

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

MARCH 27, 2019

+ + + + +

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
LESYLLEE M. WHITE, Board Member
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

TRACEY ROSE, Secretary
JOHN NYARKU

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the Public Meeting held on March 27, 2019.

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

9:44 a.m.

CHAIRPERSON HILL: Let's come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the March 27, 2019 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair; Lesyllee White and Lorna John, Board members; and representing the Zoning Commission will be Rob Miller on one case and Michael Turnbull on another -- for the rest of the day I should say.

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.

All persons planning to testify either in favor

1 or in opposition must have raised their hand and been
2 sworn in by the secretary. Also, each witness must fill
3 out two witness cards. These cards are located on the
4 table near the door and on the witness table. Upon coming
5 forward to the Board, please give both cards to the
6 reporter sitting to the table to my right.

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

14 The order of procedure for special exceptions,
15 variances, and appeals is also listed as you come into the
16 room. The record shall be closed at the conclusion of
17 each case, except for any material specifically requested
18 by the Board. The Board and the staff will specify at the
19 end of the hearing exactly what is expected and the date
20 when the persons must submit the evidence to the Office of
21 Zoning. After the record is closed, no other information
22 shall be accepted by the Board.

23 The Board's agenda includes cases set for
24 decision. After the Board adjourns, the Office of Zoning,
25 in consultation with myself, will determine whether a full

1 or summary order may be issued. A full order is required
2 when the decision it contains is adverse to a party,
3 including an affected ANC. A full order may also be
4 needed if the Board's decision differs from the Office of
5 Planning's recommendation. Although the Board favors the
6 use of summary orders whenever possible, an applicant may
7 not request the Board to issue such an order.

8 The District of Columbia Administrative
9 Procedures Act requires that the public hearing on each
10 case be held in the open before the public pursuant to
11 Section 405(b) and 406 of that act. The Board may,
12 consistent with its rules and procedures and the Act,
13 enter into a closed meeting on a case for purposes of
14 seeking legal counsel on a case pursuant to D.C. Official
15 Code Section 2-575(b)(4) and/or deliberating on a case
16 pursuant to D.C. Official Code Section 2-575(b)(13), but
17 only after providing the necessary public notice and, in
18 the case of an emergency closed meeting, after taking a
19 roll call vote.

20 The decision of the Board in cases must be
21 based exclusively on the public record. To avoid any
22 appearance to the contrary, the Board requests that
23 persons present not engage the members of the Board in
24 conversation. Please turn off all beepers and cell phones
25 at this time so as to not disrupt the proceeding.

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1 Preliminary matters are those which relate to
2 whether a case will or should be heard today, such as
3 requests for postponement, continuance, or withdrawal, or
4 whether proper and adequate notice of the hearing has been
5 given. If you're not prepared to go forward with a case
6 today or if you believe the Board should not proceed, now
7 is the time to raise such a matter.

8 Ms. Secretary, do we have any preliminary
9 matters?

10 MS. ROSE: Good morning, Mr. Chairman, members
11 of the Board. Staff has one main preliminary matter which
12 is Appeal Number 19950 of ANC 1C, which has been
13 rescheduled to May 8th, 2019 by consent of the parties.
14 The other preliminary matters can be handled when we call
15 the cases.

16 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
17 Rose. Okay, everyone. Good morning. If you plan on
18 testifying either in favor or in opposition, if you
19 wouldn't mind standing, please, and taking the oath
20 administered by the secretary to my left.

21 (Witnesses sworn.)

22 MS. ROSE: You may be seated and consider
23 yourselves under oath.

24 CHAIRPERSON HILL: Okay. One last thing. As
25 far as the order that we're going to go in, we are going

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1 to go through the agenda in the way that it's in the bin
2 as you kind of came in the door here. There's no changes.
3 We have a really full day today, and so we're going to try
4 to have -- we'll have lunch at some point. I don't know
5 exactly when that is. And so that's it.

6 Ms. Rose, if you want to call our first meeting
7 case, which actually I am not on, so I'll turn it over to
8 Vice Chair Hart.

9 MS. ROSE: That is Application Number 19722A of
10 Kline Operations. This is an opposition party motion to
11 stay BZA Order Number 19722 dated January 9th, 2019 for
12 special exceptions pursuant to 11 DCMR, Subtitle X,
13 Section 901.2; and under Subtitle C, Section 1502.1(c)(4)
14 for the penthouse side setbacks; and Subtitle I, Section
15 205.1, for the rear yard; and pursuant to 11 DCMR,
16 Subtitle X, Section 1000.1 for variances under Subtitle C,
17 Section 901.1 for the number of loading berths; Subtitle
18 C, Section 904.2 for the width of access aisle to the
19 loading berth; Subtitle I, Section 207.1 for closed court
20 dimensions; and Subtitle I, Section 612.4 from the floor-
21 to-ceiling clearing height requirement to allow a hotel in
22 the D-4-R zone at premises 923 through 927 5th Street,
23 Northwest, Square 0516, Lots 827, 828, 829, and 833.

