

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

JULY 13, 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 9:38 a.m. EDT, 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 PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

MARK HAMALA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

The transcript constitutes the minutes from the Regular Public Meeting held on July 13, 2022.

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

2 (9:38 a.m.)

3 BZA CHAIR HILL: Okay. Ladies and gentlemen of
4 the Board of Zoning Adjustment. Today's date is
5 7/13/2022. This public meeting will please come to order.
6 My name is Fred Hill, chairperson, District of Columbia
7 Office of Zoning Adjustment.

8 Joining me today is Lorna John, vice chair,
9 board members Carl Blake, Chrishaun Smith, and Zoning
10 Commissioner Peter May and Chairman Anthony Hood. Today's
11 meeting and hearing agenda are available on the Office of
12 Zoning's 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's webcast will be
16 available on the Office of Zoning's website after today's
17 hearing. Accordingly, everyone who is listening on Webex
18 or by telephone will be muted during the hearing. Also
19 please be advised that we cannot take any public testimony
20 at our decision meeting sessions.

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

25 At the conclusion of our decision meeting

1 session, I shall, in consultation with the Office of
2 Zoning, determine whether a full or summary order may be
3 issued. A full order is required when the decision it
4 contains is adverse to a party, including an affected ANC.
5 A full order may also be needed if the board's decision
6 differs from the Office of Planning's recommendation.
7 Although the Board favors the use of summary orders
8 whenever possible, an applicant may not request the board
9 to issue such an order. Let's see.

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

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

21 All persons planning to testify either in favor
22 or in opposition should've signed up in advance. They'll
23 be called by name to testify and per the appeal, only
24 parties are allowed to testify by signing up to testify.
25 All participants must plea an oath or affirmations

1 provided by Subtitle Y 408.7.

2 The request to enter evidence in the time of
3 the online virtual hearing, such as written testimony and
4 additional supporting documents other than the live video,
5 which may be presented as part of testimony may be allowed
6 pursuant to Subtitle Y 103.13, provided that the proposed
7 made the request to enter an exhibit, explain A, how the
8 proposed exhibit is relevant, B, the good cause and
9 justifies live exhibit of the record, including an
10 explanation of why the requester did not file the exhibit
11 prior to the hearing, pursuant to Y 206, and C, how the
12 proposed exhibit would not unreasonably prejudice any
13 parties.

14 There are other procedures for special
15 exceptions and variances are pursuant to Y 409. At the
16 conclusion of each case, an individual who is not able to
17 testify because of technical issues may file a request for
18 leave to file a written version of the planned testimony
19 to the record within 24 hours following the conclusion of
20 the oral testimony.

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

1 Moreover, the board may request additional
2 specific information to complete the record. The board's
3 staff will specify at the end of the hearing exactly what
4 it's expecting and the date when person must submit the
5 evidence to the Office of Zoning. No other information
6 shall be accepted by the board.

7 Finally, the District of Columbia
8 Administrative Procedures Act requires that the public
9 hearing on each case be out in the open before the public,
10 however, pursuant to Section 405 B and 406 of that act,
11 the board may, consistent with its rules and procedures
12 and the act enter into closed meetings on a case for
13 purposes of seeking legal counsel on a case pursuant to
14 D.C. Official Code, Section 2-575B-4 and/or deliberating a
15 case pursuant to D.C. Official Code Section 2-5B-13, but
16 only after providing necessary public notice in the case
17 emergency closed meeting after taking a roll call vote.

18 Let's see. Mr. Hamala, do we have any
19 preliminary matters?

20 MR. HAMALA: Yes, we have one preliminary
21 matter pertaining to the schedule, application number
22 20757 of Howard University has been withdrawn. The other
23 preliminary matters can be addressed as we call the cases.

24 BZA CHAIR HILL: Okay, great. All right, let's
25 see. Okay, well good morning everybody.

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1 MR. HAMALA: Good morning.

2 BZA CHAIR HILL: Good morning to this little
3 computer screen that we're all looking at. Okay, let's
4 see. Mr. Hamala, can you call our decision case, please?

5 MR. HAMALA: Yes. Our one decision case for
6 today is Application Number 20740 of Erick and Jessica
7 Alves de Sa.

8 This is a special exception from the rear yard
9 -- from the rear addition requirements of Subtitle E
10 Section 25.4, pursuant to Subtitle E Section 25.5,
11 Subtitle E Section 5201, and Subtitle X 901.2, and this
12 project is to construct a two-story with cellar rear
13 addition to an existing attached two-story with cellar in
14 the RF-1 zone, and the property is located at 534 Taylor
15 Street, Northwest, Square3231, Block 85.

