

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY, OCTOBER 18, 2017

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  
CARLTON E. HART, Vice Chairman  
LESYLLEE M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson  
MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on October 18, 2017.

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

9:49 a.m.

1  
2  
3 BZA CHAIR HILL: Hi. Will the hearing please come  
4 to order? We're located on the Jerrily R. Cress Memorial  
5 Hearing Room at 441 4th Street, N.W. This is the October  
6 8th, 2017 public meeting of the Board of Zoning Adjustment  
7 of the District of Columbia. My name is Fred Hill,  
8 Chairperson. Joining me today is -- well, will be Carlton  
9 Hart, Vice Chair, Lesyllee White, Board Member and  
10 representing the Zoning Commission today is Anthony Hood and  
11 Commissioner Michael Turnbull will be helping us on a hearing  
12 case as well.

13 Copies of today's hearing agenda are available to  
14 you and located in the wall bin near the door. Please be  
15 advised that this recording is being recorded live by a court  
16 reporter and is also webcast live. Accordingly, we must ask  
17 you to refrain from any disruptive noises or actions in the  
18 hearing room. When presenting information to the Board,  
19 please turn on and speak into the microphone, first stating  
20 your name and home address.

21 When you're finished speaking, please turn your  
22 microphone off so your microphone is no longer picking up  
23 sound or background noise. All persons planning to testify  
24 either in favor or in opposition must have raised their hand  
25 and been sworn in by the Secretary. Also, each witness must

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

3           Upon coming forward to speak to the Board, please  
4 give both cards to the reporter sitting at the table to my  
5 right. If you wish to file written testimony or additional  
6 supporting documents today, please submit one original and  
7 12 copies to the Secretary for distribution. If you do not  
8 have the requisite number of copies on the office printer in  
9 the Office of Zoning located across the hall. The order of  
10 procedures for special exceptions, variances and appeals are  
11 also located in the bin as you enter into the room.

12           The record shall be closed at the conclusion of  
13 each case, except for any material specifically requested by  
14 the Board. The Board and the staff will specify at the end  
15 of the hearing exactly what is expected, and the date when  
16 the persons must submit the evidence to the Office of Zoning.  
17 After the record is closed, no other information shall be  
18 accepted by the Board.

19           The District of Columbia Administrative Procedures  
20 Act requires that the public hearing on each case be held in  
21 the open before the public, pursuant to Section 405(b) and  
22 406 of that Act. The Board may, consistent with its rules  
23 of procedure and the Act, enter into a closed meeting for  
24 purposes of seeking legal counsel on a case pursuant to D.C.  
25 Official Code 2-575(b)(4) and/or deliberating on a case,

1 pursuant to D.C. Official Code Section 2-575(b)(13), but only  
2 providing the necessary public notice and in the case of an  
3 emergency closed meeting, after taking a roll call vote.

4           The decision of the Board in contested cases or  
5 otherwise must be based exclusively on the public record.  
6 To avoid any appearance to the contrary, the Board requests  
7 that persons present not engage the members of the Board in  
8 conversation. Please turn off all beepers and cell phones  
9 at this time so as to not disrupt the proceedings.

10           Preliminary matters are those which relate to  
11 whether a case will or should be heard today, such as  
12 requests for postponement, continuance or withdrawal, or  
13 whether proper and adequate notice of the hearing has been  
14 given. If you're not prepared to go forward with the case  
15 today, or you believe that the Board should not proceed, now  
16 is the time to raise such a matter. Mr. Secretary, do we  
17 have any preliminary matters?

18           MR. MOY: Good morning Mr. Chairman, members of  
19 the Board. I do and I'll try to be as quick as I can, Mr.  
20 Chairman. Three items. The first, this is for the public  
21 record of course -- first, recently the staff discovered that  
22 there were multiple cases on the Board's docket scheduled for  
23 October and November, where the notice of the public hearing  
24 was mailed less than the 40 day requirement before the  
25 hearing date, even though notice of each hearing was timely

1 published in the D.C. Register and on the OZ website.

2 Under Subtitle Y, Section 402.11, the Board can  
3 determine whether to postpone, continue or hold the public  
4 hearing based on a defect in the notice. Staff proposes to  
5 postpone the hearing in each of these affected cases, to the  
6 next available hearing date that would meet the 40 day  
7 requirement, based on the mailing dates of the original  
8 notice.

9 So staff also proposes to send letters, corrected  
10 letters to the affected ANCs and neighbors within 200 feet,  
11 to notify them of the corrected hearing date, as well as  
12 upload notice to the record and correct the dates on the  
13 public calendar. So if the Board has no objections, then the  
14 staff would like to move forward as I've described.

15 BZA CHAIR HILL: Okay great. Thank you.

16 MR. MOY: That's all on that matter.

17 BZA CHAIR HILL: Yes please, that would be great.

18 MR. MOY: Thank you, sir. Next, as to the cases  
19 for today, I'd like to add as my number two item that on  
20 September 27, 2017, the Board convened Application No. 19570  
21 of GWC Residential, LLC. On the 27th of September, as I said  
22 the Board convened the case heard and completed testimony,  
23 and scheduled the case for decision after requesting filings  
24 from the Applicant and the party in opposition. These  
25 filings are in the record, but the Board would like an

1 additional week to consider the filings, and to move, render  
2 the decision to next week's public meeting, rather, on  
3 October 25th.

4 Last, Application No. 19595 of Robert and Kim  
5 Segers has been postponed/rescheduled to October 25, 2017.  
6 I have two applications rescheduled to November 1st, 2017.  
7 These are Application Nos. 19576 of William Skelton and 19603  
8 of MDG 435 Park Road, LLC. The Appeal No. 19573 of Nefretiti  
9 Makenta has been postponed/rescheduled to November 15th,  
10 2017, and finally I have two applications that have been  
11 withdrawn by the Applicant.

12 These are Application Nos. 19597 and 19598, both  
13 of Jonathan and Carol Sandford, and that completes my reading  
14 into the record, Mr. Chairman.

15 BZA CHAIR HILL: Okay, thank you Mr. Moy. If  
16 anyone is here wishing to testify, if you could please stand  
17 and take the oath, which is going to be administered by the  
18 Secretary.

19 [WITNESSES SWORN.]

20 BZA CHAIR HILL: Okay. Well sorry. First of all,  
21 we're getting started a little late. There were some issues  
22 with traffic that some people had to overcome, and then the  
23 other thing I just want to let everyone know, we're basically  
24 going to follow the -- both the meeting and the hearing  
25 agenda that was on the bin in the hall with one exception.

1 The Application No. 19548 of Tara Guelig and Yuri Horwitz,  
2 we need to wait for someone, I'm sorry, Mr. Hart to arrive.

3 So he's running a little late as well, so that's  
4 going to be whenever we have an opportunity when Mr. Hart  
5 arrives. So other than that, we're going to follow the  
6 order, and Mr. Moy, you can start whenever you'd like.

