

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

MARCH 2, 2022

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:37 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

The transcript constitutes the minutes from the Regular Public Meeting held on March 2, 2022.

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

2 9:37 a.m.

3 CHAIR HILL: Good morning, ladies and gentlemen,
4 the Board of Zoning Adjustment, today's date is 3-2-22,
5 public hearing please come to order.

6 My name is Fred Hill, I'm chairperson of the
7 District of Columbia Board of Zoning Adjustment, joining me
8 today is Vice Chair Lorna John, Board Members Carl Blake, and
9 Zoning Commissioner Peter May.

10 Board Member Chrishaun Smith is out for the day,
11 however I believe will be participating via absentee vote for
12 some of the hearing -- or meeting, I should say.

13 Today's Meeting and Hearing Agenda is available
14 on the Office of Zoning website, please be advised that this
15 proceeding is being recorded by a court reporter and is also
16 webcast live via WebEx and YouTube Live.

17 The video of the webcast will be available on the
18 Office of Zoning website after today's hearing. Accordingly,
19 everyone who is listening on WebEx or via telephone will be
20 muted during the hearing. Also, please be advised that we
21 do not take any public testimony at our decision meeting
22 session.

23 If you're experiencing difficulty accessing WebEx
24 or with your call-in telephone then please call our OZ
25 hotline number at 202-727-5471, it's also listed on the

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1 screen there, to receive WebEx login or call-in instructions.

2 At the conclusion of the decision meeting session
3 I shall, in consultation with the Office of Zoning, determine
4 whether a full or summary order may be issued.

5 A full order is required when the decision it
6 contains is adverse to a party, including an affected ANC.
7 A full order may also be needed if the Board's decision
8 differs from the Office of Planning's recommendation.

9 Although the Board favors the use of summary
10 orders whenever possible, an applicant may not request the
11 Board to issue such an order.

12 In today's hearing session everyone who's
13 listening on WebEx or via telephone will be muted during the
14 hearing, only persons who have signed up to participate or
15 testify will be unmuted at the appropriate time.

16 Please state your name and home address before
17 providing oral testimony or your presentation. Oral
18 presentation should be limited to a summary of your most
19 important points. When your peer is speaking please mute
20 your audio so that your microphone is no longer picking up
21 sound or background noise.

22 Actually, if everyone would also like to mute that
23 are live, there's some background noise coming in right now.

24 Once again, if you're experiencing difficulty
25 accessing WebEx or with your telephone call-in, call 202-727-

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1 5471.

2 All persons planning to testify either in favor
3 or in opposition should have signed up in advance, they'll
4 be called by name to testify. If this is an appeal, only
5 parties are allowed to testify. By signing up to testify,
6 all participants completed the oath or affirmation, as
7 required by Subtitle Y408.7.

8 Requests to enter evidence at the time of an
9 online virtual hearing, such as written testimony or
10 additional supporting documents, other than live video which
11 may not be presented as part of the testimony, may be allowed
12 pursuant to Subtitle Y103.13.

13 Provided that the persons making the request to
14 enter an exhibit explain, A, how the proposed exhibit is
15 relevant. B, the good cause that justifies allowing the
16 exhibit into the record, including an explanation of why the
17 requester did not file the exhibit prior to the hearing
18 pursuant to Subtitle Y 206. And C, how the proposed exhibit
19 would not unreasonably prejudice any party.

20 The order of procedures for special exceptions and
21 variance are pursuant to Y409, the order of appeals is
22 pursuant to Y507.

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

1 testimony to the record within 24 hours following the
2 conclusion of public testimony in the hearing.

3 If additional written testimony is accepted then
4 parties will be allowed a reasonable time to respond as
5 determined by the Board. The Board will then make a decision
6 at its next meeting session, but not earlier than 48 hours
7 after the hearing.

