

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 9, 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 2:52 p.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 JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL
MAXINE BROWN-ROBERTS
ELISA VITALE

The transcript constitutes the minutes from the
Public Meeting held on May 9, 2018.

CONTENTS

Decision Cases	4
Case Application No. 19683, of Brian and Carolyn Wise	4
Vote	12
Case Application No. 19629, of Timothy and Charlotte Lawrence	12
Vote	15

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

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2:52 p.m.

CHAIRMAN HILL: All right, Mr. Moy, I think we actually are back up to our decision cases, if I'm not incorrect.

SECRETARY MOY: That's correct, sir. There are two decision cases before the Board.

So, unless you tell me otherwise, the first case for a decision is Case No. 19683, of Brian and Carolyn Wise, as amended for special exceptions under Subtitle E, Section 5204, from the rear yard requirements of Subtitle E, Section 5104, from the alley centerline setback requirement, Subtitle E, Section 5106, and pursuant to Subtitle X, Chapter 10, for area variances from the lot area requirements of Subtitle E, Section 201.1, lot frontage requirement, Subtitle C, Section 303.3(a) and (b), to construct a two-story, one-family dwelling on an existing vacant alley lot, RF-3 zone, at 216 Lincoln Court, Southeast, Square 762, Lot 828.

And let's see, this was, I believe, last heard by the Board on April 17, 2018. Participating is Chairman Hill, Vice Chair Hart, Ms. John, Mr. Peter May.

And that's what I have for the record.

CHAIRMAN HILL: Right. So, Ms. White will not be participating on this with us.

Would anyone like to begin deliberations?

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1 COMMISSIONER MAY: Okay. I have to pull up my
2 notes. Give me a sec.

3 Sorry. I got distracted there for a second.

4 I appreciate the Office of Planning submitting the
5 additional report. I think that was critical to
6 understanding what can and cannot happen on the property.

7 I want to make sure I'm looking at the right case
8 here. Oh, I was not. Now I am.

9 And the conclusion is that, apparently, the
10 Applicant can continue to use this space for parking, can get
11 a CoO and a business license, and could make improvements to
12 the property, provided they didn't build a principal
13 structure. I mean, this is the existing situation. So,
14 there are certain things that can be done with the property.

15 And I think I was hung up before on the notion
16 that the use of the property would be severely constrained
17 by not having this relief to become a record lot. And in
18 this circumstance, I mean, this is a case where I can see a
19 planning logic to allowing the property to be built out with
20 a dwelling unit. That certainly is not inconsistent with the
21 character of what's happening in the vicinity. There are
22 other two-story structures in the alley. I think all those
23 things make sense. I think that's why there was some support
24 in the record for it from outside groups.

25 I also believe that the opposition to this

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1 particular proposal was not very strong. I think most of the
2 arguments against it have little to do with the zoning issues
3 in the case. They were really more about basically not
4 wanting to have this two-story structure behind their homes.

5 Unfortunately, I think that I really tend to come
6 down in the end agreeing with the Office of Planning that the
7 variance test hasn't been met here. I think there's a
8 question about conversion of tax lots to record lots that
9 perhaps needs further consideration by the Zoning Commission,
10 particularly in cases like this where it's not a tiny alley
11 lot; it's a lot of some size. And there is a context that
12 lends itself to two-story structures in the immediate
13 vicinity.

14 But I think the bottom line is that the Applicant
15 is not prevented from making use of the property the way it
16 had been used in the past, and I just don't see how I can get
17 through basically the first prong of the variance test.

18 CHAIRMAN HILL: Okay.

19 COMMISSIONER MAY: So, as much as I might want to
20 support it, for planning reasons, I don't think I can support
21 it because the regulations, I think, don't lend support to
22 the case.

23 CHAIRMAN HILL: Okay. Commissioner May, thanks
24 for starting this off. I appreciate that because I was more
25 interested in also hearing from you due to your service,

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1 again, on the Zoning Commission.

