

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 19, 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 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:

HILLARY LOVICK, ESQ.
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 19, 2019.

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

2 (9:47 a.m.)

3 CHAIRPERSON HILL: The hearing will please come
4 to order. Good morning, ladies and gentlemen. We're located
5 in the Jerrily R. Kress Memorial Hearing Room at 441 4th
6 Street, N.W. This is the June 19, 2019 public hearing of the
7 Board of Zoning Adjustment, District of Columbia.

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

12 Copies of today's hearing agenda are available to
13 you and located on the wall bin near 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 the microphones
19 first stating your name and home address. When you're
20 finished speaking, please turn your microphone off so that
21 your microphone is no longer picking up sound or background
22 noise.

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

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1 witness cards. These cards are located on the table near the
2 door and on the witness table. Upon coming forward to speak
3 to the Board, please give both cards to the reporter sitting
4 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 set
11 of copies.

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

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1 an affected ANC. A full order may also be needed if the
2 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 and in the case of an emergency closed meeting after
16 taking a roll call vote.

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

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

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

6 MR. MOY: Good morning, Mr. Chairman, members of
7 the Board. I don't have anything substantive to say other
8 than -- than any preliminary matters on cases on the docket,
9 the Board should address when that case is called.

10 CHAIRPERSON HILL: Okay. Great. Thank you. If
11 anyone is here wishing to testify, if you could please stand
12 to take the oath administered by the Secretary to my left.

13 MR. MOY: Good morning. Do you solemnly swear or
14 affirm that the testimony you're about to present in this
15 proceeding is the truth, the whole truth, and nothing but the
16 truth?

17 (Witnesses sworn.)

18 MR. MOY: Ladies and gentlemen, you may consider
19 yourselves under oath.

20 CHAIRPERSON HILL: All right, everyone, welcome
21 here today. Good morning. So we are going to follow the
22 agenda as you've seen and as you come walking in through the
23 door. The hope is that we're going to kind of try to get
24 through everything including possibly some preliminary
25 matters concerning the appeal and then take lunch. And then

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1 we're going to have the appeal. So we'll see what happens,
2 but that's kind of the plan at this point. Mr. Moy, there
3 is a procedural issue, I think, that we want to address,
4 correct? And if you could call it?

5 MR. MOY: Yes, sir. That would be -- what -- what
6 is before the Board is a -- there's a motion to reopen the
7 record to address a procedural order, and that is to Case
8 Application Number 19886 of Giuseppe and Teresa Farruggio.

9 CHAIRPERSON HILL: Okay. Great. Thank you. So
10 there are some issues that I think we'd like to deal with
11 with this case. Once again, it was Application Number 19886,
12 and so I'm going to make a motion to reopen the record.
13 Could I have a second?

14 MEMBER JOHN: Second.

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

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed?

19 (No audible response.)

20 CHAIRPERSON HILL: Okay. Great. So after
21 considering the application and voting, I guess it's come to
22 the Board's attention that there were inconsistencies between
23 the plans and measurements and inconsistencies in OP's
24 supplemental report.

25 The Board wants to -- the following documents

1 submitted to the record and these, I guess, can also -- I
2 mean I don't know when. I guess the Secretary would reach
3 out to the applicant also to let them know about this, but
4 they can also probably reach out to the Office of Zoning.

5 But what we would like is a final set of complete
6 plans showing all four proposed floors, basement, ground,
7 second and third, and drawings delineating the measurement
8 of the depth of each proposed floor from the rear wall of
9 3604 Prospect to the corresponding proposed rear wall of the
10 subject property.

11 Two, a side-staggered illustration measuring the
12 depth to the rear wall of all four proposed floors in
13 relation to the rear wall of 3604 Prospect.

14 Three, an illustration/drawing delineating the
15 depth of all four proposed floors as originally proposed in
16 the plans at Exhibit 7A in relation to the rear wall of 3604
17 Prospect. The measurement should clearly show the
18 relationship and measurement between the rear walls of both
19 the subject property and of 3604 Prospect.

20 Four, an illustration/drawing delineating the
21 depth of measurement of all four walls proposed as -- I'm
22 sorry, proposed floors as proposed in the revised plans in
23 Exhibit 79 in relation to the rear wall of 3604 Prospect.
24 The measurement should clearly show rear wall to rear wall
25 of both properties.

