

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY
NOVEMBER 29, 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., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK HILL, Chair
- CARLTON HART, Vice Chair
- LESYLLEÉ M. WHITE, Board Member

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

The transcript constitutes the minutes from the Public Meeting held on November 29, 2017.

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Adjourn 17

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

(9:42 A.M.)

1
2
3 CHAIRMAN HILL: Okay, the hearing will please come
4 to order. Good morning, ladies and gentlemen. We're located
5 in the Jerrily R. Kress Memorial Hearing Room at 441 4th
6 Street, N.W. This is a November 29, 2017 public hearing of
7 the Board of Zoning Adjustment of the District of Columbia.
8 My name is Fred Hill, Chairperson. Joining me today is
9 Carlton Hart, Vice Chairperson; Leysleey White; Board Member;
10 and representing the Zoning Commission will be Peter Shapiro.

11 Copies of today's hearing agenda are available to
12 you and are located in the wall bin near the door. Please
13 be advised that this proceeding is being recorded by a court
14 reporter and is also webcast live. Accordingly, we must ask
15 you to refrain from any disruptive noises or actions in the
16 hearing room. When presenting information to the Board,
17 please turn on, and speak into the microphone, first stating
18 your name and home address. When you're finished speaking,
19 please turn your microphone off so that your microphone is
20 no longer picking up sound or background noise.

21 All persons planning to testify either in favor or
22 in opposite must have raised their hand and been sworn in by
23 the Secretary. Also, each witness must fill out two witness
24 cards. These cards are located on the table near the door,
25 and on the witness stand. Upon coming forward to speak to

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1 the Board, please give both cards to the reporter sitting at
2 the table to my right. If you wish to file written testimony
3 or additional supporting documents today, please submit one
4 original and 12 copies to the Secretary for distribution.
5 If you do not have the requisite number of copies, you can
6 reproduce copies on an office printer in the Office of Zoning
7 located across the hall.

8 The order of procedures for special exceptions and
9 various, as well as appeals, are also located in the bin as
10 you enter the room.

11 The record shall be closed at the conclusion of
12 each case except for any material specifically requested by
13 the Board. The Board and the staff will specify at the end
14 of the hearing exactly what is expected and the date when the
15 persons must submit the evidence to the Office of Zoning.
16 After the record is recorded, no other information shall be
17 accepted by the Board.

18 The District of Columbia Administrative Procedures
19 Act requires that the public hearing on each case be held in
20 the open before the public pursuant to Section 405(b) and 406
21 of that act. The Board may, consistent with its rules of
22 procedures and the act, enter into a closed meeting on a case
23 where persons seeking legal counsel on a case pursuant to
24 D.C. Official Code Section 2-575(b)(4) and/or deliberating
25 on a case pursuant to D.C. Official Code Section 2-

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1 575(b)(13), but only after providing the necessary public
2 notice and in the case of an emergency, a closed meeting
3 after taking a roll call vote.

4 The decision of the Board in cases must be based
5 exclusively on the record, so to avoid any appearance to the
6 contrary, the Board requests that persons present not engage
7 the members of the Board in conversation. Please turn off
8 all beepers and cell phones at this time so as to not disrupt
9 these proceedings.

10 Preliminary matters are those which relate to
11 whether a case will or should be heard today, such as
12 requests for postponement, continuance, or withdrawal,
13 whether proper and adequate notice of the hearing has been
14 given. If you're not prepared to go forward with the case
15 today, or if you believe that the Board should not proceed,
16 now is the time to raise such a matter.

17 Mr. Secretary, do we have any preliminary matters?

18 SECRETARY MOY: Good morning, Mr. Chairman, and
19 members of the Board. I do have a few announcements, related
20 to the case applications on today's docket or in this case
21 will not be on today's docket.

22 There are five cases that have been removed from
23 today's docket, rescheduled to a future date. The first
24 Appeal No. 19632 of AMT-Varnum, LLC, postponed, rescheduled
25 to December 13, 2017. Two cases rescheduled to January 17,

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1 2018. These cases are Application Numbers 19635 of HJB
2 Properties, LLC and 19636 of Scott Yurcheshen, Y-U-R-C-H-E-S-
3 H-E-N. Finally, the final two cases have been rescheduled
4 to February 28, 2018. This is Appeal No. 19613 of B Monroe
5 Ventures, LLC and Application 19614 of B Monroe Ventures,
6 LLC. That's it from the staff, Mr. Chairman.

7 Oh, yes, okay, and finally, I was going to do this
8 when got to the last case.

9 CHAIRMAN HILL: Let's do it then.

10 SECRETARY MOY: Okay.

11 CHAIRMAN HILL: Yes, let's do it then.

12 SECRETARY MOY: Okay.

13 CHAIRMAN HILL: All right, so if everyone --
14 whoever is going to testify, if you could please stand and
15 take the oath that's going to be administered by the
16 Secretary to my left.