8 Moreover, the Board may request additional
9 specific information to complete the record, the Board and
10 the staff will specify at the end of the hearing exactly what
11 is expected, and the date when person must submit the
12 evidence to Office of Zoning. No other information shall be
13 accepted by the Board.

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

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

1 MR. MOY: Good morning, Mr. Chairman, members of
2 the Board, I do have a quick announcement regarding
3 applications that are not on today's docket. I would like
4 to state those for the record.

5 Application number 20628, this is the appeal of
6 Brian J. Wise, was withdrawn by the Appellant.

7 Application number 20636, application -- which is
8 the application of Penguin, LLC., was granted its request for
9 a continuance to May 18, 2022.

10 Application number 20555 of Odessa Ford was
11 granted their request for continuance to May 25, 2022.

12 And finally, application number 20551 of Justin
13 Matthews was granted the request for a continuance to July
14 27, 2022.

15 And that's it for me, Mr. Chairman.

16 CHAIR HILL: Okay, great. All right, for the
17 record, you guys, Vice Chair John is having some technical
18 issues with her video so she's just going to be joining us
19 by audio today.

20 And then Board Member Smith I believe is no longer
21 with -- is not going to be with us here today, I'm not sure
22 if he's joining us at some point or time or not but we'll see
23 how that goes. I think that the answer's no. But -- so
24 that's all that.

25 Mr. Moy, if you could call our first meeting case,

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1 please?

2 MR. MOY: Yes, sir. So this would be Case
3 Application number 20086A of Oak Park Apartments, LLC., this
4 is the Applicant's request for a two-year time extension
5 pursuant to Subtitle Y Section 705.1 of BZA order -- of a BZA
6 order under application number 20086 that was issued August
7 15, 2019.

8 Accompanying the request for a two-year time
9 extension, Mr. Chairman, is also a -- this is a preliminary
10 matter -- also a request for a waiver of the -- to permit the
11 extension after the order has expired, and this is pursuant
12 to Subtitle Y Section 109.9.

13 That's it for me, Mr. Chairman.

14 CHAIR HILL: Okay. Are you guys ready to talk
15 about this a little bit?

16 And I'm going to -- I'm going to start, I'm going
17 to go around the table starting with Commissioner, Mr. Blake,
18 and then Vice Chair John, is how the order I'm going to go
19 in for the day more or less.

20 The problem I have with this is that the order has
21 expired and so, you know, I went and looked through
22 everything and I don't know what to do about it, meaning, the
23 order has expired.

24 So we don't really have anything in front of us
25 to necessarily take a look at, I know they're asking for a

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1 waiver but, you know, I guess what I would think is that, you
2 know, we're setting a precedent here where we've never done
3 a time extension on something where the order is already
4 expired.

5 And so, what I would kind of propose is, I guess,
6 the Applicant can go ahead and submit something to us in
7 writing that states why they believe that the Board has the
8 authority to, you know, where in the regulations does it say
9 the Board has the authority to do something like this, which
10 is take something up after the order has expired -- I think
11 it's expired by, like, six months at this point, or something
12 like that.

13 And so, you know, I don't really -- you know,
14 after looking at the regulations and speaking with counsel,
15 it seems as though it's unlikely that they'll be able to make
16 a case, but I'd like to go ahead and give them the
17 opportunity to put something into the record that states why
18 the Board should have, you know, again, has the authority to
19 do this.

20 And that's at least my first thought, then I guess
21 while the Applicant goes back and reevaluates this they may
22 determine that they need to just start again and then come
23 back before us to present the case, because we don't have an
24 order in front of us at this point.

25 So those are my thoughts, Commissioner May, do you

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1 have any thoughts?

2 COMMISSIONER MAY: No, Mr. Chairman, I think you
3 summed up the critical issue pretty well.

4 CHAIR HILL: Mr. Blake?

5 MEMBER BLAKE: Yes, I would agree with you, Mr.
6 Chair -- I would agree with you, Mr. Chair, this a worthy
7 project but unfortunately the time has expired and I think
8 it would be appropriate to look at it when appropriate.

