

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

NOVEMBER 1, 2017

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Carlton Hart, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARLTON HART, Vice Chair  
LESYLLEÉ M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Commissioner  
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

CHRISTOPHER COHEN, ESQ.

The transcript constitutes the minutes from the Public Meeting held on November 1, 2017.

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

9:41 a.m.

1  
2  
3 VICE CHAIRPERSON HART: Good morning, the meeting  
4 will please come to order. Good morning, ladies and  
5 gentlemen. We are located in the Jerrily R. Kress Memorial  
6 Hearing Room at 441 Fourth Street, NW. This is the November  
7 1, 2017 public decision meeting of the Board of Zoning  
8 Adjustment of the District of Columbia.

9 My name is Carlton Hart, Vice Chairperson.  
10 Joining me today is Lesyllee White, Board Member, and  
11 representing the Zoning Commission is Rob Miller for the  
12 first case and Peter May for the second case.

13 Copies of today's meeting agenda are available to  
14 you and are located in the wall bin near the door to my left.  
15 We do not take any public testimony at our meeting, unless  
16 the Board asks someone to come forward.

17 Please be advised that this proceeding is being  
18 recorded by a court reporter and is also webcast live.  
19 Accordingly, we must ask you to refrain from any disruptive  
20 noises or actions in the hearing room. Please turn off all  
21 beepers and cellphones.

22 And with that, Mr. Secretary, do you have any  
23 preliminary matters?

24 MR. MOY: Good morning, Mr. Chairman and members  
25 of the Board. I do, but I want to hold those in reserve for

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1 the cases in the public hearing session. So I think, Mr.  
2 Chair, you can move forward with the two cases for decision  
3 in the meeting session this morning.

4 VICE CHAIRPERSON HART: Thank you, Mr. Secretary.  
5 Can you call the first case, please?

6 MR. MOY: All right, that would be Application No.  
7 18878 of Alba 12th Street, LLC. And as the Board is aware,  
8 this is a remand of this application. Let's see, if you'll  
9 recall, the Board issued, approved and issued a procedural  
10 order on September 20, 2017, which included a request from  
11 the Office of Planning to submit a report. And that is in  
12 the record file.

13 The Board also allowed responses to the OP report  
14 from the applicant and the adjacent property owner, which is  
15 1101 K Street, Acquisitions, LLC, and the ANC. The former  
16 two that I've just mentioned have filed their responses, and  
17 that's in the record file, Mr. Chairman.

18 VICE CHAIRPERSON HART: Thank you very much, Mr.  
19 Secretary. Is the Board ready to deliberate?

20 MEMBER WHITE: Yes.

21 VICE CHAIRPERSON HART: Okay, and I'll start off  
22 with my thoughts on the case. This case, 18878, Alba Street,  
23 12th Street, has been, as the Secretary said, been remanded  
24 back to us from the DC Court of Appeals. This case was  
25 really focused around, or what was remanded back to us, was

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1 focused around one specific aspect of the case, and that was  
2 having to deal with the third prong of the variance test.

3 And the third prong really has to do with, the DC  
4 Court of Appeals noted that the Board had not sufficiently  
5 addressed whether the appeal would have substantial detriment  
6 to the public good.

7 And so our, what we were really looking to do was  
8 to determine whether or not there, to find some more  
9 information and flesh that out a little further and make that  
10 determination whether or not that we felt that it actually  
11 did meet the detriment to the public good prong.

12 And after reviewing the files, which included the  
13 OP response, the Office of Planning responded in Exhibit 51.  
14 I believe, having read the Office of Planning's response, the  
15 response from the applicant, or excuse me, the appellant,  
16 which was Exhibit 57, I felt that the Office of Planning  
17 provided us sufficient information for us to be able to find  
18 that the third prong was actually met.

19 The DCCA, the DC Court of Appeals, noted that the  
20 remand, which in summary noted that the remand and the third  
21 prong, which in summary is to see if the project would be  
22 detrimental to the public good, was met. And the Office of  
23 Planning explained this in their evaluation.

24 And they noted that while there are impacts to the  
25 building to the west or south, the appellant's building, that

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1 they would not pose an undue or substantial detriment to the  
2 context of the overall impact on the light and views  
3 available to the K Street property.

4 And then this is particularly compared to the  
5 impacts on these conditions that would result from a by right  
6 development. And really what they're saying is that the  
7 building that was approved by the BZA in this case would have  
8 had very similar impacts as the impacts by a matter of right  
9 development.