17 SECRETARY MOY: Good morning. Do you solemnly
18 swear or affirm that the testimony you're about the present
19 in this proceeding is the truth, the whole truth, and nothing
20 but the truth? Ladies and gentlemen, you may consider
21 yourselves under oath.

22 (Witnesses sworn.)

23 CHAIRMAN HILL: Okay, great. Well, welcome,
24 everybody. Just to let you know the order in which we're
25 going to go in, we are actually going to follow the agenda

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1 for both the decision cases as well as the hearing cases and
2 I think it's not going to be as long a day as I thought it
3 was going to be, but it's still probably going to be a long
4 day.

5 Mr. Moy, whenever you're ready, I guess you can
6 call the first case.

7 SECRETARY MOY: Yes. First case for decision on
8 the Board is Application No. 19558 of 1240 Mount Olivet Road,
9 LLC. This application was captioned and advertised for a
10 special exception under Subtitle C, Section 703 from the
11 minimum parking number requirements of Subtitle C, Section
12 701.5. This would construct a self-storage facility in the
13 PDR-1 Zone at premises 1240 Mount Olivet Road, N.E., Square
14 4092, Lot PAR, P-A-R, 141/79. This was last heard -- there
15 were two hearing dates, October 4th and November 8th of 2017.
16 And their post-hearing documents I believe have been filed
17 into the record, Mr. Chairman, primarily, I believe, the
18 Applicant's response to the ANC report under Exhibit 60.

19 CHAIRMAN HILL: Okay, great. Thank you. Is the
20 Board ready to deliberate? Okay, I also just want to
21 apologize. I'm a little sick today, so you guys just kind
22 of keep your distance and you all stay down there.

23 Okay, let's see, so we had a pretty full hearing on
24 this issue and this application. And there were a number of
25 issues that the ANC had actually brought up concerning this

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1 application and the project. I thought that the issues that
2 the ANC brought up primarily seemed to be again just on the
3 concept of a storage facility on the whole, and not so much
4 as to the particulars of the special exception that was being
5 requested for the parking. However, they did have some
6 issues concerning traffic.

7 I thought that the Applicant did do a good job in
8 terms of their presentation as to how they met the criteria
9 to approve the special exception. Again, I think that the
10 storage facility being there is more -- that is kind of where
11 the storage facilities in terms of a matter of right issue.
12 And so it was more kind of what I was focused on was again
13 kind of the parking and how that was going to be addressed.

14 I also thought that the analysis that was provided
15 by the Office of Planning was also one that I was able to
16 follow along with and also the Office of Planning then was
17 recommending their support and as to how the criteria was
18 being met.

19 So again, I am always disappointed when the ANC is
20 not on the same page as the Applicants are, but in this case
21 I thought that I was going to have to go with the criteria
22 that was put forth in the application and I will be voting
23 to approve.

24 Does anyone else have any comments?

25 MEMBER WHITE: I can add some comments, Mr. Chair.

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1 I'm pretty much in sync with your comments. So under
2 Subtitle C, 701.5, the minimum parking requirements for this
3 type of facility is 22 spaces. And so the Applicant was
4 proposing to provide 4 spaces when the 22 parking spaces are
5 required, so the 4 spaces to tandem sections for those 4
6 spaces.

7 So this particular PDR, this zone is heavily
8 industrial in this Ward 4 zone. I mean I was obviously very
9 sympathetic to the concerns of the neighbors in terms of
10 building an additional storage facility in that area.
11 Neighbors are often looking for things that will benefit them
12 as neighbors when there are not other types of retail or
13 businesses in their area. So I was sympathetic to that
14 particular concern. And also looked at the ANC's concerns
15 with respect to some of the issues that Chairman Hill
16 mentioned including trash and the number of storage
17 facilities in that area.

18 But in looking at the special exception relief
19 pursuit to 703.2, and some of this was outlined in OP's
20 report, essentially the BZA, after looking at the criteria
21 and the facts, has the ability to grant a full or partial
22 reduction in the number of parking, required parking spaces
23 if certain criteria, at least one of those criteria within
24 that section are met. So there were a number of those
25 subsections that I believe were met under that section.

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1 There's some obvious and physical constraints to
2 the particular property that made it challenging for them to
3 be able to do that large number of spaces. There is some
4 options in terms of mass transit in that area and it also
5 sounds like they're willing to agree to some of the
6 conditions that were voiced by the ANC and others, that is,
7 to add bicycle facilities, primarily I would imagine for
8 employees to be able to come in and out.