9 CHAIR HILL: Yeah, I mean, I agree. I mean, I do
10 think it's a worthy project, it's unfortunate that we're not
11 able to take a look at it at this point, like, you know, now.

12 Again, whether or not they, the Applicant, will
13 be able to make a good enough argument that we can look at
14 this after it's expired, I have my doubts that they'll be
15 able to make that argument, but again, I'm willing to give
16 them the opportunity. However, they may choose just to come
17 back before us again with a new application.

18 Mr. Moy, would you -- oh, I'm sorry, Vice Chair
19 John, did you have anything to add?

20 VICE CHAIR JOHN: No, I don't have anything to
21 add, I think the order has expired so there's nothing to
22 revive.

23 CHAIR HILL: Okay. Mr. Moy, do you want to set
24 some dates if they want to attempt to present some argument
25 as to why they believe that this is in front of us?

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1 MR. MOY: Yeah, I can make a suggestion for you,
2 Mr. Chairman, and I -- based on -- hearing the Board's
3 statement just now, I think sooner rather than later to hear
4 from the Applicant. So in that regards then, I would bring
5 this -- return this back to the Board at its public decision
6 meeting session on March the 30, the Applicant to make their
7 filing by March the 9, and any responses from the ANC by
8 March the 23.

9 CHAIR HILL: Okay. And again, the Applicant may
10 choose just to go ahead and start again --

11 MR. MOY: That's correct.

12 CHAIR HILL: So we'll see what happens there. All
13 right, you can call our next decision, Mr. Moy.

14 MR. MOY: All right, Mr. Chairman, so with your
15 permission I think it'd be expedient if I read into the
16 record the two appeals.

17 This would be before the Board for decision,
18 application number 20452, which is the appeal of Michael
19 Hays, this is property located at 1733 16 Street Northwest,
20 this is described as the appeal from the decision made on
21 November 19, 2020, by the zoning administrator, Department
22 of Consumer and Regulatory Affairs to approve the subdivision
23 of Square 192, Lot 108 into two separate lots described as
24 lots, or denoted as Lots 110 and 111 in the RA-8 and RA-9
25 Zones.

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1 The second appeal is application number 20453, the
2 appeal of the Dupont East Civic Action Association, and
3 again, this is property located at 1733 16 Street Northwest,
4 this is the appeal from the decision made on November 19,
5 2020, by the Zoning Administrator, Department of Consumer and
6 Regulatory Affairs to approve the subdivision of Square 192,
7 Lot 108 into two separate lots denoted as Lots 110 and 111,
8 in the RA-8 and RA-9 Zones.

9 This was last heard at the Board's public hearing
10 on February the 23, participating on the decision is Chairman
11 Hill, Vice Chair John, Mr. Smith, Mr. Blake, and Zoning
12 Commissioner Peter May.

13 CHAIR HILL: Okay, thanks. All right, I'll go
14 ahead and kind of take a little bit of a crack at this
15 summary and then I'm going to pass it along to my fellow
16 board members, because I know that you all can help me with
17 this and we can have a little bit of a discussion.

18 There was a lot of information that was given to
19 us, I thought that there was a lot of interesting arguments
20 that were made. The one that I thought was most intriguing
21 -- I don't know, whatever word you want to use -- is the
22 whole thing about a roof versus a dome, and that was
23 something that we can kind of talk about.

24 In terms of overall -- and somebody's on -- if
25 somebody wants to mute themselves, I apologize, something's,

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1 like, making a noise, I don't know -- and then the -- there
2 was a bunch of different things that were spoken about it.

3 One was that, you know, you have the ZA erred in
4 a variety of areas and I didn't really think that the
5 Applicant made a argument that the ZA actually did err.

