

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

THURSDAY

FEBRUARY 21, 2019

+ + + + +

The Special 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 4:30 p.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on February 21, 2019.

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

(4:33 p.m.)

1
2
3 BZA CHAIR HILL: All right, this meeting will
4 please come to order. Good afternoon, ladies and gentlemen,
5 this is the 2/21/2019 Special Public Meeting of the Board of
6 Zoning Adjustment in the District of Columbia.

7 My name is Fred Hill, Chairperson. Joining me
8 today is Vice Chairperson Carlton Hart, representing the
9 National Capital Planning Commission, and Board Member
10 Lesyllee White, Mayoral Appointee. And representing the
11 Zoning Commission is Anthony Hood.

12 Copies of today's meeting agenda are available to
13 you and located to my left on the wall bin near the door, I
14 think. I believe, I'm not sure. I believe so.

15 We are not taking public testimony as this is just
16 a meeting. Please be advised this proceeding is being
17 recorded by a court reporter and is also webcast live.

18 Accordingly, we must ask you to refrain from any
19 disruptive noises or action in the hearing room. Please turn
20 off all beepers and cell phones.

21 Mr. Secretary, do you have any preliminary
22 matters? If not, let's proceed with the agenda.

23 MR. MOY: Thank you, Mr. Chairman. The only
24 action before the Board is attended to Appeal Number 19441.
25 The property owner filed a motion to stay the order granting

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1 the appeal of Richardson Place Neighborhood Association,
2 which is pursuant to 11 DCMR 3100 and 3101, from the decision
3 that was made on September 27, 2016 and October 20, 2016 by
4 the Zoning Administrator, Department of Consumer and
5 Regulatory Affairs, which issued building permits Number
6 B1611469 and B1611470, that permitted the construction of two
7 adjacent flats in the R-4 District at premises 410 and 412
8 Richardson Place Northwest, Square 507, Lots 101 and 102.

9 BZA CHAIR HILL: Okay. Are we ready to
10 deliberate? Okay. So I'm going to read through some stuff
11 and then we can just see where we are.

12 So, on February 4th, 2019 the Board issued an
13 order granting the appeal in 19441, which was brought by the
14 Richardson Place Neighborhood Association, to challenge
15 decisions by the Zoning Administrator to issue building
16 permits and certificates of occupancy allowing flats on two
17 adjoining parcels.

18 The properties are owned by Oaktree Development,
19 LLC or LTD. Which completed construction of the building and
20 planned to lease them to Common Living Incorporated, which
21 would manage the properties for tenants in a, you know,
22 quote, co-living arrangement.

23 ANC 5E adopted two resolutions in support of the
24 appeal. Actually, before I get to this discussion, the first
25 thing I did want to mention was this.

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1 So, as kind of a preliminary matter, I suppose,
2 I didn't think that there was any harm or prejudice to any
3 of the parties that we're waiving any time requirements to
4 conduct this public meeting. It was scheduled to today
5 because of the inclement weather that we had with the
6 government yesterday.

7 So, unless the Board has any opposition to that,
8 I would just go ahead and waive those time requirements, is
9 that okay?

10 MEMBER WHITE: Yes.

11 BZA CHAIR HILL: All right. So everybody is
12 nodding, so, Mr. Moy, you can note that for the record.

13 As I had said then, or I left off, ANC 5E had
14 adopted two resolutions in support of the appeal. On
15 February 11th, 2019 the property owner filed a motion to stay
16 the effectiveness of the Board's order granting the appeal
17 pending a decision by the Board, on the property owner's
18 related motion for the reconsideration of the order.

19 Under Y701.2, the Board, on its own motion or the
20 motion of a party or a petitioner to the DC Court of Appeals,
21 may order the effectiveness of a final decision in order of
22 the Board's stayed pending, reconsideration or rehearing, or
23 appeal of the decision and order to the Court of Appeals.

24 The motion of stay was served on the other parties
25 to the appeal, which is the Appellant, DCRA and ANC 5E. A

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1 response in opposition to the motion was filed by the
2 Appellant.

3 However, I do note that I think in the motion the
4 Appellant said that they were comfortable with a stay of 30
5 days so that they, I guess the people that are living there
6 right now would have an opportunity to find somewhere else
7 to live.

8 In order for the Board to grant the stay, they
9 need to find that four necessary criteria are present under
10 Y701.3. Those being, A, the parties seeking the stay is
11 likely to prevail on the merits of the motion for
12 reconsideration, or the appeal to the Court of Appeals, B,
13 a irreparable injury will result if the stay is denied, C,
14 opposing parties will not be harmed by a stay and, D, the
15 public interest favors the granting of the stay.

16 The first element, again, under the consideration
17 is whether the party seeking the stay, in this case the
18 property owner, is likely to prevail on the merits of the
19 motion for reconsideration.