16 BZA CHAIR HILL: Okay, great. I mean, thanks
17 everybody. Let's see. So, I know that -- what is the
18 exhibit, give me one second -- or one was like, 73, 74,
19 75. So actually I thought -- and I only get to look at
20 two people. I know there's probably a difference of
21 opinion in some of this -- I thought about this one a lot
22 which surprised me in some regard.

23 Like, and I just kind of want to talk it
24 through because this is the only one we have Commissioner
25 May for, so he gets to leave after this anyway. I don't

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1 know how this is going to go moving forward, meaning that
2 I guess now we're looking at this more on a per story
3 basis, right? Meaning these ten foot exemptions and
4 they're special exceptions. Special exceptions, right?

5 You know, deemed, you know, through their way,
6 has deemed that, you know, you can go past ten feet if you
7 meet certain criteria, and that criteria primarily is, you
8 know, the one that we base a lot of our stuff on
9 concerning light and air issues, right, and undue impact.

10 The Office of Planning had believed that that
11 additional ten feet more or less, if you want to look at
12 it that way, was not particularly undue, meaning the
13 shadowing or the light, to -- and really I'm just speaking
14 about that adjacent property owner who was in opposition
15 primarily because like I guess again, their bedroom window
16 on the second floor was now going to have another -- what
17 is it -- yeah, 20 feet past their window, right?

18 So, basically they're going to have ten feet
19 there anyway by right, and then you have an additional ten
20 feet, and so it gets into, you know, whether or not,
21 again, the shadow study, the light and air issues in
22 regard to that additional ten feet.

23 I was actually pretty concerned about it as I
24 said at the last hearing, so much so that I was a little
25 bit unclear as to what I thought again about the light and

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1 air issues from that additional ten feet, more in just
2 kind of like a good neighbor policy, if you will, to kind
3 of quote other people that have been around here longer
4 than I.

5 I was interested in hearing about just kind of
6 like a if there was any kind of a draft construction
7 agreement or something that was going to at least allow
8 the -- at least I can understand how communication was
9 going to go back and forth between the person that was in
10 opposition and the applicant.

11 I was then conditionally -- I don't know if
12 confused is the right word, but that the first floor was
13 something that was not necessarily, you know, supposed to
14 be there, and if you could tear it down, could you replace
15 it again even if one's supposed to be there?

16 I'm using a -- you know, but searching for the
17 word I'm thinking of, but and the zoning administrator had
18 deemed that yeah, you could tear it down and as long as
19 you didn't make it bigger, you could replace it. Which
20 again to me seemed a little weird, and we talked about
21 that even with Commissioner May and to what had happened
22 before, or in earlier cases.

23 So, the Construction Management Agreement, they
24 talked about how they were going to kind of try to
25 communicate with the neighbor. I hadn't heard -- I didn't

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1 know where the neighbors stood on that. And again, this
2 isn't necessarily about, again, the light and air issues.
3 I was just interested in hearing more about how they were
4 going to communicate.

5 And then there was a response back in Exhibit
6 75 from the party in opposition that had more or less, you
7 know, some feedback on the items that were brought up in
8 the draft Construction Management Agreement, which was in
9 Exhibit 73.

10 And they were more or less in agreement to it
11 with some of the issues being like, discussions about
12 brick versus different kinds of landscaping, and that
13 again there was that the party did not want to allow
14 access into the unit because I believe there was like,
15 COVID concerns, and you know, health issues. So, that
16 seemed reasonable and so they've already I guess, you
17 know, covered themselves with photographs and such.

18 So the only thing that, you know, seemed to be
19 a little bit of a discrepancy to me was this, you know,
20 brick versus ivy type stuff, and I would imagine that the
21 applicant would be comfortable with these little changes
22 if we were to actually move forward, and whether or not we
23 believe that they're meeting the criteria to grant the
24 relief request.

25 So all that being said, I'm still a little

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1 interested in hearing what you all have to say,
2 particularly my board members because we're going to have
3 to deal with this more often now in terms of this each
4 floor thing being an issue as to the additional ten feet.

