

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 20, 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 L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on December 20, 2017.

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

9:48 a.m.

CHAIRPERSON HILL: All right. The hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest.

This is the December 20 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chairperson; Lesylleé White, Board Member; and representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to you and located in the will bin near the door. Please be advised that this proceeding is being recorded by a recorder -- by a court reporter. And is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board please turn on and speak into the microphone, first stating your name and home address.

When you're finished speaking, please turn off your microphone so that your microphone is no longer picking up sound or background noise. All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the secretary.

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1           Also, each witness must fill out two witness  
2 cards. These cards are located on the table near the door  
3 and on the witness table. Upon coming forward to speak to  
4 the Board, please give both cards to the reporter sitting at  
5 the table to my right.

6           If you wish to file written testimony or  
7 additional supporting documents today, please submit one  
8 original and 12 copies to the Secretary for distribution.  
9 If you do not have the requisite number of copies, you can  
10 reproduce copies on an office printer in the Office of Zoning  
11 located across the hall.

12           The order of procedure for special exceptions,  
13 variances, and appeals, is also in the bin as you walk into  
14 the room. The record shall be closed at the conclusion of  
15 each case except for any materials specifically requested by  
16 the Board.

17           The Board and the staff will specify the end of  
18 the hearing, exactly what is expected, and the date when the  
19 person must submit the evidence to the Office of Zoning.  
20 After the record is closed, no other information shall be  
21 accepted by the Board.

22           The District of Columbia Administrative Procedures  
23 Act requires that the public hearing on each case be held in  
24 the open, before the public, pursuant to Section 405(b) and  
25 406 of that Act. The Board may consistent -- may, consisting

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1 with its Rules of Procedure and the Act, enter into a closed  
2 meeting on a case for purposes of seeking legal counsel on  
3 a case pursuant to D.C. Official Code, Section 2-575(b)(4),  
4 and/or deliberating on a case pursuant to D.C. Official Sec  
5 -- Official Code, Section 2-575(b)(13), but only after  
6 providing the necessary public notice and in the case of an  
7 emergency closed meeting, after taking a roll call vote.

8           The decision of the Board in cases must be based  
9 exclusively on the record. To avoid any appearance to the  
10 contrary, the Board requests that persons present not engage  
11 the members of the Board in conversation.

12           Please turn off beepers and cell phones at this  
13 time so as not to disrupt the proceedings. Preliminary  
14 matters are those which relate to whether a case will or  
15 should be heard today, such as a request for a postponement,  
16 continuance, or a withdrawal, or whether proper and adequate  
17 notice of the hearing has been given.

18           If you're not prepared to go forward with the case  
19 today, or if you believe that the Board should not proceed,  
20 now is the time to raise such a matter.

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

22           SECRETARY MOY: Good morning Mr. Chairman and  
23 members of the Board. I do have a very quick announcement  
24 with regards to today's docket.

25           There are two case applications that will not be

1 heard today. The first is Application Number 19508 of John  
2 Tekeste, T-E-K-E-S-T-E. This application has been withdrawn  
3 by the Applicant.

4 And second, Case Application Number 19659 of the  
5 Federation of State Medical Boards has been postponed,  
6 rescheduled to January 31, 2018.

7 And that's it from the staff Mr. Chair.

8 CHAIRPERSON HILL: Okay. Great, thank you. If  
9 anyone's here who wants to testify towards the -- with the  
10 Board, if you could please stand and take the oath, which is  
11 going to be administered by the secretary to my left.

12 SECRETARY MOY: Good morning. Do you solemnly  
13 swear or affirm that the testimony you are about to present  
14 in this proceeding is the truth, the whole truth, and nothing  
15 but the truth?

16 (Witnesses sworn.)

17 SECRETARY MOY: Well, ladies and gentlemen, you  
18 may consider yourselves under oath.

19 CHAIRPERSON HILL: All right, everybody. Sorry  
20 we got started a little late today. There were some issues  
21 that we had to work through.

22 So, just to let you guys know as far as the  
23 agenda, and how we're going to follow it. Normally we go  
24 through the decision cases first.