10 And the appellant actually noted in their report  
11 that there would be a cost to them if the variance was  
12 allowed to proceed. And while I understand that there would  
13 be a cost, I also felt that, or reading through the  
14 information, it struck me that there would be a cost to them  
15 regardless if it were a matter of right development or a  
16 variance.

17 And so all this being said, I think what I've come  
18 to is that the Office of Planning has provided us with  
19 sufficient information for me to be able to support the third  
20 prong of the variance. And with that, I guess I'll open it  
21 up to my colleagues.

22 MEMBER WHITE: Okay, thanks, Mr. Vice-Chair. I'll  
23 give my comments. There are some similarities, but I'll  
24 share what I looked at. Obviously, you have to look very  
25 closely at the record, and you have to really look very

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1 closely at the variance test, which is a much higher standard  
2 than, you know, seeking a special exception.

3 But in this case, the request was to allow the  
4 construction of an office building in the DD/C2C district  
5 that was located at 1017 12th Street. The District Court of  
6 Appeals, you know, remanded the case, as Mr. Hart shared, in  
7 April. And they issued an opinion of, and judgment  
8 affirming, the Board's conclusions regarding the first and  
9 the second prongs of the variance test, as well as the  
10 Board's finding that the approval would not be detrimental  
11 to the zone plan.

12 But their opinion found that the Board really  
13 didn't sufficiently address whether or not the approval would  
14 have had a substantial detriment on the public good. And  
15 that's really the prong that we have to pay particular  
16 attention to with respect to this case that was remanded back  
17 from the Court of Appeals.

18 So specifically, looking at the complaints that  
19 the applicant's proposed project would obstruct some of the  
20 windows that were located in the building 1101 K Street,  
21 after reviewing the record, including the OP's supplemental  
22 report that was dated October 4, 2017 and the response  
23 submitted by the applicant dated October 27 responding to  
24 OP's report, which could be found at Exhibit 51, and the  
25 response that was a supplemental response regarding OP's

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1 analysis of the rear yard variance on 1101 K Street, NW.

2           Looking at DCRA's advice that since the windows  
3 already exist on Lot B, DCRA would not be required -- require  
4 the closing of any of the existing windows. And under the  
5 existing conditions, none or 0% of those windows on Lot B are  
6 required to be covered.

7           The other question that was raised was whether,  
8 is what impact would the variance have on the light and the  
9 view that would be available to 1101 K Street property.

10           So reviewing the record, the Office of Planning's  
11 report, which you give great weight to, but the greatest  
12 weight you give to are the prongs within the variance test,  
13 I agree with OP's assessment that based on the standards  
14 established for evaluating a variance request, that the  
15 proposed project would not pose an undue or substantial  
16 detriment on the light and the views available to the K  
17 Street property.

18           The matter of right proposed project would have  
19 nearly the same amount of impact. And what I looked at last  
20 night particularly were the sun studies that were in the  
21 record as well. There would be some impact in the summer  
22 afternoons, but I just didn't see that there would be a  
23 substantial undue impact on the public good looking at the  
24 third prong.

25           So the construction of the larger building under

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1 the approved variance scenario, I found that the analysis  
2 from OP and their supplemental filing to be quite persuasive  
3 on the prong dealing with whether or not there was a  
4 detriment to the public good. So on remand, Mr. Chair, I  
5 would also grant the variance relief.

6 VICE CHAIRPERSON HART: Mr. Miller.

7 MR. MILLER: Thank you, Mr. Vice-Chairman, and  
8 thank you, colleagues, for your very thorough analysis, which  
9 I agree with. I spent a good part of yesterday looking at  
10 the record of the hearing that we each sat on for the remand  
11 and the original hearing that none of us sat on three years  
12 ago. Three years ago, that just shows you something's wrong  
13 here.

14 So but I, the Court did find that we had, in the  
15 Board's original decision, had met the first two prongs, the  
16 exceptional or unique situation, very small lot, leading to  
17 a practical difficulty. But did want us to explore the  
18 substantial detriment to the public good and the impact on  
19 the neighbor.

20 And I think that the analysis that we did get from  
21 the Office of Planning, as you each have stated, was  
22 persuasive in showing that a matter of right project would  
23 not be that much significantly different in terms of the  
24 impact on the adjacent property. So I think this is a good  
25 project, and I think it's time to move forward, and I agree

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1 with your analysis.