2 I also kind of didn't struggle per se, but like
3 this ended up in comparison like the other case we're going
4 to kind of talk about. This was more where I could also see
5 that development happening there. I was empathetic, and do
6 mean so, for the owner in terms of how they had hoped to use
7 the lot, as well as I guess one of the unfortunate things is
8 that they didn't get the correct information prior to
9 purchasing the lot. At least that's what I heard during the
10 case.

11 But what I, again, had difficulty with was the
12 variance test in terms of the first prong and that, from the
13 Office of Planning's perspective again, that this wasn't
14 necessarily -- you know, there are a lot of these lots, and
15 it wasn't necessarily unique or exceptional. Even the Office
16 of Planning thought that there was harm to the zoning
17 regulations in terms of the third prong.

18 But I guess the main problem that I was just kind
19 of again struggling with was the 1,120 feet versus the 1800
20 that was required. And then, following the discussion that
21 we had from the hearing, and I thought that the Applicant did
22 make a good point in terms of, if they weren't going to be
23 able to use it the way that it was already existing, that
24 that would be an exceptional situation.

25 And so, unfortunately for the Applicant, the

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1 supplemental report came back saying that they could, in
2 fact, improve the paving, they could do the paving, and they
3 could replace the bollards. There was even discussion, I
4 suppose, as to getting a Certificate of Occupancy in order
5 to do a rental parking there. So, I didn't see that becoming
6 something that would meet the first prong of the test.

7 And I'm just kind of curious, again. This isn't
8 a question right now to be answered, but it's just kind of
9 like the Zoning Commission, how you all came up with these
10 sizes, and that this now did not meet what you had
11 anticipated to happen. It's just it's too small.

12 COMMISSIONER MAY: Yes, I think that it's hard to
13 remember every discussion that occurs in the context of the
14 Zoning Commission rulemaking, particularly with the big re-
15 write. But the fact that the line was drawn at 1800, there
16 was a rationale for that. I think it's a valid question to
17 ask, since we happened to get these two cases in rapid
18 succession, about whether there should be some form of
19 special exception for cases where it's not fully 1800, but
20 meets a lot of other criteria. I mean, again, that's
21 something I think that the Office of Planning and Zoning
22 Commission should discuss to see whether, in fact, there
23 should be something else done.

24 I mean, if it just so happens that the only two
25 cases like this in the entire city came before the BZA right

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1 now, then it's probably not worth doing a rulemaking about.
2 But if there are dozens of others out there -- and I have no
3 idea how many that are out there -- it might be something
4 worth considering. Again, that's something that the Office
5 of Planning can look at. Because, very often, when we ask
6 questions like this, well, how many properties are going to
7 be affected if we change this particular rule, they have
8 really good data about the properties across the city and
9 they can tell us how many tax lots there are that are under
10 a certain size, I think. So, we'll be able to look at that
11 question.

12 And maybe this case could come back if there is
13 a rulemaking that provides an avenue for granting this kind
14 of relief. But, again, right now, I don't think that it --

15 CHAIRMAN HILL: Okay, okay.

16 COMMISSIONER MAY: -- passes the test.

17 CHAIRMAN HILL: All right.

18 COMMISSIONER MAY: I want to mention one other
19 thing, which is that the Applicant stated they didn't get
20 necessarily very good advice in the beginning of it. I mean,
21 the key thing is that I think that advice came from their
22 architect. The fact that the architect screwed up isn't
23 really grounds for a variance, either. I mean, it gives me
24 greater sympathy for the Applicant, that they didn't get good
25 advice, but that's --

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1 CHAIRMAN HILL: I was just mentioning that I felt
2 bad, right --

3 COMMISSIONER MAY: Yes.

4 CHAIRMAN HILL: -- that that was what they had.
5 They were working off of the advice that they had been given.

6 COMMISSIONER MAY: Yes. I kind of feel bad, but
7 I know there are a lot of not-great architects out there,
8 too.

9 CHAIRMAN HILL: All right. Anyone else?

10 VICE CHAIR HART: Yes, Mr. Chairman, only to say
11 that, I mean, I would agree with the conversation we've had
12 or the discussion we've had so far. I think that the
13 exception condition prong was a difficult prong to surmount
14 in this case.

