

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY
APRIL 3, 2024

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Member
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on April 3, 2024.

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

2 (9:38 a.m.)

3 BZA CHAIR HILL: Good morning, ladies and
4 gentlemen of the Board of Zoning Adjustment. Today is
5 April 3rd. This public hearing will please come to order.

6 My name is Fred Hill, Chairman of the District of
7 Columbia Board of Zoning Adjustment. Joining me today is
8 Board Members Carl Blake and Chrishaun Smith; Zoning
9 Commissioners Anthony Hood and Tammy Stidham.

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

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

20 And if you are experiencing difficulty accessing
21 Webex or with your call -- telephone call-in, then please
22 call our OZ hotline number, (202) 727-5471, to receive Webex
23 log-in or call-in instructions.

24 At the conclusion of a decision meeting session,
25 I shall, 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 affected ANC. A full order may also be
4 needed if the Board's decision differs from the Office of
5 Planning's recommendation. Although the Board favors these
6 summary orders whenever possible, an applicant may not
7 request the Board to issue such an order.

8 In today's hearing session, everyone who is
9 listening on Webex or by telephone will be muted during the
10 hearing, and only persons who have signed up to participate
11 and testify will be unmuted at the appropriate time. Please
12 state your name and home address before providing oral
13 testimony or oral presentations.

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

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

24 Requests to enter evidence at the time in an
25 online virtual hearing such as written testimony or

1 additional supporting documents, other than live video, which
2 may not be presented as part of the testimony, may be allowed
3 pursuant to Y 103.13, provided that the person making the
4 request to enter an exhibit explain: a) how the proposed
5 exhibit is relevant, b) is it good cause that justifies
6 allowing the exhibit into the record, including an
7 explanation of why the requester did not file the exhibit
8 prior to the hearing pursuant to Y 206, and c) how the
9 proposed exhibit would be -- would not unreasonably prejudice
10 any parties.

11 The order of procedures for special exceptions and
12 variances are in Y 409.

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

20 The Board will then make its decision in its next
21 meeting session, but no earlier than 48 hours after the
22 hearing. Moreover, the Board may request additional specific
23 information to include in the record. The Board or the staff
24 will specify the hearing -- the Board and the staff will
25 specify at the end of the hearing exactly what is expected

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1 and the date when the person must submit evidence to the
2 Office of Zoning. No other information shall be accepted by
3 the Board.

4 Finally, the District of Columbia Administrative
5 Procedures Act requires that the public hearing on each case
6 be held in the open before the public. However, pursuant to
7 405B and 406 of the Act, the Board may, consistent with its
8 rules and procedures and the Act, enter into closed meeting
9 on a case for purposes of seeking legal counsel on a case
10 pursuant to D.C. Official Code Section 2-575(b)(4) and/or
11 deliberate on a case pursuant to D.C. Official Code Section
12 2-575(b)(13), but only after providing the necessary public
13 notice in the case after taking a roll call vote.

14 Madam Secretary, do we have any preliminary
15 matters?

16 MS. MEHLERT: Good morning. There are a few
17 scheduling changes for today's agenda. Application Number
18 17320B of Protestant Episcopal Cathedral Foundation of the
19 District of Columbia has been withdrawn. Application Number
20 20953 of Jackson Place, LLC, has also been withdrawn. And
21 Appeal Number 20889 of Chukwuma Ewelike has been postponed
22 to December 18th, 2024.

23 Any other preliminary matters will be noted when
24 that case is called.

25 BZA CHAIR HILL: Thank you.

1 Good morning, everyone. This is so weird. But,
2 anyway, I still think the video squares thing is weird.
3 Every now and again it hits me. I'm saying good morning, but
4 I -- I'm not really talking to anyone.

5 Madam Secretary, you may call our first decision
6 case.

7 MS. MEHLERT: Sure. So there is one case in the
8 meeting session today. That's Appeal Number 21042 of
9 William W. Bennett. This is an appeal pursuant to Subtitle X
10 1100 in the decision made on August 15th, 2023, by the
11 Department of Buildings to issue Building Permit
12 Number B2307068. This is located in the R1-A zone at
13 2243 Sudbury Road, Northwest, Suite 2755, Lot 28.

