

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

NOVEMBER 29, 2023

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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. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA L. JOHN, Vice-Chairperson
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MATT JESICK
JONATHAN KIRSCHENBAUM
CRYSTAL MYERS
SHEPARD BEAMON

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on November 29, 2023.

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

(9:48 a.m.)

SECRETARY MOY: Yes, sir. So in the public meeting session before the Board is the remand of the Board's order in Application No. 20135. This is an application that -- the address is 3428 O Street, LLC. And I think that's all I need to say. I think I'll turn the podium over to you, Mr. Chairman.

BZA CHAIR HILL: Okay. All right. So, I believe that first off is I was the only one who was originally on this case, and I believe that Chairman Hood, Commissioner John, and Commissioner Smith are participating in this and have gone ahead and reviewed the record.

So, if I could just get confirmation of that. Is that correct? I'll start with you, Chairman Hood.

ZC CHAIR HOOD: I have reviewed the record and the case is subsequent to the initial case. Yes, I have.

BZA CHAIR HILL: Okay. And Mr. Smith?

MEMBER SMITH: -- the record and the subsequent cases before this, Your Honor -- before this case.

BZA CHAIR HILL: Okay. And Vice-Chair John?

VICE-CHAIRPERSON JOHN: I have read the record, Mr. Chairman.

BZA CHAIR HILL: Okay, great. Commissioner

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1 Stidham, you're not on this one, correct?

2 Okay, if I could ask you just to go ahead and
3 turn off your video just so there's no confusion. Thank
4 you, Commissioner.

5 All right, so this is a remand of the Board's
6 order in Application 20135, which is at 3428 O Street --
7 or I'm sorry, 3428 O Street, LLC, is the Applicant. And
8 they were asked to submit it pursuant to 11 DCMR Subtitle
9 X, chapter 10, for an area variance from the corner store
10 requirements of Subtitle U, 254.6(g), to operate a corner
11 store on the first floor and basement of an existing
12 building in the R-20 zone at 3428 O Street, N.W. (Square
13 1228, Lot 76).

14 The parties to this case were the Applicant,
15 represented by Martin Sullivan on behalf of the owner of
16 the property and Call Your Mother, which was the tenant,
17 ANC 2E, and then there was a party in opposition of the
18 name of Melinda Roth.

19 Participating in the remand are myself, Vice-
20 Chair John, Board Member Smith, and Chairman Hood of the
21 Zoning Commission. The order was issued June 16th, 2020,
22 and the Board granted the relief requested in the self-
23 certified application.

24 The order was appealed to the DC Court of
25 Appeals by the party in opposition and others. The

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1 initial order agreed with the Applicant that the planned
2 corner store use was permitted as a matter of right,
3 except for needing an area variance from a distance
4 requirement in Subtitle U-254.6(g) because the property is
5 less than 750 feet from a mixed-use zone.

6 The Court of Appeals vacated the Board's order
7 and remanded the case for further proceedings on two
8 specific topics. One, the implications of Call Your
9 Mother's 10-year lease for a portion of the building at
10 the subject property on the question of whether denial of
11 the variance would cause a practical difficulty to the
12 owner of the subject property, and, two, whether the
13 Applicant could permissibly proceed by solely seeking an
14 area of variance or whether instead a special exception is
15 required.

16 The matter before the Board now is, you know,
17 to decide whether to issue a procedural order inviting
18 submissions from the parties and the Office of Planning to
19 address the question posed by the court.

20 So again, what I'm saying is before the Board
21 is, you know, to decide whether to issue procedural order
22 inviting submissions from the parties and the Office of
23 Planning to address the questions posed by the court.

24 So this is what I'm proposing we do. So the
25 procedural order will set dates for submissions and for a

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1 further public hearing in this proceeding, and that would
2 be on the submissions. All submissions are due by January
3 10th, 2024. They must be based on the existing record and
4 must be served on other parties.

5 The Board will not accept responses, but will
6 conduct a public hearing on January 31st, 2024 for further
7 proceedings on remand.