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1 Five, a narrative from the applicant stating the
2 proposed depth to rear wall of all four floors in all
3 iterations of the plans, Exhibits 7A, 79, and 90, in relation
4 to the rear wall of 3604 Prospect and stating any
5 change/differential in the depth to rear wall proposed for
6 all four floors in each iteration of the plans.

7 And lastly, a second supplemental report for the
8 Office of Planning revising its first supplemental report in
9 Exhibit 81 based on the new clarification documents to be
10 submitted to the record by the applicant. So these are all
11 things that came up during kind of our -- our looking at the
12 order. And so I think that that would be helpful if we could
13 get all those things and then we can take a look at them
14 again and -- and consider where we are.

15 Did -- Mr. Moy, do you have anything in terms of
16 trying to schedule a date?

17 (No audible response.)

18 CHAIRPERSON HILL: All right. It's also been
19 brought to my attention again and so we did take a vote and
20 we need to rescind the vote in terms of being able to then
21 take all this new information and so I'm going to make a
22 motion to rescind the vote that we made in Application 19886
23 and ask for a second.

24 MEMBER JOHN: Second.

25 CHAIRPERSON HILL: Motion made and seconded. All

1 those in favor, say aye?

2 (Chorus of aye.)

3 CHAIRPERSON HILL: All those opposed?

4 (No audible response.)

5 CHAIRPERSON HILL: The motion passes again, Mr.
6 Moy. And so I read all that information, so I'm trying to
7 figure out when the applicant will be able to give us all
8 this information to the order and then when the Office of
9 Planning will be able to submit a supplemental report.

10 (Off microphone comments.)

11 CHAIRPERSON HILL: Mr. Moy, do you have any dates
12 or anything like that?

13 MR. MOY: What I would suggest, Mr. Chairman, is
14 that you -- you direct the staff to -- to establish a
15 timeline that would be incorporated into the procedural
16 order. That's what we have done in the past.

17 CHAIRPERSON HILL: Okay. Does that sound good
18 with the Board? Okay.

19 MR. MOY: And that would be sent to all the
20 parties.

21 CHAIRPERSON HILL: Okay. I see someone raising
22 their hand. I can't talk to anybody right now at this
23 particular point. If you want to reach out to the Secretary
24 at a break, then you can go ahead and do that. We're just,
25 again, trying to find out some information that, I guess, to

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1 clarify as we were kind of working through the order, that
2 there were some differences in terms of the measurements and
3 illustrations. And so then we'll have a chance to look at
4 that. We'll also have a chance to get Office of Planning's
5 supplemental report to those clarifications. And then we'll
6 be able to take a vote again. Mr. Moy, do you need anything
7 else from us on that?

8 MR. MOY: I'm clear -- I'm clear unless the OAG
9 wants to weigh in, but I think we're good to go.

10 CHAIRPERSON HILL: Okay. All right. Then we're
11 done with that and we can move on to our first decision.

12 MR. MOY: Okay. That would be two cases that are
13 on the expedited review calendar. The first is Application
14 Number 20025 of Jacqueline N. Douglas, caption advertised for
15 special exception under Subtitle D Section 5201(b), from the
16 side yard requirements of Subtitle D Subsection 206.7, to
17 construct a covered porch on an existing detached principal
18 dwelling unit, R-1-B Zone. This is at premises 4820 Nebraska
19 Avenue N.W., Square 1759, Lot 814.

20 CHAIRPERSON HILL: Okay. Is the Board ready to
21 deliberate?

22 (No audible response.)

23 CHAIRPERSON HILL: Okay.

24 MR. MOY: Just sorry to interrupt, Mr. Chairman.

25 CHAIRPERSON HILL: Sure. That's all right.

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1 MR. MOY: There's, as you know, there -- there was
2 not a --

3 CHAIRPERSON HILL: The preliminary matters.

4 MR. MOY: -- waiver. Yes, that's right, as to the
5 affidavit of posting and maintenance.

6 CHAIRPERSON HILL: Okay. So I don't -- I mean,
7 I guess -- well, I don't know. I mean, I think that I can
8 go ahead and deliberate on this even though the affidavit of
9 posting and maintenance has been -- not been submitted,
10 because that -- the ANC has had the 30 days in order to
11 respond. I thought it was a pretty straightforward issue,
12 but the problem that -- and I'm just kind of going to vent,
13 I guess, I suppose. Like I mean the affidavit of posting and
14 maintenance, like I mean for these expedited review cases,
15 like unless it all seems to be kind of buttoned up, it's very
16 sometimes difficult. But, you know, I can go ahead and give
17 at least my opinion on this and then whatever you guys think,
18 you know, we can -- we can see in terms of that.

