

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

MARCH 9, 2022

+ + + + +

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

ZONING COMMISSION MEMBER[S] PRESENT:

- ANTHONY J. HOOD Chairperson

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 9, 2022.

AGENDA

Chairman's Welcome and Instructions 3

Preliminary Matters 6

I. CONSENT CALENDAR

1) Application No. 20640 7

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

2 9:43 a.m.

3 BZA CHAIR HILL: Good morning, ladies and
4 gentlemen of the Board of Zoning Adjustment. Today's date
5 is 03/09/2022. The public hearing will please come to order.
6 My name is Fred Hill.

7 I'm Chairperson of the Board of Zoning Adjustment
8 for the District of Columbia. Joining me today is Lorna
9 John, Vice Chair, Board Members Carl Blake and Chrishaun
10 Hill, and Zoning Commissioner Anthony Hood.

11 Today's meeting and hearing agenda are available
12 to you on the Office of Zoning website. Please be advised
13 that this proceeding is being recorded by a court reporter
14 and is also webcast live via Webex and YouTube Live.

15 The video of the webcast will be available on the
16 Office of Zoning website after today's hearing. Accordingly,
17 everyone is listening on Webex or by telephone will be muted
18 during the hearing.

19 Also, please be advised that we do not take any
20 public testimony at our decision meeting sessions.

21 If you're having difficulty accessing Webex or
22 with your telephone call-in, then please call our OZ hotline
23 number at 202-727-5471, once again, 202-727-5471, to receive
24 Webex log-in or call-in instructions.

25 At the conclusion of a decision meeting session,

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

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

10 In today's hearing session, everyone who is
11 listening on Webex or by telephone will be muted during the
12 hearing, and only persons who have signed up to participate
13 or testify will be unmuted at the appropriate time.

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

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

1 Requests to enter evidence at the time in online
2 virtual hearings, such as written testimony or additional
3 supporting documents, other than live video which may not be
4 presented as part of the testimony, may be allowed pursuant
5 to Subtitle Y.103.13, provided that the person making the
6 request to enter an exhibit explain how the proposed exhibit
7 is relevant and the good cause that justifies allowing the
8 exhibit into the record, including an explanation of why the
9 requester did not file the exhibit prior to the hearing
10 pursuant to Subtitle Y.4.206, and how the proposed exhibit
11 would not unreasonably prejudice any parties.

12 The order of procedures for special exception and
13 variances are pursuant to Y.409. The order of appeals is
14 pursuant to Y.507.

15 At the conclusion of each case, an individual who
16 was unable to testify because of technical issues may file
17 a request for leave to file a written version of the planned
18 testimony to the record within 24 hours following the
19 conclusion of public testimony in the hearing. If additional
20 written testimony is accepted, then the parties will be
21 allowed a reasonable time to respond as determined by the
22 Board.

23 The Board will then make its decision at its next
24 meeting session, but no earlier than 48 hours after the
25 hearing. Moreover, the Board may request additional specific

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1 information to complete the record.

2 The Board and the staff will specify at the end
3 of the hearing exactly what is expected and the date when
4 persons must submit the evidence to the Office of Zoning.
5 No other information shall be accepted by the Board.

6 Finally, the District of Columbia Administrative
7 Procedures Act requires that the public hearing on each case
8 be held in the open before the public.

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

18 Mr. Secretary, do we have any preliminary matters

19 MR. MOY: Good morning, Mr. Chairman, and members
20 of the Board. I do. First, I would like to give an update
21 of today's docket of case applications that have been
22 rescheduled.

23 We have two cases that have been rescheduled to
24 March 16, 2022. These two cases are Appeal No. 20604 of ANC
25 6B and Appeal No. 20605 of Linda J. Young, which I believe

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1 has been withdrawn, but I'll give you that update next week.

2 We have two applications that have been
3 rescheduled to April 27, 2022. These two cases are 20637,
4 the application of 2812 Gainesville Street Southeast, LLC and
5 20567 of the Hillsdale College.

