

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 23, 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., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

- ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

DCRA STAFF PRESENT:

- MATTHEW LeGRANT, Zoning Administrator
- PATRICK WHITE, ESQ., Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on February 23, 2022.

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

2 9:36 a.m.

3 CHAIRPERSON HILL: Good morning, ladies and
4 gentlemen, the Board of Zoning Adjustment will now come to
5 order. Today's date is 2/23/2022. My name is Fred Hill, I'm
6 Chair of the Board of Zoning Adjustment for the District of
7 Columbia.

8 Today joining me is Lorna John, Vice Chair; Board
9 members Carl Blake, Chrishaun Smith, Zoning Commissioner
10 Peter May, and Rob Miller is attending for a decision meeting
11 case. Today's meeting and hearing agendas are available to
12 you on the Office of Zoning website.

13 Please be advised that this proceeding is being
14 recorded by a court reporter and is also webcast live via
15 Webex and YouTube Live. The video webcast will be available
16 on the Office of Zoning website after today's hearing.
17 Accordingly, everyone who is listening on Webex or by
18 telephone will be muted during the hearing.

19 Also, please be advised that we do not take any
20 public testimony at our decision meeting sessions. If you're
21 experiencing difficult access in Webex or with your telephone
22 call-in, then please call our OZ hotline number at (202) 727-
23 5471 to receive Webex call-in permission.

24 At the conclusion of a decision meeting session,
25 myself in consultation with the Office of Zoning determine

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1 whether a full or summary order may be issued. A full order
2 is required when the decision it contains is adverse to a
3 party, including an affected ANC.

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

9 In today's hearing session, everyone who's
10 listening on Webex or by telephone will be muted until the
11 appropriate time. Only a person who has signed up to
12 participate or testify will be unmuted at the time. Please
13 state your name and home address before providing oral
14 testimony or your presentation.

15 Oral presentations should be limited to a summary
16 of the most important points. When you are finished
17 speaking, please mute your audio so that your microphone is
18 no longer picking up sound and background noise.

19 All persons planning to testify either in favor
20 or in opposition should have signed up in advance. They'll
21 be called by name to testify. If this is an appeal, only
22 parties are allowed to testify. By signing up to testify,
23 all participants will be under oath or affirmation as
24 required by Subtitle Y 408.7.

25 Requests to enter evidence at the time of an

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1 online virtual hearing such as written testimony or
2 additional supporting documents other than live video, which
3 may not be presented as part of the testimony, may be allowed
4 pursuant to Subtitle Y 103.13, provided that the person
5 making the request to enter an exhibit explain how the
6 proposed exhibit is relevant.

7 The good cause justifies allowing the exhibit in
8 the record, including an explanation of why the requester did
9 not file the exhibit prior to the hearing, pursuant to Y 206,
10 and how a proposed exhibit would not unreasonably justify any
11 parties.

12 The order for procedures and special exceptions
13 and variances are pursuant to Y 409. The order of the appeal
14 is Subtitle Y 507. Pursuant to Y Section 408.2 and 408,
15 there will be time constraints maintained for any appeals.

16 At the conclusions of each case, an individual who
17 is unable to testify because of technical issues may file a
18 request for relief to file a written version of the planned
19 testimony to the record within 24 hours following the
20 conclusion of public testimony in the hearing.

21 If additional written testimony is accepted, then
22 parties will be allowed a reasonable time to respond, as
23 determined by the Board. The Board will make its decision
24 in its next -- the Board will then make its decision in its
25 next meeting session, but no earlier than 48 hours after the

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1 hearing.

2 Moreover, the Board may request additional
3 specific information, including the record. The Board and
4 staff will specify at the end of the hearing exactly what is
5 expected and the date when persons must submit the evidence
6 to the Office of Zoning. No other information shall be
7 accepted by the Board.

8 Finally, the District of Columbia Administrative
9 Procedures Act required that the public hearing on each case
10 be held in the open before the public.