25 We're going to move one of the decision cases

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1 until later in the day, which is Appeal Number 19573. We're  
2 going to move that to later in the day.

3 So the first decision case is going to be 19564.  
4 After that, we'll go into our hearing docket. And those  
5 cases will be followed in the order in which they've been  
6 listed in the agenda.

7 SECRETARY MOY: I'm sorry, Mr. Chairman, we were  
8 --

9 CHAIRPERSON HILL: Sure. That's all right. So,  
10 what I had mentioned was that everything is basically the  
11 same order except for we're going to move one of the decision  
12 cases to later in the day.

13 SECRETARY MOY: Yes. I caught that.

14 CHAIRPERSON HILL: Which was Appeal Number 19573.  
15 So the first thing we're going to do is our decision case for  
16 19564.

17 And I might as well mention right now, I'm  
18 actually not on that case because I wasn't here for it. And  
19 I had it read into the record.

20 So, the Vice Chair is going to take over.

21 SECRETARY MOY: Very good. Thank you Mr. Chair.  
22 I'd like to read this into the record. This is Case  
23 Application Number 19564 of Tammika Thompson as amended for  
24 a special exception from the residential conversion  
25 requirements of Subtitle U, Section 320.2, including a waiver

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1 from the rear addition requirement of Subtitle U, Section  
2 320.2(e).

3 This would convert an existing one-family dwelling  
4 into a three-unit apartment house with a rear addition RF01  
5 Zone. That premise is 428 Randolph Street N.W., square 3236  
6 lot 69.

7 As you'll recall Mr. Chair, this was heard, let's  
8 see the -- let's see, the public hearing was on November 15,  
9 2017. And the Board delayed its decision from November 28  
10 to today, December 20.

11 And I think I'll leave it with you at this point.  
12 Thank you.

13 VICE CHAIR HART: Thank you Mr. Secretary. Are  
14 the Board members ready to discuss the case? I'll start.

15 So, we had a full discussion, a full hearing on  
16 this case, I guess it was last month. And after reviewing  
17 the full record and hearing the testimony from the  
18 Applicant's representatives and ANC 4C, I -- I would be  
19 supportive of the Applicants and that they have met the  
20 burden of proof.

21 I appreciated the Applicant for submitting  
22 additional views of the building from across the street. And  
23 that helped me understand what it would look like, you know,  
24 from the street frontage.

25 And I think that they -- that it's helpful to kind

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1 of see that. The Applicant has demonstrated how it meets the  
2 criteria set forth in the Zoning Regulation for a Subtitle  
3 U, Section 320.2 regarding the waiver for an additional --  
4 for an addition that is more than ten feet past the furthest  
5 rear wall on an adjacent property.

6 And I'll note that there is a letter in support  
7 from the adjacent property owner, which is Exhibit 35. The  
8 other adjacent property owner has not provided a letter  
9 either way. But the Applicant did note that they were not --  
10 not against this project.

11 I do believe that the project would meet the  
12 general special exception criteria as it would be in harmony  
13 with the general purpose and the intent of the Zoning Regs.  
14 And it would not tend to adversely affect the use of  
15 neighboring property.

16 And I know that the ANC has raised a question on  
17 this case and how it's related to another case. And that  
18 case -- excuse me, that BZA Order was 19418, which is a  
19 nearby house.

20 And I'll note that in that -- that the BZA does  
21 look at each case independently. As the conditions -- and  
22 I believe that the conditions are not the same in this case  
23 as it was in the previous case.

24 In this case I believe that the Applicant has met  
25 the burden of proof that was, I guess, outlined by the Office

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1 of Planning Report. And the ANC did raise their concerns and  
2 I did actually give great weight to both of the -- of the  
3 reports from the ANC as well as the Office of Planning.

4 But, in looking at it, I -- the Applicant is not  
5 looking for height relief. It's really just looking for this  
6 rear yard relief.

7 The neighbors on either side have either supported  
8 or not provided any information against the project. And for  
9 those reasons I could support the -- for the Application.

10 And there were some conditions that were in the  
11 ANC Report. And it seems like the Applicant and the ANC have  
12 come to an understanding about those conditions.

