

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 12, 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 9:42 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.  
ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 12, 2019.

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

WELCOME:

Frederick Hill . . . . . 3

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CONSENT CALENDAR:

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DECISION CASES:

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

9:42 a.m.

CHAIRPERSON HILL: Okay. The hearing will please come to order.

Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the June 12th, 2019 public hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Lorna John, Board Member and representing the Zoning Commission is Anthony Hood, as well as Peter Shapiro for a case later on.

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 your microphone first stating your name and home address. When you're finished speaking, please turn off your microphone 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 sworn  
2 in by the secretary. Also, each witness must fill out two  
3 witness cards. These cards are located on the table near the  
4 door and on the witness table. Upon coming forward to speak  
5 to the Board, please give both cards to the reporter sitting  
6 at the table to my right.

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

14           The order of procedure for special exceptions,  
15 variances and appeals are also listed as you come into the  
16 door.

17           The record shall be closed at the conclusion of  
18 each case except for any material specifically requested by  
19 the Board. The Board and the staff will specify at the end  
20 of the hearing exactly what is expected and when date when  
21 the person must submit must submit the evidence to the Office  
22 of Zoning. After the record is closed no other information  
23 shall be accepted by the Board.

24           The Board's agenda includes cases set for  
25 decision. After the Board adjourns, the Office of Zoning in

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

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

19           The decision of the Board in cases must be based  
20 exclusively on the public record. To avoid any appearance  
21 to the contrary, the Board requests that persons present not  
22 engage the members of the Board in conversation.

23           Please turn off all beepers and cell phones at  
24 this time so as not to disrupt the proceedings.

25           Preliminary matters are those which relate to

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

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

8 MR. MOY: Good morning, Mr. Chairman, Members of  
9 the Board. I do have a quick announcement regarding today's  
10 docket. There are two case applications that have been  
11 rescheduled, and they are Application Nos. 20032 of Tana,  
12 LLC, rescheduled to July 10th, 2019, and Application No.  
13 20033 of Matthew and Claire Portolese, rescheduled to  
14 September 18th, 2019.

15 Finally, I have an announcement for a case  
16 application which is scheduled for June 19th, and that  
17 application -- the applicant has -- had requested  
18 postponement. That has been granted. And that is Case  
19 Application No. 20016 of Richard Leavy, L-E-A-V-Y, and that  
20 is rescheduled to July 3rd.

21 Other than that there are some preliminary  
22 matters, Mr. Chairman, on specific cases and staff would  
23 suggest that the Board address those when I call the case.

24 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
25 Moy.

1 All right. Good morning, everyone. If there is  
2 anyone planning to testify, if you wouldn't mind please  
3 standing and taking the oath administered by the secretary  
4 to my left?

5 (Witnesses sworn.)

6 MR. MOY: Ladies and gentlemen, you may consider  
7 yourselves under oath.

8 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
9 Moy.

10 Let's see. All right. So we're going to  
11 basically follow the order that you saw in the agenda,  
12 meaning the agenda as you kind of came in through the door.  
13 I don't know what's going to happen in terms of lunch. We  
14 probably will take lunch at some point because it looks like  
15 we have nine cases today outside of the meeting cases, so  
16 we'll see how we go.

17 And, Mr. Moy, why don't you call our first -- I  
18 guess it's expedited review?

19 MR. MOY: Yes, sir. That would be Case  
20 Application No. 20029 of 2905 P Street, LLC. This is a  
21 request for special exceptions under Subtitle D § 5201, from  
22 the lot occupancy requirements of Subtitle D § 1204, and from  
23 the nonconforming structure requirements of Subtitle C §  
24 202.2. This would remove an existing second-story addition,  
25 and construct a two-story rear addition to an existing semi-

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1 detached principal dwelling unit, R-20 Zone at premises 2905  
2 P Street, Northwest, Square 1268, Lot 813.

3 BZA CHAIR HILL: Okay. Is the Board ready to  
4 deliberate?

5 MEMBER JOHN: Yes.

6 ZC CHAIR HOOD: Yes.

7 BZA CHAIR HILL: Okay. I can start. I thought  
8 that -- I thought it was relatively straightforward. The  
9 Office of Planning -- I thought that their analysis was  
10 concise in terms of their support and how they thought that  
11 the applicant is meeting its burden to satisfy this  
12 particular request. Also then DDoT was in -- or DDoT's had  
13 no objection.

14 My one thought or -- was just that I didn't see  
15 an ANC report, however, after kind of again looking through  
16 the record and reviewing it, I didn't think that perhaps I  
17 guess the ANC -- it was a small lot occupancy relief from --  
18 they're going from 9.1 percent to 10 percent. If they had  
19 any issue, I guess they would have supplied something to us.  
20 So I believe I could vote in support of this.

