

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

OCTOBER 24, 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., Carlton Hart, Vice-Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARLTON HART, Vice-Chairperson  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, Esq.

## OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
KAREN THOMAS  
STEVEN COCHRAN  
ANNE FOTHERGILL  
CRYSTAL MYERS

The transcript constitutes the minutes from the  
Public Meeting held on October 24, 2018.

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

9:30 a.m.

1  
2  
3 VICE CHAIRPERSON HART: Good morning, ladies and  
4 gentlemen. We are located in the Jerrily R. Kress Memorial  
5 Hearing Room at 441 4th Street, N.W. This is the October  
6 24th, 2018 public hearing of the Board of Zoning Adjustment  
7 of the District Columbia. My name is Carlton Hart, Vice  
8 Chairperson. Joining me today is Lorna John, Board Member  
9 and representing the Zoning Commission is Peter May. Copies  
10 of today's hearing agenda are available to you and are  
11 located in the wall bin near the door. Please be advised  
12 this proceeding is being recorded by a court reporter and is  
13 also webcast live. Accordingly, we must ask that you refrain  
14 from any disruptive noises or actions in the hearing room.  
15 When presenting information to the board, please turn on and  
16 speak into the microphone, first giving your names and home  
17 address. When you are finished speaking, please turn your  
18 microphone off so that your microphone is no longer picking  
19 up sound or background noise. All persons trying to testify  
20 either in favor or in opposition must have raised your hand  
21 and been sworn in by the secretary. Also, each witness must  
22 fill out two witness cards; these cards are located on the  
23 table near the door and on the witness tables. Upon coming  
24 forward to speak to the board, please give both cards to the  
25 court reporter sitting at the table to my right. If you wish

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1 to file written testimony or additional supporting documents  
2 today, please submit one original and 12 copies to the  
3 secretary for distribution. If you do not have the requisite  
4 number of copies, you can reproduce copies on an office  
5 printer in the Office of Zoning located across the hall.  
6 Please remember to collate your set of copies.

7           The order of procedure for special exceptions and  
8 variances pursuant to Subtitle Y409 can be found in the table  
9 in the back of the room to my left. The record shall be  
10 closed at the conclusion of each case, except for any  
11 materials specifically requested by the board. The board and  
12 the staff will specify at the end of the hearing exactly what  
13 is expected and the date when a person must submit the  
14 evidence to the Office of Zoning. After the record is  
15 closed, no other information shall be accepted by the board.  
16 The board's agenda includes cases set for a decision; when  
17 the board adjourns the Office of Zoning in consultation with  
18 me will determine whether a full summary or an order --  
19 excuse me -- the board's agenda includes cases for decision  
20 -- after the board adjourns, the Office of Zoning in  
21 consultation with me will determine whether a full or a  
22 summary order may issue. A full order is required when the  
23 decision it contains is adverse to a party, including an  
24 affected ANC. A full order may also be needed if the board's  
25 decision differs from the Office of Planning's

1 recommendation. Although the board favors the use of summary  
2 orders whenever possible, an applicant may not request the  
3 board to issue such an order. The District of Columbia  
4 Administrative Procedures Act requires that the board hearing  
5 on each case be held in the open before the public pursuant  
6 to Subtitles 405(b) and 406 of that act, the board may,  
7 consistent with its rules and procedures in the Act enter  
8 into a closed meeting for purposes of seeking legal counsel  
9 on a case pursuant to DC Official Code, Subtitle 2-575(b)4  
10 and/or delivering on a case pursuant to DC Official Code,  
11 Subtitle 2-575(b)13 but only after providing the necessary  
12 public notice and in the case of an emergency closed meeting  
13 after taking a roll call vote. The decision of the board in  
14 these contested cases must be made exclusively on the public  
15 record. To avoid any appearance to the contrary, the board  
16 requests that persons please not engage the members of the  
17 board in conversation. Please turn off all beepers and cell  
18 phones at this time so as to not disrupt these proceedings.

19 Preliminary matters are those which relate to  
20 whether a case will or should be heard today such as requests  
21 for postponement, continuance or withdrawal, or whether  
22 proper and adequate notice of the hearing had been given.  
23 If you are not prepared to go forward with a case today or  
24 if you believe the board should not proceed, now is the time  
25 to raise such a matter.

1 Mr. Secretary, do you have any preliminary  
2 matters?

3 MR. MOY: Good morning, Mr. Chairman and members  
4 of the board. For the record, for today's docket, there are  
5 two case applications originally scheduled that have been  
6 postponed or rescheduled to future days. This is Case  
7 Application #19-774 Phillip Qiu and Associates LLC  
8 rescheduled to January 9th, 2019, and Case Application #19-  
9 841 of Habitat For Humanity Washington D.C. postponed and  
10 rescheduled to January 16th, 2019. The only other item I  
11 have, Mr. Chair, is there are two applications where ANC7C  
12 has requested postponement and this is to Application No.'s  
13 19-831 and 19-832.

14 VICE CHAIRPERSON HART: Okay, I think what we can  
15 do with those two cases is go through our meeting, the agenda  
16 for the meeting which is a decision case and then get to  
17 those two cases, and then we'll talk about the order of the  
18 agenda, or I'll talk about it after we get to the public  
19 hearing part of the agenda.