8 So in light of the Court's opinion, what I
9 suggest is the Board seeks submissions on the court's
10 remand. And those submissions would be addressing the two
11 questions. And for reasons -- so one, for reasons
12 explained in the procedural order, the Board does not
13 conclude that the corner store use proposed in this
14 application is permitted as a matter of right under
15 Subtitle U-254.2.

16 The Board seeks submissions addressing whether
17 the proposed use variance, a special exception under
18 U.254.14, and if so, whether any variance relief is also
19 needed. And if a variance is needed, what is the
20 practical difficulty to the owner of the existing building
21 in light of the tenant's 10-year lease?

22 Okay, so I'm going to repeat this. The Board
23 seeks submissions addressing whether the proposed use --
24 the proposed use -- requires a special exception under
25 U254.14, and if so, whether there's any variance relief

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1 needed for that special exception.

2 And then, second, if a variance is needed -- if
3 a variance is needed, what is the practical difficulty to
4 the owner of the existing building in light of the
5 tenant's 10-year lease?

6 Okay, the Board has a draft procedural order
7 that I think we can go ahead and issue. And I've had a
8 chance to look at this. So, then again, they, the
9 parties, would give us submissions by January 10th, 2024,
10 based solely on the existing record -- and, again, this
11 must be served on all parties.

12 And then we, the Board, will have a public
13 hearing on January 31st to review and discuss anything
14 that we get in the filings. Okay, does anybody have any
15 questions for me or thoughts on anything I just said? And
16 I'm going to start with you, Mr. Smith.

17 MEMBER SMITH: I don't have any thoughts, so I
18 do believe that you've sufficiently summarized the issues
19 today so I don't think anything to add in addition.

20 BZA CHAIR HILL: Okay, thank you. Chairman
21 Hood?

22 ZC CHAIR HOOD: Mr. Chairman, the only thing I
23 will say is I assume the dates are the fastest we can do
24 this. I know this has been lingering a while, but I do
25 agree with the format, especially with the special

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1 exception and the responses.

2 Looking forward to get this, and let's put this
3 on the fast track. I think the residents expect us to get
4 this done. Thank you, Mr. Chairman.

5 BZA CHAIR HILL: Thank you, Chairman Hood.
6 Vice-Chair John?

7 VICE-CHAIRPERSON JOHN: I don't have anything
8 to add. I think you summarized the process and the
9 contents of the procedural order and the process going
10 forward, and I don't have anything. I think that's fine.
11 Thank you.

12 BZA CHAIR BZA CHAIR HILL: Okay, then I'm going
13 to make a motion to approve the issuance of a procedural
14 order and ask for a second. Ms. John?

15 VICE-CHAIRPERSON JOHN: Second.

16 BZA CHAIR HILL: The motion made and seconded.
17 Mr. Moy, could take a roll call?

18 SECRETARY MOY: When I call your name, if
19 you'll please respond to the motion made by Chairman Hill
20 to approve and issue the procedural order on this matter.
21 This motion was seconded by Vice-Chair John. Zoning
22 Commission Chair Anthony Hood?

23 ZC CHAIR HOOD: Yes.

24 SECRETARY MOY: Mr. Smith? Vice-Chair John?

25 VICE-CHAIRPERSON JOHN: Yes.

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1 SECRETARY MOY: Chairman Hill?

2 BZA CHAIR HILL: Yes.

3 SECRETARY MOY: We have no other board members
4 participating. Staff would record the vote as 4-0-1, and
5 this is on the motion of Chairman Hill to approve issuing
6 a procedural order.

7 This motion was seconded by Vice-Chair John.
8 Also in support of the motion is Zoning Commission Chair
9 Anthony Hood, Vice-Chair John, Mr. Smith, and Chairman
10 Hill. The motion passes, sir, in a vote of 4-0-1.