6 In the case of choosing the front of a building,
7 it clearly states in the regulations that you can choose
8 anywhere as being the front of the building. So they chose
9 S Street so that the Applicant -- I'm sorry, the property
10 owner chose S Street so that they could have the rear yard
11 where the rear yard was.

12 Then you're able to choose a different spot for
13 the building height measuring point and so they chose a
14 different spot for the building height measuring point.

15 I think that the other issue that was discussed
16 was the retaining wall and whether or not it is a retaining
17 wall. I guess, to me it clearly seemed like it was a
18 retaining wall, at least for, you know, a good portion of
19 that wall because there was kind, like, that little area way
20 there that the soil was holding up -- I'm sorry, the wall was
21 holding up the soil.

22 And then I would even further argue, even though
23 it seems -- I don't know, you could make an argument that the
24 wall isn't holding up those stairs, but it also seems as
25 though you could make the argument that the wall is holding

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1 up those stairs.

2 I mean, I think that if you took down the wall
3 there must be dirt underneath there, or something that the
4 wall is retaining, and so I would, you know, agree with the
5 argument that that actually is a retaining wall.

6 So the one that really I was kind of most
7 interested in, I guess, is the whole thing about the dome
8 versus the roof, and I learned again what a ziggurat is, and
9 that, you know, when they showed the diagrams you could, you
10 know, clearly see that the dome went down to what the Zoning
11 Administrator was using as the roof, and that is the roof.

12 And so, you know, the other thing that made it --
13 that convinced me that that was a dome was that it originally
14 got approved by the commission as a dome because otherwise
15 it couldn't be that high.

16 And then the attorney for the property owner even
17 showed that diagram where there is, you know, in the, I think
18 when, you know, there's a tutorial or something like that for
19 zoning, it showed that the building height measurement, you
20 know, the roof is right below the dome, and the dome, you
21 know, is not part of the roof.

22 And so, for those reasons, and again I'd like to
23 hear what my fellow board members have to say, and I'm going
24 to ask and rely on a little bit, I think, since we have, you
25 know, an architect here with us on the zoning commission that

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1 allow him more time to speak a little bit on some of these
2 issues.

3 But I didn't think that the Applicant made the --
4 you know, I'm sorry, the case that the Zoning Administrator
5 had erred. I mean, everything the Zoning Administrator had
6 made a decision upon makes sense to me in terms of the
7 regulations and I think that the Zoning Administrator did
8 show how he was following the regulations to make these
9 decisions.

10 So, you know, I'm going to vote against the appeal
11 at this point, depending upon what my fellow board members
12 have to say. And I am going to turn to Commissioner May, if
13 I could, for his expertise.

14 COMMISSIONER MAY: Thank you, Mr. Chairman. So
15 I agree with you, I do not think that we should support this
16 appeal, I think it should be denied.

17 So I'll run through most of the same points that
18 you will and give, you know, from my own thoughts on this.
19 So first, regarding building height generally, the building
20 height measuring point can be on 16 while the front of the
21 building is on S Street, that's already an established
22 practice.

23 Therefore the area way on S Street is irrelevant
24 since it does not -- it is not on the side of the building
25 height measuring point, and the building height measuring

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1 point can be taken from the finished grade on 16 Street
2 because it is a residential zone and has been the finished
3 grade for at least five years.

4 Now, dome versus roof, a dome or a tower is called
5 out as an architectural embellishment in the zoning
6 regulations paralleling the Height Act, it doesn't make sense
7 to try to dissect or question these definitions. Is it a
8 dome, a tower, or a ziggurat, well, maybe yes to all three
9 but it is clearly more than a roof.

10 It is also worth noting that while its exterior
11 appearance is not a traditional dome, it is very much a dome
12 on the inside and it extends from the base of the vertical
13 wall that supports the pyramidal structure.

14 For these reasons I think the ZA's conclusion that
15 it is an architectural embellishment is reasonable and well
16 supported by past practice in the administration of the
17 zoning regulations.