24 VICE CHAIRPERSON HART: Thank you very much.
25 Is the Board ready to deliberate? I can start. So as

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1 you're aware, one of the parties in opposition has
2 submitted a motion to stay the BZA order, as they are in
3 the process of an appeal at the District Court of Appeals.

4 The zoning regulations describe the process and
5 criteria that the Board must use in order to determine if
6 granting a stay is warranted. The zoning regs state that
7 the Board shall grant a stay only upon finding that all
8 four of the following criteria are present. And these
9 criteria are that the party -- the first is that the party
10 seeking the stay is likely to prevail on the merits of the
11 appeal. The second is that irreparable injury will result
12 if the stay is denied. The third criteria is opposing
13 parties will not be harmed by a stay. And, finally, that
14 the public interest favors the granting of the stay.

15 So it's the Board's responsibility to determine
16 if all four of the criteria are present. The opposition
17 party submitted with its stay request, which is Exhibit
18 98, its rationale regarding how it meets all four criteria
19 and why it believes the stay should be granted. And the
20 applicant has also supplied its own view on whether the
21 opposition party has met the four criteria. This is in
22 Exhibit 99.

23 So after reviewing this request and the
24 rationale, I am not convinced that the opposition party
25 provided sufficient information demonstrating how they

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1 meet the second criteria regarding irreparable injury, how
2 irreparable injury will result if the stay is denied. And
3 I also note that the applicant has demonstrated that they
4 will be harmed by the stay because the appeal would last
5 for an unknown amount of time, during which time the
6 applicant would not be able to receive their building
7 permit, even though the BZA order has been completed.

8 So because of this, my vote would be to deny
9 the stay since not all of the criteria, the four criteria
10 that I read, would not be able to be met. I think it's
11 fairly kind of straightforward to me, so I'd like to hear
12 from my other Board members.

13 MEMBER WHITE: Yes. Mr. Vice Chair, I agree
14 with your assessment of the standard of review that's
15 spelled out in Subtitle Y, 701.3. As you stated, there
16 are four criteria. I agree with your assessment of some
17 of the points that you've made, meaning -- including your
18 point that if the stay were granted, there's really no
19 defined time line by which we would know when the appeal
20 would be resolved, and it could potentially create some
21 harm to the applicant.

22 And also with respect to Section A of that
23 particular section, I'm also not swayed that the applicant
24 -- the individual that's filing the motion for the stay
25 would likely prevail on the merits of the appeal at this

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1 point. So I would concur with your assessment that the
2 motion to stay should be denied.

3 MEMBER JOHN: Mr. Vice Chair, this case was
4 argued over several hearings. There's a very full record.
5 And I believe that in order to prevail, as my fellow Board
6 members have stated, the applicant must prevail on all
7 four criteria. So I believe that the record demonstrates
8 that the 450K is not likely to prevail on the merits, that
9 most of the arguments presented in the motion for a stay
10 were discussed and fully explored during all of the
11 hearings, and that the findings of fact and the record
12 support the Board's decision and that it was consistent
13 with the law and regulations that were -- that apply.

14 I also believe that the applicant will be
15 harmed by granting the stay. As the applicant noted in
16 its opposition to the motion, it will be unable to start
17 the permit process, which is lengthy. And the applicant
18 also understands that it would be proceeding at its own
19 risk.

20 So because the 450K, who is the movement in
21 this case, has not met its burden of meeting all four of
22 the criteria, I cannot support the motion.

23 VICE CHAIRPERSON HART: Okay. So hearing that,
24 I think I will make a motion to, I guess, deny the motion
25 to stay for Application 19772 of Kline Operations. Do I

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1 have a second?

2 MEMBER JOHN: Second.

3 VICE CHAIRPERSON HART: Having heard a second,
4 all those in favor of the denial -- it seems odd -- say
5 aye.

6 (Chorus of aye.)

7 VICE CHAIRPERSON HART: Any opposed?

8 Motion carries. Or I think we have an
9 absentee.

10 MS. ROSE: No, we don't.

11 VICE CHAIRPERSON HART: Okay. So then the
12 motion would carry.

13 MS. ROSE: Yes. Staff would record the vote as
14 3 to 0 to 2 with the motion by Mr. Hart, a second by Ms.
15 John, to deny the motion to stay the order of the Board.
16 Ms. White in support of the motion, Mr. Hood not present
17 not voting, and Mr. Hill not participating.

