

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 1, 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 L. 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)

ZONING COMMISSION MEMBERS PRESENT:

- ROBERT MILLER, Zoning Commission Vice Chair

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 1, 2019.

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

(9:41 a.m.)

1 CHAIR HILL: All right. Good morning, everyone.
2
3 The hearing will please come to order. We're located in the
4 Jerrily R. Kress Memorial Hearing Room at 441 4th Street,
5 Northwest. This is the May 1st public hearing of the Board
6 of Zoning Adjustment District of Columbia.
7

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chair, Leslie White and Lorna
10 John, Board Members, and representing the Zoning Commission
11 is Rob Miller.

12 Copies of today's hearing agenda are available to
13 you and located on the wall bin next to the door.

14 Please be advised that this proceeding is being
15 recorded by a court reporter and is also webcast live.
16 Accordingly, we must ask you to refrain from any disruptive
17 noises or action in the hearing room. When presenting
18 information to the Board, please turn on and speak into the
19 microphone, first stating your name and home address. When
20 you're finished speaking, please turn your microphone off so
21 that your microphone is no longer picking up sound or
22 background noise.

23 All persons planning to testify either in favor
24 or in opposition must raise their hand and be sworn in by the
25 Secretary. Also, each witness must fill out two witness

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1 cards. These cards are located on the table near the door
2 and on the witness table. Coming forward, please -- upon
3 coming forward to the Board, please give both cards to the
4 reporter sitting at the table to my right.

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

12 The order of procedures for special exceptions,
13 variances, and appeals are also listed as you come walking
14 into the hall there. The Board's -- the record shall be
15 closed at the conclusion of each case except for any material
16 specifically requested by the Board. The Board and the staff
17 will specify at the end of the hearing exactly what is
18 expected and the date when the persons must submit the
19 evidence to the Office of Zoning. After the record is
20 closed, no other information shall be accepted by the Board.
21 The Board's agenda includes cases set for decision.

22 After the Board adjourns, the Office of Zoning,
23 in consultation with myself, will determine whether a full
24 or summary order may be issued. A full order is required
25 when the decision it contains is adverse to a party,

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1 including an affected ANC. A full order may also be needed
2 if the Board's decision differs from the Office of Planning's
3 recommendation. Although the Board favors these use of
4 summary orders whenever possible, an Applicant may not
5 request the Board to issue such an order.

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

17 The decision of the Board on cases must be based
18 exclusively on the public record. To avoid any appearance
19 to the contrary, the Board request the persons present not
20 engage the members of the Board in conversation. Please turn
21 off all beepers and cell phones at this time so as not to
22 disrupt these proceedings.

23 Preliminary matters are those which relate to
24 whether a case will or should be heard today such as requests
25 for a postponement, continuance, or withdrawal, or whether

1 proper and adequate notice of the hearing has been given.
2 If you're not prepared to go forward with the case today,
3 or if you believe that the Board should not proceed, now is
4 the time to raise such a matter.

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

6 SECRETARY MOY: Good morning, Mr. Board -- good
7 morning, Mr. Chairman, members of the Board. Yes, very
8 quickly, and this is for the record on today's docket, Case
9 Application Number 19984 of Rupsha -- that's R-U-P-S-H-A,
10 2011, LLC has been postponed from today's hearing schedule
11 and rescheduled to June 5, 2019.

12 There are other preliminary matters as well, Mr.
13 Chairman. I would suggest that we -- the Board address those
14 when I call the case, but I would mention that on Case
15 Application Number 19985 of disrictproperties.com and 19990
16 of Thomas Houston, there has been a request from the ANC 7C
17 to postpone, but we can address those when I call the case
18 again.

19 CHAIR HILL: Okay. Great. Thank you. All right.
20 If anyone is here wishing to testify, either in favor or in
21 opposition, if you would please stand and take the oath
22 administered by the Secretary to my left?

23 (Witnesses sworn.)

24 SECRETARY MOY: All right. Ladies and gentlemen,
25 you may consider yourselves under oath.

1 CHAIR HILL: Okay. Good morning, everybody. We
2 are going to follow the agenda that is at the door, so I
3 don't have any changes at this point. We'll see how that
4 goes throughout the remainder of the day. And Mr. Moy, you
5 can call our first decision case whenever you get a chance.