6 And finally, Case Application No. 20563 of
7 Kilmurry Properties, LLC was granted a continuance to June
8 8, 2022.

9 Other than that, Mr. Chairman, there are other
10 preliminary matters, but as customary, the Board can address
11 those when I call the case.

12 BZA CHAIR HILL: Okay, thanks, Mr. Moy. Could you
13 call the first case? I think it's an expedited review?

14 MR. MOY: Yes, sir. That would be Case
15 Application No. 20640 of Rachel Harriot, H-A-R-R-I-O-T. This
16 application is relief for a special exception from the rear
17 addition requirements of Subtitle E, Section 205.4, pursuant
18 to Subtitle E, Section 205.5, Subtitle E, Section 5201, and
19 Subtitle X, Section 901.2.

20 This would construct a two-story rear addition to
21 an existing, attached, two-story with basement, principal
22 dwelling unit in the RF-1 zone. The property is located at
23 739 12th Street, SE, Square 995, Lot 54.

24 BZA CHAIR HILL: Okay, all right, so is the Board
25 ready to talk about this? Okay, so I've reviewed the case

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1 and it's funny. In generally, I'm not a big fan of expedited
2 reviews that are over the ten-foot rule because I like to
3 kind of like have a chance to kind of talk to people.

4 However, in the past, we have done these as
5 expedited reviews, so I don't necessarily think that that's
6 a hard and fast rule by the Board in terms of whether or not
7 we hear these or not.

8 There seems to be a little bit of a discrepancy
9 on some of the measurements, and I know that, Mr. Blake, I
10 was going to ask you to provide some clarification to that,
11 and I will in a moment, and then the other is that CHRS was
12 in opposition, and so I think that, since we do have some
13 opposition to the expedited review, it might be something
14 that we want to actually hear in the hearing.

15 I could have possibly gone either way to be quite
16 honest, but I'd like to hear with my fellow Board members,
17 meaning pulling it off expedited review and onto a hearing
18 case. Mr. Blake, may I hear your thoughts?

19 MEMBER BLAKE: Sure, Mr. Chair. In reviewing the
20 application, I did see some inconsistencies in measurement,
21 but the discrepancies resulted not from variations in the
22 applicant's plans, but rather inconsistencies in the
23 measurements of the adjacent properties.

24 Since the initial filing in October of 2021, the
25 applicant has consistently proposed a 25-foot rear addition

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1 as measured from the subject property's rear wall. This
2 excludes a 12-foot, three-foot high rear deck which is also
3 proposed.

4 The initial application and plans in Exhibit 5
5 show uniform rear walls with subject property at 739 as well
6 as the two adjoining properties at 737 to the north and 741
7 12th to the south, with the 12-foot addition and the rear
8 deck being added to the subject property.

9 I would also note that the color photos thought
10 presented in Exhibit 3 do show a one-story porch in the rear
11 property of the north 737, but it is not reflected in the
12 plans in Exhibit 5.

13 So, the applicant's initial burden of proof in
14 Exhibit 7, the applicant acknowledge the recent building
15 permit issued for the building to the south permitting a 20-
16 foot, six-inch rear addition.

17 That was BZA Case 20335, which was approved by the
18 Board in December 2020, and described its project as a two-
19 story addition extending 25 feet beyond the property to the
20 north and four foot, six inches beyond the adjoining building
21 to the south.

22 Now, in the final -- there were a lot of
23 iterations that went back and forth between us, but in the
24 final revised burden of proof in Exhibit 29, the applicant
25 describes a proposed rear addition at 739 extending 15 feet

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1 beyond 737, the building to the north, and four foot, six
2 inches beyond 741, the building to the south.

3 So, essentially though, the proposed rear addition
4 would extend 25 feet beyond the rear wall and 15 feet beyond
5 the covered porch at 737 12th Street.

6 Now, that's a fairly consistent presentation from
7 the outset to now. We can look at the presentation on the
8 first page of Exhibit 28 which is titled the shadow study.
9 It depicts an addition that extends 25 feet beyond the rear
10 wall and 15 feet beyond the covered porch at 737 12th Street,
11 the adjacent building to the north, and four feet, six inches
12 past the building to the south, which the applicant indicated
13 on their plans was currently under construction and they also
14 provided photos confirming that in Exhibit 30.