11 However, pursuant to Section 405(b) and 406 of the
12 Act, the Board may, consistent with its rules and procedures
13 and the Act, enter into closed meetings on a case for
14 purposes to seek legal counsel on a case pursuant to DC
15 Official Code Section 2-575(b)4 and/or deliberate our case
16 pursuant to DC Official Code Section 2-575(b)13, but only
17 after providing the necessary public notice in the case of
18 an emergency closed meeting after taking a roll call vote.

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

20 MR. MOY: Good morning, Mr. Chairman and members
21 of the Board. I only have two matters before the Board
22 before we begin.

23 The first matter is my announcement that Case
24 Application No. 20598, this is the application of District-
25 Properties.com, had been rescheduled to a hearing date of

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1 March 2, 2022.

2 And finally, Mr. Chairman, there is a preliminary
3 matter in the -- in Case Application No. 20643. This
4 application is a request by the Maret School for special
5 exceptions under Subtitle U, Section 203.1(m), which would
6 allow a private school use. And under -- and under Subtitle
7 C, Section 703.10 concerning the location of parking spaces
8 at part of 5901 Utah Avenue, NW, Square 2319, Lot 832.

9 Mr. Chairman, the party in opposition, named the
10 Friends of the Field, has asked for a postponement of the
11 hearing, which is scheduled for March 9, 2023. Or rather,
12 2022. And that's under Exhibit 188 in the case record. So
13 that's before you and the Board, Mr. Chairman.

14 CHAIRPERSON HILL: Okay, so as the Secretary has
15 just called this preliminary matter in Application 206.3, I'd
16 like to discuss this with the Board and see if you have any
17 -- or the Board has any issues with my thoughts on this.

18 I went ahead and took a look at the request for
19 a postponement from the party in opposition, which was the
20 Friends of the Field, which is scheduled -- this hearing is
21 scheduled for March 9.

22 The Friends asked to delay the March 9 hearing
23 because there are matters that the Friends want to resolve
24 before the BZA considers this case, including a potential
25 agreement with the Applicant, clarification of the necessary

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1 zoning relief, certain information the Friends want from the
2 Applicant, and a complaint about the ANC pending before the
3 DC Board of Ethics and Government Accountability.

4 The Applicant opposes the postponement, stating
5 that all the matters raised by the Friends can be addressed
6 in the hearing. ANC 3/4G submitted a letter that took no
7 position on the request for a postponement.

8 Pursuant to Subtitle Y 408.1, the presiding
9 officer at a public hearing has the authority to consider
10 preliminary matters, including motions seeking to postpone
11 a hearing. After reviewing the record, I was kind of
12 persuaded by the Friends motion that the hearing on the Maret
13 application should be postponed.

14 I'll note that the Applicant has a burden of proof
15 to demonstrate how the application meets the requirements for
16 approval, even if no evidence is presented in opposition
17 under Subtitle X 901.3.

18 Also, the application is self-certified, meaning
19 that the Board will consider the request so long as there is
20 a plausible basis to consider the relief sufficient without
21 making a determination on whether different or additional
22 relief is required by the applicant proposal.

23 The Friend's motion did not request postponement
24 to a specific date. Unfortunately, the Board's agenda is
25 already extremely full for the next several months, so a

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1 relatively short postponement is not possible. The Applicant
2 says they're ready to move forward on March 9, and ANC is not
3 opposed to keeping the original schedule.

4 Accordingly, I believe that we should begin the
5 public hearing as scheduled on March 9. If necessary, the
6 record can be left open for specific filings or the hearing
7 can be continued at a later date.

8 The -- a lot of the issues that were brought up
9 I believe by the party in opposition are outside of our
10 purview. And I think that the Board at the March 9 hearing
11 would be able to determine what, if anything, the Board might
12 need to be able to hear the argument.

13 Again, this is a self-certified application and
14 the Applicant is the one who has the burden of proof as to
15 whether or not the standards have been met. Again,
16 unfortunately, we are really jammed up for the next couple
17 of months. And so even if we did -- even -- I couldn't even
18 figure out how to do like a small postponement for it.