13 They had to do with pest abatement, parking spaces  
14 at the rear of the property, and lead testing conducted on  
15 the water lines. Some of that I didn't think was in the  
16 purview of the BZA.

17 But, actually most of it is not in the purview of  
18 the BZA or this Order. But, I just wanted to make sure that  
19 everybody was aware of it.

20 So, that's my view point.

21 MEMBER WHITE: Thanks Mr. Vice Chair. I'll add  
22 my comments. And I stayed up pretty late last night just  
23 kind of going through the criteria.

24 Because, you know, this is a special exception  
25 request from the residential conversion requirements of

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1 Subtitle U, Section 320.2. Including a waiver from the rear  
2 additional requirements to convert an existing one-family  
3 dwelling into a three-unit apartment house to allow a rear  
4 addition to extend beyond 31 feet.

5           And initially I did have, you know, some serious  
6 issues about the amount of feet that were going back for this  
7 particular development. So I had to really look closely at  
8 exactly what they were doing.

9           And one of the things that did cause me to be a  
10 little bit more open-minded about it was the fact that they  
11 made some adjustments. And that the ground level is 31 feet.

12           But they made some adjustments with the upper  
13 levels to bring it -- scale it back in towards 19 feet. The  
14 other thing that I looked at was the fact that this was a  
15 large rear yard. It was facing south.

16           So, the amount of blockage in terms of light and  
17 air that would result from that addition was somewhat  
18 limited. And so I looked closely at the Office of Planning's  
19 Report because in order to meet that criteria, you have to  
20 look at whether or not the light and air available to the  
21 neighboring properties shall be unduly affected.

22           Also, the privacy and the use and enjoyment of the  
23 neighboring properties shall not be unduly compromised. And  
24 third, the conversation and any associated additions is  
25 viewed from the street, alley, and other public way should

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1 not substantially visually intrude upon the character, scale,  
2 pattern of houses along the subject street and alley.

3 So, the first was the light and air. I think  
4 because they scaled the project back in, I think they were  
5 able to meet that particular criteria.

6 The privacy and use and enjoyment of the  
7 neighboring property shall not be unduly compromised. There  
8 was quite a bit of support from some of the neighboring  
9 properties in that area that were in support of it.

10 But, the one caveat was that the ANC was not. So,  
11 typically we give great weight when the ANC weighs in on  
12 these particular cases.

13 And I can appreciate the comments that they made.  
14 One of the concerns was that the project would have an impact  
15 on the look and feel of that particular block.

16 From the front I think there's some limited  
17 impact. Obviously it's a rear addition. But I think with  
18 the fact that they're pulling back on it a bit, I think they  
19 were able to meet that criteria.

20 So, obviously we always look at ANC's positions.  
21 And I did take a hard look at this because I know the rear  
22 additions and the "pop up" issue is a very big issue here in  
23 the city.

24 But, with the neighboring support as well as the  
25 support from the adjacent owner, as well as the fact that

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1 this is a very large lot in the rear, and they're pulling  
2 back on those upper floor additions, I believe that there  
3 would be limitations on -- on the light and air impact.

4 So, Mr. Vice Chair, I would be in support of the  
5 Application in this particular case.

6 CHAIRPERSON HOOD: Mr. Vice Chair, I don't have  
7 a whole lot to add. But typically these type of cases, I am  
8 typically -- I have a hard time with a lot of conversations  
9 in the city.

10 Because, as I believe the ANC was alluding to, it  
11 changes the character of the neighborhood. And in this case  
12 because of what they're -- what this particular Applicant is  
13 trying to accomplish here, I think also gave me reason to  
14 move in a fashion of approving this.

15 And I can tell you, it's hard for me to do this.  
16 Because having been on the Commission and we put the rule in  
17 place on some of the thing, you know, we had to balance it.

18 And we have to balance a lot of interests in the  
19 city. Especially with development now. And as both of you  
20 have already said, I think this is worth approving.

21 But, while I want to approve this one, I'm very  
22 skeptical about the pop backs. I don't want this to be  
23 precedent setting. I have issues with pop back, pop ups, pop  
24 arounds, the whole gambit.