9 I imagine for a storage facility, for the most part
10 you're going to have cars. You're not going to have people
11 bringing storage items on bikes. But I think for this
12 particular case, I think that they met the strict criteria
13 under that particular section, Mr. Chairman.

14 VICE CHAIR HART: Mr. Chairman, I also believe that
15 the Applicant provided sufficient information in their plans,
16 drawings, and etcetera, demonstrating how it meets the
17 criteria to approve the relief including Exhibit 47A which
18 is the Comprehensive Transportation Report; Exhibit 60 which
19 is the Applicant's response to the ANC Report; and also
20 Exhibit 54 which is the Applicant's PowerPoint presentation
21 that provides plans and drawings showing where the parking
22 and loading areas will be located. I also appreciate hearing
23 testimony from the Applicant regarding the parking on the
24 street that is available.

25 Finally, I also understand that the ANC had a

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1 number of concerns and it also seemed to me that their
2 concerns were primarily about too many storage facilities in
3 the neighborhood, in general, and while I understand that
4 concern, I think that that was a little bit outside of the
5 area that the Applicant was coming in for.

6 I do think that the project that the Applicant had
7 submitted will be in harmony with the general purpose and
8 intent of the zoning regulations and that it will not tend
9 to adversely affect the use of neighboring property as it is
10 a use that is allowed in the PDR 1 zoning district. And with
11 that, I would be supportive of the application.

12 CHAIRMAN HILL: Okay. Thank you. The other, I
13 guess, that I was swayed by was the conclusion that was
14 provided by the most recent exhibit from the Applicant's
15 counsel in November, Exhibit 60, their November 15th letter.
16 I thought the conclusion was something that I found
17 supporting.

18 So there was also two conditions: one, that the
19 Applicant shall provide one short term bicycle parking space;
20 and the other, the Applicant shall provide a total of four
21 indoor secure long term bicycle parking spaces which they
22 agreed to at the hearing.

23 So with that, I'm going to go ahead and make a
24 motion to approve Application No. 19558, as read by the
25 Secretary.

1 VICE CHAIR HART: And including the conditions?

2 CHAIRMAN HILL: Thank you, and including the
3 conditions as I read. Yes, please.

4 VICE CHAIR HART: Seconded.

5 CHAIRMAN HILL: The motion has been made and
6 seconded. All those in favor.

7 (Chorus of ayes.)

8 All those opposed?

9 (No response.)

10 The motion passes. Mr. Moy?

11 SECRETARY MOY: Thank you, Mr. Chairman. Before I
12 read the final vote, I do have an absentee ballot from Mr.
13 Robert Miller, who was also participating on this case
14 application. And his absentee vote is to approve with such
15 conditions as the Board may impose. So that would give a
16 final vote of 4 to 0 to 1. This is on your motion, Mr.
17 Chairman, Chairman Hill, to approve the application with the
18 two conditions as you cited. Seconding the motion was Vice
19 Chair Hart. Also in support is Ms. White. And of course,
20 Mr. Miller. We have a board seat vacant. The motion
21 carries.

22 CHAIRMAN HILL: Thank you. Summary order, Mr. Moy?

23 SECRETARY MOY: Yes, thank you. The next decision
24 case is Application No. 19610 of Granite, LLC, captioned and
25 advertised for a variance relief from the penthouse

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1 regulations of Subtitle C, Section 1500.3(d). This would
2 permit the second floor of an existing two-story penthouse
3 to be used as habitable space. This is in the D-6 Zone at
4 premise 730 15th Street, N.W., Square 221, Lot 800 and 809.
5 This was last heard at the Board's hearing on November 8th.

6 CHAIRMAN HILL: Okay, thank you, Mr. Moy. Is the
7 Board ready to deliberate? Okay, I can start.

8 So again, we had a full hearing on this and I
9 suppose the only thing that I kind of struggled with a little
10 bit in terms of the relief was just, you know, if they just
11 could have just left it alone, what would happen. But I did
12 go over again how the variance was being supported in terms
13 of how the variance tests were being made. I mean I think
14 they did a good job of the Applicant of providing testimony
15 and the points in the record as to how they're meeting the
16 variance test.

17 I thought that some of the practical difficulty, I
18 suppose, was that you know, if they don't need the space any
19 more in terms of the mechanical and so they'd have to
20 maintain that space and so I did see the connection between
21 how the uniqueness in terms of also the connection with that
22 and the practical difficulty and also the fact that it's --
23 they would be unable to -- they would be unable to tear it
24 down if they wanted to because of the historic nature of the
25 property.