19 And so what I would suggest is we go ahead and
20 have the hearing on March 9, and if we have any issues, we
21 can address them at the hearing. If anybody has any concerns
22 with anything I just said, please speak up.

23 All right, that being the case, Mr. Moy, I'm going
24 to go ahead and deny the motion for a postponement of the
25 hearing, and we'll continue on March 9 with the hearing.

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1 MR. MOY: Yes, sir, thank you.

2 CHAIRPERSON HILL: Okay, great. All right, so
3 that addressed that issue. The next issue I believe before
4 the Board is a decision case, and it is 20609. If you
5 wouldn't mind calling that before us, Mr. Moy.

6 MR. MOY: Yes, thank you, sir. So as you said,
7 this is Case Application No. 20609 of Amilia Care,
8 Incorporated. This is the Applicant's request for special
9 exception relief in the matter of right uses of Subtitle U
10 Section 201, pursuant to Subtitle Section 203.1(g) and
11 Subtitle X Section 902.1.

12 This would construct a three-storey and basement
13 addition and to convert and existing detached principal
14 dwelling unit to a continuing care retirement community in
15 the R-2 Zone. The property is located at 4507 Eads, E-A-D-S,
16 Street, NE, Square 5133, Lot 112.

17 This was last heard by the Board at its public
18 hearing on February 7, and participating on this decision is
19 you, sir, the Chairman; the Vice Chair; Mr. Blake; Mr. Smith;
20 and Zoning Commissioner Rob Miller.

21 CHAIRPERSON HILL: Okay, thank you. Are we all
22 ready to deliberate? All right. There's one preliminary
23 matter, I guess Mr. Moy. There was a letter that the Board
24 had not requested that the Applicant submitted from the
25 Tabernacle Baptist Church.

1 I would go ahead and going to allow that into the
2 record because I believe that one of my fellow -- our fellow
3 Board members had requested some information about other
4 CCRCs that might be in the area or other similar projects.
5 And I think that's really kind of what they were responding
6 to, even though they did mention, you know, their support of
7 this particular application.

8 So unless the Board has any issues, I would go
9 ahead and recommend that we include that into the record.
10 If you have any issues, please speak up.

11 All right, Mr. Moy, let's go ahead and include
12 that -- sure, go ahead, Mr. Moy.

13 MR. MOY: That triggered a memory, Mr. Chairman.
14 Also last night around ten p.m., there was email
15 correspondence from ANC 7D. So that's pending if you allow
16 that to waive that 24-hour block.

17 CHAIRPERSON HILL: Yeah, Mr. Moy, if you could go
18 ahead and allow that into the record. I believe it was an
19 email from the single-member district commissioner Stephanie
20 Audain.

21 And if you want to go ahead and include that into
22 the record, that would be helpful. I know that the Board has
23 seen that, and basically it was that the ANC seems to be in
24 support of the application.

25 However, since it was just the executive

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1 committee, we're unable to give it great weight. However,
2 I think we should go ahead and include that into the record
3 so we have a complete record. And if, again, the Board has
4 any issues with that, please speak up.

5 All right. Okay, so in terms of the application,
6 I believe that after again going back and looking at the --
7 there was some additional information that we had asked about
8 from the Applicant concerning, I guess, screening, loading
9 and trash collection, plans as to where the trash was, and
10 also the outdoor garden and clarifying the bike parking
11 requirements that DDOT had.

12 I believe all that is now in the record, and I
13 believe that all of our questions have been answered about
14 those issues.

15 Concerning the actual, again, application and the
16 standard with which we're supposed to review, I believe that
17 they're meeting the special exception criteria for the
18 continued care -- sorry, retirement community. The building
19 itself is a matter-of-right building, and really what it came
20 down to was kind of some of those issues within the
21 regulations as to whether or not this should or shouldn't be
22 approved.

23 I believe that the Office of Planning's analysis
24 as to how they're meeting the standard is one that I could
25 get behind. And I would agree with them.