7 Appeal No. 19550 Appeal of ANC 6C

8 MR. MOY: Okay. Stop me if I call the wrong case,  
9 Mr. Chair, but I believe in the meeting session there is a --  
10 before the Board to take action on a Request for Advance  
11 Consideration of Intervenor Status, okay, and that is to  
12 Appeal No. 19550 of ANC 6C. I believe it is the adjacent  
13 property owner by the name of Kevin Cummins asking for  
14 Intervenor status, and that's under Exhibit 21. So that's  
15 before the Board for action.

16 BZA CHAIR HILL: Okay, great. Thank you Mr. Moy.  
17 Is the Board ready to deliberate? Okay. I, you know, after  
18 reading the record don't have a lot of issues or concern  
19 granting the Intervenor status. Given also that this is the  
20 adjacent neighbor and see why they would meet the criteria  
21 for the status, and also -- at least this is what I didn't  
22 see from the record when I was reviewing it, there was any  
23 opposition from the Applicant. Does the Board have any  
24 thoughts?

25 MEMBER WHITE: I don't have an issue with it as



1 well, Mr. Chairman. I just wanted to make sure that looking  
2 at the record, making sure that adequate notice was given to  
3 the parties, and I believe that it was unless Mr. Moy  
4 corrects me.

5 MR. MOY: That's my understanding.

6 BZA CHAIR HILL: Okay. Is the Intervenor here?  
7 Would you like to come forward sir? If you can just  
8 introduce yourself for the record?

9 MR. CUMMINS: Hello. My name is Kevin Cummins  
10 and I live at 1123 7th Street, N.E., the adjacent property  
11 to the subject property of the Appeal of the ANC 6C, case  
12 number -- Appeal No. 19550.

13 BZA CHAIR HILL: Okay, and I don't have really  
14 have any direct questions for you. I just knew that there  
15 was a chance that you were going to be here, and since I have  
16 a little time to kill, I thought, you know, we'd bring you  
17 on up.

18 But does the Board have any questions that they  
19 would like to ask of the Intervenor directly? No? Okay.  
20 We don't -- we're not going to go into anything in terms of  
21 the case. You don't have anything to add concerning why you  
22 should receive the status?

23 MR. CUMMINS: I inserted for the record and gave  
24 you notice that basically it's as you stated, I'm the  
25 adjacent property owner. So I'm more directly impacted than

1 the ANC by this appeal.

2 BZA CHAIR HILL: Okay, okay, great. All right.  
3 Then do I make a motion, Mr. Moy? I don't know whether  
4 consensus.

5 ZC CHAIR HOOD: I think you make a motion.

6 BZA CHAIR HILL: Make a motion. All right, go  
7 ahead.

8 ZC CHAIR HOOD: I'll make a motion that we give  
9 Mr. Kevin Cummins party status in case number 19550. I think  
10 he meets the requirement of why this whole thing was even set  
11 up to begin with.

12 BZA CHAIR HILL: Okay. I second the motion. All  
13 those in favor?

14 (Chorus of ayes.)

15 BZA CHAIR HILL: All those opposed?

16 (No response.)

17 BZA CHAIR HILL: All right, the motion passes.  
18 All right, Mr. Cummins. We'll see you next time.

19 MR. MOY: For the record Chair, I would record the  
20 vote as 3 to 0 to 2, this on the motion of Mr. Anthony Hood  
21 to grant the Request for Intervenor Status. Seconding the  
22 motion Chairman Hill, and also in support of motion Ms.  
23 White. Our other Board member is not present yet and a Board  
24 seat vacant. The motion carries, sir.

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

1 Case No. 19113-B, Application of Lerner South

2 MR. MOY: The next item in meeting session before  
3 the Board is a Request for Minor Modification, and this is  
4 to Application No. 19113-B of Lerner South Capitol Street JV  
5 LLC.

6 This was first scheduled for decision on October  
7 the 4th, rescheduled to today, October 18th, and to read into  
8 the record the caption that was advertised, Request for Minor  
9 Modifications to the plans approved in BZA Order 19113, which  
10 would permit retail/service use within all or a portion of  
11 the ground floor, to reconfigure the ground floor layout, the  
12 parking, loading and bicycle parking facilities, and the  
13 North Penthouse enclosure, to permit the addition of  
14 balconies to certain units and to modify the range of drawing  
15 units permitted in the proposed multi-family apartment  
16 building in the C3C district at premises 1000 South Capitol  
17 Street, S.E., Square 697, Lot 46.

18 So I have participating Chair Hill, Ms. White, Mr.  
19 Hart is not here, of course, and I believe my understanding  
20 is Mr. Hood would be participating after having read the  
21 record. That can be corrected by Mr. Hood.

22 ZC CHAIR HOOD: I'll just add, Mr. Chairman yes,  
23 I have reviewed the record and I will be participating in  
24 this case.

25 BZA CHAIR HILL: Okay. Thank you all. Are we

1 ready to deliberate? Okay. I can start. You know, after  
2 reviewing the record and what -- yes. Hello? I'm sorry.

3 MR. DETTMAN: Good morning Chairman Hill and  
4 members of the Board. My name's Shane Dettman. I'm the  
5 director of Planning Services for the law firm Holland and  
6 Knight. I believe the Board on October 4th had put off its  
7 decision on this case, because it wanted to hear from the  
8 Applicant regarding whether or not the Applicant was okay  
9 with the three conditions in the DDOT Order, in the DDOT  
10 report.

11 So I just wanted -- you wanted that to be put into  
12 the record verbally, so I just wanted to make sure that I can  
13 get that on the record, that the Applicant is amenable to the  
14 three conditions that DDOT has in the report.

15 BZA CHAIR HILL: Okay, okay. All right, all  
16 right, great, Mr. Dettman. You know again -- okay, that's  
17 great. So and also since you're all right there, the  
18 original Order had the one condition about, and I'm just  
19 going to read, "The Applicant or any successor owner-operator  
20 of the site in a rental apartment building development shall  
21 make two units affordable, one for a household with an income  
22 that is 80 to 120 of area median income, and one for a  
23 household that is 50 to 80 of area median income.

24 "The number of bedrooms in each unit shall be  
25 keeping with unit distribution in the completed building.

1 The Applicant shall verify the income of each household  
2 living in an affordable unit and set the rent at no more than  
3 30 percent of each household's income," right?

4 MR. DETTMAN: That's correct. That condition will  
5 remain unchanged.

6 BZA CHAIR HILL: Okay, all right, and then the  
7 three items that you mentioned that DDOT had, okay. All  
8 right. Well thanks for just appearing there. I'm not going  
9 to look down anymore.

10 All right. So that was a question that we did  
11 have, and so I had thought that there was something in the  
12 record that had clarified that, but I'm glad that Mr. Dettman  
13 was here and was able to clarify that verbally on the record  
14 for us.

15 So again, that being the case, I would be in  
16 agreement with the analysis that the Office of Planning had  
17 provided concerning this minor modification, as well as the  
18 fact that I guess there wasn't any report by the ANC. But  
19 I went back and looked at the original case, and that the ANC  
20 was in favor of the project and also I was on the original  
21 case actually.