15 I understand the Applicant's, you know, kind of
16 their rationale for it. I just did not agree with it or just
17 didn't feel like it went far enough, I guess, to be able to
18 meet the prong.

19 And I understand the Office of Planning
20 supplemental report that they provided and gave us
21 information regarding the information from the ZA, the Zoning
22 Administrator, regarding being able to do some improvements,
23 and very limited I guess, on the site. I just felt that
24 there didn't seem to be enough proof that the Applicant
25 provided to be able to say that they had met the first prong.

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1 So, I just didn't feel like that I could be able to support
2 the variance for that reason. But I understand that the
3 Applicant has tried to -- you know, they put forth their
4 effort as best they could for this, but I think that it's
5 just not something that I could support.

6 CHAIRMAN HILL: Okay.

7 MEMBER JOHN: Mr. Chairman?

8 CHAIRMAN HILL: Yes?

9 MEMBER JOHN: I don't have a lot to add. Mr.
10 Chairman, I don't have a lot to add. I struggled with this
11 case because of the size of the lot. And it was a good
12 enough size that a structure could be built on it, except
13 that the regulations in this case don't allow it, and I could
14 not get past the first prong of the variance test. So, it
15 was a very difficult case to say no to. So, I can't support
16 the application, based on everything everybody else has said
17 and the record and the testimony of the witnesses.

18 Thank you.

19 CHAIRMAN HILL: Okay. All right. Anybody else?

20 (No response.)

21 Okay. I'm going to make a motion, then, to deny
22 Application No. 19683, as captioned and read by the
23 secretary, and ask for a second.

24 VICE CHAIR HART: Second.

25 CHAIRMAN HILL: Motion made and seconded. All

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1 those in favor?

2 (Chorus of ayes.)

3 All those opposed?

4 (No response.)

5 The motion passes.

6 Mr. Moy?

7 SECRETARY MOY: Staff would record the vote as
8 4-to-0-to-1, this on a motion of Chairman Hill to deny the
9 application for the relief being requested, second to the
10 motion by Chair Hart. Also support of the motion, Mr. Peter
11 May and Ms. John; Ms. White not having participated on the
12 application. The motion carries.

13 CHAIRMAN HILL: Okay. Thank you, Mr. Moy.

14 Full order? It's a full order.

15 SECRETARY MOY: The next and last case for a
16 decision is Case Application No. 19629, of Timothy and
17 Charlotte Lawrence, captioned, advertised for special
18 exceptions under Subtitle E, Section 5204, from the rear yard
19 requirements of Subtitle E, Section 5104.1, side yard
20 requirements, Subtitle E. Section 5105.1, and pursuant to
21 Subtitle X, Chapter 10, for variances from the alley
22 centerline setback requirement, Subtitle E, Section 5106.1,
23 and from the pervious surface requirements, Subtitle E,
24 Section 5107.1, which would construct a garage structure on
25 an alley lot, RF-1 zone, at 1665 Harvard Street, Northwest,

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1 rear, Square 2588, Lot 827.

2 CHAIRMAN HILL: Thank you, Mr. Moy.

3 Okay. I can start. It's very similar, I suppose,
4 to the last argument in terms of what my discussion was
5 thinking. Or I should say, in this case it was a smaller
6 lot, and I, again, was not convinced by the arguments that
7 were provided by the Applicant that the criteria had been
8 met.

9 There was a lot of opposition to this, and there
10 was a lot of concerns that were raised from the community
11 about like the alley site lines and the negative impact. I
12 thought that, also, the impact that was going to take place
13 from the property owner directly behind the proposed garage,
14 they were going to be affected by the proposal.

15 But I do appreciate that the Applicant had kind
16 of made a smaller building, or at least proposed a smaller
17 building, but I still did not think that it was something
18 that I could get behind in terms of meeting the requirements
19 for us to grant the request.

20 I thought that it, again, based upon some similar
21 discussions that the Office of Planning had provided in their
22 supplemental report, I do see that, as with this case as well
23 as the previous case, there were items put into the record
24 from the Applicant in terms of responses to the Office of
25 Planning's report, but I do still adhere to the report that

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1 was provided from the Office of Planning.