6 SECRETARY MOY: Thank you, Mr. Chairman. The
7 first of two cases were decision-making in the meeting
8 session of today's docket is Appeal Number 20021 of ANC 6C,
9 and I'm going to read the appeal as captioned, and this is
10 the appeal from the decision made on January 22nd, 2019 by
11 the Zoning Administrator, Department of Consumer and
12 Regulatory Affairs, to issue Certificate of Occupancy Number
13 CO1901156, permitting the property to operate as restaurant
14 and bar with seating for 122 persons and a load occupancy of
15 269 persons in the NC-16 Zone. This is at 707 H Street,
16 N.E., Square 890, Lot 26. This is before the Board because
17 there is a motion on the part of DCRA to dismiss the appeal
18 as moot.

19 CHAIR HILL: Okay. Thank you. Is the Board ready
20 to deliberate? Okay. I can start. I mean I didn't think --
21 I thought this was actually quite straightforward. DCRA
22 submitted a motion in Exhibit Number 5 to dismiss the appeal
23 as moot citing why, 101.6. The motion states that the
24 Certificate of Occupancy was voluntarily surrendered by the
25 property owner on April 3, 2019 and was canceled by DCRA.

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1 By email, the Appellant indicating consent to the motion in
2 Exhibit Number 6. So I don't have any issues with dismissing
3 this appeal as moot. Does the Board have anything they'd
4 like to add?

5 VICE CHAIR HART: No. And I would agree with your
6 -- I would also be in agreement with that, too, I guess
7 approve the motion.

8 CHAIR HILL: Okay. Anyone else?

9 All right. I'm going to make a motion then to
10 dismiss Appeal Number 20021 as moot and ask for a second?

11 MEMEBER WHITE: Second.

12 CHAIR HILL: The motion's been made and seconded.
13 All those in favor, say aye.

14 (Chorus of ayes.)

15 CHAIR HILL: All those opposed?

16 Motion passes. Mr. Moy?

17 SECRETARY MOY: Staff would record the vote as 5-
18 0-0. This is on the motion of Chairman Hill to dismiss the
19 appeal as moot. Seconding the motion, Ms. White. Also
20 support Ms. John, Vice Chair Hart, and Mr. Robert Miller.
21 Motion carries.

22 CHAIR HILL: Thank you, Mr. Moy. Mr. Hart, I'm
23 actually not on the next one, so if wouldn't mind taking over
24 that.

25 VICE CHAIR HART: Sure.

1 CHAIR HILL: Thank you. Whenever Mr. Moy has a
2 chance to call it.

3 SECRETARY MOY: All right. That would be Case
4 Application Number 19942 of Alula Abera as captioned for
5 special exception under Subtitle G, Section 1200, from the
6 lot occupancy requirements to Subtitle G, Section 404.1.
7 This would construct a third story and convert the existing
8 semi-detached principle dwelling unit to a four-unit
9 apartment house. This is in an MU-4 Zone at 3321 11th
10 Street, N.W., Square 2841, Lot 48. And let's see,
11 participating is Vice Chair Hart, Ms. White, Ms. John, and
12 also participating on the vote currently is Mr. Michael
13 Turnbull.

14 VICE CHAIR HART: Yes. I -- is the Board ready
15 to deliberate?

16 I had some, kind of, initial thoughts on this.
17 In looking at the drawings, one of the -- we had requested
18 that the Applicant submit -- that their architect submit
19 additional drawings or updated drawings showing what they
20 were -- I guess the ANC had seen and had voted to approve.
21 I -- looking at the updated drawings, there still seemed to
22 be an issue with the section that is in Exhibit 46, and my
23 issue is that one of the things that the Applicant had
24 changed from the original drawings to the new drawings was
25 adding a rooftop architectural element back into the design

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1 that they had removed in the original drawings. And the
2 section actually doesn't show this, and I think that that's
3 helped. It is something that we should have in the record
4 so that we are -- know what we are approving. And I would --
5 because we haven't -- we don't have an updated drawing, or
6 at least one that seems like it, kind of, makes sense. I
7 would recommend that we would push this decision off to
8 either next week or the following week so that we could get
9 the drawings that we're looking for and we could then make
10 a determination or make a decision at that point.