22 So does the Board have any other comments? I mean  
23 I don't have any issue with the minor modification.

24 MEMBER WHITE: Mr. Chairman, I don't have any  
25 issues with the minor modification as well. I'm glad Holland

1 and Knight clarified the affordability component, as well as  
2 implementing the other conditions that have been laid out by  
3 DDOT are fine. So that's part of the loading management  
4 plan. So I would recommend approval after reviewing the  
5 record and OP's report. So I concur with your comments.

6 BZA CHAIR HILL: Okay. Chairman Hood, do you have  
7 anything to add?

8 ZC CHAIR HOOD: I'm glad that Mr. Dettman came  
9 forward, because for some reason I thought that the Applicant  
10 had already agreed to everything. But I'm glad that he came  
11 and clarified that. I thought I read that, but anyway,  
12 that's been taken care of and I'm ready to move forward with  
13 this minor mod.

14 BZA CHAIR HILL: Okay. I'll go ahead and make a  
15 motion to approve Application No. 19113-B as read by the  
16 Secretary.

17 MEMBER WHITE: Second.

18 BZA CHAIR HILL: Motion has been made and  
19 seconded. All those in favor, aye?

20 (Chorus of ayes.)

21 BZA CHAIR HILL: All those opposed?

22 (No response.)

23 BZA CHAIR HILL: The motion passes. Mr. Moy.

24 MR. MOY: Before I record the vote Mr. Chairman,  
25 as I said, Mr. Hart is not present, but he did submit an

1 absentee ballot, and his absentee ballot is to approve the  
2 application with such conditions as the Board may impose.

3 So that would give a final vote of 4 to 0 to 1,  
4 this on a motion of Chairman Hill to approve the application  
5 with the conditions that he stated. Seconding the motion Ms.  
6 White. Also in support Mr. Anthony Hood of course Mr.  
7 Carlton Hart, the Vice Chair. We have a Board seat vacant.  
8 The motion carries.

9 BZA CHAIR HILL: Thank you, Mr. Moy. Summary  
10 Order.

11 MR. MOY: Yes sir.

12 BZA CHAIR HILL: Thank you.

13 (Pause.)

14 Application No. 19578 of 944 Florida Avenue N.W. LLC

15 MR. MOY: Okay. The next case before the Board  
16 for action I believe is Application No. 19578 of 944 Florida  
17 Avenue, N.W., LLC. As amended, the caption reads Request for  
18 a Use Variance from the Use Requirements of Subtitle Use  
19 Section 401, which would operate as a salon in the first and  
20 second floor of an existing building in a RA-2 zone of  
21 premises 944 Florida Avenue, N.W., Square 357, Lot 50.

22 As the Board will recall, the public hearing was  
23 convened on September 27th, 2017, and scheduled for hearing  
24 today, October 18th. Participating on the vote is Chair  
25 Hill, Vice Chair Hart, Ms. White and Mr. Hood.

1           BZA CHAIR HILL: All right. Is the Board ready  
2 to deliberate? Okay. Well, I'm interested in our  
3 deliberations with this. I am not completely torn, I  
4 suppose. I am -- I know where I'm leaning towards. We had  
5 a pretty extensive hearing concerning this application and  
6 then took quite a bit of testimony in terms of testimony from  
7 both the Applicant.

8           The ANC Commissioner came down also to talk about  
9 the application, and then also, you know, the opinions and  
10 testimony from the Office of Planning, who seems to be here  
11 as well if we have any further questions for them. I can get  
12 behind the variance in terms of how they are meeting the  
13 standard. I believe that the way that they were doing it  
14 was, you know, in terms of the argument that the Applicant  
15 made for the expense in terms of converting the units to  
16 residential.

17           And the uniqueness of it that I was kind of  
18 struggling with in terms of the test was that it had been  
19 already a non-conforming use for the second story in terms  
20 of the -- it was already a non-conforming use and that this  
21 was now switching to another non-conforming use, which I got  
22 a little bit confused about in terms of why that was actually  
23 --

24           I mean I know that that now has been a change that  
25 the Zoning Commission has made, and I'm glad that we'll be



1 able to hear from a member here from the Zoning Commission.  
2 But that that, along with the other arguments that the  
3 Applicant had made in terms of how they're meeting the  
4 variance test, I was able to get behind.

5           Beyond that, taking the testimony from again, how  
6 it just kind of my entire thought process, where the ANC had  
7 come and given their thoughts for that particular area and  
8 that additional housing there was -- there was a lot of  
9 additional -- there was housing along that area and across  
10 the street, and that that -- they, the ANC, was more in favor  
11 of keeping it the way it was in terms of having the ability  
12 to have the salon there.

13           But again, that is more -- besides the fact, not  
14 in how I was going along with the Applicant's arguments as  
15 to how they were meeting the variance test. I don't know if  
16 anyone else would like to add anything.

17           MEMBER WHITE: Yes, I would Mr. Chairman. Yeah,  
18 this is an interesting case. I mean basically, there's a lot  
19 of history with this property, where it's been used as a  
20 business on the first floor but they want to use the second  
21 floor for a business, converting it from residential into the  
22 second floor of the salon.

23           But after reviewing, you know, the regulations and  
24 the record, looking at a summary of the variance argument  
25 from the Applicant and also some of the precedent, case

1 precedent that's out there regarding use variances, reviewing  
2 the testimony of the ANC Commissioner 1B I thought was pretty  
3 compelling and supportive of the rationale for why it made  
4 sense to convert that to a business use.

5 I think it also supported the appellant's argument  
6 that this was an extraordinary and exceptional situation  
7 given this specific piece of property, and also just adding  
8 that part of the argument was whether or not taking that  
9 residential unit as an option off the table in the  
10 neighborhood, whether or not that would have adverse impact  
11 on the neighborhood as far as having availability for  
12 apartments.

13 He provided and the applicant provided just some  
14 insight on the fact that there are numerous multi-family  
15 projects, some of which I think are affordable in that  
16 neighborhood. But he also added some flavor in terms of the  
17 history, the negative history of that second story  
18 residential unit, and that he was supportive of it being  
19 converted into -- as part of the business unit.

20 I did look at the OP report, and obviously we give  
21 weight to the OP's report. But I did have -- I didn't quite  
22 buy in 100 percent with their argument that this was an  
23 extraordinary and exceptional situation. So me personally,  
24 looking at the regulations and applying it to the facts of  
25 the case, I'm supportive of approving this particular

1 application, and specifically I also looked at a case, the  
2 *Hilltop* case, that provided a similar kind of effect pattern  
3 in terms of the Board supporting a second floor conversion  
4 of a building as part of the business unit, and taking it out  
5 as a residential option.

6           Also, I looked at the cost. The Applicant had  
7 serious concerns about the cost of trying to convert that  
8 unit into a residential unit. I found those costs to be  
9 pretty high. I think it was about \$170,000 to convert that  
10 existing into a residential unit. So based upon that, I  
11 think that they did meet the test in order to be able to get  
12 the use variance. I don't see it as having an undue hardship  
13 on the community. So I'm supportive of the application.

