

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

March 28, 2018

+ + + + +

The Regular Public Hearing 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 L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)
LORNA L. JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
HILLARY LOVICK, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
ELISE VITALE

The transcript constitutes the minutes from the
Public Meeting held on March 28, 2018.

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

9:37 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, NW. This is the March 28, 2018 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, Lesyllee White and Lorna John, Board members. And representing the Zoning Commission is Rob Miller.

Copies of today's hearings agenda are available to you and located in the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter and it's 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 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

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1 in by the secretary.

2 Also each witness must fill out two witness cards.
3 These cards are located on the table near the door and on the
4 witness table.

5 Upon coming forward to speak to the Board please
6 give both cards to the reporter sitting to the table to my
7 right.

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

14 The order of procedure for special exceptions,
15 variances and appeals are also listed in the bin as you walk
16 into the door.

17 The record shall be closed at the conclusion of
18 each case except for any material specifically requested by
19 the Board.

20 The Board and the staff will specify at the end
21 of the hearing exactly what is expected and the date when the
22 persons must submit the evidence to the Office of Zoning.
23 After the record is closed no other information shall be
24 accepted by the Board.

25 The District of Columbia Administrative Procedures

1 Act requires that the public hearing on each case be held in
2 the open before the public pursuant to section 405(b) and 406
3 of that act.

4 The Board may, consistent with its rules or
5 procedures and the act enter into a closed meeting on a case
6 for purposes of seeking legal counsel on a case pursuant to
7 D.C. Official Code section 2-575(b)(4) and/or deliberating
8 on a case pursuant to D.C. Official Code section 2-575(b)(13)
9 but only after providing the necessary public notice and in
10 the case of an emergency closed meeting after taking roll
11 call vote.

12 The decision of the Board in cases must be based
13 exclusively on the public record. To avoid any appearance
14 to the contrary the Board requests that persons present not
15 engage the members of the Board in conversation.

16 Please turn off all beepers and cell phones at
17 this time so as not to disrupt these proceedings.

18 Preliminary matters are those which relate to
19 whether a case will or should be heard today such as requests
20 for postponement, continuance, or withdrawal, or whether
21 proper and adequate notice of the hearing has been given.

22 If you're not prepared to go forward with the case
23 today or believe that the Board should not proceed now is the
24 time to raise such a matter.

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

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1 MR. MOY: Good morning, Mr. Chairman and members
2 of the Board. I do have -- I would like to announce case
3 applications for today's docket that actually would not be
4 on today's docket for the record for the transcript.

5 First, case application number 19715 of Joseph
6 McNamara and Meg Booth has been removed from the expedited
7 review calendar and scheduled for public hearing on April 4,
8 2018.

9 Case application 19169-B of Birchington, LLC, has
10 been withdrawn by the applicant.

11 Case application 19722 of Kline Operations
12 postponed, rescheduled to April 4, 2018.

13 Appeal number 19708 of Berkley Smallwood has been
14 postponed, rescheduled to April 11, 2018.

15 The following two cases have been rescheduled to
16 April 18, 2018. These are application numbers 19662 of
17 Demetrios Bizbikis and 19689 of MIC9 Owner, LLC also to April
18 18, 2018.

19 Finally, Mr. Chair, for the record since I have
20 the microphone, if I can have your patience I just wanted to
21 announce for the record that a former BZA member served on
22 the BZA and as well on the Zoning Commission passed untimely,
23 untimely death last week.

24 His name -- I'm not going to say was, his name is
25 Curtis Etherly. And speaking on behalf of the director and

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1 the staff he was a joy for us to work for.

2 I think of this Board -- I think Mr. Rob Miller
3 is the only one who has served with us during his time.

4 COMMISSIONER MILLER: Thank you, Mr. Moy, I
5 appreciate you mentioning that. Yes, I served with him when
6 he was on the council staff in the nineties and he served
7 alongside my wife Ruth Ann in the early two thousands on the
8 BZA.

9 CHAIRPERSON HILL: Thank you. I'm sorry for Mr.
10 Etherly's family and his passing and thank you for taking the
11 time to mention that to us.

12 If there's anyone here who would like to stand to
13 take the oath if you plan on testifying either in favor or
14 in opposition if you could please stand and take the oath
15 administered by Mr. Moy.