11 I, you know, think it's somewhat unfortunate. I
12 was ready to, kind of -- understanding what we had -- the
13 testimony that we had gotten already, I was pretty close to
14 making that decision, but I really would like to have this
15 updated building section. It's -- the section -- there's a
16 section in both 45 and 46, Exhibits 45 and 46, but the
17 Exhibit 46, while it is an improvement over the partial
18 section that is in the drawing set of Exhibit 45, it still
19 doesn't show that -- where that peak is, or at least I'm not
20 understanding where that is, because I had a different
21 understanding on some of the drawings, so I think they need
22 a little bit more clarity between the drawings -- more
23 consistency between the drawings before we can move forward.
24 But I'd like to hear from other Board members.

25 MEMBER WHITE: Yes, Mr. Vice Chair. I concur with

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1 you. I was ready to move forward with this as well, you
2 know, because I think, you know, I was comfortable with the
3 fact that the criteria was met for the special exception
4 relief that they were seeking. But as you stated, we need
5 to make sure that the plans and the record reflect the actual
6 relief that they're asking for. So I would like to see
7 something that responds to your architectural comments and
8 something, you know, just more professional, something more
9 concrete that we can clearly see through revised drawings in
10 terms of all the changes that we were looking for. So I'd
11 like to delay it as well.

12 VICE CHAIR HART: Ms. John?

13 MEMBER JOHN: I agree, Mr. Vice Chair. I am
14 looking at this drawing that was submitted at Exhibit, I
15 believe it's 46, in response to the request you made earlier.
16 And I really don't think this does it for me, either. You
17 know, I'm not sure how to relate this to the previous
18 renderings and exactly what is being requested here. So I
19 would support continuing this decision until we have a proper
20 set of drawings.

21 VICE CHAIR HART: Yes. And I think that -- I
22 appreciate your thoughts on this. I think that the issue
23 that I'm, kind of, trying to understand is in the Exhibit 46
24 where it has the -- it says existing peak, behind that is a
25 railing, and that didn't exist -- that does not exist in the

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1 drawings on the fourth page of Exhibit 45. That, whatever
2 you want to call that, that patio area behind the peak is
3 much smaller. And so I'm just, you know, at a -- I'm just
4 curious as to how those two images are supposed to align, and
5 they don't seem to align. So it is just an oddity and I just
6 don't understand -- maybe it's just where they're taking the
7 section from, but that's also not clear.

8 So again, I think that they need to -- the
9 architect needs to clearly give us an idea of where this --
10 the existing peak is going to be located and what is behind
11 it, how big is the patio that's on that third floor on the
12 addition and, you know, provide some dimensions would help.
13 We have some dimensions but, you know, it's not fully
14 dimensioned as normal architectural drawings are. So again,
15 I just think that it's -- there are some things that are
16 missing in that, that I thought that we had requested. So
17 Mr. Moy, if we could reach out to the Applicant again and see
18 if we could get a more clear updated drawing? I don't know
19 if we should give them a week, two weeks maybe?

20 SECRETARY MOY: Mr. Vice Chair --

21 VICE CHAIR HART: I don't know what our schedule
22 is, too.

23 SECRETARY MOY: -- I would suggest -- it so
24 happens that Mr. Turnbull is participating on a decision case
25 on May the 15th.

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1 VICE CHAIR HART: Okay.

2 SECRETARY MOY: I would suggest May 15.

3 VICE CHAIR HART: Then two weeks it is. That's
4 fine. The Board -- are Board members okay with that?

5 MEMBER JOHN: Yes, Mr. Vice Chair, and I agree
6 with you that we need to have dimensions and the relationship
7 between the peak and that little area behind. We know
8 there's a four-foot railing or something but I don't know,
9 you know, what the width is for that space.

10 VICE CHAIR HART: Yes.

11 MEMBER JOHN: It's just very confusing and it
12 needs to be clear, so two weeks should be fine.

13 VICE CHAIR HART: Okay.

14 MEMBER JOHN: Thank you.

15 VICE CHAIR HART: I think that's it. Mr. Moy,
16 we'll move the decision to May the 15th.

17 SECRETARY MOY: Very good. Thank you.

18 VICE CHAIR HART: Thank you. Thank you, Mr.
19 Chairman.

20 (Whereupon, the above-entitled matter was
21 concluded at 9:56 a.m.)

22

23

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: DC BZA

Date: 05-01-19

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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