20 Okay. Okay.

21 MR. MOY: Yes, sir.

22 VICE CHAIRPERSON HART: All individuals wishing  
23 to testify today, please rise to take the oath.

24 Mr. Secretary, would you please administer the  
25 oath?

1 If you're testifying for any case today.

2 Okay, thanks.

3 MR. MOY: Good morning.

4 (Witnesses Sworn)

5 Ladies and gentlemen, you may consider yourselves  
6 under oath.

7 VICE CHAIRPERSON HART: So Mr. Secretary, if you  
8 could please call the first meeting agenda case.

9 MR. MOY: Okay, that would be Case Application  
10 #19583A of Jemal's East 451LLC. This is a request for a  
11 minor modification to the plans approved by BZA Order #19583  
12 to construct a 13-story hotel, D-4-R Zone at premises at 601  
13 K Street, N.W., Square 451, Lots 23, 24, 25, 823, 822.

14 VICE CHAIRPERSON HART: Thank you. Is the board  
15 ready to deliberate on this case?

16 So I'd like to start. The applicant has made  
17 several changes to the approved drawing set and from the  
18 original case; they submitted this minor modification. I  
19 have read the full record and I do agree with the OP report  
20 that this is a minor modification of the original order that  
21 pertain to the relief of penthouse regulations under Subtitle  
22 C, Section 1500.3(c). I don't believe that this project  
23 changes any of the underlying facts of the original  
24 application we used to base our approval after reviewing the  
25 drawings and the Office of Planning's report, which also

1 acknowledges that no other zoning relief if required. The  
2 ANC6E did provide a letter which is Exhibit 13 which stated  
3 its conditional approval of the proposed modifications that  
4 approval was 7-0-0. They had two conditions and these  
5 conditions are as follows; the trash bins be located indoors,  
6 and that Douglas, the developer, would continue to work with  
7 the commission, the ANC, to obtain DDOT approval for either  
8 a lay-by on either 6th Street and/or K Street. I do  
9 appreciate the ANC letter and I didn't have any particular  
10 concern about the conditions, but I would note that these  
11 don't seem to address the relief specifically. I wouldn't  
12 necessarily want to add these conditions because I don't  
13 think they relate to the relief. I'd like to hear the other  
14 board members' thoughts on that as well. I would encourage  
15 the applicant to work with the ANC to try to address their  
16 concerns and I think we also have Exhibit 14 which the  
17 applicant responded to the ANC's letter and the applicant did  
18 not have any objection to the ANC conditions. So I'd like  
19 to hear the other board members' thoughts on that.

20 BOARD MEMBER JOHN: Mr. Vice Chair, I concur that  
21 this case meets the requirements for a minor modification  
22 which the board has authorized to grant. I did not  
23 participate in the original case so I reviewed the original  
24 and the current record. I agree that the current changes do  
25 not impact the material facts in which the board made its'

1 decision. Essentially, the board granted a special exception  
2 for the penthouse use, and there is some change to the  
3 penthouse design, but it's not a significant change. And so  
4 I agree that this is a minor modification. The applicant  
5 noted that the additional design changes do not require board  
6 approval, and so based on that representation I believe that  
7 it's appropriate to grant the request for minor modification.

8 I should also note that the design change for the  
9 penthouse is a change from one-story 18-foot high to one-  
10 story mezzanine and 20-foot high penthouse. So that supports  
11 the applicant's claim that the change is minor. I agree with  
12 the Vice Chair's comments of the conditions recommended by  
13 the ANC; in my view they're not central to the relief  
14 requested because they're not related to the penthouse and  
15 I will not be in favor including them in the order.

16 I would like to hear what my other colleague  
17 thinks.

18 ZONING COMMISSION MEMBER MAY: I would just say  
19 that I agree on all counts. I would emphasize that this is  
20 a minor modification and the ANC's conditions don't relate  
21 either to the initial relief that was granted or to the  
22 requested modifications, so yeah I don't believe it would be  
23 appropriate to include those in the order but it is always  
24 encouraging to know the developer has put it on the record  
25 saying that they would accommodate the ANC's conditions. So

1 that's always good to hear but not necessary for us to be  
2 able to take action in favor today.

3 VICE CHAIRPERSON HART: Okay, hearing that I will  
4 make a motion to approve Application #19583A of Jemal's East  
5 451LLC as read and captioned by the secretary. Do I have a  
6 second?

7 BOARD MEMBER JOHN: Second.

8 VICE CHAIRPERSON HART: Hearing a second, all  
9 those in favor say aye.

10 (Chorus of aye.)

11 Any opposed?

12 Mr. Secretary?

13 MR. MOY: Staff would record the vote as 3-0-2,  
14 this is on the motion of Vice Chair Hart to approve the  
15 request for minor modification, seconded motion is Ms. John,  
16 also in support Mr. May. We have two board members now  
17 present with us today. The motion carries.

18 VICE CHAIRPERSON HART: Thank you, Mr. Secretary.

19 So moving forward, I think we can move to the  
20 other heavy meeting agenda. This is concluded; we can move  
21 to our hearing agenda.

22 (Whereupon, the above-entitled matter went off the  
23 record at 9:51 a.m.)

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: DCBZA

Date: 10-24-18

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.



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Court Reporter

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