18 It's also consistent with the original approval
19 of the construction of the building by the district
20 commissioners who clearly considered it a dome or a tower,
21 which -- either of which would be permitted under the Height
22 Act to exceed the otherwise allowed building height.

23 The Applicant raised this issue of the 30 percent
24 rule, for lack of a better way to phrase it, this is a much
25 more recent addition to the zoning regulation and was

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1 intended to prevent developers from simply extending the
2 facade of a building upward to make it seem taller and
3 pretending that was actually an architectural embellishment.

4 And, while it might not be crystal clear in the
5 zoning regulations, this provision was not intended to
6 address building features that are clearly, or have
7 historically been interpreted as a tower or a dome.

8 It is not a portion of a facade, it does not
9 extend up from the outer wall, although it does rest on the
10 wall setback from the outer perimeter of the structure.

11 Again, the Zoning Administrator's interpretation
12 that, being setback, not extending from the outer perimeter,
13 and not intended to make the building seem taller, is clearly
14 a reasonable perspective.

15 Regarding the retaining wall, at first glance the
16 wall does not seem to clearly fit the definition of retaining
17 wall and the -- I was skeptical at the beginning, but I think
18 that the Zoning Administrator's conclusion that the wall fits
19 aspects of the several allowed structures within a rear yard
20 is actually very compelling.

21 The area way is very clearly a retaining wall and
22 south of that is arguably still a retaining wall, given the
23 different grade levels on east and west sides. I think the
24 chairman made that point as well, that there's -- you know,
25 we don't really know what's underneath those stairs and it's

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1 quite possible that the wall is retaining earth there.

2 It is arguably also a fence, as defined in the
3 dictionary because it is a barrier that forms part of an
4 enclosure. Now, the rest of that enclosure is a rod iron
5 fence that encloses the rest of the rear yard, but that wall
6 is clearly part of a, an outer perimeter enclosure for the
7 property.

8 I would note that there are many circumstances
9 where enclosure of a rear yard happens with a masonry wall
10 of more than four feet in height, I mean, I can look out my
11 back window and see some of those where there are brick walls
12 that surround rear yards -- or within rear yards and enclose
13 them.

14 If one followed the Appellant's argument then such
15 walls would not be allowed and would result in non-compliant
16 or even non-existent rear yards. Existence of steps adds to
17 this conclusion but I think is not significant.

18 So I think in essence sort of the multitude of
19 considerations about this structure and the rear yard on the
20 part of the Zoning Administrator was quite reasonable.

21 So, the ZA's conclusion that the wall is not part
22 of the building because it does not enclose an occupiable
23 space is not compelling, the key word in the regulations is
24 structure, and if it were not a retaining wall and not a
25 fence, I do think it is both, then it would be a structure

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1 not permissible within the required rear yard.

2 If we went down that road I think that subtracting
3 that structure from the rear yard and calculating an average
4 of rear yard depth would be a common and reasonable approach,
5 and calculating a mean value from just two points is unduly
6 restrictive and would not result -- and would result in many
7 other requests for relief if that were the standard for
8 calculating.

9 Regarding the other issues, side yards are
10 compliant, no new parking or loading requirements are
11 triggered by the subdivision, that only happens when there
12 is an addition to a historic building, and the area ways are
13 not, by definition, part of a building and they are allowed
14 to occupy a building rear yard.

15 In summary, the Zoning Administrator was correct
16 in the determination that S Street can be used as the front
17 of the facade, that the front facade of the building, the
18 building height measuring point can be on the finished grade
19 on 16 Street, the domed roof is an architectural
20 embellishment not in violation of the 30 percent rule, the
21 building height is 85.25 feet, the wall can occupy the
22 required rear yard, there is ample rear yard, and there are
23 no other requirements, such as side yard parking, loading
24 that would make a subdivision contrary to the zoning
25 regulations.

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1 So, for all those reasons, I am prepared to vote
2 to deny this appeal.