16 (Witnesses sworn.)

17 CHAIRPERSON HILL: Okay. Let's see. I guess we
18 can go ahead and start with our meeting cases, Mr. Moy.

19 I usually let everybody know in terms of what we
20 do with the agenda in the start of the hearings. We're going
21 to go through the meeting docket as was listed in the agenda.

22 But as far as the hearing cases we're going to mix
23 them up just a little bit. We're going to start with
24 application 19720 of Equilibrium. Then we're going to go to
25 application number 19690 of P Street and we're going to end

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1 up with application 19684 of C&S Development.

2 So with that being the case, Mr. Moy, feel free
3 to call the first meeting case.

4 MR. MOY: Thank you, sir. I believe that would
5 be case application number 19169A of Birchington, LLC. Is
6 that right. Yes.

7 This is a request for a two-year time extension
8 of BZA order number 19169 approving variances from the rear
9 yard requirements under section 774.1, off street parking
10 requirements under section 2101.1 and loading requirements
11 under section 2201.1.

12 This would construct a hotel and apartment
13 building in the DD/DD-HPA/C-2-C district. This is at 303-317
14 K Street, NW, square 526, lots 20, 21, 804, 805, 824, 825 and
15 829.

16 CHAIRPERSON HILL: Okay, great, thank you, Mr.
17 Moy.

18 Is the Board ready to deliberate? Okay. I can
19 begin. I was actually on this case originally and I guess
20 Commissioner Miller you were also on the case and I do
21 remember it.

22 And after going back through the record also do
23 recall the case but also in this particular case in terms of
24 the time extension the applicant had submitted good cause
25 under Y705.C citing financing or the market I suppose in

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1 terms of the need for the time extension.

2 I've reviewed the information by the applicant as
3 to why the time extension should be granted and agree with
4 the arguments and supporting articles that they have made
5 part of their application concerning the financing issues due
6 to the economic and market conditions as well as the
7 softening of the hotel market.

8 In addition to that the ANC 2B was in support of
9 the time extension 5-0-0. DDOT had not filed a report but
10 I didn't see any need to hold that up for the DDOT report.
11 And then the Office of Planning was also in support.

12 So I don't have any issues concerning the time
13 extension and the argument that was put forth for that. Does
14 anyone have anything else to add?

15 MEMBER WHITE: I would agree with you, Mr. Chair.
16 On I believe February 23, 2016 the Board granted the variance
17 to construct the hotel and apartment building subject to the
18 conditions that you were just mentioning.

19 And the order expired on March 10, 2018. But the
20 application was dated February 13 so I'd just like to just
21 for the record indicate that it was filed in a timely manner.

22 But in terms of whether or not they showed good
23 cause with respect to the request under 705.1(a) through (c)
24 the applicant did serve both the ANC, DDOT, had given them
25 time to respond.

1 And as you mentioned before there has been no
2 substantial change in the material facts upon which the Board
3 based its original decision.

4 And finally I would also state under 705.1(c) that
5 in my mind they provided good cause for the extension due to
6 -- one of the reasons was their inability to obtain financing
7 because of the extreme amount of hotel development going on
8 in the city.

9 So I find that they've met the standards in order
10 to obtain the time extension in order to give them time to
11 obtain financing debt for the project.

12 CHAIRPERSON HILL: Okay, great. Then I'll go
13 ahead and make a motion to approve application number 19169A
14 as captioned and read by the secretary and ask for a second.

15 MEMBER WHITE: Second.

16 CHAIRPERSON HILL: Motion made and seconded. All
17 those in favor, aye.

18 (Chorus of ayes)

19 CHAIRPERSON HILL: All those opposed? Motion
20 passes, Mr. Moy.

21 MR. MOY: Staff would record the vote as 5-0-0
22 based on the motion of Chairman Hill to approve the request
23 for a time extension. Seconding the motion Ms. White. Also
24 in support Mr. Rob Miller, Ms. John and Vice Chair Hart. The
25 motion carries.

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1 CHAIRPERSON HILL: Thank you. Summary order.