25 But I think when I look at the merits in this

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1 case, this maybe one of those where some of my colleagues  
2 maybe right, where we have all those different criteria.  
3 Which I actually was not in favor of at the time we were  
4 doing this.

5 But I believe that this is one of those cases  
6 where I'm actually glad the way we wrote this, because of the  
7 use and what they're trying to accomplish here and stay in  
8 the city and provide for their family. I think this is one  
9 of those cases.

10 And I think as was stated, each case handles on  
11 its own merit. I can't take this case and equate it with the  
12 case around the corner because it has its own uniqueness.

13 And one of the things that I was happy to see,  
14 which one of the things that we grappled with that they did  
15 meet the square feet. So, with that, Mr. Vice Chair, I would  
16 be in support of this application.

17 But again, this is not precedent setting for at  
18 least for my standpoint.

19 VICE CHAIR HART: Thank you.

20 MEMBER WHITE: And I would also add that I would  
21 be in support of the conditions that were submitted by the  
22 ANC.

23 VICE CHAIR HART: And would you like to --

24 MEMBER WHITE: And agreed to by the Applicant.

25 VICE CHAIR HART: Do you want to read the

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1 conditions?

2 CHAIRPERSON HOOD: Before we do that, one of the  
3 things that I thought about when I was looking, as I read  
4 this again, I was wondering why we didn't do this for -- I'm  
5 sure it probably come up, reasonable accommodations.

6 I just don't know why this was not. Did I miss  
7 something on it? I'm just wondering why we didn't never look  
8 into this.

9 VICE CHAIR HART: Yeah. I'm not sure.

10 CHAIRPERSON HOOD: I don't want to put anybody on  
11 the spot while they're on the dais. But this is one of the  
12 things, I can ask that question later, why this -- of  
13 counsel.

14 Why this was not a reasonable accommodation  
15 earlier? And us going through all of this. Okay.

16 VICE CHAIR HART: Okay. So the -- let's see,  
17 looking at the conditions. The conditions that the ANC  
18 Report included were that pest control on the property be  
19 completed before any demolition work begins, to mitigate any  
20 migration to nearby properties.

21 That two parking spaces on the rear of the  
22 property accessible via the alley be included in any plans.  
23 That lead testing be conducted on the water lines and any  
24 lead pipes to be removed. D.C. Water currently believes  
25 there are lead pipes on the private side of this property.

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1           There was another condition related to the deck.  
2 But during the hearing they actually described that that was  
3 already taken care of. So I didn't include that one.

4           So, that's it. Yes, Mr. Secretary?

5           SECRETARY MOY: Oh, I'm sorry. I was counting the  
6 number of conditions.

7           VICE CHAIR HART: I think there are three.

8           SECRETARY MOY: Three. Okay.

9           VICE CHAIR HART: Yes. So, hearing no other  
10 conversation, any more discussion, I move to approve  
11 Application 19564 of Tammika Thompson as read by the  
12 Secretary, and including the conditions that I read, the  
13 three conditions that I just read.

14           Do I have a second?

15           MEMBER WHITE: Second.

16           VICE CHAIR HART: All those in favor say aye.

17           (Chorus of ayes)

18           VICE CHAIR HART: Opposed?

19           (No response)

20           VICE CHAIR HART: It looks like the --

21           SECRETARY MOY: Staff would record the vote as  
22 three to zero to two. This is on the motion of Vice Chair  
23 Hart to approve the Application for the relief being  
24 requested along with the three conditions as the Board has  
25 cited in your motion.

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1                   Seconding the motion, Ms. White. Also in support,  
2 Mr. Anthony Hood. We have a seat vacant, a Board member not  
3 participating. The motion carries.

4                   CHAIRPERSON HILL: And because the ANC is against  
5 this then it's a full order?

6                   SECRETARY MOY: That's correct.

7                   CHAIRPERSON HILL: Okay. I just want to make sure  
8 I had that correct. Thank you Mr. Vice Chair and thank you  
9 Board.

10                   (Whereupon, the above-entitled matter went off the  
11 record at 10:08 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: 12-20-17

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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