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1 I thought that the post-hearing report that we
2 asked for in terms of Exhibit 40 that outlined a little bit
3 more how they were meeting the variance test provided a
4 little bit more clarity to me in terms of again the standard.
5 So I am comfortable approving this in the way that they have
6 set forth their argument.

7 Further discussion of the Board?

8 MEMBER WHITE: Yes, Mr. Chair, I agree, and not to
9 be repetitive, but this is a variance request, so the
10 standards for meeting that are much higher than a special
11 exception. And this was really to prevent a second floor off
12 the existing two-story penthouse to be used as a habitable
13 space in the D-6 zone at premises 730 15th Street, N.W.

14 After hearing the testimony and reviewing the
15 record, taking into consideration the criteria for area
16 variance, looking at Subtitle C, 1500.3(d) to allow use of
17 a second floor of an existing two-story penthouse at the
18 office building in this particular zone that would be used
19 as a communal rooftop area, I think that the criteria was met
20 in this particular situation.

21 I believe that the Applicant does meet the tests
22 and was providing factual information that supported the case
23 that this was an exceptional situation in terms of not
24 needing that space because they've basically revamped their
25 systems that don't require as much space in that penthouse.

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1 So if they did not request this relief, they would basically
2 just have a lot of -- a large amount of empty space that
3 would continue to go unused and the tenants in that building
4 would not be able to utilize that as a communal system.

5 But basically, the larger space was originally
6 sized to accommodate this large system that was used for
7 their water tank, their fans, and other type systems. So I
8 think there was a practical difficulty proven in this case
9 in relation to the facts of not being able to utilize that
10 space without granting the relief and that it would be a
11 substantial detriment to the owners of that -- there would
12 be no substantial detriment to the public good, to the
13 individuals in that area if we were to grant that relief.

14 One of the questions I had because it's so close to
15 the White House is that I wanted to make sure that Secret
16 Service had signed off on it and I'm comfortable that they
17 are comfortable with the fact that that space is going to be
18 a communal space. So with that, I would be supportive of the
19 area variance relief that the Applicant is requesting.

20 CHAIRMAN HILL: Yes, and I guess I just want to
21 mention before making a motion that again, as each case is
22 done on a case-by-case basis, in this particular instance I
23 thought it was impractical to maintain that that was not
24 needed. I don't know if I've be able to do that every time,
25 but I thought that in this case it warranted that.

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1 I'll go ahead and make a motion to approve
2 Application 19610, as read by the Secretary, and ask for a
3 second.

4 MEMBER WHITE: Second.

5 CHAIRMAN HILL: Motion made and seconded. All
6 those in favor?

7 (A chorus of ayes.)

8 All those opposed?

9 (No response.)

10 The motion passes. Mr. Moy?

11 SECRETARY MOY: Excuse me and thank you, Mr.
12 Chairman. Before I read the final vote, I do have an
13 absentee ballot from a participating member and this is from
14 Mr. Michael Turnbull. And his absentee vote is to approve
15 the application with such conditions as the Board may impose.
16 Of course, there was none in this case. So that will give
17 a final tally of 4 to 0 to 1. This is on the motion of
18 Chairman Hill to approve the application, for the relief
19 being requested. Seconding the motion, Ms. White also
20 supports. Vice Chair Hart and of course, Mr. Turnbull, we
21 have a Board seat vacant. Motion carries.

22 CHAIRMAN HILL: Will you do a summary order, Mr.
23 Moy?

24 SECRETARY MOY: Yes, sir.

25 CHAIRMAN HILL: Thank you.

1 SECRETARY MOY: Finally, Mr. Chairman, we have --
2 I don't have a quorum for the next decision case and that's
3 Application No. 19564 of Tammika Thompson. There's only
4 three, in this case, voting members. Staff would suggest
5 that we, the Board, delay its decision to a future date.

6 CHAIRMAN HILL: Okay, I think Chairman Hood is on
7 that one, correct, Mr. Moy?

8 SECRETARY MOY: That's correct, sir.

9 CHAIRMAN HILL: So I think he's going to be back
10 with us on the 20th.

11 SECRETARY MOY: That's correct.

12 CHAIRMAN HILL: And I think also he was interested
13 in participating during the deliberations, so why don't we
14 go ahead and put it on the 20th?

15 SECRETARY MOY: Okay, done. Thank you, Mr.
16 Chairman.

17 CHAIRMAN HILL: Thank you. And I guess that's the
18 end of our meeting cases, correct, Mr. Moy?

19 SECRETARY MOY: Yes, sir.

20 CHAIRMAN HILL: We can invite Commissioner Shapiro
21 up.

22 (Whereupon, the above-entitled matter went off the
23 record at 10:06 a.m.)
24
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 Meeting

Before: DC BZA

Date: 11-29-17

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.



Court Reporter

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