18 BZA CHAIR HILL: Thank you. Let's see. So as you
19 all recall, we had this appeal last week, and I appreciate
20 that the Appellant was actually quite organized, and also was
21 the building owner and -- property owner, that is. And I
22 really appreciate the Office of Zoning's Legal Department for
23 some of their help with helping to -- helping me to
24 understand a little bit more of the appeal.

25 It seems, again, there was like three issues that

1 were raised. One was violation of the 5th and 14th Amendment
2 under the Constitution for -- and I believe that those are
3 issues that are not really in the jurisdiction of the Board.
4 We're, again, here for zoning appeals, but also, then,
5 special exceptions to the variances to the zoning code. So
6 the constitutionality of something is not really something
7 that is within our purview.

8 Then, there was another about -- lack of notice
9 for a -- the demo or raze permit, if there was in fact a demo
10 or raze. I'm sorry, whether it was a demo or a raze, and
11 really those would be issues that are construction code
12 issues that are, again, not within the purview of the Board,
13 whether or not something is -- whether there were -- whether
14 there was notice given for either -- whether it was a demo
15 or a raze is something that would have fallen within the
16 purview of the construction code.

17 The third was issues about the Shipstead-Luce Act
18 and how this property could be affected by the Shipstead-Luce
19 Act. That would be something that I guess would be in the
20 purview of the Board. However, I believe that this did --
21 this particular property did not trigger the Shipstead-Luce
22 Act. The Shipstead-Luce Act says that you have to border a
23 parkland, and this particular -- or a street that borders a
24 parkland, and this property did not border a street that
25 borders a parkland.

1 The Appellant was trying to make an argument that
2 it was a street that bordered a street that bordered the
3 parkland, and that's not what the Act says. And, in addition
4 to that, there was an email from the Commission of Fine Arts
5 saying that it did not -- this property did not trigger the
6 Shipstead-Luce Act.

7 I do think that in this particular case what I
8 would be voting towards is dismissing the first argument
9 about the violation of the 5th and 14th Amendment, because
10 it's not within our purview, as well dismissing the lack of
11 notice because, again, it's not something that's within our
12 purview, and then denying on the merits the argument about
13 the application of the Shipstead-Luce Act.

14 I would say that, in reviewing the case, I didn't
15 really see where the property owner had violated any issues
16 that they were having. I mean, I'm sorry that the neighbors
17 are having difficulty with this particular property, and the
18 work that's going on with the property, but it seems to me
19 that the property owners were in their right to do everything
20 that they did do, and they haven't done anything wrong.

21 So I hope that if my fellow Board members agree
22 with me that this is something now that the neighbors can
23 kind of learn to work together to finish this project and
24 then also -- when I say work together, like just notify each
25 other of things that might be going on. Be neighborly. Be

1 neighborly about the issues and concerns, and then hopefully
2 this is something that would just -- they can move on from.

3 So those are my thoughts. Mr. Smith, do you have
4 anything to add?

5 MEMBER SMITH: I'll just say that I -- that I
6 agree with your assessment on the organization of the
7 Appellant regarding this particular case. It was very
8 thorough and a very well put together presentation.

9 But the three points that he raised, by and large,
10 have been reviewed. Your assessment on -- regarding this
11 particular case, the Appellant raised questions regarding
12 notification based on the raze permit regulations regarding
13 notification.

14 As stated by the Department of Buildings and
15 within the record, this wasn't a raze permit, because the
16 Applicant retained all of the extremity walls. They, by and
17 large, just went up on the -- on the existing home. So it
18 wasn't a raze permit. So it wasn't required to meet the
19 notification requirements that would be at some level within
20 our realm of the Board or the Zoning Administrator to not --
21 because they did not notify the neighbor.