20 So I was going to go through my four talking
21 points on those four elements and then just see where the
22 rest of my colleagues were.

23 I suppose in terms of A, which is the parties
24 likely to prevail, I actually, I didn't really know what to
25 do with this.

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1 I mean, I don't necessarily know whether I think
2 that they would be likely to prevail. However, given the
3 fact that there was also a motion for reconsideration made
4 and there was a variety of arguments put forward by the
5 property, as well as the Appellants for the reconsideration,
6 I was basing a lot of what I was thinking upon, on the fact
7 as to whether or not we were or weren't going to do a
8 reconsideration.

9 And so, if we had done, or if we were to have a
10 reconsideration done, or have an opportunity to do a
11 reconsideration, then I would even know more strongly, one
12 way or the other, if I thought that the property was likely
13 to prevail in an appeal. So I'm kind of tabling that
14 discussion.

15 The other was that for B, a reputable injury will
16 result if the stay is denied. The arguments, again, that the
17 parties had made in terms of that there were people living
18 in the facility now, and come, I think Monday, which is
19 what's bringing us to have to do this today, is that the
20 certificate of occupancy will be expiring and those people
21 that are living there are going to have to be, you know, they
22 would have to leave, evicted or what have you.

23 And so, I could see how that could be irreparable
24 injury, in the result if this stay was denied. I kind of
25 think they brought that on themselves. But, I can understand

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1 that argument.

2 The, let's see, the next item, which was opposing
3 parties, will not be harmed by a stay. I kind of kick that
4 back to B again, to me, which is like there's an argument
5 from the Appellants who were successful in their appeal and
6 that the community now has the facility moving forward in the
7 way that we thought the Zoning Administrator had erred.

8 And so, I think that an argument could be made
9 that opposing parties will be harmed by the stay, in terms
10 of it being the Appellant. And also, opposing party will be
11 harmed in terms of the stay in terms of, again, the people
12 that would have to be evicted from the facility.

13 Then, D, the public interests favors the granting
14 of the stay. Again, kind of am going back to this discussion
15 in terms of the difference between the people who had -- the
16 community or us, the Board, who had thought that the Zoning
17 Administrator had erred, and that the, this facility is
18 moving forward in a way that we thought was in err by the
19 Zoning Administrator, and then now those people that would
20 be evicted while this process is moving forward.

21 And after that long discussion where I am again,
22 and then I'm going to turn it over to whoever would like to
23 discuss it next, is that I would be under the opinion to
24 grant the stay until the motion for reconsideration order is
25 written. So therefore, we would take up the motion for

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1 reconsideration.

2 We set a date for it, and then that motion would
3 either be approved or denied. And then once that order was
4 written, then that's when the stay would expire.

5 So, that's my long-generated thing. And since
6 this is all we got today, who would like to go next?

7 Well, we know where you voted before, so left on
8 my room, the table on the right here. The left that is.
9 Please, whenever you like.

10 MEMBER WHITE: Mr. Chair, I will just chime in by
11 just simply saying that after looking at the criteria for
12 granting the motion for the stay, I think I would be in
13 support of granting the stay until such time as, you know,
14 we as a Board are able to make a decision on the motion for
15 reconsideration.

16 In terms of the four elements, in terms of whether
17 or not the criteria was met, I think an argument could be
18 made either way, depending on who is making the argument,
19 with respect to the four elements for reconsideration.

20 And then the first one was really the one that I
21 had the hardest one, hardest time with. And that was the
22 fact that whether the parties seeking the stay is likely to
23 prevail on the merits of its motion for a reconsideration.

24 I don't know if that's actually 100 percent the
25 case. But I think we will have an opportunity to make that

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1 decision once we take up the motion for a reconsideration.
2 I imagine that will be sometime next month.

3 So, even though I'm not terribly pleased with this
4 coming up at this particular point in time, I would like to
5 give the parties an opportunity to kind of weigh in on the
6 arguments that were presented in the motion for
7 reconsideration. So, that's where I stand right now.

8 ZC CHAIR HOOD: Thank you, Mr. Chairman. Another
9 opportunity for a developer or applicant to come down and try
10 to push our, push us up against the wall at the last minute.
11 They knew this was coming out of the pipe long before
12 February 25th, or whatever the cutoff date is for the C of
13 O to be non-executable.

14 For me the merits of the case, I think that the
15 motion for the stay, from what I read, is very weak. It's
16 very weak.

17 And then trying to insinuate, and I think they
18 even capture some comments from what was being mentioned,
19 through the case. I think that case was fully vetted.

20 And depending upon on how we move forward we can
21 still, I don't see where anything has changed, other than the
22 Applicant and the developer didn't do their due diligence and
23 waited until the last minute to bring it back here for us to
24 stay and hold everything off. They knew this was coming.
25 So, I have problems with this.