15 So, if you look at that exhibit, I think it makes
16 a pretty clear case that the evidence, it started out a
17 little bit sketchy, but the issue really did come down to the
18 porch and whether its measurements should be included in that
19 or not. The measurement requires from the rear wall of the
20 building.

21 The porch is not against the property line. It's
22 actually back about 18 inches to two feet from what I can see
23 on the photos. So, the rear wall appropriately would be the
24 25-foot marking.

25 If you look at the exhibit, in that final shadow

1 study in Exhibit 28, you will see precise measurements of a
2 ten-foot deck, a 25-foot space from the rear wall of both,
3 all buildings, original rear walls, and the 15-foot spacing
4 from the deck, so I think it's basically covered at this
5 point.

6 BZA CHAIR HILL: So, you --

7 MEMBER BLAKE: Yes, please, go ahead.

8 BZA CHAIR HILL: I'm sorry, Mr. Blake. So, you
9 don't need any further clarification? That's what I'm trying
10 to --

11 MEMBER BLAKE: No, I don't need any clarification.
12 I think it is there and I think that the applicant did have
13 -- the information came in piecemeal, but it's fairly
14 consistent and also consistent with the requirements and
15 definition of rear wall and what they described in this
16 exhibit.

17 BZA CHAIR HILL: Okay.

18 MEMBER BLAKE: Do you want to talk about that
19 further or do you want to talk about the --

20 BZA CHAIR HILL: No, no, no, just give me a
21 second. I mean, it sounds like you're comfortable having
22 this discussion now.

23 MEMBER BLAKE: I am.

24 BZA CHAIR HILL: Okay, all right, then I'll go
25 around a little bit. And you all can take a second because

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1 I'm happy going either way on this and you all can kind of
2 think what you think real quick, but I'm going to go around
3 the table and I'm going to start with Vice Chair John
4 actually.

5 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
6 I think it's sufficiently unclear for me to need just a final
7 submission to the record with more precise statements as to
8 what the applicant is requesting, and so I would suggest we
9 could continue for another decision meeting instead of a
10 hearing since this is just a measurement issue and the
11 application has not changed.

12 The relief requested has not changed, but it's not
13 clear if the request is for, to me, anyway, based on the
14 submissions, for an addition that's 15 feet from the rear
15 wall of the neighbor to the north, I believe, or 25 feet.
16 It needs to be clearer than that.

17 And I appreciate Mr. Blake's detailed explanation,
18 but I would like to see it more clearly stated in the record.
19 Thank you.

20 BZA CHAIR HILL: Okay, all right, so then we need
21 -- what you would like to see is something that further
22 clarifies the measurements for what they're requesting and
23 how that compares to the neighbors to the north and south?

24 VICE CHAIRPERSON JOHN: Yes, and is there a
25 covered deck, I believe it was, or a porch, or something?

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1 As I read the record, I wasn't clear as to what the applicant
2 was trying to achieve and that's never a good sign for me.

3 BZA CHAIR HILL: Okay, Mr. Smith?

4 MEMBER SMITH: So, I agree with -- well, I'll say
5 this before I get into who I necessarily agree with or what
6 position I fall on taking this off of expedited review.

7 In looking at the shadow study and the
8 architectural plans, the architectural plan does say 25 feet,
9 but in looking at the shadow study, it does seem to me to be
10 a 15-foot addition beyond the rear wall of the house at 737
11 12th Street, Southeast. That seems like abundantly clear to
12 me.

13 Now, as far as pulling it off of expedited review,
14 I'm in support of that because I would like to hear some of
15 the dialogue that -- I would like to have a dialogue about
16 the opposition and just hear out some of their concerns, and
17 some of their concerns may, you know, even validate some of
18 the points raised by Ms. John.

19 So, I would like to pull it off of expedited
20 review and, you know, I welcome where we land with when we
21 discuss this, whether it's today or going the direction where
22 Ms. John wants to go where we'll sit this up for a decision
23 later.