3 CHAIR HILL: Okay, thanks. And for the record,
4 everyone, we are discussing both appeals, 20452 as well as
5 20453, because they were heard together because the issues
6 were (audio interference). Mr. Blake?

7 MEMBER BLAKE: Yes, excuse me, I would agree with
8 everything that you and Commissioner May said, and
9 Commissioner May very eloquently approached each of these
10 issues, I do also want to talk about the side yard
11 requirement of F606.1, which is in, I believe, the DECAA
12 appeal, there too it is not applicable to this zone for a
13 side yard.

14 So I think, as you pointed out, I would agree with
15 you and I believe that this appeal should be denied.

16 CHAIR HILL: Vice Chair John?

17 VICE CHAIR JOHN: Thank you, Mr. Chairman, I'll
18 add a few thoughts. So (audio interference) this is an
19 appeal from a decision of the Zoning Administrator granting
20 a subdivision of the original temple property into two lots.

21 Appellants allege that the western lot bordering
22 on 16 Street which houses the original temple does not meet
23 the subdivision requirements in several -- the regulations
24 in several areas related to the rear yard, loading, parking,
25 height.

1 The Appellants also allege that the purpose and
2 intent provisions of Subtitle F were violated and that there
3 was undue influence by the property owners in the ZA's
4 determination. Those two issues are not subject to appeal
5 to this board.

6 Now with respect to the parking and height, I
7 agree with the comments so far because the parking -- the
8 temple is a historic structure and there were no changes
9 being made to that building.

10 And so, under Subtitle C901.7, a historic resource
11 such as a temple is required to provide loading berths,
12 loading platforms, service delivery spaces only where there's
13 an addition meeting certain requirements. So in this case,
14 there is no addition.

15 Similarly, there is no additional parking required
16 under Subtitle C705.3 where there is no expansion of the
17 building.

18 Now with respect to the rear yard, where the
19 building fronts on more than one street any street may be
20 selected to determine the street frontage. In this case, the
21 ZA properly concluded that S Street was the correct frontage
22 based on the plain language of Subtitle B100.2, and so if S
23 Street is properly established as the front of the building,
24 then the rear yard would be on the south side of the
25 building, next to the alley.

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1 Next, the Appellant claims that the width of the
2 south area way leading to the lower level at the rear of the
3 building must be excluded from the measurement of the rear
4 yard.

5 I believe the ZA correctly determined that the
6 area way is included in the rear yard based on the definition
7 of a yard in Subtitle B101, this is also consistent with the
8 BZA's prior treatment of a ramp leading down to a storage --
9 leading down to a garage in a previous BZA appeal.

10 With respect to side yards, there is no required
11 side yard on the 16 Street side because it abuts a street on
12 a corner lot, and the side yard to the east meets the four
13 foot minimum requirement in that zone under Subtitle F606.

14 With respect to the building height measuring
15 point, the length of the rear yard is determined by the
16 building height measuring point, the BZA correctly determined
17 that the BHMP is on 16 Street, Subtitle B308.7 states that,
18 if a building fronts on more than one street, quote, the
19 basis for measuring the height of the building shall be
20 established by the street selected as the front of the
21 building. The ZA properly established a building height of
22 85.25 feet as shown on the subdivision plan.

23
24 I do not agree that the dome should be included
25 in the building height because a dome -- because domes are

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1 expressly excluded under Subtitle C1503.3, and a building is
2 defined as a structure requiring placement on the ground with
3 a roof supported by columns or walls.

4 In this case, the roof covers both the building
5 and the columns, and the dome sits on the roof of the
6 building as was shown in several of the photographs
7 submitted.

8 Because the roof does not sit on a wall of the
9 building then the 30 percent limit in C1503.3 does not apply,
10 and I believe there was testimony that the setback was
11 between eight to 11 feet, therefore, as Commissioner May
12 stated, there is no illusion that the building height is
13 higher as some developers try to do. In this case, the dome
14 sits far back from the building wall.