14           BZA CHAIR HILL: Okay, thank you. Mr. Hood, have  
15 you got anything to add?

16           ZC CHAIR HOOD: I don't know how much more I can  
17 add. I think Board Member White expounded quite a bit and  
18 I think she did a superb job, and I will concur with all of  
19 her comments as well as yours. The only thing I will say,  
20 and this might sound kind of contradictory, but when I look  
21 at the record -- when I look at the record, I appreciate the  
22 Office of Planning for holding the line, because normally I'm  
23 not typically supportive.

24           But there are other factors that come into play.  
25 So I think the Office of Planning is doing exactly what the

1 regulations have been intended to do. But the issue is each  
2 case is done on the merits, and I look at the merits of this  
3 case. As Board Member White mentioned, the build out of  
4 making livable units and how that use has been in the past  
5 and under the MU, the uses, I think that the record speaks  
6 for itself.

7 For us to be able to give the Office -- well, by  
8 law we have to give the Office of Planning great weight, as  
9 well as the ANC, and the ANC has done a lot of work in moving  
10 forward with making sure that this is developed as it is, and  
11 the issue I have though, and I look at some of the policies  
12 about second floor general purpose or trying to get people  
13 to go up to the second floor for retail use or whatever you  
14 have, but I think that this case specifically has the merits  
15 and specifically warrants our approval.

16 That's exactly what this Board is supposed to do.  
17 Now that might have sounded contradictory, but I'm going to  
18 be voting in favor of this, and I agree with all my comments  
19 and my colleagues.

20 BZA CHAIR HILL: Okay, all right. So I'm going  
21 to go ahead and make a motion to approve Application No.  
22 19578 as read by the Secretary.

23 MEMBER WHITE: Second.

24 BZA CHAIR HILL: Motion made and seconded. All  
25 those in favor?

1 (Chorus of ayes.)

2 BZA CHAIR HILL: All those opposed?

3 (No response.)

4 BZA CHAIR HILL: Mr. Moy, the motion passes.

5 MR. MOY: All right. Before I record the vote Mr.  
6 Chair, I have an absentee ballot from Mr. Hart, who  
7 participated, and his absentee vote is to approve with such  
8 conditions as the Board may impose. So with that, we get the  
9 final vote to 4 to 0 to 1 on your motion to approve the  
10 application for the relief requested, Mr. Chairman.  
11 Seconding the motion Ms. White. Also in support Mr. Hood.  
12 Yes, Mr. Hood and Mr. Hart of course, with one Board seat  
13 vacant. The motion carries.

14 BZA CHAIR HILL: Okay. Summary Order.

15 MR. MOY: Thank you, sir.

16 BZA CHAIR HILL: Thank you.

17 (Pause.)

18 BZA CHAIR HILL: Okay. We're going to switch up  
19 a couple of people here, so we're just going to take two  
20 minutes. We don't need to get up, or y'all don't need to get  
21 up. You can if you want but --

22 (Off-microphone comments.)

23 BZA CHAIR HILL: Okay, all right. Well we'd like  
24 -- I'd like to welcome Vice Chair Hart to the table of the  
25 Board here as well as Mr. Turnbull, for our last meeting case

1 of the day. Mr. Hart, are you relaxed there? Are you ready  
2 to hear it quickly enough here? Okay.

3 VICE CHAIR HART: Yes, Mr. Chair. Thank you for  
4 your concern.

5 BZA CHAIR HILL: Sure. So Mr. Moy, whenever you'd  
6 like to read our case, we can move forward.

7 Case No. 19548, Application of Guelig and Horwitz

8 MR. MOY: Thank you, Mr. Chairman. First of all,  
9 before I read the next and last case for decision-making, I  
10 neglected to mention earlier my preliminary matter report  
11 that the Application No. 19596 of Richard and Allison Sedwick  
12 has been postponed by the Board and rescheduled for decision-  
13 making to November 1st, 2017.

14 So with that, then the application before the  
15 Board for action is Application No. 19548 of Tara Guelig and  
16 Yuri Horwitz, as amended for special exception under Subtitle  
17 D, Section 5201 from the rear yard requirements of Subtitle  
18 D, Section 1206.3, which would construct a rear addition to  
19 a one family dwelling, R-20 Zone at premises 2716 O Street,  
20 N.W., Square 1239, Lot 143.

21 As the Board is aware, the hearing took place on  
22 September 6th, 2017. Scheduled for decision on September  
23 27th and then rescheduled its decision to today, October  
24 18th. The only thing I'll add Mr. Chair is in the case  
25 record, the Applicant filed another submission late last

1 night, so that's in the record as to how you want to handle  
2 that exhibit. Thank you.

3 BZA CHAIR HILL: I don't really have an issue  
4 letting that letter into the record, unless that's going to  
5 create some kind of a time line, Ms. Nagelhout. Okay, all  
6 right. It's again a letter from the Applicant in terms of --  
7 well, I did get it and had a chance to read it, and I guess  
8 everyone had a chance to look at it. So are we ready to  
9 deliberate?

10 Okay. So I'm not sure where this is going to go,  
11 and so I'm interested to see what my fellow Board members  
12 have to say. It is definitely something that -- I know that  
13 all of us have taken a really hard look at, and I know that  
14 myself, I've been struggling with it and I'm not, again, 100  
15 percent sure how to move forward.

16 In terms of just like my empathy for those who are  
17 involved with this, I really do -- not that has anything  
18 again to do with the zoning regulations or anything like  
19 that, I feel for all the parties involved and what they're  
20 trying to do and what they want to not have done. And so  
21 again, as someone who lives in the City and lives in a pretty  
22 dense area of the City and has a lot of things that happened  
23 to me that I don't really want to happen necessarily both  
24 ways, I can understand how it has been a very long process  
25 for the Applicants and the neighbor next door, as well as,

1 you know, the neighborhood.

2           Where I'm looking for some help from the Board  
3 again is just, and I'm going to lay out some of my thoughts,  
4 is again the criteria for the special exception, and that  
5 being again (a), the light and air available to neighboring  
6 properties must not be unduly affected; the privacy and use  
7 and enjoyment of neighboring properties must not be unduly  
8 compromised; and the addition, together with the original  
9 building as viewed from the street and other public way must  
10 not substantially visually intrude upon the character scale  
11 and pattern of houses along the subject street frontage.

12           After hearing from the Applicant and all the  
13 testimony provided and all of the drawings and the  
14 architectural drawings, I mean again I don't really  
15 necessarily have a whole lot of problems with (a) and (b),  
16 I'm sorry (b) and (c), in terms of I don't think that it's  
17 going to intrude on the character scale and pattern of  
18 houses.