1 Also, the main concern it seemed as though there
2 was opposition to this application. And it seemed to be
3 mostly around traffic concerns. And I was actually not
4 concerned about the traffic concerns because they are meeting
5 the parking requirement.

6 They're actually -- they're not requesting parking
7 relief. They're actually proposing five spaces where I think
8 only four are required. But also, I also don't think that
9 the one that they have proposed to deal with any kind of --
10 I think that the way the Applicant has proposed to deal with
11 any kind of employee traffic, you know, I'm satisfied with
12 it.

13 I don't think that this is going to cause an undue
14 burden on the surrounding neighborhood. And you know, an
15 undue burden. I mean, there is going to be some increase
16 issues with it. But I believe the Applicant is dedicated to
17 addressing those traffic concerns.

18 And then also they have a record of providing this
19 kind of service in the past, and I believe that they, you
20 know, this is someone who, you know, an applicant has the
21 experience to do this.

22 In addition to that, I think that -- and I don't
23 think that anyone in the opposition had an issue with that
24 actual motives of the application, which is again to provide
25 assisted living facilities for 22 low income residents.

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1 And you know, the city obviously needs these type
2 of services, and I believe that this would be a, you know,
3 I think this could actually be a good addition to the
4 neighborhood and provide this type of service to, you know,
5 a much needed service to the low income residents of the
6 city.

7 So I'm going to be, you know, siding with the
8 Applicant and them meeting the -- in their burden of proof
9 as to how they're meeting the standard. And I'm going to be
10 voting in support.

11 If I could go around the table and see what my
12 fellow Board members have to think, and if I could start with
13 you, Mr. Smith.

14 MEMBER SMITH: Chairman Hill, I don't really have
15 too much to add on your position on this. Some of the -- I
16 do agree with all the points that you brought up.

17 The -- some of the comments that we received from
18 the opposition -- I would say that it's poignant that we
19 haven't heard from the ANC in light that we have kept this
20 open to receive some type of dialogue from them.

21 And I think at the last meeting, the ANC's -- the
22 SMD for this area was on the phone call and we didn't -- we
23 didn't hear from her. So it's very interesting that we
24 haven't had the opportunity to hear back from the ANC on this
25 case.

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1 So nevertheless, the opposition that we received
2 at the last hearing more so related to parking. And I think
3 that the Applicant has more than met their minimum parking
4 requirements. The minimum parking is four. And based on the
5 feedback that the Applicant received from the ANC, they went
6 back and redesigned the project to incorporate an additional
7 parking space.

8 While I do think that based on the standards for
9 us to evaluate these projects, we -- I think we can have a
10 more robust analysis on the parking impact.

11 So I would welcome that from the Office of
12 Planning going forward just looking at U 203.1(g)(4). It
13 does kind of speak to -- and 6 to a certain degree does kind
14 of speak a more robust analysis of parking requirements. But
15 I do think that they're meeting at least the minimum, more
16 than the minimum that would be required.

17 The other concern was about privacy, and that was
18 one of the comments that I raised the last time we heard
19 this. It was about that large stair structure to the west,
20 on the west side of this particular -- this particular
21 structure.

22 The Applicant has, you know, addressed those
23 concerns. They have fully enclosed that stair structure in
24 order to protect the privacy of the property to the right of
25 the home.

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1 So I think that the Applicant has done their due
2 diligence to sufficiently address many of our concerns.
3 They've labeled the trash area and garden. The -- so I think
4 they've largely met the park -- the requirements that we
5 asked them to take a look at.

6 Also, they have clarified the bike parking on the
7 revised plans in order to address a concern that was raised
8 by DDOT. Also with that, I do believe that they've met the
9 standards for us to be able to grant the special exception,
10 and I would be in support of the application.

11 CHAIRPERSON HILL: All right, thanks, Board Member
12 Smith. I -- did you see that email that was sent by the SMD?

13 MEMBER SMITH: I must have missed it, sorry.

14 CHAIRPERSON HILL: Okay. So I'm just going to
15 read it into the record, and also it's going to be included
16 into the record. So this came from the SMD late last night.