22 But this wasn't a raze permit that required
23 notification in accordance with the Zoning Administrator's
24 regulations.

25 I do agree with your assessment on we do not have

1 burden over the federal constitution. The purview of Zoning
2 Regulations in the District of Columbia, Section S-11,
3 1100.2, constitutional arguments arising from the federal
4 constitution are not our purview. Our regulatory power is
5 limited to rules and revisions of adjudicating the zone
6 records, so before you dismiss those two arguments, based on
7 constitutional provisions.

8 Also, the other provision, as you stated,
9 violation that the Appellant felt regarding the
10 Shipstead-Lace Act. As you stated, the Shipstead-Luce Act
11 only requires review by the National Park Service for
12 properties that directly abut Rock Creek Park or face Rock
13 Creek Park, as properties to the east do. They do face Rock
14 Creek Park, so those properties will be subject to
15 Shipstead-Luce.

16 This particular property does not abut and does
17 not directly face Rock Creek Park, so it's not subject to
18 Shipstead-Luce. And we did get a letter from CFA -- or, I'm
19 sorry, not National Park Service, but CFA does regulate
20 Shipstead-Luce. We did get a letter from CFA stating that
21 this project is not subject to that review.

22 So I agree with your assessment of this particular
23 case, Chairman Hill, and I will support dismissing the
24 arguments raised by the Appellant.

25 BZA CHAIR HILL: Thank you, Mr. Smith, and thank

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1 you for helping to clarify about the Shipstead-Luce Act
2 applying to Rock Creek Park.

3 Commissioner Stidham?

4 MEMBER STIDHAM: Thank you. I think Commissioner
5 Smith and yourself covered the points. Do we have --

6 (Audio inference)

7 BZA CHAIR HILL: Okay. Thank you.

8 All right. I'm going to go ahead and make a
9 motion, then, to again, as I mentioned, towards
10 Application 21042, dismiss the first alleged violation, which
11 was, again, that there was a violation of the 5th and 14th
12 amendment, that it is not within our jurisdiction.

13 And then, also make a motion to dismiss the lack
14 of notice concerning the potential raze as it also is not our
15 purview because it is a construction code issue. And then
16 denial on the merits of the third point, which is that there
17 was a violation of the Shipstead-Luce Act as we have now
18 determined we do not believe there was such a violation, and
19 ask for a second. Mr. Smith?

20 MEMBER SMITH: Second.

21 BZA CHAIR HILL: Motion made and seconded, Madam
22 Secretary. Will you take a roll call, please?

23 MS. MEHLERT: Yes. When I call your name, please
24 respond to the Chair's motion to dismiss the appeal in part
25 and deny the appeal in part.

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1 Chairman Hill?

2 BZA CHAIR HILL: Yes.

3 MS. MEHLERT: Mr. Smith?

4 MEMBER SMITH: Yes.

5 MS. MEHLERT: And Commissioner Stidham?

6 MEMBER STIDHAM: Yes.

7 MS. MEHLERT: Staff would record the vote as three
8 to zero to two to dismiss the appeal in part, in violation
9 of the 5th and 14th amendment, as well as dismissing the lack
10 of notice issue and denying the application of the
11 Shipstead-Luce Act, on the motion made by Chairman Hill and
12 seconded by Mr. Smith.

13 BZA CHAIR HILL: Thank you. You can call our next
14 item before the Board.

15 Commissioner Stidham? Is that it?

16 All right. Commissioner Stidham, you have a
17 lovely, rainy day.

18 MEMBER STIDHAM: Thank you. You, too. Bye-bye.

19 BZA CHAIR HILL: Bye-bye.

20 Chairman Hood, welcome.

21 ZC CHAIR HOOD: Good morning, everyone.

22 BZA CHAIR HILL: Good morning.

23 (Whereupon, the above-entitled matter went off
24 the record at 9:53 a.m.)

25

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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 Hearing

Before: DC BZA

Date: 04-03-24

Place: teleconference

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

Neal R. Gross
Court Reporter

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