19           I don't necessarily think that the privacy and use  
20 of enjoyment of neighbors are going to be unduly compromised.  
21 In fact, as was indicated from the Office of Planning, there  
22 might even be more privacy to at least that neighbor to --  
23 the adjacent neighbor in terms of -- I mean there might be  
24 some more privacy. But the light and air issue is really  
25 what I was kind of continuing to struggle with.



1           In terms of also how, and this is where I'm going  
2 to kind of put the Zoning Commission a little bit on the  
3 spot, in terms of the ten feet, you know, back from the  
4 existing wall, I'm sorry, from the neighboring property. I  
5 mean the property, as I understand it, is already ten feet  
6 from the neighboring property. So they would be going an  
7 additional 17 feet past that or something thereabouts, and  
8 then the property would go back, you know, 30-some odd feet  
9 or something like that.

10           What continues to keep me having an open mind to  
11 this and where I'm again, continuing to be conflicted, is  
12 that the property to the other side that, you know, is a  
13 vacant lot. So that vacant lot doesn't have any issues with  
14 -- the vacant lot doesn't have any issues with the extension.  
15 And then on the other side of the vacant lot, there's a  
16 building that goes even farther back than what the Applicant  
17 is proposing.

18           So my -- the finishing thought on that is, you  
19 know, the vacant lot, then that person whoever develops that  
20 lot would be able to, you know, if this were to be approved,  
21 would probably be able to go back as far as the two adjoining  
22 properties, so why wouldn't they be in approval of this? It  
23 again just continues to come down to that light and air issue  
24 of the neighboring property, and what the special exception  
25 was originally put forward by the Zoning Commission in terms

1 of the criteria.

2           Obviously, the Office of Planning has provided  
3 their report, and I do very much appreciate and am usually  
4 not conflicted with their interpretation. Actually, that's  
5 not true. I oftentimes am conflicted with their  
6 interpretation, but I struggle through it. And so I am  
7 understanding that we are to give great weight to the Office  
8 of Planning and I'm very respectful of their opinions. I  
9 just am a little torn as to the unduly -- the word unduly and  
10 whether or not, you know, the light and air of that adjacent  
11 property neighbor is unduly affected.

12           And so again, as we are to do with our task here,  
13 we get to talk in public and go through our deliberations in  
14 public, and figure out things in public. So I am beginning  
15 to throw out my comments and see where they lead, and I will  
16 look to whoever would like to pick up the baton next. Mr.  
17 Turnbull, would you like to go since you're -- I've already  
18 kind of put you on the spot to a certain extent.

19           MEMBER TURNBULL: I'm never on spot.

20           BZA CHAIR HILL: Okay, well that's good. Then you  
21 should --

22           MEMBER TURNBULL: I'm always ready -- I'm always  
23 willing to talk.

24           BZA CHAIR HILL: I can invite you to a lot of  
25 meetings I have at my office, if you want to come by and --

1           MEMBER TURNBULL: Well, I think like you, Mr.  
2 Chair, I struggled with this case. As you mentioned earlier,  
3 the dwelling is already beyond the -- is at 11 foot 6, which  
4 puts it at 1 foot 6 beyond the 10 foot. But that's a given.  
5 It's already existing. It's an existing condition, so it's  
6 already beyond that.

7           I think the Applicant's original drawing had the  
8 -- what they had wanted to add on was 20 feet beyond that,  
9 and I think we heard a lot of impassioned argument back and  
10 forth on either pro and con as to why it should or it  
11 shouldn't be done.

12           As you know, the Zoning Commission, one of the  
13 reasons why this -- why the regulation was changed to have  
14 this as a special exception and not as a matter of right is  
15 that so that you could engage your neighbors and really talk  
16 over issues with them, and look at the light and air and the  
17 impact on the next door neighbor.

18           I would agree, I don't think there's -- I think  
19 the Old Georgetown Board is better at looking at the aspect  
20 of what it looks like from the street. There's really no  
21 impact from the street of this, other than the fact that you  
22 can see it because there happens to be a vacant lot. But in  
23 the true sense, there really would not be any impact.

24           So the main thing really gets to be the adjacent  
25 neighbor and really the rear yard and the impact on the

1 enjoyment of that -- of the rear yard. The Applicant had  
2 provided several shadow studies. Some of them indicated that  
3 there would be a little bit more of an impact. There already  
4 is some impact primarily feeding from the other building,  
5 which is on the other side of vacant square. I think it  
6 casts some shadows. So there is some impact no matter what.

7           Twenty feet. There was also some idea brought up  
8 about maybe putting vines or something on the wall, which is  
9 really not for us really to get into to, to try to minimize  
10 it. But in the latest set of iterations that have been  
11 provided by the Applicant and their architect, they've tried  
12 to mitigate the effect of the brick wall by providing some  
13 decorative brick work, as to give some relief to that wall.

14           In the two plans B and C, there has been some  
15 changes as far as the setback from the existing building  
16 line. I think it's number C that is the most dramatic, where  
17 they've taken off about three and a half feet. They're now  
18 back at 16'6", which primarily affects the family room.  
19 Actually the second story addition would be only at 13'10"  
20 I believe. So they've tried to minimize that going back.

21           You could argue why didn't they make the whole  
22 thing 13'10", but so -- and they've also narrowed it. I  
23 think the subset, the Plan C narrowed -- I think it's C,  
24 narrowed the building. They took it -- they took it back to  
25 the original, I believe the line of the second floor now

1 lines up with the original wall of the second floor of the  
2 original building.

3           So they've knocked that back. They've still kept  
4 the bump out on the first floor, which lines up with the  
5 exterior wall and there's still -- there's a little bit of  
6 a bump up. So you can see that there's been an attempt to  
7 try to minimize this. They've tried to -- I mean at some  
8 point you can see they wanted an extra bedroom. Of course,  
9 they're also getting an office out of this too, so you can  
10 argue plus or minus the needs of what they're really trying  
11 to do.

12           But that's not for us to interpret them. That's  
13 just looking at how this then now affects the -- we still  
14 have a big blank wall. But it's, I think, from looking at  
15 the size of the existing residence, which is only about what  
16 -- I forget what size it is, 15 feet. I think it's 15 feet.  
17 So it's a very narrow residence, and you can see how on a  
18 site like this, and I guess we're always --

19           I'm always concerned about setting of precedents,  
20 and allowing people to go beyond the special exception limits  
21 to a point where it gets to be egregious. So I struggled  
22 between what's going to become egregious and balancing the  
23 impact of what it has on the neighbors, and at least trying  
24 to allow the Applicant some ability to improve their life and  
25 their house.

1           So it's not really in the zoning regs written that  
2 you have to allow for that, but you get into these things.  
3 It's unwritten. But looking at the impact on that neighbor,  
4 there's still more -- I mean let's say there was already this  
5 11 foot 6 add that had been done before the zoning regs had  
6 to, you know, enforce this. So adding on another, and I  
7 would -- if I looked at the most minimum one, which would be  
8 Plan C, I believe it's C and if anybody wants to check and  
9 correct me on that.