5 However, since two buildings next door to the
6 party in opposition was already a large building that had
7 been built prior to the changes in the regulations,
8 meaning the height and the popping it back, so it's a
9 pretty big building to begin with, and that other side of
10 the party that's in opposition there's a side yard to
11 where there is more air that could be allowed into -- like
12 if it was on either side, I would have more issues perhaps
13 in approving this, right?

14 But the fact that it is open to one side, so
15 I'm leaning towards approval based upon the criteria, as
16 well as the fact that I would be referencing these,
17 Exhibits 73 and 75, in the order if we were to get to an
18 approval, but still wanting to hear what my fellow board
19 members have to say. And I'm going to go around the board
20 in my normal way if I can, which is -- oh wait, Mr. Smith
21 was not on this, that's right. Let's go with Mr. Blake.

22 MEMBER BLAKE: Okay, I'm off mute, thank you.
23 Mr. Chair, thank you very much. I agree with most of
24 everything you said in terms of this agreement and in
25 terms of this case.

1 And based on the record, the information in the
2 record and the testimony received today, and the applicant
3 received previously and the applicant, I believe that the
4 burden of proof has really been met for the conditions for
5 E 5201, as well as the General Standards. And obviously
6 the project is in harmony with the Zoning regulations and
7 shouldn't substantially adverse the effect of the use and
8 enjoyment of the property.

9 But I certainly understand the concerns
10 expressed by the party in opposition. But like I said,
11 the project does meet the general development standards.
12 That study demonstrates that the addition should not
13 produce undue shadows beyond the matter of right. There
14 is a fairly large remaining yard, there's a dog laying to
15 the east side of the property.

16 As you pointed out, there is certainly room on
17 the other side to the semi-detached property of the party
18 in opposition, to the south of the window placement on
19 the addition and the use and enjoyment therefore should
20 not really be compromised.

21 I think that the addition will not be visible
22 from the street because of the design and the variety of
23 properties around the square and the addition shouldn't
24 substantially visually intrude upon the character, scale
25 and pattern along the alley.

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1 I believe the Construction Management
2 Agreement, although it's kind of a work in progress, will
3 go a long way to address the majority of the non-zoning or
4 construction-related issues raised by Ms. Waters. And in
5 this case, I give great weight to the Office of Planning
6 Board, awaiting their approval. DDOT has no objection and
7 ANC 4C recommends approval. So I would actually be voting
8 in favor of the application.

9 BZA CHAIR HILL: Okay. Commissioner May?

10 MEMBER MAY: From your board members first.

11 BZA CHAIR HILL: Yeah, I know, you're the last
12 one. So I'm going to lead with Ms. John because I didn't
13 know where she was going to be exactly.

14 MEMBER MAY: Oh, I see. So, I'll talk if you
15 want.

16 BZA CHAIR HILL: Mr. Smith is gone. He's not
17 with us.

18 MEMBER MAY: I know, I know. I thought you
19 meant Ms. John too, before me, but I'll go ahead.

20 VICE CHAIR JOHN: I'm fine with going ahead,
21 Commissioner May. You're normally very happy to jump in,
22 but I will go ahead this morning. So, Mr. Chairman, I
23 agree with most of the comments. I was really very
24 concerned about the additional ten feet of shadow outside
25 of the bedroom of the party in opposition.

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1 I mean, even though we know that ten feet is a
2 matter of right, it still means that, you know, the party
3 in opposition is going to have a 20 foot wall outside of
4 the bedroom window. But when I looked at the case again
5 over the weekend I took note of the fact that it is a
6 corner unit, and so there is light coming from the other
7 side.

8 And so, you know, while I might have been
9 inclined to vote against the application, I think that
10 that fact changed it for me. So I don't believe that even
11 though they will be additional shadow, it will create an
12 undue adverse impact. There will be some adverse impact,
13 but I don't believe it will be undue. So based on that, I
14 would be able to support the application.

15 And I'm happy that the neighbors are working
16 towards a construction agreement because if you've ever
17 lived next door to construction of this type, you
18 understand that there are a whole host of issues that come
19 up during construction so it's really important for the
20 parties to come to an agreement even though the board does
21 not include those agreements in the order, but we like to
22 see them because as one of our commissioners says, it's
23 the neighborly thing to do, and so I'm happy to see that
24 they're working towards an agreement. So based on that, I
25 will go ahead and support the application.

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1 BZA CHAIR HILL: Thank you. Commissioner May?

2 MEMBER MAY: Thank you. You know, I may be
3 always willing to speak up but I'm always willing to defer
4 if anybody wants to go before me, so.