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1 But one of the things in the four, going back to
2 what you did in the four under 701.3, irreparable injury will
3 result if the stay is denied. I don't want to say, and I
4 think it's been captured, that the people that have moved in
5 will have to move out. That's one thing where I would hope
6 that we can get that resolved prior to the C of O being non-
7 executable.

8 But I think that the stay request is very weak.
9 And how we move forward, I still do not see where the Zoning
10 Administrator did not err. But, anyway, with that, I would
11 just stick with the stay for now.

12 But dependent upon what others think, if we do
13 want to grant the stay I would do it very, very hesitantly
14 to grant a stay. Very, very hesitantly, because I think the,
15 again, as I stated, and I want to make sure this goes on the
16 record for anything someone wants to use it for, if you look
17 at the actions of what we spoke about, I think we dissected
18 quite a bit. I think it was captured.

19 I just have a problem with how this, the manner
20 this is being presented to us. To me, I'm not going to say
21 back door, but I don't like the way it's presented. And,
22 again, this stay request is very, very weak. Extremely weak.
23 And all that's I have to say, Mr. Chairman.

24 VICE CHAIR HART: So, I get to go next?

25 (Laughter.)

1 VICE CHAIR HART: Yes, I didn't have a lot to add
2 to this. I don't have a particular issue with granting the
3 stay.

4 I would note, however, that I think that the one
5 part that kind of gave me some pause was the first part,
6 which is the party seeking the stay is likely to prevail in
7 the merits of the motion for reconsideration. I really don't
8 know that.

9 And so, that's the only part that I had a question
10 on. But I think that it would be maybe helpful to have the,
11 to do the reconsideration and then we can take that up at
12 that point.

13 But other than that, I'm okay with having the
14 stay. And we'll deal with it at the reconsideration, as a
15 reconsideration. So, whatever that is. And I'm not even
16 sure what the date is --

17 BZA CHAIR HILL: Okay.

18 VICE CHAIR HART: -- in February. Or in March.

19 BZA CHAIR HILL: Okay. So what I'm proposing
20 again is that we're going to go ahead and grant the stay
21 until the order for the, until the order of the motion of
22 reconsideration is written.

23 And so we can go ahead and set a date to determine
24 whether, you know, whether or not we're going to reconsider
25 this case. And I guess on that date, if we deny the

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1 reconsideration then that's the end of that. And if we want
2 to hear the reconsideration, then we can just reconsider it
3 that same day.

4 So, Mr. Moy, when is it that Chairman Hood is back
5 with us again?

6 MR. MOY: Actually, it would be March the 13th,
7 Mr. Chairman.

8 BZA CHAIR HILL: Okay. So does that date work
9 with everybody? Does that sound like a good date?

10 (Off-microphone comments.)

11 BZA CHAIR HILL: Okay. All right.

12 So, Chairman Hood, we might have a conflict with
13 Board Member White. And so, if we can do it the following
14 week, would you be willing to come back in the morning?

15 ZC CHAIR HOOD: Chairman, whatever you date you
16 set I will be here.

17 BZA CHAIR HILL: All right. So, Mr. Secretary,
18 if you could set this for the following week after that.
19 What date would that be?

20 MR. MOY: That would be the 20th of March.

21 BZA CHAIR HILL: So we'll go ahead and set the --

22 ZC CHAIR HOOD: Can we put it first?

23 BZA CHAIR HILL: Yes, we can put it last.

24 ZC CHAIR HOOD: Or last.

25 BZA CHAIR HILL: No, we'll put it first. We'll

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1 put it first. If that works for you. And great.

2 Okay. Then I'm going to go ahead and make a
3 motion to grant the motion for stay until the order is
4 written, after we determine the motion for reconsideration
5 on March, which day again was it, Mr. Moy?

6 MR. MOY: March the 20th.

7 BZA CHAIR HILL: March 20th, and ask for a second?

8 VICE CHAIR HART: Second.

9 BZA CHAIR HILL: Motion made and seconded, all
10 those in favor say aye?

11 (Chorus of ayes.)

12 BZA CHAIR HILL: All those opposed? Motion
13 passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as 4-0-1.
15 This is on the motion of Chairman Hill to grant the motion
16 for a stay of the order. Seconded the motion, Vice-Chair
17 Hart. Also in support Ms. White and Mr. Anthony Hood. No
18 other members participating. Motion carries.

19 BZA CHAIR HILL: Okay, great. Is that all we have
20 today, Mr. Moy?

21 MR. MOY: Yes, sir.

22 BZA CHAIR HILL: All right, then as stand
23 adjourned. Thank you everybody.

24 (Whereupon, the above-entitled matter went off the
25 record at 4:49 p.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: Special Public Meeting

Before: DC BZA

Date: 02-21-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Court Reporter

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