13 you ready to begin?

14 MEMBER SMITH: Yes, Chair John. I will begin the
15 deliberations. So, the case before us is a request to
16 construct a rear addition, one storey plus mezzanine, to an
17 existing attached three storey with basement, mixed use
18 building.

19 Based on the information in the record, and the
20 testimony heard at the public hearing last week, I believe
21 that the applicant has sufficiently demonstrated that they
22 meet the burden of proof for us to be able to grant a special
23 exception.

24 The proposed addition will be one storey in
25 height. And I do not believe would obstruct light and air

1 to the adjacent properties. I also am giving credits to the
2 ordinance to the party of opposition, the building owner to
3 the south of this property.

4 While their building is in close proximity to the
5 applicant's addition, the property is located within a dense
6 urban neighborhood. So, the design of such an addition is
7 setbacks of buildings from other, this type of setback is not
8 uncommon in that neighborhood, and other neighborhoods
9 similar to this within the District or MU zone.

10 Also, the proposed one storey addition would not
11 obstruct light and air to the party in opposition's units.
12 They're proposing to construct with large sliding windows
13 that open out to the applicant's property. So, I do believe
14 that applicant has met the criteria of Section 901.2.

15 Also, from the standpoint of the ANC, I understand
16 that they are opposition. While, you know, I do err on the,
17 commonly do, you know, err on the side of the ANC, I will
18 again state that this property is MU. MU is a mixed use
19 zone, mixture of commercial and residential property.

20 So, you know, I do acknowledge that the ANC give
21 priority to residential development over commercial
22 buildings. But again, this is a MU zoned area, with a
23 mixture of commercial and residential uses. And I do believe
24 that this is indicative of the zone, and the intent of the
25 zone. So, with that, I will support the application.

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1 VICE CHAIR JOHN: Thank you, Board Member Smith.
2 Mr. Blake?

3 MEMBER BLAKE: Sure. Excuse me. My voice is a
4 little better, but not great still today. Based on the BZA
5 approved plans I would agree with the Office of Planning's
6 analysis, that the project meets a specific rear yard relief
7 requirement of G 1201.

8 Its assessment that the proposed venture is in
9 harmony with the general purpose and intent of the zoning
10 regulation for building expansion is of the commercial levels
11 of the buildings, where there is no lot occupant restriction.
12 The entire building would also continue to be within the
13 maximum permitted development standards for the lot
14 occupancy, building height, FAR, all for the MU 18 zone, and
15 as Member Smith pointed out.

16 And going to, you know, Subtitle X 911.2(b), and
17 adjacent concerns raised by the pointed opposition of the ANC
18 regarding the potentially adverse effect on the use of
19 available property, I think the party in opposition argued
20 that the rear addition would potentially block all light and
21 air to new residential units on the second and third floors
22 of their building.

23 I reviewed the schematics presented by both the
24 applicant and the opposition. Given the north facing
25 position of the windows in question it appears that there may

1 be a loss of some ambient light to the lower level unit
2 though. But the loss does not render the space
3 uninhabitable. So, it would not in my mind rise to the level
4 of undue.

5 I would also concur with the Office of Planning's
6 analysis, that based on the BZA approved plans in Case 20042,
7 the proposed addition would not have an undue or gross effect
8 on the use of neighboring property, because the abutting
9 properties will be almost nine feet from the common lot line.

10 The addition will be only one and a half storeys-
11 ish, about less than 20 feet high. There will be no windows
12 along the wall of the addition, the south wall of the
13 addition, which faces the opposition parties' curbing. And
14 the roof access will be not provided on the addition.

15 So, based upon the record before the Board, and
16 giving weight to the Office of Planning, and also giving
17 great weight to the concern of the ANC and the opposition
18 party, I believe the applicant has met the burden of proof,
19 and should be granted a special, granted the request for
20 relief.

21 VICE CHAIR JOHN: Thank you, Board Member Blake.
22 Commissioner Imamura?

23 ZC MEMBER IMAMURA: Thank you, Madame Vice-Chair.
24 There's clearly a tremendous amount of interest in this case.
25 And I'm sure there's a number of people listening this

1 morning to hear the verdict of our decision and deliberation.