5 Anyway, I think my thoughts align with those of
6 Board Member Blake and Vice Chair John. You know, I am
7 normally very strict about going past 10 feet for an
8 extension of a property to the rear, but the regulations
9 do regard such an extension as a special exception. So
10 there is a presumption that it is an appropriate thing to
11 do, provided that there are not substantial impacts.

12 And in this case, I think as others have
13 highlighted, there are not really substantial impacts,
14 they're -- because of the position of the house the light
15 and the shadow study, things like that, are not going to
16 have a substantial impact on the neighbor's property. And
17 you know, when it comes to kind of light and air, it's not
18 just that the neighbor's property is an end unit, which --
19 and it's an end unit that sort of widens its -- it's quite
20 a generous piece of land -- that is a huge, huge benefit,
21 but it's also the depth of the yards, right?

22 There's a lot of yard space there, and I think
23 that when the Zoning Commission was considering how to put
24 appropriate restrictions on this kind of development in
25 the RF Zones, we were focused on the sort of the minimal

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1 lot sizes, right? If this were an 18 by 100 lot, which is
2 the minimum of an RF-1 circumstance, I think something
3 like this can have a much more substantial impact, and in
4 this circumstance, given the generosity of the properties
5 more generally, I think the impacts are going to be
6 minimal.

7 You know, I'm not as concerned about the
8 Construction Management Agreement but it sort of goes
9 without saying that if you're going to be building a major
10 addition or doing a renovation of your property, you have
11 to bend over backwards to make sure that you are not
12 having impacts on your next-door neighbor because your
13 next-door neighbor's still going to be there when you're
14 done, and you don't want to be at odds with them the whole
15 time.

16 So I think it is very important that the
17 applicant work closely with Ms. Watters or her family to
18 make sure that the impacts of their project are kept to a
19 minimum and are managed and that they and their contractor
20 are responsive. We've seen every indication that they are
21 willing to do that in this case, so I don't have any
22 qualms about moving forward.

23 I a feeling of confidence about the good
24 neighbor approach here, I think that that's, you know,
25 still to be proven, but I think that we've seen evidence

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1 to indicate that that's going to happen. So I'm in favor
2 and ready to vote to approve this case.

3 BZA CHAIR HILL: Okay, great. All right. So
4 again, thank you. I'll just highlight again the -- in the
5 record the announcement that Office of Planning has
6 provided, as well as that of the ANC. The ANC even
7 submitted an additional letter after the exhibit that was
8 put forward by the applicant, concerning how they were
9 going to again coordinate with the immediate party in
10 opposition.

11 And so I'm going to go ahead and make a motion
12 to approve Application Number 20740, as captioned and read
13 by the secretary, and ask that then the order is written
14 referencing Exhibit 73 and 75, and ask for a second, Ms.
15 John?

16 VICE CHAIR JOHN: Second.

17 BZA CHAIR HILL: The motion made and seconded.
18 Mr. Hamala, if you could please take a roll call?

19 MR. HAMALA: Yes, Mr. Chair. When I call your
20 name, please respond with a yes, no, or abstain. Chairman
21 Hill?

22 BZA CHAIR HILL: Yes.

23 MR. HAMALA: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. HAMALA: Mr. Blake?

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1 Mr. May?

2 MEMBER MAY: Yes.

3 MR. HAMALA: And we have one member not
4 participating. The staff would record the vote as 4 to 0
5 to 1 to approve the application with a motion made by
6 Chairman Hill and seconded by Ms. John, with Mr. Blake and
7 Mr. May in support of the motion.

8 I will also note that Exhibits 73 and 75 will
9 be referenced in the order, and those are the Construction
10 Management Agreement and I believe the ANC report.

11 BZA CHAIR HILL: Okay, great. Commissioner
12 May, is that it for you?

13 MEMBER MAY: Yes.

14 BZA CHAIR HILL: Okay.

15 MEMBER MAY: And then, nice to see you guys.
16 Have a good summer.

17 BZA CHAIR HILL: You as well. Oh yeah, you're
18 not coming back?

19 MEMBER MAY: There are only a couple more
20 meetings, so I won't be back.

21 BZA CHAIR HILL: Okay, well you have a nice
22 summer, you also have a nice August. Bye-bye.

23 MEMBER MAY: Bye.

24 (Whereupon, the above-entitled matter went off
25 the record at 10:00 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: 07-13-22

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.



Court Reporter

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