2 MR. MOY: Thank you. The next case for decision-
3 making is application number 19593. This is of Edward and
4 Naomi Griffin as amended for special exception under subtitle
5 E section 5201 for the lot occupancy requirements of subtitle
6 E section 304.1, non-conforming structure requirements
7 subtitle C section 202.2 which would enclose a rear third
8 floor deck in an existing one-family dwelling, RF-1 zone.

9 This is at 1226 North Carolina Avenue at square
10 1012, lot 122.

11 The last hearing was heard on March 7, 2018.
12 Decision dates and March 21 and today's date, March 28.

13 Participating on a decision is Vice Chair Hart,
14 Ms. White and Mr. Peter Shapiro.

15 MEMBER HART: Thank you, Mr. Moy. For this case
16 -- or is the Board ready to deliberate? I'm looking at Ms.
17 White because you're the only person that's up here to speak
18 on it.

19 So I would find that the applicant has met the
20 burden of proof to show how they are meeting the criteria for
21 special exception relief under subtitle 5201 from the lot
22 occupancy requirements of subtitle E 301.1 and from the non-
23 conforming structural requirements for subtitle C 202.2 which
24 would enable them to enclose the rear third floor deck in an
25 RF-1 zone.

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1 I would agree with the Office of Planning report
2 that includes a recommendation to approve this relief as
3 requested.

4 And I'll also note that the ANC 6A report exhibit
5 number 76 includes a recommendation to approve the requested
6 relief and they raise no issues.

7 The report notes that the design has taken
8 measures to ensure that the addition is in the character of
9 the neighborhood and will not disrupt the privacy, air and
10 light of the neighbors.

11 One neighbor had some strong opinions on this
12 proposed addition and requested to be a party in the case.
13 The Board granted that party status request in opposition.

14 And I'll note that at the last BZA public hearing
15 on March 7 neither the opposition party nor their
16 representative appeared.

17 The opposition party has withdrawn their
18 opposition to this special exception and that's in exhibit
19 78.

20 Finally, I'd like to note that the opposition
21 party, they made a few assertions about the review process
22 in their exhibit number 78 including that they, quote unquote
23 believe, that a decision had been made in favor of the
24 requester long before they lodged their objection.

25 I'm not sure if this is referring to the BZA

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1 making its decision prematurely. And I'd just like to take
2 this opportunity to refute this and say that the Board
3 decides every case on its merits when it reviews each case.

4 If the case is a special exception as this was it
5 can be allowed under the zoning regulations if the applicant
6 meets the certain criteria that were set forth within the
7 zoning regulations.

8 Only variances require a higher standard because
9 variances are in their nature outside of what is permitted
10 in the zoning regulations themselves.

11 So it's up to the BZA to review each case and
12 determine if an applicant has met the zoning regulations
13 criteria.

14 So after reviewing the case record, hearing the
15 testimony from the applicant, the Office of Planning report
16 and the ANC I am satisfied that the applicant has met the
17 zoning regulation criteria.

18 Exhibit 78 also describes some issues with, a
19 variety of issues with OP staff talking to the applicant.

20 I'll just note that the Office of Planning staff
21 are allowed to provide guidance to applicants on cases.
22 Quite simply it's part of their job.

23 Another part of their job is actually to give the
24 BZA recommendations regarding each case. And I'll note that
25 sometimes the applicants take the Office of Planning guidance

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1 and sometimes they don't. It is up to the applicant to
2 figure out whether or not they want to do that.

3 And I'll also say that that's also sometimes the
4 same with the BZA, the Board itself. We listen to the Office
5 of Planning report and the recommendation and we determine
6 whether or not that -- after giving it great weight determine
7 whether or not that's something that we agree with or don't
8 agree with.

9 So it is up to the applicant to present their case
10 and how they meet the special exception criteria. And then
11 the Board has to determine if we believe the applicant has
12 provided that information.

13 We are not about picking sides, or bending rules,
14 or anything else that the party in opposition was discussing.

15 We are determining each case on the facts
16 presented to us and by testimony that each person gives
17 themselves.

18 And I'll note that each person also testifies to
19 take an oath to tell the truth. And that's something that
20 we do take very seriously.

21 So just because the case didn't go in favor of the
22 opposition party doesn't mean that the decision that the
23 Board is making is in error.

24 So I'll just end with saying that I believe that
25 the applicant has proven their case and I will vote to

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1 support this application. I know that was long-winded, but
2 I just felt that it was a little bit out of order for the
3 party in opposition to assert some things that I didn't think
4 were correct. I thought they were stretching.

