

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

APRIL 11, 2018

+ + + + +

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 L. HILL, Chairperson
CARLTON HART, Vice Chairperson
LESYLLEE M. WHITE, Board Member
LORNA JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER SHAPIRO, Board Member
MICHAEL G. TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATTHEW BELL
STEVE COCHRAN
MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
ANNE FOTHERGILL
MATTHEW JESICK

The transcript constitutes the minutes from the
Public Meeting held on April 11, 2018.

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

9:39 a.m.

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CHAIRMAN HILL: All right, good morning, everyone.

The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW.

This is the April 11 public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Fred Hill, chairperson.

Joining me today is Carlton Hart, vice chair, Lesyllee White and Lorna John Board member and representing the Zoning Commission on a case will be Peter Shapiro. And then following we will get Michael Turnbull for the remainder of the day.

Copies of today's hearing agenda are available to you and are located in the wall bin near the door. Please be advised that this proceeding is being recorded 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 your microphone off so that your microphone is no longer picking up sound or background noise.

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1 All persons planning to testify either in favor
2 or in opposition must have raised their hand and been sworn
3 in by the secretary.

4 Also, each witness must fill out two witness
5 cards. These cards are located on the table near the door
6 and on the witness table.

7 Upon coming forward to speak to the Board please
8 give both cards to the reporter sitting to the table at my
9 right.

10 If you wish to file written testimony or
11 additional supporting documents today please submit 1
12 original and 12 copies to the secretary for distribution.

13 If you do not have the requisite number of copies
14 you can reproduce copies on an office printer in the Office
15 of Zoning located across the hall.

16 The order of procedures for special exceptions,
17 variances, appeals is also listed in the documents as you
18 come into the room.

19 The record shall be closed at the conclusion of
20 each case except for any materials specifically requested by
21 the Board.

22 The Board and its staff will specify at the end
23 of the hearing exactly what is expected and the date when the
24 persons must submit the evidence to the Office of Zoning.

25 After the record is closed no other information

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1 shall be accepted by the Board.

2 The District of Columbia Administrative Procedures
3 Act requires that the public hearing on each case be held in
4 the open before the public pursuant to section 405(b) and 406
5 of that act.

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

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

18 Please turn off all beepers and cell phones at
19 this time so as to not disrupt the proceedings.

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

24 If you're not prepared to go forward with the case
25 today or you believe that the Board should not proceed now

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1 is the time to raise such a matter.

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

3 MR. MOY: Good morning, Mr. Chairman and members
4 of the Board. I do have a brief announcement regarding
5 today's docket for the record.

6 First off there are two case applications that
7 have been postponed and rescheduled to May 2, 2018. These
8 two cases are case application number 19730 of Sons of Italy
9 Foundation, and appeal number 19708 of Berkeley Smallwood.

10 Case application number 19731 of 1766 Lanier NW
11 LLC postponed, rescheduled to May 23, 2018.

12 And finally case application number 19644 of
13 Meenakshi Nankani, K-A-N-K-A-N-I postponed, rescheduled to
14 May 30, 2018.

15 And that's it from the staff, Mr. Chairman.

16 CHAIRMAN HILL: Okay, great. Thank you, Mr. Moy.
17 All right, if anyone is here wishing to testify if you
18 wouldn't mind please standing and taking the oath which is
19 going to be administered by Mr. Moy to my left.

20 (Whereupon, the witnesses were sworn)

21 CHAIRMAN HILL: Okay. Once again good morning
22 everyone. Just to let everyone know in terms of the order
23 in which we are going to proceed we are going to follow
24 what's in the bin there as you walk in to the right.

25 There's no changes. And I'd like to thank Vice

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1 Chair Hart for acting as chair while I was out last week.
2 And since I was out last week I am not participating in the
3 first meeting case. And so I'm going to turn that over to
4 Mr. Moy if you could announce the first meeting case and then
5 I'll see what happens.

6 MR. MOY: Thank you, Mr. Chairman. So this one
7 and only case for decision-making this morning is case
8 application number 19710. This is 404 of Newcomb LLC,
9 captioned and advertised for a special exception under
10 subtitle D section 306.4 and 5201 from the rear addition
11 requirements of subtitle D section 306.3 and pursuant to
12 subtitle X chapter 10 for a use variance from the non-
13 conforming use requirements subtitle C section 204.3.

14 This would convert an existing community residence
15 facility into a four-unit apartment house R-3 zone at
16 premises 404 Newcomb Street SE square 5996 lot 48.

17 And I'll leave it at that. And there is an ANC
18 report in the record, Mr. Chair, or Mr. Vice Chair.

19 VICE-CHAIR HART: Thank you, Mr. Moy. Is the
20 Board ready to deliberate? Excellent. I can start.

21 This is a case that we heard last week. The
22 applicant is seeking special exception under subtitle D 306.4
23 and 5102 from the rear addition requirements of subtitle D
24 306.3 and pursuant to subtitle X chapter 10 for use variance
25 from the non-conforming use requirements of subtitle C

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1 section 204.3 to convert an existing community residence
2 facility into a four-unit apartment house in an R-3 zone.