15 The Appellants conceded that the property owner
16 and the Zoning Administrator could place the front of the
17 building on S Street and calculate the building height
18 measuring point on 16 Street, but contend that the zoning
19 commission should look at that rule.

20 Again, I disagree because, as Commissioner May
21 stated during the hearing, the (audio interference)
22 commission is aware of the rule and has not changed it after
23 several -- after having, you know, looked at (audio
24 interference) and the zoning commissioner can correct me if
25 I misstated, but that's my recollection.

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1 The ZA also testified that the logical place from
2 which to measure the building height measuring point was from
3 the corners, which exclude the domed structure to the
4 property line on the 16 Street. And because the steps
5 existed more than five years ago, the lower level at the
6 property line is the natural or finished grade for building
7 height measuring purposes, and that is also allowed by the
8 regulations.

9 Next, Appellants claim that the high wall on the
10 southwest side of the building is an impermissible structure
11 in the rear yard under Subtitle B324.1.

12 I believe it is clearly a retaining wall based on
13 the uncontradicted testimony of the property owner's
14 architect. The retaining wall would buttress the area way
15 and prevent soil erosion into the area way, both on the south
16 side and to the 16 Street side.

17 And I don't believe there is any height limit for
18 a retaining wall, so for all of these reasons I would deny
19 the appeal.

20 CHAIR HILL: Okay, thank you, Vice Chair John.
21 Thank you all very much for your analysis, and so I have
22 nothing further to add. I'm going to make a motion to deny
23 Appeal Number 20452 and Appeal Number 20453 as captioned
24 around by the secretary and ask for a second, Ms. John?

25 VICE CHAIR JOHN: Second.

1 CHAIR HILL: The motion made and seconded, Mr.
2 Moy, if you take a roll call?

3 MR. MOY: Yes, thank you, Mr. Chairman. When I
4 call each of your names, if you would please respond with a
5 yes, no, or abstain to the motion made by Chairman Hill to
6 deny the two appeals, Appeal Number 20452 of Michael Hays,
7 and Appeal Number 20453 of the Dupont East Civic Action
8 Association.

9 This motion to deny is second by Vice Chair John,
10 Zoning Commissioner Peter May?

11 COMMISSIONER MAY: Yes, to deny the appeals.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes, to deny.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes, to deny.

16 MR. MOY: Chairman Hill?

17 CHAIR HILL: Yes, to deny both of the appeals.

18 MR. MOY: Before I give a final vote, Mr.
19 Chairman, as you said earlier, we do -- I am in receipt of
20 a absentee ballot vote from Mr. Smith and with your
21 permission I would like to read his statement as well?

22 CHAIR HILL: Yes, please.

23 MR. MOY: Okay. All right, so Mr. Smith absentee
24 vote is to deny the two appeals. He states, quote, the
25 Zoning Administrator did not err in determining that the BHMP

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1 can be measured from a frontage that is not a designated
2 frontage for a property as allowed per the zoning
3 regulations.

4 I do not believe that the Zoning Administrator
5 erred in measuring the roof of the building as the cornice
6 of the portico of the building, and therefore the rear yard
7 does meet minimum setback requirements. End quote.

8 So with that, Mr. Chairman, staff would record the
9 vote as five to zero to zero, and this is on the motion made
10 by Chairman Hill to deny. The motion to deny was second by
11 Vice Chair John, also in support of the motion to deny is
12 Zoning Commissioner Peter May, Mr. Blake, Chairman Hill, Vice
13 Chair John, and of course Mr. Smith by absentee vote.

14 So the motion carries, sir, for both appeals on
15 a vote of five to zero to zero.

16 CHAIR HILL: Okay, thanks, Mr. Moy.

17 (Whereupon, the above-entitled matter went off the
18 record at 10:13 a.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: 03-02-22

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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