19 I think that, you know, the applicant did say that
20 they were to present at the 6/13 ANC meeting. I thought
21 that, again, it was a pretty straightforward issue, and I
22 didn't have a lot of comments concerning the -- the
23 application. I did think that the analysis that the Office
24 of Planning had provided was, you know, pretty concise. And
25 so I would be able to -- be able to vote in favor of this and

1 also grant a waiver to the affidavit of posting and
2 maintenance given that the ANC has had their significant --
3 you know, their -- their amount of time to do this. And this
4 is just, you know, kind of, I think, a small project. So
5 what does anyone else have to say?

6 VICE CHAIR HART: It looks like, Mr. Chairman,
7 that there is an ANC report now, which was filed yesterday,
8 so it was very late but it is -- we did receive it. I
9 understand that their meeting was on the 13th. So they voted
10 5-0-0 in -- in favor. They were a unanimous vote in favor,
11 and they do note that there was -- the applicant has -- in
12 the ANC report, the applicant has presented a letter of
13 support for the projects -- they don't say which -- from the
14 neighbor who owns and occupies the other half of the semi-
15 detached home that they occupy. And the ANC has heard no
16 opposition from any nearby neighbors. So I think that that
17 just is helpful to kind of reiterate that waiving the
18 affidavit of posting and maintenance are fine. I guess
19 there's a motion -- we need to make a motion to accept the
20 ANC report as well, which is filed late?

21 CHAIRPERSON HILL: Okay. I thought we just
22 waived. I don't know. It was -- it was just kind of waiving
23 --

24 MS. LOVICK: Yes. You would -- it just wasn't --
25 it was just not as -- it was not within the seven days, so

1 you can just waive that time-filing requirement.

2 CHAIRPERSON HILL: Okay. So I mean is the Board
3 fine with waiving the time-filing requirement for the ANC
4 report? I see everyone nodding so by consensus, I'll say
5 that that's done.

6 Also, is the Board comfortable with waiving the
7 affidavit of posting and maintenance? Okay. I see everyone
8 nodding, so we'll go ahead and that's also by consensus.

9 And then does anyone have anything they'd like to
10 add in terms of the content?

11 COMMISSIONER MAY: Yes. First of all, Mr.
12 Chairman, I share with you the frustration of not having a
13 complete case record and in a timely fashion for an expedited
14 review. I mean, we set up the expedite review so that for
15 the cases that are really straightforward, you got everything
16 in the file, and we can make a decision, and it's not all
17 there. You know, fortunately, in this case, I think it's all
18 not controversial so, you know, I don't know what good
19 venting about it now does, but at least for the lawyers in
20 the room, I'll register with them that they should work with
21 their clients. In this case, there's probably no lawyer
22 involved, just the applicant.

23 The -- I think the most important thing, though,
24 is that the -- when I read the affidavit of posting, it
25 indicated that it was posted for the required minimum time.

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1 So it's the filing that was late but the posting was on time,
2 and I think that's the more important thing, to make sure
3 that the notice was out there for the neighbors in case they
4 had concerns. So, therefore, I'm with you. I can vote to
5 approve this.

6 CHAIRPERSON HILL: Okay. Anyone else?

7 MEMBER WHITE: I just concur with my colleagues.
8 I think they've met the criteria for special exception. I
9 was comfortable with the report from the Office of Planning
10 that outlined how they met the criteria. There doesn't
11 appear to be any opposition or any type of undue impact or --
12 on -- on the neighboring properties. So I would be in
13 support, too, Mr. Chair.

