

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 8, 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
CARLTON HART, Board Member (NCPC)
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 8, 2019.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:46 a.m.)

CHAIRPERSON HILL: All right, good morning everybody. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest.

This is the May 8th public hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Carlton Hart, vice chair, and Lorna John, board members, and representing the Zoning Commission is Peter May.

Copies of today's hearing agenda are available to you and 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 off your microphones, so that your microphone is no longer picking up sound or background noise.

All persons planning to testify, either in favor or in opposition, must've raised their hand and been sworn in by the secretary.

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1 Each witness must fill out two witness cards.
2 These cards are located on the table near the door and on the
3 witness table.

4 Upon coming forward to speak to the board, please
5 give both cards to the reporter sitting at the table to my
6 right.

7 If you wish to file written testimony today 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,
11 you can reproduce copies on an office printer in the Office
12 of Zoning located across the hall. Please remember to
13 collate your set of copies.

14 The order of procedures for special exceptions,
15 variances, and appeals is also listed as you come into the
16 room.

17 The record shall be closed at the conclusion of
18 each case, except for any material specifically requested by
19 the board.

20 The board and the staff will specify at the end
21 of the hearing exactly what is expected, and the date when
22 the persons must submit the evidence to the Office of Zoning.

23 After the record is closed, no other information
24 shall be accepted by the board.

25 The board's agenda includes cases set for

1 decision. After the board adjourns, the Office of Zoning,
2 in consultation with myself, will determine whether a full
3 or summary order may be issued.

4 A full order is required when the decision it
5 contains is adverse to a party, including an affected ANC.
6 A full order may also be needed if the board's decision
7 differs from the Office of Planning's recommendation.

8 Although the board favors the use of summary
9 orders whenever possible, an applicant may not request the
10 board to issue such an order.

11 The District of Columbia Administrative Procedures
12 Act requires that the public hearing on each case be held in
13 the open, before the public, pursuant to Section 405(b) and
14 406 of that act.

15 The board may, consistent with its rules and
16 procedures and the act, enter into a closed meeting on a case
17 for purposes of seeking legal counsel on a case, pursuant to
18 D.C. Official Code, Section 2-575(b)(4), and/or deliberating
19 on a case, pursuant to D.C. Official Code, Section 2-
20 575(b)(13), but only after providing the necessary public
21 notice in the case of an emergency closed meeting, after
22 taking a roll call vote.

23 The decision of the board in cases must be based
24 exclusively on the public record. To avoid any appearance
25 to the contrary, the board requests that persons present not

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1 engage the members of the board in conversation.

2 Please turn off all beepers and cell phones at
3 this time, so as not to disrupt this proceeding.

4 Preliminary matters are those which relate to
5 whether a case will or should be heard today, such as request
6 for postponement, continuance or withdrawal, or whether
7 proper and adequate notice of the hearing has been given.

8 If you're not prepared to go forward with the case
9 today, or you believe that the board should not proceed, now
10 is the time to raise such a matter.

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

12 MR. MOY: Good morning Mr. Chairman and members
13 of the board. I do have a few announcements attending to
14 cases on today's docket were -- rather, would not be on
15 today's docket.

16 First, the decision case for Application Number
17 19914 of 3110 Monroe Street Associates LLC has been withdrawn
18 by the applicant.

19 We have two cases that have been postponed and
20 rescheduled from today's docket. The first is Case
21 Application Number 19996 of Mallard Estates LLC, rescheduled
22 to May the 15, 2019.

23 And Application Number 19999 of Sanjay Bagag, I
24 believe. B-A-G-A-G. Rescheduled to June 12, 2019.

25 And other than that, there's some preliminary

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1 matters, but staff would suggest that the board address those
2 when I call the case.

3 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
4 Moy. If anyone is here wishing to testify, if you could
5 please stand and take the oath administered by the secretary
6 to my left.

7 MR. MOY: That's good. Everyone should just
8 stand. Good morning.

9 (Witnesses sworn.)

10 MR. MOY: Thank you. Ladies and gentlemen, you
11 may consider yourselves under oath.

12 CHAIRPERSON HILL: All right, Mr. Moy, let's go
13 ahead and just kind of work through. We only have one
14 meeting case today, so if you want to call that?

15 MR. MOY: Yes sir. Thank you. That would be Case
16 Application Number 19972 of David Do, D-0.

17 As captioned and amended for special exceptions
18 from the penthouse requirements of Subtitle C, Section
19 1500.4, and under Subtitle C, Section 1504 for the penthouse
20 setback requirements, Subtitle C, Section 1502.1, to
21 construct a third floor with a roof deck and a penthouse
22 enclosure on an existing two-story flat, RF-1 Zone.

23 This is at 1449 through 1451 Holbrook Street,
24 Northeast, Square 4075, Lot 182. And participating on this
25 decision is Chairman Hill, Vice Chair Hart, Mr. Peter May,

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1 and Ms. Lesyllee White.

2 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
3 Moy. Is the board ready to deliberate?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. I can start.

6 We finished this hearing and then closed the
7 record, except for a few items that we were kind of
8 interested in getting.

9 One was an ANC report, and then the other was some
10 of the images that were presented at the hearing on 4/17.

11 I actually wasn't clear as to whether those images
12 got submitted, and I'm going to look a little bit more
13 closely, but that wasn't something that I had asked for. I
14 wasn't concerned with the ANC report.