17 It says, Chair Hill and members of the Board,
18 following the Board's hearing two weeks ago, I met with the
19 Applicant on February 15 to discuss the proposal in more
20 detail. During the meeting, I reviewed the Applicant's
21 supplemental filings to make sure all of the ANC's questions
22 had been answered.

23 On February 22, the ANC's executive committee met
24 and discussed the proposal. Overall, I think the assisted
25 living facility will be a positive addition to our community.

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1 That the Applicant addressed the concerns of the neighbors
2 and providing housing for low income seniors is important for
3 our community.

4 I understand the executive committee's vote is not
5 given, quote unquote, great weight since it is not our full
6 ANC meeting, but I wanted to make sure that the ANC has
7 updated the BZA with our position on the application. Thank
8 you, Stephanie Audain, Commissioner SMD, 7D05.

9 So just so you have heard that and it's been read
10 into the record, and it will be included in the record as
11 well.

12 Commissioner Miller.

13 ZONING VICE CHIAR MILLER: Thank you, Mr.
14 Chairman. I concur with your comments and support the
15 application.

16 Appreciate the Applicant's responsiveness to the
17 ANC's concerns and the Board's, individual Board members or
18 the Board as whole's request at the hearing a couple weeks
19 ago, including my request for a little information on whether
20 there's similar continuing care retirement facilities
21 operated by this applicant successfully well-managed in other
22 neighborhoods in the District.

23 And they did submit information about four other
24 properties, including one they noted in a similar facility
25 in the Dupont Circle -- in the Dupont Circle row house

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1 neighborhood where there doesn't seem to be, according to the
2 Applicant, any concerns in that operating amidst a
3 residential community.

4 So I'm ready to support the application, Mr.
5 Chairman. Thank you.

6 CHAIRPERSON HILL: Thank you, Commissioner Miller.
7 Board Member Blake.

8 MEMBER BLAKE: Yeah, I basically agree with
9 everything that's been said by the other Board members, Mr.
10 Smith and you, Mr. Chair, and Commissioner Miller.

11 And based on the record and including the recent
12 and supplemental filings, the testimony presented at the
13 hearing, I give great weight to the Office of Planning report
14 and would believe -- I believe the Applicant has met the
15 burden of proof and should be granted relief.

16 CHAIRPERSON HILL: Thank you. Vice Chair John?

17 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
18 I agree with all of the Board members' comments so far, and
19 I'm in support of the application.

20 CHAIRPERSON HILL: All right, I'll go ahead and
21 make a motion to approve Application No. 20609 as captioned
22 and read by the Secretary and ask for a second. Ms. John?

23 VICE CHAIRPERSON JOHN: Second.

24 CHAIRPERSON HILL: The motion has been made and
25 seconded. Mr. Moy, do we need a roll call?

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1 MR. MOY: Thank you, Mr. Chairman. When I call
2 each of your names, if you would please reply with a yes, no,
3 or abstain to the motion made by Chairman Hill to approve the
4 application for the relief requested. The motion to approve
5 was second by Vice Chair John.

6 Zoning Commissioner Rob Miller.

7 ZONING VICE CHAIR MILLER: Yes.

8 MR. MOY: Mr. Smith.

9 MEMBER SMITH: Yes.

10 MR. MOY: Mr. Blake.

11 MEMBER BLAKE: Yes.

12 MR. MOY: Vice Chair John.

13 VICE CHAIRPERSON JOHN: Yes.

14 MR. MOY: Chairman Hill.

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: Staff would record the vote as 5-0-0,
17 and this is on the motion to approve made by Chairman Hill.
18 The motion to approve was second by Vice Chair John. Also
19 in support for the motion to approve is Zoning Commissioner
20 Rob Miller, Mr. Smith, and Mr. Blake. The motion carries on
21 a vote of 5-0-0.

22 CHAIRPERSON HILL: All right, thank you, Mr. Moy.

23 (Whereupon, the above-entitled matter went off the
24 record at 9:59 a.m.)

25

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: 02-23-22

Place: teleconference

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



Court Reporter

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