14 CHAIRPERSON HILL: Okay. Great. And just to
15 reiterate -- Ms. John did you have -- and just to reiterate
16 what the Commissioner said, again, like I don't -- I don't
17 know why these affidavit of maintenance -- I mean did see now
18 the affidavit of maintenance here but why the affidavit of
19 posting, affidavit of maintenance seems to be like, you know,
20 not in time or posted, you know, the -- I mean I think as --
21 as Commissioner May mentioned, you know, it was posted for
22 the correct amount of time but just that -- only for the
23 expedited review cases, because we don't have anybody to talk
24 to. And so -- but anyway, okay. So I'll go ahead and make
25 a motion to approve Application Number 20025 as captioned and

1 read by the Secretary and ask for a second.

2 VICE CHAIR HART: Second.

3 CHAIRPERSON HILL: Motion made and seconded. All
4 those in favor, say aye.

5 (Chorus of aye.)

6 CHAIRPERSON HILL: All those opposed?

7 (No audible response.)

8 CHAIRPERSON HILL: Motion passes, Mr. Moy.

9 MR. MOY: Staff would record -- excuse me -- staff
10 would record the vote as 5-0-0. This on the motion of
11 Chairman Hill to approve the application for the relief
12 requested; seconded the motion, Vice Chair Hart; also in
13 support, Ms. John, Ms. White, and Commissioner Peter May.
14 If that's five, then the motion carries.

15 CHAIRPERSON HILL: Oh, great. Thank you, Mr. Moy.
16 I'm just trying to get ready for the next one. All right,
17 Mr. Moy, whenever you're ready.

18 MR. MOY: All right. The next case for decision-
19 making, another expedited review case, is Application Number
20 20039 of Elisa Hull, H-U-L-L, captioned advertised for
21 special exceptions under Subtitle D Section 5201 from the lot
22 occupancy requirements of Subtitle D Section 304.1, minimum
23 rear yard setback requirements, Subtitle D Section 306.2,
24 nonconforming structure requirements of Subtitle U Section
25 202.2, to construct a rear deck addition to an existing

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1 semi-detached principal dwelling unit, R-2 Zone at 6430 8th
2 Street N.W., Square 2976, Lot 2.

3 On this one, I'm looking at the affidavits again,
4 I think we're good on the affidavit of posting under Exhibit
5 41. They admit the five days prior to hearing to submit the
6 affidavit and for the affidavit of maintenance under Exhibit
7 42, which was submitted four days prior to the hearing when
8 the standard is anywhere between two to six days.

9 CHAIRPERSON HILL: Okay. All right. Great.
10 Thanks. Is the Board ready to deliberate? Okay. I mean
11 again, we did get everything we needed. However, we seem to
12 always get it at the last minute still, and so like I don't
13 know why but, you know, we did get everything we needed
14 there. Every -- the record's complete and so I thought that
15 we had all of the information with which, at least, I could
16 evaluate the application.

17 You know, this is, again, I think, a pretty simple
18 straightforward rear deck addition, and I would agree with
19 the analysis that the Office of Planning has provided. DDOT
20 had no objection. ANC 4B was in support and unless the Board
21 has anything else to add, I would be able to vote in favor
22 of this application. Is there anything anyone else has to
23 add?

24 (No audible response.)

25 CHAIRPERSON HILL: Okay. Going to make a motion

1 to approve Application Number 20039 as captioned and read by
2 the secretary and ask for a second.

3 VICE CHAIR HART: Second.

4 CHAIRPERSON HILL: Motion made and seconded. All
5 those in favor, say aye.

6 (Chorus of aye.)

7 CHAIRPERSON HILL: All those opposed?

8 (No audible response.)

9 CHAIRPERSON HILL: Motion passes, Mr. Moy.

10 MR. MOY: Staff would record the vote as 5-0-0.
11 This is on the motion of Chairman Hill to approve the
12 application for the relief requested; seconded the motion,
13 Vice Chair Hart; also in support, Ms. John, Ms. White, and
14 Zoning Commissioner Peter May.

15 Okay. The last item before the Board for
16 decision-making is Appeal Number 19950 of ANC 1C. This is
17 captioned as the Appeal from the decision made on October 26,
18 2018 by the Zoning Administrator, Department of Consumer and
19 Regulatory Affairs, to issue building permit number B1809516,
20 as amended by revised permit number B1906933, to construct
21 a rear addition to an existing principal dwelling unit and
22 convert it to a flat in the RF-1 Zone at 2920 18th Street
23 N.W., Square 2587, Lot 490.