2 VICE CHAIRPERSON HART: Okay, so hearing that, I  
3 guess I should be, I think we're kind of in agreement, it  
4 sounds like, through the discussion we've had that I would  
5 then move to approve Application No. 1959 -- excuse me, I'm  
6 reading the wrong one. Approve Application No. 18878 of Alba  
7 12th Street, LLC, as read by the Secretary. Do I have a  
8 second?

9 MEMBER WHITE: Second.

10 VICE CHAIRPERSON HART: All in favor of the  
11 motion, say aye.

12 (Chorus of ayes.)

13 VICE CHAIRPERSON HART: Any opposed? The motion  
14 carries. Mr. Secretary.

15 MR. MOY: Our staff would record the vote as three  
16 to zero to two. This is on your motion, Vice-Chair Hart, to  
17 approve the application. I second the motion, Ms. White also  
18 in support, Mr. Rob Miller. We have a member not  
19 participating, we have a Board seat vacant. The motion  
20 carries, three to zero to two.

21 VICE CHAIRPERSON HART: Thank you, Mr. Secretary.  
22 I think we should take a two-minute break while we change out  
23 the Zoning Commission members.

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

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1           VICE CHAIRPERSON HART: Welcome, Mr. May. It's  
2 okay. Mr. Secretary, could you read the next case, please.

3           MR. MOY: Yes, thank you. The next and final case  
4 for decisionmaking is an expedited review case, Application  
5 No. 19596 of Richard and Allison Sedwick as captioned  
6 advertised for special exception relief under Subtitle D,  
7 Section 5201 from the lot occupancy requirements of Subtitle  
8 D, Section 304.1 to construct a rear screened porch addition  
9 to an existing one-family dwelling.

10           This is in a R-3 Zone at premises 3931 Benton St.,  
11 N.W., Square 1810, Lot 136.

12           VICE CHAIRPERSON HART: Thank you, Mr. Secretary.  
13 Are the Board members ready to deliberate? Okay. This case  
14 I thought was actually fairly straightforward. And this is  
15 looking to construct a rear screened porch addition to an  
16 existing one-family dwelling in an R-3 zone.

17           The Office of Planning has submitted a report and  
18 they are in approval of the application of the relief  
19 requested. The ANC 3B has also submitted a report in Exhibit  
20 35. The Office of Planning's report is Exhibit 34. ANC 3B  
21 also recommends approval of the project, of the application  
22 by a vote of five to zero. And there are no letters in  
23 either support or opposition to the case.

24           I, again, felt that the, I agree with the OP  
25 report that the applicant has met the criteria for relief,

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1 and I thought that we, I would be voting for approval of the  
2 application as it's been submitted. And if you have any  
3 thoughts for?

4 MEMBER WHITE: I agree with your assessment, Mr.  
5 Chair. I think that the most important thing is that, you  
6 know, in looking at the criteria that has to be met for a  
7 special exception relief, I felt based upon review of the  
8 record that each one of the criteria had been met, and that  
9 there had been sufficient input from OP and the ANC for that  
10 area to merit granting the application.

11 VICE CHAIRPERSON HART: And, okay so hearing,  
12 seems like we're all in agreement, I'd like to, I would make  
13 a motion to approve Application 19596 of Richard and Allison  
14 Sedwick. Do I have a second?

15 MEMBER MAY: Second.

16 VICE CHAIRPERSON HART: All those in favor of the  
17 application say aye.

18 (Chorus of ayes.)

19 VICE CHAIRPERSON HART: Any opposed? Mr. Chair,  
20 it seems like we've agreed to move this forward.

21 MR. MOY: Yes, our staff would record the vote as  
22 three to zero to two. This is on your motion, Vice-Chair  
23 Hart, to approve the application for the relief requested.  
24 Second the motion Mr. Peter May. Also in support, Ms. White.  
25 We have a member not participating and a Board seat vacant.

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1 The motion carries.

2 VICE CHAIRPERSON HART: Summary order?

3 MR. MOY: Yes, thank you.

4 VICE CHAIRPERSON HART: And with that, I think  
5 we'll take a one-minute break so we can have a few more seat  
6 changes. So if you bear with us for a minute, we will be  
7 back by 10:05. Thank you.

8 (Whereupon, the above-entitled matter went off the  
9 record at 10:01 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: 11-01-17

Place: Washington, DC

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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Court Reporter

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