10           But I think the Plan C is the least egregious of  
11 any. So I'm -- again, I'm torn. There is an impact. Again  
12 at the same time, the Applicant has tried to minimize what  
13 they originally had, and has tried to work with the next door  
14 neighbor. So maybe if the rest of you want to weigh in and  
15 add some comments, it would be good and we can go from there.

16           BZA CHAIR HILL: Okay, all right. Go ahead,  
17 Chairman Hart, I mean Vice Chair Hart.

18           VICE CHAIR HART: Mr. Chairman, and thank you Mr.  
19 Turnbull. It is Tab B of the Applicant's -- I'm trying to  
20 think of what exhibit this is, 84 that I think you're talking  
21 about.

22           MEMBER TURNBULL: That's right, yeah.

23           VICE CHAIR HART: Which is the second set of plans  
24 that the Applicant has put forward. In Exhibit 84, they've  
25 -- in Tab A the building has -- the top floor, the second

1 floor has actually narrowed, so that it is in alignment with  
2 the -- I guess there was a small court, and this wall on the  
3 eastern, sorry on the western side of that wall, on the  
4 eastern side of that wall is -- has moved so that it is in  
5 alignment with the new master bedroom wall.

6 I mean I kind of look at it like this. The width,  
7 and you've spoken about this Mr. Turnbull, the width of the  
8 property is 15 feet. So you're not really looking at a very  
9 wide lot, a wide space as it is. So any room that they  
10 create is going to be less than that. The bedroom that is  
11 proposed here is actually a fairly -- I mean it's an  
12 extravagant size. In this case, on Tab and on Exhibit 84 it  
13 is 10-1/2, 10 feet 9 inches by 14 feet 5 inches, which is to  
14 me not a --

15 I mean it's a bedroom. It's a master bedroom, so  
16 fairly -- so a good size for one. If you look at Tab B on  
17 the same exhibit, we have a room that is 12 feet by an inch  
18 by 11 feet 11 inches. So again, these aren't 20 by 20 foot,  
19 you know, rooms that we're talking here. These are fairly  
20 normal-sized rooms and I don't feel that --

21 I think if you are looking at making this room  
22 even smaller, you get to a point that -- significantly  
23 smaller, I think you get to a point that it is an unuseable  
24 room as a master bedroom or as a, you know, as a bedroom  
25 itself. It then kind of begs the question of why do this

1 addition, you know, at all? So I mean I think I'm on the  
2 same point that I was before when we had this discussion,  
3 which was I understand that there will be an impact to this.

4 I think that the applicant could have gone two  
5 ways. One is to the back, to the rear of the building, or  
6 they could have gone up. So and I think that in this  
7 neighborhood, I think that the going up would have been --  
8 adding a floor would have been more problematic than adding  
9 to the rear of the building. I don't think that this is  
10 again a very large addition that is being proposed, at least  
11 on the second floor.

12 The first floor is actually a larger piece, but  
13 that actually is going to be somewhat hidden from the  
14 neighbor because it is not -- I guess there's a fence or  
15 something that's between these buildings. I don't know. I  
16 just -- I don't have a -- I understand that there will be an  
17 impact. I just don't -- well, I don't feel that the impact  
18 is unduly, and I don't know, I don't think that there is an  
19 ability for the Applicant to make an addition for this new  
20 bedroom.

21 And you know, if you really wanted to make a  
22 significant change to it, you know, you'd cut off, you know,  
23 six or seven feet of it, you know. That would be more of a  
24 change than what is being proposed here. If you do cut off  
25 that six or seven, you know, a significant amount of this,



1 I think it becomes an unviable room and so it then kind of  
2 begs the point then why do it that. Why do an addition if  
3 you're not making a viable room?

4 So with that, I think I'm in the -- looking at the  
5 materials that have been provided, understanding that there  
6 has been some additional conversations that have happened,  
7 and that they were not -- they led to a different, a reduced,  
8 a reduction in the actual design on the second floor, it  
9 still wasn't enough for the next door neighbor to be in  
10 support of it.

11 But I think I could be supportive of the Tab B  
12 design on Exhibit 84, because I think that it what it did was  
13 try to reduce that size and impact as much as possible, while  
14 trying to also provide, as I said, a viable room for the  
15 Applicants. And I think that it also -- that the Applicant  
16 has provided enough background information with shadow  
17 studies and the testimony to show that they've met the  
18 criteria under the zoning regulations.

19 MEMBER WHITE: Thank you, Mr. Hart. So the  
20 option, the third option was the option that you were  
21 referencing that's in Tab B, correct?

22 VICE CHAIR HART: That's correct.

23 MEMBER WHITE: Okay. Well after reviewing the  
24 record and it's a very long record, the revised plans, I  
25 always like to hear the architects speak first, because it

1 gives me a little bit more technical information in terms of  
2 how to read those plans. But you know, it was also important  
3 to hear the responses from the neighbors and obviously I am  
4 very sympathetic to both sides.

5 I understand now a little bit why the ANC didn't  
6 take an active concrete position on this because it is -- it  
7 is a very difficult case. So not to take anything away from  
8 the ANC, it is a very, very, very difficult case. But  
9 understanding that, you know, that's not our job necessarily.  
10 Our job is to look at the regulations and as BZA members and  
11 apply them to the facts of the case, and you know, the  
12 Applicants admitted three versions, plans that were looked  
13 at by the neighbors.

14 I agree with Mr. Hart, that the -- and I believe  
15 Mr. Turnbull too, that the third option is less intrusive.  
16 I hesitated in making a final decision because part of the  
17 test, the criteria was the fact that the light and the air  
18 available to the neighboring property shall not be unduly  
19 affected.

20 So obviously there is some impact. The neighbor  
21 was clear. She lives next door, so she's there every day.  
22 So she understands that it's going to change her day to day  
23 life on a daily basis because you're going to have a  
24 structure there that casts a shadow. But I didn't believe  
25 that the shadow was unduly cast, to the point where it had

1 a significant impact on the light and air.

2 But I do agree, it is going to have an impact.  
3 You can tell that from the shadow studies. I also am very  
4 sympathetic to the needs of the other neighbors as well,  
5 because I know they're trying to maintain the look and feel  
6 of that kind of mini-park. It's kind of like you're in a  
7 park but you're in a city. So I understand why they had some  
8 issues as well, but I don't think that the Option C is going  
9 to, which is Tab B, going to be that burdensome to the point  
10 that it doesn't meet the criteria under the special  
11 exception.

12 So you know, I looked at Office of Planning's  
13 report and, you know, I can get behind the third option that  
14 the Applicant submitted. I think it does meet the criteria,  
15 and those are my comments.

16 BZA CHAIR HILL: Mr. Turnbull.

17 MEMBER TURNBULL: Yeah. I would agree with my  
18 colleagues. The third, the Scheme C I guess we're calling  
19 it or Tab B is probably the preferred option. I would really  
20 jump behind this wholeheartedly if both the first and second  
21 floors were the same. If the family room, the first floor  
22 was at 13'10", I would go, I would jump on it right away.