24 CHAIRPERSON HILL: Okay. Great. Thank you. Is
25 the Board ready to deliberate? Okay. There's a couple of --

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1 or there's one preliminary issue I'd just kind of like to
2 talk through with the Board and then ask for, you know,
3 everyone's help in discussing this, particularly with the
4 architects of our group today.

5 The -- there's a preliminary matter about whether
6 to incorporate the third permit and the revised drawings
7 concerning the top of the building. And if the revised
8 drawings make the -- the part of the rooftop element of the
9 appeal moot. Or at least that's what I'm kind of offering
10 here to the Board.

11 We asked at the end of hearing, from the -- the
12 people that were presenting to us, revised plans about the
13 rooftop, some clarification, I guess, about the height issue
14 and so -- and whether or not -- and so I'm first talking
15 about, you know, has everybody had a chance to kind of at
16 least look at that in terms of the incorporating of the --
17 the third permit and the revised drawings? I mean, I think
18 that based upon my looking at the drawings, I think that --
19 that it is close enough to -- or not close enough -- I think
20 it's very similar to what was there originally.

21 And so I think that I would be in favor of
22 incorporating the third permit and the revised drawings into
23 the top of the -- for the top of the building and, therefore,
24 I think that the part of the appeal that was for the rooftop
25 element would be moot. Does anybody have any thoughts on

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1 that?

2 COMMISSIONER MAY: I would agree with you, Mr.
3 Chair.

4 CHAIRPERSON HILL: Okay. So then do I have to
5 make a motion or does that mean -- okay. So that -- okay.
6 Well, I'll make a motion then. So OAG's nodding no, and
7 somebody over here's nodding yes, so I don't know. So I'm
8 going to go. I'll make a motion to incorporate the third
9 permit and the revised drawings showing the top of the
10 building because now I believe that that is going to settle
11 the issue in terms of the top of the building and, therefore,
12 that part of the appeal is moot and ask for a second.

13 MEMBER WHITE: Second.

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

16 (Chorus of aye.)

17 CHAIRPERSON HILL: Okay. So now we're back to the
18 meat of the appeal or at least now, you know, about the ---
19 the height. And does someone else want to help me start?

20 COMMISSIONER MAY: I'll go first. So thank you
21 for the opportunity. So first, let me say I am very
22 sympathetic to the position of the ANC and what they were
23 trying to do and what they were trying to do is very
24 consistent with why the Zoning Commission made the changes
25 in Zoning Commission Case 17-18.

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1 But it is apparent to me that this is clearly a
2 pre-17-18 case and the rules allow a manipulation of the
3 grade to establish a cellar. Furthermore, you can manipulate
4 the height of the ceiling of a cellar in order to make a --
5 or a basement, drop the ceiling to make it a cellar. So I
6 don't -- I think it's, the cellar -- the existence of that
7 lowest floor as a cellar is a non-issue based on the rules
8 that are in effect on this case.

9 I also think that the building height issue is
10 resolved because it is measured from the existing grade to
11 the top of the building, and I agree with the explanation
12 from the property owner and DCRA that the existing grade is
13 established at the face of the building. The appellant has
14 argued that the stories are measured from the -- the building
15 height measuring point, but that is really only where you
16 count the stories from. It's not -- and it's not anything
17 more than that, and the cellar is a cellar. It's not a
18 story, so when you count, there are only three stories.

19 I agree -- so we already covered the -- the dormer
20 issue. I think in the further submissions, the one
21 interesting point that was made by the NAC is that the Zoning
22 Administrator has set the building height measuring point at
23 the front of the porch on a couple of other cases. However,
24 when you look at those cases, they are ones where there is
25 an areaway at the face of the building, and there's no real

1 way to measure the existing grade at the face of the building
2 when there's an areaway of that extent.

3 It seems to me that measuring from the front porch
4 in those circumstances made sense, but it is not a rule that
5 you have to measure at the front of the porch. To me, it
6 would make sense to measure at the front of the porch, but
7 since there's no clear guidance on this, I think that the
8 Zoning Administrator was acting reasonably. So in the end,
9 I am not in favor of granting this appeal, so that's pretty
10 much what I have to say.