18 VICE CHAIRPERSON HART: Thank you. I turn it
19 back over to you, Mr. Chairman.

20 CHAIRPERSON HILL: Thanks, Ms. Rose. You can
21 call the next one whenever you'd like.

22 MS. ROSE: The next case for decision is
23 Application Number 19936 of Matthew and Alicia Amling,
24 pursuant to 11 DCMR, Subtitle X, Chapter 9, for a special
25 exception under Subtitle D, Sections 1206.4 and 5201 from

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1 the rear addition requirements of Subtitle D, Section
2 1206.3 to construct a third story and a rear addition to
3 an existing attached principal dwelling unit in the R-20
4 zone at premises 3617 T Street, Northwest, Square 1296,
5 Lot 338.

6 CHAIRPERSON HILL: Okay. Thank you. Is the
7 Board ready to deliberate? Okay. So I can start. We
8 heard this back on 3/13, and we asked for a shadow study
9 on the matter-of-right option versus what they were
10 proposing. We did receive that information.

11 The Office of Planning had provided their
12 testimony and was in support. The ANC was also in support
13 but had concerns about the roof deck, but they did vote to
14 approve, but they did have concerns about the roof deck
15 and that we take a look at those concerns. DDOT had no
16 objection. The two immediate neighbors were in support.
17 There was some opposition to this application.

18 After reviewing the record and the additional
19 sun studies, I think I would agree with the analysis
20 provided by the Office of Planning. I do not think that
21 the additional 11 feet from the matter-of-right 10 feet
22 causes an undue amount of shadowing or detriment to light
23 and air. I further do not think that the roof deck causes
24 an undue detriment to privacy or that privacy would be
25 unduly compromised, as in the specific special exception

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1 criteria under D5201(b), privacy of use and enjoyment of
2 neighboring properties should not be unduly compromised.
3 So I do not think that the roof deck would unduly
4 compromise the privacy of adjacent properties or the
5 properties in that area, and the neighbors -- actually the
6 adjacent neighbors were actually in support.

7 We did clarify with the applicant concerning, I
8 believe, the one-to-one setback for the penthouse. So I
9 would be voting to approve and would ask my fellow Board
10 members if they have any comment.

11 VICE CHAIRPERSON HART: Only that I'd note
12 that, after reviewing the case, I also believe that there
13 would be impacts from light and air on the project, but,
14 after reviewing the most recent shadow study, I do not
15 believe that these would be undue impacts. I know they
16 provided a by right and the proposal in comparison to be
17 able to understand what that impact would be if it were a
18 by-right option versus the actual proposed development.

19 And I'll say that I did have some reservations
20 about this because of the extent of the project in the
21 rear and particularly because, and I think I raised this
22 at the hearing, the southern facing -- any southern-facing
23 building will have greater shadows in the rear and that
24 these shadows would be cast, of course, on the
25 neighboring, adjacent neighbors. And this could

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1 potentially be, you know, more impactful than if you had a
2 building that had a northern -- kind of faced to the
3 north.

4 So that being said, I looked at the by-right
5 and the proposed impacts, at the sun study. I think this
6 was Exhibit 46. I felt that that was actually helpful for
7 me to understand the extent of the impacts from the -- the
8 difference between the by-right and the proposed project.

9 So all that said, I just thought that I would
10 be able to support the application because I felt that
11 they've provided sufficient information to demonstrate how
12 they meet the criteria for the Board to grant the special
13 exception, and I'd be in support. So that's it.

14 MEMBER JOHN: Mr. Chairman, I support the
15 application. I support the application based on the
16 record, and I agree with what my fellow Board member has
17 said. I also was convinced or persuaded by the shadow
18 studies, the last set, which did not show any significant
19 difference between the by-right option and the option as
20 proposed. So based on that reason and the record, I will
21 support the application.

22 CHAIRPERSON HILL: Okay, thank you. And I make
23 note that Board Member White is not on this deliberation.
24 She's not on this case. But I am kind of -- since we're
25 bringing this up again and, you know, these continue to be

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1 more and more of these that we see and that there are
2 different even options that applicants are coming forward
3 with in terms of these type of special exceptions, I
4 continue to think that we, as a board, deliberating about
5 what the impact is on the shadowing, you know, and that
6 you bring up a good point in terms of the southern facing,
7 and that's something that, you know, I think that is
8 another thing that we might think about as we kind of go
9 forward with these things.

10 But, okay, thank you. So in that case, I'll go
11 ahead and make a motion to approve Application Number
12 19936 as captioned and read by the secretary and ask for a
13 second.

14 VICE CHAIRPERSON HART: Second.

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

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed?

19 The motion passes. Ms. Rose?

20 MS. ROSE: Staff would record the vote as 3 to
21 0 to 2 with a motion -- that is to approve the
22 application, with a motion by Mr. Hill, seconded by Mr.
23 Hart, with Ms. John in support of the motion, Mr. Hood not
24 present and not voting, Ms. Hill not -- Ms. White not
25 participating.

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1 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose.
2 (Whereupon, the above-entitled matter went off
3 the record at 10:03 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: 03-27-19

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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