11 BZA CHAIR HILL: Okay, thank you. Chairman
12 Hood, I think we're done with you today. Correct?

13 ZC CHAIR HOOD: Thank you. You all have a
14 great day.

15 BZA CHAIR HILL: You as well. Thank you, sir.

16 (Whereupon, the above-entitled matter went off
17 the record at 9:57 a.m. and resumed at 11:56 a.m.)

18 SECRETARY MOY: Okay, the Board has returned to
19 its public meeting session to address two of the Mods
20 consequences, rather two of the Modification of
21 Consequence.

22 The first is Application No. 209 27a of
23 Congressional 1015 Rhode Island, LLC. Again, it's a
24 request pursuant to Subtitle Y, Section 703 for
25 Modification of Consequence of plans approved in BZA Order

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1 20927 to allow a reduction in the number of vehicle
2 parking spaces.

3 Property is located in the RA-1 zone at 1015
4 Rhode Island Avenue N.E. (Square 3870, Lot 53). And
5 that's all I have. Thank you.

6 BZA CHAIR HILL: Okay, we will mark this for
7 set. Okay. All right, I've gone ahead and reviewed this
8 application. And I don't really have any issues with it.
9 I would agree with the Applicant's statement concerning
10 this modification as well as that of the Office of
11 Planning.

12 There is a letter from a member of the advisory
13 neighborhood commission. It is from a single-member
14 district but it's not from the whole ANC itself. However,
15 there is some support, it seems, for the modification.

16 I don't have a concern. I'm going to vote to
17 approve. Mr. Smith, do you have anything you'd like to
18 add?

19 MEMBER SMITH: I have nothing to add.

20 BZA CHAIR HILL: Commissioner Stidham, do you
21 have anything you'd like to add?

22 MEMBER STIDHAM: No, sir.

23 BZA CHAIR HILL: Okay, I'm going to make a
24 motion to approve Application No. 20927A, as in Apple, and
25 ask for a second. Mr. Smith?

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1 MEMBER SMITH: Second.

2 BZA CHAIR HILL: Motion made and seconded. Mr.
3 Moy, will you take a roll call, please?

4 SECRETARY MOY: When I call your name, if
5 you'll please respond to the motion made by Chairman Hill
6 to approve the application for the relief requested for
7 motion to approve as seconded by Mr. Smith. Zoning
8 Commissioner Stidham?

9 MEMBER STIDHAM: Yes.

10 SECRETARY MOY: Mr. Smith?

11 MEMBER SMITH: Approve.

12 SECRETARY MOY: Chairman Hill?

13 BZA CHAIR HILL: Yes.

14 SECRETARY MOY: We have two others not
15 participating. Staff would record the vote as 3-0-2. And
16 this is on the motion made by Chairman Hill to approve.
17 Motion to approve was seconded by Mr. Smith. Voting to
18 approve the application is Zoning Commissioner Stidham,
19 Mr. Smith and Chairman Hill. Motion carries on a vote of
20 3-0-2.

21 BZA CHAIR HILL: Okay, thank you, Mr. Moy. Can
22 you comment on the next one, please?

23 SECRETARY MOY: The next case is Application
24 No. 19897C of Coloma River Capital. This is a request
25 pursuant to Subtitle Y, Section 7034, Modification of

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1 Consequence of the plans approved in 19897. The order was
2 issued March 4th, 2019.

3 Property located in the MU-4 zone at 5501 1st
4 Street, N.W. (Square 3389, Lot 138). Thank you.

5 BZA CHAIR HILL: Okay, great. Thank you. I
6 reviewed the record and I was not -- nothing came to mind
7 in terms of concerns about this modification. I would
8 agree with the analysis that are provided by the Office of
9 Planning as well as the, I believe, the thorough report,
10 thank you, of the ANC and agree with the argument that the
11 Applicant has made and vote to approve.

12 Mr. Smith, do you have anything you'd like to
13 add?

14 MEMBER SMITH: Nothing to add.

15 BZA CHAIR HILL: Thank you. Commissioner
16 Stidham?

17 MEMBER STIDHAM: Nothing from me either, sir.

18 BZA CHAIR HILL: Thank you. I'm going to go
19 ahead and make a motion to approve Application No. 19897C
20 and ask for a second. Mr. Smith?