3 This case we heard last week. The main aspect of
4 the case, the reason that we set the case for decision this
5 week was because the applicant had -- the applicant needed
6 to have a little bit more of a conversation with the ANC.

7 The ANC commissioner, Commissioner Cuthbert was
8 here and she gave testimony stating that she would like the
9 applicant to come to the meeting and describe the project and
10 present the project and hear from the full ANC which she
11 described had not actually heard this particular case.

12 The applicant had several projects that were
13 before the ANC and she was not -- Commissioner Cuthbert did
14 not recall this particular case going before the ANC. So she
15 suggested that they actually present the project which
16 happened last week.

17 And the ANC has submitted their report in exhibit
18 39. The vote was 5-0-0 to support the application.

19 After reviewing the record and listening to the
20 testimony as well as reading through the ANC report and the
21 Office of Planning report I can also support this application
22 because I believe that they've met the criteria for special
23 exception and for the use variances as was outlined in the
24 Office of Planning report.

25 This is a fairly modest addition to a building,

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1 to a structure and I felt that they've moved through the
2 criteria fairly well and did not have much to add to it other
3 than that.

4 I didn't know if my other Board members had any
5 other comments for the case.

6 MEMBER WHITE: I would concur with your comments,
7 Mr. Vice Chair. They're seeking to convert a community
8 residence facility as you said into a four-unit apartment
9 building so the relief they were requesting as you stated was
10 for a rear addition under the special exception criteria
11 under 306.3 and the use variance for non-conforming use under
12 C section 204.3.

13 I think they met the criteria. I've always been
14 a big proponent of allowing the community to weigh in on
15 projects going on in their community. So the commissioner
16 who was here last week wanted time to talk amongst her
17 colleagues.

18 They did submit something. It appears that they
19 did have a quorum during that meeting and are supporting the
20 relief.

21 In looking at the criteria I looked and gave a lot
22 of weight to the Office of Planning report because I think
23 it really spelled out the criteria that's necessary under the
24 variance test which is a test that's a lot more difficult to
25 get versus a special exception.

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1 So I was convinced that without this variance that
2 it would pose an undue hardship on the applicant to convert
3 this apartment building into a one- or a two-family dwelling.

4 And as far as I could tell from the record there
5 were no substantial negative effects to the community that
6 were at risk here in granting the relief and that there was
7 no harm that would come, substantial harm to the zoning regs
8 since the conversion to a four-unit building would be
9 compatible with this area.

10 With respect to the rear addition I'm also very
11 sensitive to those types of relief and as you said it was
12 modest and there is no negative comments in the record that
13 I could see that would say that it would have a negative
14 impact on the use or enjoyment of those in the community.

15 So I would concur with your comments and support
16 the relief that the applicant is seeking for this particular
17 case.

18 MEMBER JOHN: Mr. Vice Chair, I would also vote
19 to support the application. I concur with what has been said
20 so far and also based on the analysis of the Office of
21 Planning and the record and having listened to all of the
22 testimony I too would concur that the applicant has shown
23 that the use variance is appropriate in this case based on
24 the existing conditions on the property.

25 It was formerly used and constructed as a four-

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1 unit apartment building and that is in keeping with the other
2 apartment buildings in the neighborhood.

3 I too have some concern about the rear exception,
4 special exception, and in this case the request is for a 14.5
5 foot extension.

6 However, as noted earlier this extension is quite
7 modest and is due to the need to enclose I believe a utility
8 room.

9 So based on the OP analysis giving great weight
10 to their recommendations and to the report from the ANC I
11 would go ahead and vote to support the application.

12 VICE-CHAIR HART: Okay. I think I would then make
13 a motion to approve application 19710 of 404 Newcomb LLC.
14 And this is pursuant to 11 DCMR subtitle X chapter 9 for a
15 special exception under subtitle D 306.4 and 5201 from the
16 rear addition requirements from subtitle D 306.3 and pursuant
17 to subtitle X chapter 10 for use variance from the non-
18 conforming use requirements of subtitle C 204.3 to convert
19 an existing community residence facility into a four-unit
20 apartment house in the R-3 zone at premises 404 Newcomb
21 Street SE square 5996 lot 49. Do I hear a second.

22 MEMBER WHITE: Second.

23 VICE-CHAIR HART: All those in favor say aye.

24 (Chorus of aye)

25 VICE-CHAIR HART: Any opposed? Mr. Moy.

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1 MR. MOY: Mr. Vice Chair before I give a final
2 tally we do have an absentee ballot from another participant
3 who is Mr. Anthony Hood. And his absentee vote is to approve
4 the application. So that would give a final vote of 4-0-1.

5 This on your motion, Mr. Vice Chair Hart, to
6 approve the application for the relief being requested.
7 Seconding the motion Ms. White. Also in support Ms. John and
8 of course Mr. Anthony Hood. We have a Board member not
9 participating on this application. The motion carries.

10 VICE-CHAIR HART: Summary order.

11 MR. MOY: Thank you.

12 VICE-CHAIR HART: Thank you. And thank you to my
13 fellow Board members. Mr. Chair, I turn it back over to you.

14 (Whereupon, the above-entitled matter went off the
15 record at 9:53 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: 04-11-18

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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