2 So, I'm basically kind of in the same place where
3 I was in terms of this application, that I don't think that
4 they met their criteria in which for us to approve the
5 application.

6 Does anyone have any other thoughts?

7 COMMISSIONER MAY: Mr. Chairman, I would agree,
8 for the same reasons. I would also just want to highlight
9 the fact that much of the opposition related to this
10 particular proposal had virtually nothing to do with the
11 zoning relief that was requested. I mean, the Applicant
12 could build a fence around this that would obstruct
13 visibility to that pedestrian alley. The notion that somehow
14 a garage is going to increase how much ice collects in the
15 alley I think is not a real argument.

16 I think that a lot of the neighbors were just
17 upset about the mere fact that there could be a garage there
18 when, in fact, if this parcel were actually part of the
19 property that it was originally cut out from, they could
20 build that garage, and it would have the same negative
21 impacts. It's just because it happens to be in different
22 ownership that they can't do what's proposed here. So, I
23 mean, this doesn't really weigh on our decisionmaking, but
24 I think that it is important for the record and for people
25 to understand that the reason this is problematic has to do

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1 with the restrictions on what you can do with tax lots.

2 CHAIRMAN HILL: Thank you for that clarification,
3 Commissioner May.

4 Anyone else?

5 (No response.)

6 Okay. Well, I guess we're all on the same page.

7 All right. Then, I'm going to go ahead and make
8 a motion to deny Application No. 19629, as captioned and read
9 by the secretary, and ask for a second.

10 COMMISSIONER MAY: Second.

11 CHAIRMAN HILL: Motion made and seconded. All
12 those in favor?

13 (Chorus of ayes.)

14 All those opposed?

15 (No response.)

16 The motion passes.

17 Mr. Moy?

18 SECRETARY MOY: Staff would record the vote as
19 4-to-0-to-1. This is on the motion of Chairman Hill -- or
20 rather, Chair Hart -- Chair Hill. I apologize.

21 (Laughter.)

22 This is crazy.

23 All right. Let me restate that.

24 So, this is on the motion of Chairman Hill to deny
25 the application for the relief being requested; the seconder

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1 of the motion, Mr. Peter May. Also in support, Ms. John and
2 Vice Chair Hart; Ms. White not having participated on the
3 application. The motion carries.

4 CHAIRMAN HILL: Full order, Mr. Moy.

5 SECRETARY MOY: Yes, sir, thank you.

6 CHAIRMAN HILL: Okay. Today is Wednesday, May
7 9th, 2018. This will now adjourn the public meeting portion
8 of the hearing.

9 At this point, Board Members, I would like to know
10 whether any of you believe we should hold a closed meeting
11 to obtain legal advice from our counsel and to deliberate
12 upon, but not vote, on the remand of BZA Order 19133,
13 Application of St. Thomas Episcopal Parish, variance for lot
14 occupancy.

15 Could I get a second?

16 MEMBER WHITE: Second.

17 CHAIRMAN HILL: All right. The motion has been
18 made and seconded.

19 Mr. Moy, could you do a roll call vote?

20 SECRETARY MOY: Yes. Thank you, Mr. Chairman.

21 When I call the member's name, if you would please
22 reply with a yes or no.

23 Mr. Peter May?

24 COMMISSIONER MAY: Yes.

25 SECRETARY MOY: Ms. White?

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1 MEMBER WHITE: Yes.

2 SECRETARY MOY: Chairman Hill?

3 CHAIRMAN HILL: Yes.

4 SECRETARY MOY: Ms. John?

5 MEMBER JOHN: Yes.

6 SECRETARY MOY: Vice Chair Hart?

7 VICE CHAIR HART: Yes.

8 SECRETARY MOY: The motion carries, sir.

9 CHAIRMAN HILL: All right. So, then, the public
10 meeting is adjourned for today, and thank you very much.

11 (Whereupon, at 3:15 p.m., the public meeting was
12 adjourned.)

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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: Board of Zoning Adjustment

Date: 05-09-2018

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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