11 VICE CHAIR HART: Yeah. I would agree with
12 Commissioner May on this. In looking at it -- and I actually
13 came to the same conclusion about the areaway issue when
14 looking at the natural grade, because that's kind of --
15 they're really only -- they're really kind of extending the
16 grade from the front of the stairs or porch basically to the
17 -- to the building, because there was no -- there was no
18 grade to be able -- that actually attached to the building.
19 So it looked like they were doing it from the -- from the --
20 from where the front of the porch was, but it -- but to me,
21 it was more of an extension of extension of the actual grade
22 from where it was closest to the house. And that -- and in
23 those cases, because the areaway was there, then, you know,
24 that's where they using -- that's where the ZA was using the
25 measuring point from.

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1 So it seemed straightforward to me and, you know,
2 as we continue to say that we -- while I understand the ANC
3 bringing up the other cases, we do look at and have to look
4 at kind of each case on its own merits. And I just did not
5 think that the ANC's conclusions were the same conclusions
6 that I would draw about where this -- the kind of the issues
7 that they were raising regarding where the building height
8 measuring point was.

9 And actually, I realize that all of these things
10 are kind of connected to each other, or at least some of them
11 are connected to each other, because once you determine where
12 the building height measuring point is, then you can
13 determine whether or not it violated the height limit, and
14 because I think that it -- that the ZA made the correct
15 determination and as to where the building height measuring
16 point was, then the height limit is set from that. And I did
17 not think that they violated the height limit.

18 And for the reasons that Commissioner May
19 described, the number of stories issue, I would agree with
20 his point of view as well. So I would be voting to deny the
21 appeal as well.

22 MEMBER JOHN: So Mr. Chairman, I agree with
23 everything that's been said so far. I think that the
24 building height measuring point is the crux of the issue and
25 depending on how the Zoning Administrator interpreted the

1 regulation, then all of the other issues would flow from
2 that, whether or not there is a story and where there's a
3 basement and a cellar as opposed to basement or a cellar.

4 So the -- I believe the Zoning Administrator was
5 reasonable in determining that the point, as the rule says,
6 the building height is measured from the -- is the vertical
7 distance measured at the existing grade, the mid-point -- at
8 the mid-point of the building facade closest to the street
9 lot line. And that's what I looked at in coming to a
10 decision, because the facade is not the front of the porch,
11 and that's how I looked at it.

12 I also thought that in the submissions after the
13 hearing, there was a lot of discussion about the fact that
14 the ANC believed that the Zoning Administrator acted in a
15 arbitrary and capricious manner by not measuring from the
16 front of the porch. And I don't think that's correct. There
17 were also some cases cited. I believe that each case before
18 the BZA is determined on its own merit, and as noted by some
19 of my colleagues -- all of my colleagues so far -- or some,
20 the -- in this case, there's no areaway. And so there's a
21 difference between the cases cited and this one. And, you
22 know, at the end of the day, I believe that it makes sense
23 to have measured the building height at the front of the
24 facade, not at the porch.

25 And I discounted the discussion and testimony

1 about whether or not there was a berm and whether or not it
2 should have been included, because there was no testimony
3 about what the existing grade was before and after. There
4 was a lot of talk, a lot of, you know, discussion about
5 seeing people pulling in dirt and -- but nobody could testify
6 that the property owner -- or had any evidence that was
7 reliable that the property owner adjusted the grade.

8 It seems from all of the evidence that the grade
9 was adjusted to ameliorate the flooding problems, which is
10 the very same -- not -- well, not the very same -- the
11 neighbors had been complaining about. So I don't think
12 that's really germane to the issue, but I thought that in
13 this case, I would not want to penalize the property owner
14 for something the property owner did not do, not that it's
15 appropriate.

16 So based on that long statement, I would support
17 dismissing the appeal.

18 MEMBER WHITE: Hopefully, I won't be too
19 redundant, but I'll just share some of my thoughts.
20 Obviously, the major issue of the hearing is whether or not
21 the project violates the number of stories because the lower
22 level is not a cellar and should count as a story and puts
23 the building over the story limit.

24 And the other issue is whether the building
25 violates the height limit because the height measuring point

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1 was raised and should be located in front of the porch as
2 argued by the ANC instead of underneath the porch.