24 BZA CHAIR HILL: Okay.

25 MEMBER SMITH: But I welcome more dialogue.

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1 BZA CHAIR HILL: Okay, any member of the Board can
2 pull this off of expedited review, so if I've got one person
3 pulling it off, then I don't need a -- Chairman Hood, are you
4 fine with that?

5 ZC CHAIR HOOD: Yeah, I'm fine. I don't have
6 anything to add, but I do take the Capitol Hill Restoration
7 -- I've always had an issue with going beyond the rule that
8 we put in place for the ten-foot, going back ten feet, but
9 either way, I think I would like to have some more
10 conversation on this.

11 And also, I would like to understand what Chair
12 Hague for the Capitol Hill Restoration Society is actually
13 implying, because I think she's in the same lines, but I know
14 the horse is already out of the gate with a lot of this, but
15 I can't remember where we are with the Office of Planning
16 doing some more discovery to give the BZA more guidance.

17 And I appreciate Board Member Blake's analysis.
18 I felt like I was in a redistribute meeting. So, anyway,
19 thank you, Mr. Chairman.

20 BZA CHAIR HILL: Okay, great. All right, thanks,
21 Chairman Hood. All right, Mr. Moy, can you hear me?

22 MR. MOY: Yes, sir, I'm here.

23 BZA CHAIR HILL: When could we quickly get this
24 back? Because, you know, they were here for expedited
25 review, and so I don't want to -- I mean, again,

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1 unfortunately, we're just completely jammed up, but do you
2 have any idea?

3 MR. MOY: Yeah, yeah, I will always have an idea.
4 I don't know if you're going to like it. Okay, so I'm
5 hearing that the Board wishes to pull this off the expedited
6 review calendar and set it for a public hearing session.

7 If that's the case, I would suggest two dates that
8 accommodates the Board's docket. The first suggested date
9 would be April 27. The second suggested date would be May
10 18.

11 BZA CHAIR HILL: Wow, okay.

12 MR. MOY: We could always do it earlier, but
13 that's going to jam you up on the other dates.

14 BZA CHAIR HILL: No, I know, I just -- so what we
15 need is we need further clarification. So, for the public
16 meeting, and as the applicant, I'm sure, is watching, we need
17 further clarification on all of the measurements that were
18 requested, and then I guess the applicant would then have an
19 opportunity to discuss the position of CHRS.

20 I know they've already gone through their ANC and
21 the ANC has already given their opinion concerning the
22 project in terms of us giving them great weight, and also
23 that it is, was in favor.

24 They did have a note, I guess, that they didn't
25 really understand the impact on the building at 737 12th

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1 Street, which I guess is what we will also continue to talk
2 about.

3 Is there any way -- I mean, I'd rather do the 27th
4 obviously, but I'm just trying to see if there's any -- so
5 you're just saying -- how many cases are on the 27th?

6 MR. MOY: We have eight cases. This would be the
7 ninth case.

8 BZA CHAIR HILL: All right, let's do the 27th
9 because I know that there has to be some back and forth with
10 what's happening, again for the applicant's sake.

11 I mean, the Board is unclear as to some of the
12 measurements, so that's why it can't move forward, and in
13 addition to that, we received opposition from CHRS which is
14 something that, once opposition has been put into the record,
15 we tend to also want to hear from people, so that's why
16 you're getting pulled.

17 All right, Mr. Moy, then we'll put this on for the
18 27th. And when would you suggest we get information and if
19 OP -- I doubt OP is going to give us anything additional for
20 it, but if you want to give us some dates?

21 MR. MOY: Yes, sir, I would suggest that the
22 applicant make their supplemental filings by Monday, April
23 18.

24 BZA CHAIR HILL: Okay, all right, let's go ahead
25 and do that. All right, the next case, when you get a

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1 chance, Mr. Moy, I am not on, I believe, so I'm going to jump
2 off until we come back.

3 (Whereupon, the above-entitled matter went off the
4 record at 10:05 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: 03-09-22

Place: teleconference

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



Court Reporter

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