15 COMMISSIONER MAY: They were submitted.

16 CHAIRPERSON HILL: Oh, okay. And so the ANC had
17 submitted their report, and they were in favor of it.

18 I thought that after the presentation that the
19 applicant presented, I'd agree with the analysis that was
20 provided by the Office of Planning, as well as that of the
21 ANC 5D, and I do think that the applicant had made a case to
22 grant this application.

23 And so I will be voting in favor. Does anyone
24 have anything that they'd like to add?

25 VICE CHAIRPERSON HART: Only that the -- as you

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1 noted, the burden is on the applicant to describe how they
2 meet the criteria. This is for a special exception, not a
3 variance.

4 The applicant had noted that they are adding the
5 rooftop access for the existing stair and including in that
6 the mechanical equipment.

7 They also noted that they didn't have a full
8 basement, just a crawlspace, and that they were not able to
9 place the equipment inside of the residence itself. I would
10 be in agreement and would be supporting the application.

11 COMMISSIONER MAY: Mr. Chairman, I'm not in
12 support. I don't think that's a huge surprise.

13 I appreciate everything that the applicant did,
14 and I appreciate the fact that the applicant, you know, has
15 gone down a particular path thinking that they could get this
16 project approved, and then had to, you know, step back and
17 potentially redesign things in order to comply with the
18 existing regulations, but instead chose to secretly.

19 So, you know, they did sort of get caught in a
20 point when the regulations were changing. And I have some
21 appreciation for that.

22 However, I do not agree that the building, you
23 know, has to be designed this particular way. I believe that
24 there are different ways to provide the access to the roof,
25 and there are different ways to accommodate mechanical

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1 equipment.

2 And I think that's what should be done. And I
3 think that the images that were submitted -- and I think it's
4 -- which one is it? I'm pulling up the number right this
5 minute.

6 Yeah, so 42 is the one that shows most clearly
7 why this is objectionable.

8 I mean, what seems to be from across the street,
9 that you can see the, you know, the extra story that's been
10 added, and then you see the penthouse on top of that.

11 And as I said, this is exactly what we were trying
12 to avoid when we revised the regulations on penthouse
13 structures in many of the zones.

14 And we had a particular concern about penthouse
15 structures in this zone.

16 And you know, it would be a different thing if the
17 building next door were a three-story building and it was
18 right on the lot line. I think that's certainly okay.

19 But in this circumstance, I just think it's the
20 wrong thing to do, the wrong thing to have to inflict on
21 people nearby.

22 I mean, my only hope is that the next-door
23 neighbor at some point builds an addition on top of their
24 house and blocks the penthouse. I don't know.

25 I just don't think this is something that should

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1 be approved, but I understand that I am most likely not in
2 the majority here.

3 CHAIRPERSON HILL: Okay. I appreciate your input,
4 Mr. May. And I don't necessarily completely disagree.
5 However, I'm still going to stay where I am. Does that
6 change anything for you?

7 (No audible response.)

8 CHAIRPERSON HILL: So then we shall see what we
9 shall see. We do have an absentee, correct?

10 MR. MOY: One was not submitted.

11 CHAIRPERSON HILL: Hm, okay. So, we have to get
12 an absentee, then?

13 MR. MOY: Yes.

14 CHAIRPERSON HILL: Okay. From --

15 MR. MOY: Ms. White, board member.

16 (Simultaneous speaking.)

17 CHAIRPERSON HILL: But it's going to fail.

18 MR. MOY: Right, exactly.

19 CHAIRPERSON HILL: So, I'll do it just for -- I'll
20 do it -- yeah. So, I'm going to make a motion to approve
21 Application Number 19972, as captioned and read by the
22 secretary, and ask for a second?

23 VICE CHAIRPERSON HART: Seconded.

24 CHAIRPERSON HILL: Motion made and seconded. All
25 those in favor, say aye. Aye. All of those opposed?

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1 COMMISSIONER MAY: No.

2 CHAIRPERSON HILL: Okay, all right. So that
3 failed. And so I'm just trying to think. Mr. Moy, does OAG
4 know? So, do we postpone this again until next week?

5 MR. MOY: Yeah.

6 CHAIRPERSON HILL: Okay. All right. So let's go
7 ahead and postpone it until next week, and then Ms. White
8 will be back.

9 MR. MOY: That's correct, sir.

10 CHAIRPERSON HILL: And she'll have an opportunity
11 to deliberate. And she can also watch the tape.

12 COMMISSIONER MAY: And I'll have to submit an
13 absentee ballot.

14 CHAIRPERSON HILL: Okay, well, we -- yeah. Do you
15 want to make a motion that's going to fail?

16 COMMISSIONER MAY: No.

17 CHAIRPERSON HILL: Okay. That's how I think it's
18 done. That's why I --

19 COMMISSIONER MAY: I understand. No, I don't.
20 I'm not going to waste any more time with this.

21 CHAIRPERSON HILL: Okay, all right. Okay, all
22 right then. We're doing that for next week again.

23 (Whereupon, the above-entitled matter went off the
24 record at 9:57 a.m.)

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: 05-08-19

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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