2 I certainly give great weight to the ANC and great
3 weight to the Office of Planning report. I certainly
4 appreciate the position of the ANC and the neighbors in
5 opposition. But I also appreciate the applicant's need and
6 desire to expand.

7 We know locally owned businesses are important for
8 the health and vitality of the neighborhood. While the
9 applicant has every right to request a special exception, the
10 proposed addition does create an undesirable condition for
11 the abutting property. But it does not rise to the level of
12 creating an undue hardship for the abutting property.

13 While the proposed addition by code is considered
14 one floor at 22 feet high, with a mezzanine, the general
15 public understands it to be a two storey addition. If the
16 proposed addition were to be even higher it would then and
17 only then adversely affect light, air for the abutting
18 property.

19 But as it is, only views are impacted. And as the
20 applicant demonstrated during the hearing, they convincingly
21 argued that views are not a right. The fact that the
22 abutting property included balconies in revised drawings, and
23 did that on the north side with, you know, direct light, it
24 is a disservice to their own argument for light and air being
25 impacted.

1 Further, the location of the skylight is really
2 negligible when evaluating light and air. But its relocation
3 isn't hurting. And so, with that, Madame Vice-Chair, I am
4 in general agreement with my esteemed colleagues, and will
5 vote in favor.

6 VICE CHAIR JOHN: Thank you, Commissioner. So,
7 I'm also in favor of the application. And I agree with my
8 colleagues' comments so far, in terms of any adverse impacts
9 to light and air.

10 And I cannot give great weight to the ANC's
11 opposition. Because the basis of the opposition is the
12 inability to work with a residential building, and because
13 of the need of residential housing in the neighborhood. And
14 I don't believe that's the criteria for addressing whether
15 or not the applicant has complied with Section G 501, which
16 establishes the requirement for rear yard relief.

17 And so, based on our discussion -- Oh, I give
18 great weight to the Office of Planning's analysis. And I
19 just want to emphasize that there is no right to views over
20 anybody else's property.

21 And based on our discussion then I will make a
22 motion to approve the application. So, I will make a motion
23 to approve Application number 20603 as captioned and read by
24 the Secretary, and ask for a second, please. Board Member
25 Blake?

1 MEMBER BLAKE: Second.

2 VICE CHAIR JOHN: Mr. Moy, would you please take
3 the roll call?

4 MR. MOY: Thank you, Madame Vice-Chair. When I
5 call each of your names, if you would please respond with a
6 yes, no, or abstain to a motion made by Vice Chair John to
7 approve the application for the relief requested. The motion
8 to approve was second by Mr. Blake. Zoning Commissioner Dr.
9 Imamura?

10 ZC MEMBER IMAMURA: Yes.

11 MR. MOY: Mr. Smith.

12 MEMBER SMITH: Yes.

13 MR. MOY: Mr. Blake.

14 MEMBER BLAKE: Yes.

15 MR. MOY: Vice-Chair John.

16 VICE CHAIR JOHN: Yes.

17 MR. MOY: We have no other Board Member
18 participating. Staff will record the vote as four, to zero,
19 to one on the motion made by Vice-Chair John to approve.
20 Second by Mr. Blake to approve.

21 Also in support of the motion to approve is Zoning
22 Commissioner Dr. Imamura, Mr. Smith. Again, the Board, or
23 rather the motion carries by a vote of four, to zero, to one.

24 VICE CHAIR JOHN: Thank you, Mr. Moy. So, can you
25 go ahead call the first hearing case?

1 ZC MEMBER IMAMURA: Before you, Mr. Secretary, and
2 Madame Vice-Chair, I think that completes my role on the --

3 VICE CHAIR JOHN: Oh, I'm so -- Yes. I'm so
4 sorry. I should have noted that. So, thank you for being
5 here this morning. And we'll see you next time.

6 ZC MEMBER IMAMURA: Right. Thank you. And Board
7 Member Blake, I'm glad you're feeling better.

8 VICE CHAIR JOHN: Bye.

9 (Whereupon, the above-entitled matter went off the
10 record at 1:01 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: 02-09-22

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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