21 Is there anything else anyone would like to add?

22 MEMBER JOHN: Just briefly, Mr. Chairman. So this  
23 is -- I agree this is a fairly straightforward application.  
24 The applicant seeks special exception relief from lot  
25 occupancy requirements of Subtitle D § 1204 to increase the

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1 lot occupancy from 41.6 percent to 50 percent to allow a rear  
2 addition at 2905 P Street in the R-20 Zone.

3 And the special exception must meet the criteria  
4 under Subtitle D § 5201. I believe that the applicant has  
5 met that burden. The size of the addition is similar to the  
6 property to the west and to the east. And there's also a  
7 proposal to also extend the rear of -- I believe it's the  
8 property to the east.

9 I agree with the -- with OP's analysis. Both  
10 neighbors have submitted letters of support. And although  
11 their recommendation is not binding, the Old Georgetown Board  
12 also approved the proposed design. And there's also no ANC  
13 report as you noted, Mr. Chairman. So I can support this  
14 application.

15 ZC CHAIR HOOD: Mr. Chairman, I agree with both  
16 of my colleagues. This is expedited review, so what I would  
17 do, I would move approval pursuant to 11 DCMR Subtitle X,  
18 Chapter 9 for a special exception under Subtitle D § 5204  
19 from the lot occupancy requirements of D § 1204 and from the  
20 nonconforming structure requirements under C § 202.2, and the  
21 rest of the caption as noted. And that's my motion to  
22 approve.

23 BZA CHAIR HILL: Second. Motion made and  
24 seconded. All those in favor, say aye?

25 (Chorus of aye.)

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1 BZA CHAIR HILL: All those opposed?

2 (No audible response.)

3 BZA CHAIR HILL: Motion passes, Mr. Moy?

4 MR. MOY: Staff would record the vote as 3 to 0  
5 to 2. This is on the motion of Zoning Commissioner Anthony  
6 Hood to approve the application for the relief requested.  
7 Seconding the motion, Chairman Hill. Also in support Ms.  
8 John. No other Board Members present or participating today.  
9 Motion carries, sir.

10 BZA CHAIR HILL: Great. Thank you, Mr. Moy.

11 MR. MOY: All right. The next case application  
12 for decision making is Application No. 19983 of District  
13 Properties.com. This is an application is amended for area  
14 variance from the side yard requirements of Subtitle D §  
15 206.2, to construct a new detached principal dwelling unit  
16 in the R-2 Zone at 2028 Jasper Street, Southeast, Square  
17 5848, Lot 4.

18 BZA CHAIR HILL: Okay. Thank you, Mr. Moy.

19 Is the Board ready to deliberate?

20 (No audible response.)

21 BZA CHAIR HILL: Okay. I can start. The last  
22 time we had this case we had wanted a little bit of  
23 clarification about some of the things that they were doing.  
24 We wanted to see if we could get some revised plans that  
25 actually did show the three-foot side yard, and that is now

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1 I believe in Exhibit 37.

2 We had asked for -- there was testimony that the  
3 ANC 8E had supported the project, however, we didn't see  
4 anything in the record in terms of a report. We asked the  
5 applicant to go back and get a report from the ANC. What  
6 they ended up getting was kind of a -- well, they -- I think  
7 they first gave us an email of support and then they came  
8 back with now a letter. Unfortunately the letter isn't in  
9 the form in which we were able to give the ANC great weight,  
10 however, I do believe that given the testimony as well as the  
11 letter that the ANC did vote in support.

12 However, in terms of the actual standard for  
13 meeting the variance test and the requested relief, I do  
14 believe that the applicant has met the burden and would be  
15 in agreement with the analysis that was provided by the  
16 Office of Planning as well as DDoT has no objection to the  
17 project. I mean, it's kind of the same project that we've  
18 seen from this developer now for a variety of times. And so,  
19 I mean, there always is really small -- there's all this  
20 really small lot and these in-fills. I guess we're going to  
21 continue at least to see -- unless somebody else starts doing  
22 this, seeing this. But I believe that I can vote in favor  
23 of this.

24 Is there anything else that anyone would like to  
25 add?

1           MEMBER JOHN:    No, Mr. Chairman.    I -- well,  
2 briefly, I agree that this application meets the variance  
3 test because the narrow -- because of the narrow lot and the  
4 inability of the applicant to build a useable dwelling  
5 without the relief.    So there is an exceptional condition  
6 that creates a practical difficulty and I would agree that  
7 the application meets the requirements, so I support the  
8 application.

9           ZC CHAIR HOOD:   I'm actually not participating on  
10 this case.    Unless you -- if you'd like my input, I will give  
11 it to you, but I'm not participating on this case.

12           BZA CHAIR HILL:    Oh, this is Commissioner  
13 Turnbull.    I'm sorry.    Right.    So we have -- so, okay.    So  
14 then let's see what happens.

15           Okay.    So I'm going to go ahead and make a motion  
16 to approve Application No. 19983 as captioned and read by the  
17 secretary and ask for a second.

18           MEMBER JOHN:    Second.

19           BZA CHAIR HILL:    Motion made and seconded.    All  
20 those in favor, say aye?

21           (Chorus of aye.)