21 MEMBER SMITH: Second.

22 BZA CHAIR HILL: The motion has been made --

23 SECRETARY MOY: Mr. Chairman?

24 MS. DEMARE: Mr. Chairman?

25 BZA CHAIR HILL: Yeah, yeah, yeah, okay, that's

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1 fine.

2 SECRETARY MOY: Did you read my text? Thank
3 you.

4 BZA CHAIR HILL: Yeah. Oh, my gosh, I can't
5 believe this is going to happen that fast. Okay, so this
6 is what is -- this is what's bad about having -- this is
7 what's bad about having a long hearing before trying to
8 take a break to go to the restroom and trying to go
9 through the meeting docket in an efficient manner.

10 This order has expired. Is that correct, Ms.
11 Bajaj?

12 MS. DEMARE: Sorry, it's Attorney Demare that's
13 on the case and --

14 BZA CHAIR HILL: Oh, sorry --

15 MS. DEMARE: -- yes, that order has expired.

16 BZA CHAIR HILL: -- Ms. Demare. So this is --
17 so Mr. Moy, I appreciate the staff and I guess it's
18 something that one could make sure that I don't do what
19 was about to happen. I'm a little -- I want to make sure
20 I don't do it again, right.

21 And I, you know, we were going -- and I
22 appreciate that you caught us. I mean, the Office of
23 Planning has given their analysis concerning this
24 modification. And I have read the record. And
25 unfortunately, I, in going through this in a quick manner,

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1 forgot that this one had expired.

2 I don't think we can do -- I mean, I know for a
3 fact that we can't do anything on an expired order. They
4 have to come back again, okay. And so, you know, I -- and
5 I know that my colleagues will agree with me, and I
6 apologize for moving quickly through this.

7 So I'm -- I don't even think this is something
8 that can be decided before us and it's something that I
9 think we should dismiss. Or if Ms. Demare or someone else
10 thinks that we need to make a decision in denial -- I
11 don't think we can make a decision in denial. It's
12 something that's not before us.

13 So Ms. -- unless my fellow board members have
14 any issues, I'm going to make a motion to dismiss
15 Application No. 19897C, as in Charlie, because the
16 underlying order has expired. And that's kind of what I -
17 - where I am kind of. I don't know. Mr. Smith -- I'm
18 going to have a little discussion here -- Mr. Smith, if
19 you have thoughts about this.

20 MEMBER SMITH: You're right, you know, as far
21 as for to push through. I agree with your position on it.
22 The order has expired. The order has expired and we can't
23 extend an order that's already expired, so, I mean, in
24 accordance with the regulations. So I do agree with your
25 motion to dismiss this --

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1 BZA CHAIR HILL: Well, you know, it's so funny
2 -- and I'll do this also. I don't want to -- I love what
3 Mr. Moy had said, out of an abundance of caution is a long
4 time. So out of an abundance of caution, I'm just going
5 to push this off for another week, okay, and see if the
6 Applicant -- I don't even know what they can or can't do.

7 And so I don't want to -- I want to wait until
8 we get the Board back again, right. I want to take a look
9 at this again and see whether or not this is something
10 that should be voted upon, dismissed.

11 And I'm just going to let -- Mr. Moy, let's
12 just move this to 12-06, okay?

13 SECRETARY MOY: Okay.

14 BZA CHAIR HILL: Okay. Just till next week. I
15 just want to know what we are supposed to do with an
16 expired order. Okay. All right, and I again, apologize
17 for that haste. And I appreciate you, Mr. Smith, you also
18 falling on the sword with me as well, you know.

19 Okay, Commissioner Stidham, Mr. Smith, let's
20 take a break, okay, and we'll come back for our cases.
21 Thank you.

22 (Whereupon, the above-entitled matter went off
23 the record at 12:05 p.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 ZC

Date: 11-29-23

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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