23 So I just struggled that it's an extra 2 foot 10,  
24 and it's -- I'm being, getting into the weeds here on this.  
25 But if the first and second floor had been the same and had

1 been only 13'10", I would have said okay, yeah. So I just  
2 struggled. I know we're only talking about three feet more  
3 on the first floor, but I just think it's much more simpler  
4 and it would just satisfy from the standpoint of impact a  
5 little less extra shadow on the neighbor's yard.

6 But it's minor, but I'm just throwing that out  
7 there, that if it was -- both first and second floors were  
8 the same dimension, it would have been easier for me to jump  
9 right into it and say yeah, we're still over. It's beyond.  
10 We're looking at it from the special exception. I could go  
11 with it a lot easier. But I'm being picky here, I guess.

12 BZA CHAIR HILL: Well, I guess I'm just trying to  
13 figure out where -- I mean I'm still not -- well actually I'm  
14 back to where I think I'm more again in the -- in the, you  
15 know. The ten foot rule is there. We have the ten foot.  
16 It's at 11 feet already, and going back any further to me is  
17 what I'm still stuck at.

18 And so if you guys are all, you know, with the Tab  
19 C or the plan, then I think that that's great, you know. I'm  
20 just -- I know where I am now, which is I'm just -- I think  
21 that the regulation and the special exception -- anyway, I'm  
22 still stuck with the light and air. But I'm happy to follow  
23 along with any motion that anybody makes, in terms of I know  
24 what I'm going to vote.

25 VICE CHAIR HART: Okay. Since no one is jumping

1 to it, I would make a motion --

2 MEMBER TURNBULL: Well, so you're still -- you  
3 still struggle with basically the basic zoning regulation,  
4 that anything beyond the ten foot is --

5 BZA CHAIR HILL: Yes.

6 MEMBER TURNBULL: --and there still a tremendous  
7 impact? I struggled with that also, but I'm trying to look  
8 at options here for -- the Applicant tried to mitigate some.  
9 But you still don't think that there's enough mitigation  
10 done?

11 BZA CHAIR HILL: I'm opposed right now. That's  
12 where I am, and so for the reasons that I had stated in terms  
13 of why you guys set up the ten foot thing to begin with, you  
14 know. And so -- but I again very much respect the opinions  
15 that have been put forth by the Board members, as well as the  
16 Office of Planning.

17 If there is something that -- I suppose, you know,  
18 if this were a deadlock situation or if there was something  
19 Mr. Turnbull that, you know, if you thought that there was  
20 something that you might feel more comfortable with, and then  
21 even maybe, you know, we would have a little bit more time  
22 to take a look at it or if, you know, the Applicant, who I'm  
23 sure is listening, you know, would want to submit something  
24 different they think that they would get, you know, would  
25 have more of an ability to get your approval, then I would

1 say that we could either take a vote again and see where we  
2 lie, and if it's --

3           And I know that we have another Board member  
4 coming very soon. But if we were to be deadlocked, then we  
5 could postpone this and leave the record open for any further  
6 design possibly, modifications based upon the discussions  
7 that you have had Mr. Turnbull, and then just see where you  
8 come up with. Or if you feel comfortable with where you are  
9 now, then I'm happy to be the outlier on this.

10           MEMBER TURNBULL: Well, I appreciate it. Again,  
11 the special exception was set up to simply get into  
12 situations like this, where an Applicant could come before  
13 the Board and make a case as to why they need to go beyond  
14 the ten foot. It's not locked in stone that you can only be  
15 at ten feet. There's an option where you can go beyond that.

16           And again, notwithstanding the light and impact  
17 to the adjacent neighbor, I would just -- I would have felt  
18 more comfortable if the whole thing had been at 13 foot 10,  
19 which is just 3 foot 10 beyond what they have right now. I  
20 mean they're already beyond the ten foot. They're a foot and  
21 a half beyond it.

22           So if it was at 13 foot 10 for the whole thing,  
23 I could -- I could see myself granting it. Again, it's still  
24 beyond the -- again, we have to look at this case by case,  
25 and on this particular case I know the next door neighbor is

1 not going to be totally happy with this. But I think at  
2 least it's, as the Vice Chair has said, there's still some  
3 impact.

4 But is the impact as egregious as what it would  
5 have been if there had been another seven feet beyond that?  
6 So I'm just saying if the Applicant make this as tight as  
7 they can and go back -- knock off seven feet of what they  
8 originally had --

9 BZA CHAIR HILL: Okay, okay, okay, okay.

10 MEMBER TURNBULL: --I would be in favor.

11 BZA CHAIR HILL: Okay. So I see that everybody's  
12 here, and so I know that if I do this, what happens to us?  
13 There would be -- so before I do this, do you Mr. Turnbull  
14 or Mr. Hart or Ms. White have any questions that you would  
15 like to have of the Applicant or anyone who's here, because  
16 I see that everyone is here, and Mr. Turnbull, I think you've  
17 been pretty clear as to what you are speaking of. Would you  
18 like to hear from the Applicant?

19 MEMBER TURNBULL: Not if they're going to argue  
20 one way or another. I mean --

21 BZA CHAIR HILL: Okay, all right, okay. Okay,  
22 all right. Can we have the Applicant come -- the Applicant's  
23 here; correct? Would the Applicant please come forward. The  
24 people in party status are here I can see also. Would you  
25 guys please come forward?

1 (Pause.)

2 BZA CHAIR HILL: Okay, before everybody starts,  
3 we're going to introduce ourselves, and then we're just --  
4 I just have -- don't, we're not asking for any questions just  
5 yet. Just let me kind of get through this. So if you could  
6 please introduce yourselves from my right to left please?

7 MR. BRODNIG: Gernot Brodnig, co-owner of 2719  
8 Dumbarton Street.

9 MS. SCHAFER: I'm Alison Schafer. I'm the  
10 easterly neighbor, 2712 O.

11 BZA CHAIR HILL: Okay.

12 MS. MOLDENHAUER: Good morning Chairman Hill and  
13 members of the Board. Meredith Moldenhauer from the law firm  
14 of Cozen O'Connor.

15 MS. GUELIG: Tara Guelig, 2716 O Street, the  
16 Applicant.

17 BZA CHAIR HILL: Okay, great. Thank you. So you  
18 guys have all heard all of the discussion. Please don't say  
19 anything yet. Just let me kind of get through this a little  
20 bit. So you guys have all heard the discussion. Mr.  
21 Turnbull is, had some comments about something that he  
22 thought he would be best, better able to get behind.

23 So my question I guess, and Mister -- well, I'm  
24 asking Mr. Turnbull, tell me if I'm not asking this  
25 correctly, would be to the Applicant, in terms of do you



1 understand what Mr. Turnbull is suggesting, and would you be  
2 able to submit something that is along those lines?