5 That's it. Do you have any comments, Ms. White?

6 MEMBER WHITE: No, I think your comments are well
7 said. But for the record I'll just kind of talk through the
8 analysis that I went through in my mind.

9 With respect to the special exception application
10 that was requested in this particular case I looked at the
11 criteria, reviewed the record and I found that the light and
12 air available to the neighboring properties was not unduly
13 affected.

14 OP found that the sun studies would shade a window
15 owned by the party in opposition not adjacent to the subject
16 site but located one house removed to the north of the site
17 for only a short period of time during the late afternoon
18 during the winter months.

19 So I just wanted to kind of talk through that
20 because there was some information in the record in terms of
21 how this particular enclosure of this rear addition would
22 have negative impact on them.

23 So in looking at that first part of the criteria
24 I found that the neighboring property was not unduly
25 affected.

1 Also with regards to the criteria regarding
2 privacy of the use and enjoyment of neighboring properties
3 I agree with the Office of Planning's assessment that the
4 proposed third story enclosure would result in greater
5 privacy even though that structure would be there because the
6 applicant would no longer be able to conduct activities
7 outdoors. They would be indoors and the neighboring
8 properties would not see the activity that apparently they
9 were seeing before because that rooftop area was not
10 enclosed.

11 I also agree with OP's assessment that the
12 enclosure does not visually intrude on the neighboring
13 properties because it's not visible from the North Carolina
14 Avenue since it would be located at the rear of third story
15 row dwellings and would not visually intrude upon the
16 character, scale, pattern of houses along the subject street
17 frontage.

18 I also obviously looked at all the graphical
19 representations and the sun studies I felt were helpful. So
20 I can at this point support the application that the
21 applicant is submitting.

22 The lot occupancy, according to the rules the BZA
23 can approve lot occupancy up to 70 percent which in this case
24 is proposed by the applicant.

25 So therefore I would concur with your assessment.

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1 And also I'd just like to state for the record that when we
2 look at these cases we don't have any preconceived notions.
3 We look at the facts. We look at the rules.

4 Obviously we care about the comments that we get
5 from communities and we give them the appropriate respect and
6 weight that they deserve.

7 We don't decide those cases until we're up here
8 and make assessments in terms of whether or not to grant the
9 relief that's sought. So that concludes my comments, Mr.
10 Vice Chair.

11 MEMBER HART: Thank you. So I guess with that I
12 would make a motion to approve application 19593 of Edward
13 and Naomi Griffin as read by the secretary which is as
14 amended pursuant to 11 DCMR subtitle X chapter 9 for a
15 special exception under subtitle E 5201 from the lot
16 occupancy requirements of subtitle E 304.1 and from the non-
17 conforming structure requirements of subtitle C 202.2 to
18 enclose a rear third floor deck in an existing one-family
19 dwelling in the RF-1 zone at premises 1226 North Carolina
20 Avenue, NE, square 1012, lot 122. And do I have a second?

21 MEMBER WHITE: Second.

22 MEMBER HART: Having heard the second all those
23 in favor say aye.

24 (Chorus of ayes)

25 MEMBER HART: Any opposed? Mr. Moy.

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1 MR. MOY: Yes, thank you. Before I read the vote
2 count, Mr. Vice Chair, we do have an absentee ballot from Mr.
3 Peter Shapiro. And his vote is to approve with any
4 conditions that the Board might impose.

5 So that would give a final vote of 3-0-1. Did I
6 say that right? 3-0-2. I keep forgetting that we have a
7 full Board.

8 MS. GLAZER: Mr. Moy, was Ms. Johnson sitting
9 though? So it would be one.

10 MR. MOY: I was correct the first time then. And
11 this is on the motion of Vice Chair Hart to approve the
12 application for the relief being requested. Seconding the
13 motion, Ms. White. Also in support Mr. Peter Shapiro. The
14 motion carries.

15 MEMBER HART: Summary order. Now that we don't
16 have a party in opposition I think we can do a summary order,
17 correct?

18 MR. MOY: Yes, sir.

19 MEMBER HART: Thank you.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:54 a.m.)
22
23
24
25

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: 03-28-18

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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