22           BZA CHAIR HILL:    And now we see whether or not  
23 this passes.

24           MR. MOY:    Mr. Chairman, before I read the vote  
25 count, we do have three absentee ballot votes from three

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1 participants on this application: from Ms. White, Zoning  
2 Commissioner Michael Turnbull and Vice Chair Hart.

3 Ms. White has voted to approve the application  
4 with any or such conditions that the Board may impose. So  
5 her vote is to approve.

6 The absentee ballot vote from Zoning Commissioner  
7 Michael Turnbull is the same, to approve with any such  
8 conditions as the Board may impose. He does add in his  
9 comments, quote, revised drawings received showing three-foot  
10 side yards, end quote. So that's an approval.

11 And finally there's an absentee vote from Vice  
12 Chair Carlton Hart, and his vote is to approve with any  
13 conditions that the Board may impose.

14 So that would give a final vote of 5 to 0 to 0.  
15 This is on the motion of Chairman Hill to approve the  
16 application for the relief requested. Seconding the motion,  
17 Ms. John. And of course in support of the motion Vice Chair  
18 Hart, Ms. White and Zoning Commissioner Mr. Turnbull.

19 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
20 Moy.

21 MR. MOY: The last application for decision making  
22 is application of Sheela, S-H-E-E-L-A, Tschand, T-S-C-H-A-N-  
23 D. This is a request for a minor modification to the plans  
24 approved by the BZA Order No. 19203, to modify the façade and  
25 reconfigure the interior layout of the approved three-story,

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1 three-unit apartment house, RF-1 Zone at 1844 Kendall Street,  
2 Northeast, Square 4048, Lot 808.

3 BZA CHAIR HILL: All right. Is the Board ready  
4 to deliberate?

5 MEMBER JOHN: Yes.

6 ZC CHAIR HOOD: Yes.

7 BZA CHAIR HILL: Anyone else want to start?

8 MEMBER JOHN: I'll start. So this is a request  
9 for minor modification to change the internal configuration  
10 of a three-story unit apartment house in the RF-1 Zone. And  
11 it's located at 1944 Kendall Street, Northeast.

12 The changes meet the criteria for minor  
13 modification under Subtitle Y § 703.3 because there's no  
14 change to the material facts in which the Board based its  
15 original decision to approve the special -- the applicant's  
16 special exception request in the previous case. And in that  
17 case the applicant had requested a variance from the side  
18 yard requirement.

19 The changes will not alter the approved footprint,  
20 but the mix of the units will be changed. So this is really  
21 just a request to change the internal configuration of the  
22 dwelling and to change some of the materials, the exterior  
23 to brick and other materials as demonstrated in Exhibit 27.

24 OP has done a very thorough analysis of the  
25 application and I'm able to give great weight to their

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1 analysis and recommendation that the project continues to  
2 meet the variance request and the special exception criteria.  
3 So I can support this application.

4 MEMBER JOHN: Well, Mr. Chairman, I would agree  
5 with Board Member John. I did -- I was a little concerned  
6 about the brick, but I don't think that's a showstopper for  
7 me. I do I understand as you get into development sometimes  
8 you make these changes. I think these changes do not change  
9 the material facts about the original approval and I will be  
10 voting in support of this application.

11 BZA CHAIR HILL: Okay. I don't have anything to  
12 add. I think that I agree with you guys in terms of the  
13 discussion. The one I guess comment I would make is like  
14 DDoT was trying to put in -- or had recommended a condition  
15 in terms of closing the curb cut. I don't think that -- I  
16 don't really even understand it. That wasn't even the  
17 conditions for the existing -- for the original order, so I  
18 don't know why they would now want us to put that in there  
19 now. But also I don't think it's necessarily under our  
20 authority to impose that as a condition. So I would not  
21 think that that would be something that we would do. Agreed?

22 MEMBER JOHN: Yes.

23 BZA CHAIR HILL: Okay. I'm seeing nodding heads.  
24 Okay. So I'm going to go ahead and make a motion  
25 to approve Application No. 19203-A as captioned and read by

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1 the secretary and ask for a second.

2 MEMBER JOHN: Second.

3 BZA CHAIR HILL: Motion has been made and  
4 seconded. All those in favor, say aye?

5 (Chorus of aye.)

6 BZA CHAIR HILL: All those opposed?

7 (No audible response.)

8 BZA CHAIR HILL: Motion passes, Mr. Moy?

9 MR. MOY: Staff would record the vote as 3 to 0  
10 to 2. This is on the motion of Chairman Hill to grant the  
11 request for a minor modification. Seconding the motion, Ms.  
12 John. Also in support Zoning Commissioner Hood. No other  
13 Board Members present or participating today. The motion  
14 carries, sir.

15 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
16 Moy. We're just going to switch out Zoning Commissioners  
17 here for a second.

18 (Whereupon, the above-entitled matter went off the  
19 record at 10:01 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: 06-12-19

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.



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Court Reporter

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