3 Regarding the cellar or whether the lowest level
4 of the building was a cellar defined in 11-B Section 100.2,
5 as that portion of which is less than four feet above the
6 adjacent finished grade, this is kind of the major part of
7 the rule. So I -- part of the rule -- so determine whether
8 or not the cellar is too high, the finished grade has to be
9 interpreted in the past to include added beams or artificial
10 landscaping or other alterations but don't really, you know,
11 matter that these particular aspects or soil or landscaping
12 were added to the grade.

13 Regarding the building height, I looked at the
14 relevant part of the rule which is to measure -- which -- the
15 rule is 11.B Section 308.2, which is that you measure from
16 the existing grade at the midpoint of the building facade of
17 the principle building that is closest to the street lot
18 line. So it's established in the record that there's -- that
19 this is the relevant test here. But at the hearing, there
20 was discussion about whether or not the grade was altered.
21 And as my colleague indicated, you know, the ANC was arguing
22 that the -- that we should measure from the front of the
23 porch instead of the building height measuring point under
24 the porch. The owner is stating that the rule defines the
25 building height based upon the vertical distance measured at

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1 the existing grade. So I believe that there was no error
2 here.

3 There is a dispute about whether the grade was
4 altered, and the owner argues that the existing grade was
5 determined at the time the survey was completed. And the
6 present owner was not responsible for previous changes to the
7 grade that were alleged by the -- in the ANC's testimony.
8 The owner argues that the existing grade is whatever you find
9 at the time that you file the actual building permit. And
10 the property owner testified, as I reviewed the record, that
11 he did not change the grade before conducting the survey,
12 which was around August of 2018.

13 So there is some confusion about whether, you
14 know, whether or not DCRA directed any type of work at that
15 site. But based upon the information on the record and the
16 rules, which I thought were pretty clear, to me, that I would
17 deny the appeal because I believe that the ZA did correctly
18 measure -- did the correct measuring points for this
19 particular case. And also, I would also find that the cellar
20 is under the four feet measurement, which means that it would
21 not count as a story.

22 CHAIRPERSON HILL: Okay. Great. Thanks. I don't
23 have a lot to add, actually. I would agree with my
24 colleagues. I mean, I thought that the -- I didn't think
25 that the ZA acted arbitrary and capricious in terms of how

1 he came up with this decision. I mean, I thought that if
2 anything, the things that were submitted after the fact in
3 terms of how the porch was measured with the other cases that
4 were put forward, again, there was an areaway, and so that's
5 how the ZA was measuring wherever that, the natural grade,
6 would have been to the building.

7 In this particular case, they measured from
8 underneath the porch because they could, and that was where
9 the land -- you know, the natural grade was. I didn't
10 believe that -- I mean, I thought that the survey was done
11 and then the Zoning Administrator made his determination upon
12 that survey.

13 Then after the fact again -- or not after the fact
14 -- then the applicant -- or I'm sorry, the appellant was
15 arguing that the grade was manipulated in some fashion. I
16 don't think that there was any proof that the applicant
17 manipulated that grade. And then also, however, since this
18 was the old rule, the grade could be manipulated in order to
19 create a cellar. And so I didn't have -- really see an
20 argument either way with that discussion I suppose.

21 And so I think that -- yes, just see if you guys
22 -- no, you guys covered everything that I was also writing
23 down. So I'm also going to be voting to deny the appeal.
24 So I'll go ahead and make a motion to deny the appeal of
25 19950 as captioned and read by the Secretary including the

1 issue that we talked about in terms of including the third
2 permit and the revised drawings to make the rooftop element
3 or the dormer part of the appeal moot and ask for a second.

4 VICE CHAIR HART: Second.

5 CHAIRPERSON HILL: Motion made and seconded. All
6 those in favor, say aye?

7 (Chorus of aye.)

8 CHAIRPERSON HILL: All those opposed?

9 (No audible response.)

10 CHAIRPERSON HILL: The motion passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as 5-0-0.
12 This is on the motion of Chairman Hill to deny the appeal;
13 seconded the motion, Vice Chair Hart; also in support, Ms.
14 John, Ms. White, and Zoning Commissioner Peter May.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
16 Moy.

17 (Whereupon, the public meeting was concluded at
18 10:25 a.m.)

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In the matter of: Public Meeting

Before: DC BZA

Date: 06-19-19

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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