3 MS. MOLDENHAUER: I'll let my client respond.

4 MS. GUELG: So what I also wanted to just point  
5 out is that the concept of the bay evolved as a result of the  
6 Old Georgetown Board. They didn't think that the appearance  
7 of a first floor that would be aligned with the second floor  
8 conformed to the historic elements. And so it's for that  
9 reason that there had always been, regardless of the absolute  
10 length, a difference between the first and the second floor  
11 in terms of length.

12 BZA CHAIR HILL: So the Old Georgetown Board would  
13 not be in approval, you're saying, of the design if it was  
14 done the way that Mr. Turnbull's speaking of?

15 MS. GUELG: Our original design was a flush first  
16 floor that aligned with the second floor, and that was  
17 perceived to be not conforming to the historical piece.

18 BZA CHAIR HILL: Okay, okay. I don't know if that  
19 is answering my question. Mr. Moldenhauer, do you have a  
20 thought on that question?

21 MS. GUELG: Sure. So if we would be willing to  
22 revise, assuming it's conforming to that Georgetown Board  
23 request, if the desire is to pull it back further.

24 BZA CHAIR HILL: Okay. So Mr. Turnbull, I'm going  
25 to let Mr. Turnbull reiterate what he was saying, and then

1 I would imagine what I would just suggest to the Board is we  
2 would then just hold this off again for deliberation, to  
3 allow the plans to be submitted and then allow time for the  
4 party status people to respond.

5 I will also allow the party status person now to,  
6 in a minute, to respond to everything that's going on. But  
7 Mr. Turnbull, would you like to clarify again what you were  
8 thinking about?

9 MEMBER TURNBULL: Yeah. I guess trying to, and  
10 again since Mr. Chair, you really are dug in more than the  
11 Zoning Commissioner is on the absolute interpretation of the  
12 regs as far as the ten foot rule and what you could go  
13 beyond, I think you're more -- I'm sort of in the way that  
14 I'm lenient and could allow this, even given some of the  
15 impact on the adjacent neighbor.

16 BZA CHAIR HILL: And I don't -- I don't  
17 necessarily know whether I would disagree with you Mr.  
18 Turnbull at this point. I don't know what it is you're now  
19 --

20 MEMBER TURNBULL: Well, I would just say I like  
21 the idea that you were only going 13 foot 10. I think you've  
22 made a big leap back as far as what you're adding on. I  
23 think the bay going out an extra two foot 6 or 8, whatever  
24 it is. I think if that could be made de minimis so that if  
25 the -- again, if you have to work with the Georgetown Board,

1 if there was sort of relief, it could be just a six inch  
2 projection to give some relief architecturally, if they feel  
3 that something would be allowed back there.

4           Maybe that would be more appropriate. I would  
5 think I'd go along with something that just gives a little  
6 bit of a relief to the first floor, but not the full going  
7 back two feet. So that we're close to your 16 foot 6. So  
8 maybe if it's just a little bit of a relief, sort of like a  
9 lack of a better definition, a Juliette bay window, something  
10 very de minimis that just gives some relief to that first  
11 floor.

12           BZA CHAIR HILL: Okay, okay.

13           MEMBER TURNBULL: That I might be in agreement  
14 with.

15           BZA CHAIR HILL: So I don't want to get into a  
16 long discussion with the Applicant and everything. I'm just  
17 letting you know, I mean this isn't really where the Board  
18 normally is in terms of, you know, us getting into the weeds  
19 in terms of design or what we might or might not be able to  
20 get to in terms of our deliberation.

21           We have, you know, we have an uneven number of  
22 people here, and so I'm trying to also work through in a way  
23 that we get to a decision. And so I would go ahead and --  
24 so there's no comment I need in terms of I guess go ahead.  
25 We'll see, Mr. Turnbull, what you get and when we might be

1 able to get drawings back from the Applicant. Ms. Schafer  
2 and Mr. -- again, what is your last name?

3 MR. BRODNIG: Brodnig.

4 BZA CHAIR HILL: Brodnig? Brodnig, thank you  
5 sorry. Do you have -- I mean I assume you're in the same  
6 place you were, regardless of what happens with any further  
7 design measures that Mr. Turnbull had just kind of mentioned.  
8 And so I'm going to give you an opportunity to speak.  
9 However, you will have an opportunity to again respond to  
10 anything that is submitted into the record.

11 So that will again be something that we as a Board  
12 will have an opportunity to look at before our next  
13 deliberation. However, is there anything you'd like to add?

14 MS. SCHAFFER: Well, I mean I don't need to say  
15 anything you're not going to expect. I still find that it  
16 has a huge and undue impact on my back garden, and of course  
17 I appreciate you looking at this, because less is -- of  
18 course less of an impact is better. So I appreciate this  
19 discussion.

20 BZA CHAIR HILL: Okay, great. All right. So that  
21 being case, Ms. Moldenhauer, when do you think you can get  
22 drawings back to us?

23 MS. MOLDENHAUER: We'll aim for Friday, so we can  
24 have maybe on the decision next week.

25 BZA CHAIR HILL: I think I've got to do the seven

1 days again, right? Is that correct Ms. Nagelhout? So  
2 something that's put in the record, they'll have seven days.

3 MS. MOLDENHAUER: Even if the record is closed  
4 Chairman Hill?

5 BZA CHAIR HILL: I'm waiting to see what Ms.  
6 Nagelhout has to say.

7 MS. NAGELHOUT: It's seven days unless otherwise  
8 directed by the presiding officer. So you could pick a  
9 shorter time.

10 BZA CHAIR HILL: Okay. So if we get drawings by  
11 Friday, then Mr. Turnbull -- well gosh Mr. Turnbull, when are  
12 you back here again?

13 MEMBER TURNBULL: I don't think it's until  
14 November, but I can make myself available.

15 BZA CHAIR HILL: Would you be willing to come back  
16 again?

17 MEMBER TURNBULL: Oh sure.

18 BZA CHAIR HILL: Okay, all right. So if you're  
19 willing to come back again then. So Friday we'll have  
20 drawings, and then we'll deliberate again next Wednesday the  
21 25th.

22 MS. SCHAFER: Can I quickly ask for one more week  
23 postponement? I'm not sure I can come next Wednesday. Now  
24 I don't know whether I'm vital, but I'd love to be here.

25 BZA CHAIR HILL: It's okay. I appreciate. I

1 don't think it's necessary for you to come down.

2 MS. SCHAFER: Oh, but I'd like it.

3 BZA CHAIR HILL: Okay.

4 MS. SCHAFER: So nice to see you all.

5 BZA CHAIR HILL: Okay. It's nice to see you as  
6 well. We're on video, on demand, you know. I think that  
7 you'll be able to see the deliberation. Okay.

8 MEMBER TURNBULL: Yeah, because I would not be  
9 available the following Wednesday.

10 BZA CHAIR HILL: Okay, so there you go. That's  
11 even easier for me to say no. All right, okay. Then there  
12 you go, all right. Okay. We're going to take five minutes  
13 everybody, and then we'll come back with our hearing cases.  
14 Thank you.

15 (Whereupon, the above-entitled matter went off the  
16 record at 11:00 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: 10-18-17

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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