

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 13, 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., Carlton Hart, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chair
CARLTON HART, Vice Chair
LESYLLEÉ M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on December 13, 2017.

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

9:44 a.m.

1
2
3 VICE CHAIR HART: Good morning. The hearing will
4 please come to order. Good morning ladies and gentlemen.
5 We are located in the Jerrily R. Kress Memorial Hearing Room
6 at 441 4th Street Northwest. This is the December 13, 2017,
7 public hearing for the Board of Zoning Adjustment of the
8 District of Columbia.

9 My name is Carlton Hart, the Vice Chair. Joining
10 me today is Lesyllee White, Board member. And representing
11 the Zoning Commission for the decision cases will be Robert
12 Miller and for the hearing cases will be Peter May.

13 The Chairman will join us for the second decision
14 case and the hearing.

15 Copies of today's hearing agenda are available to
16 you and are located in the wall bin near the door. Please
17 be advised that this proceeding is being recorded by a court
18 reporter and is also webcast live. Accordingly, we must ask
19 you to refrain from any disruptive noises or actions in the
20 hearing room.

21 When presenting information to the Board, please
22 turn on and speak into the microphone, first saying your name
23 and home address. While you are finished speaking -- excuse
24 me, when you are finished speaking, please turn off your
25 microphone so that your microphone is no longer picking up

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1 sound or background noise.

2 All persons planning to testify either in favor
3 or in opposition must have raised your hand and been sworn
4 in by the Secretary. Also, each witness must fill out two
5 witness cards. These cards are located on the table near the
6 door and on the witness tables.

7 Upon coming forward to speak to the Board, please
8 give both cards to the reporter sitting at the table to my
9 right.

10 If you wish to file written testimony or
11 additional supporting documents today, please submit one
12 original and 12 copies to the Secretary for distribution.
13 If you do not have the requisite number of copies, you can
14 reproduce copies on an office printer in the Office of Zoning
15 located across the hall.

16 The order of procedures for special exceptions in
17 variances are found on the table near the entrance of the
18 door, near the entrance on my left. The order of procedures
19 for appeal applications pursuant to Subtitle Y of 507 are
20 also at the same location to my left.

21 The record shall be closed at the completion of
22 each case for any material specifically requested by the
23 Board. The Board and the staff will specify at the end of
24 the hearing exactly what is expected and the date when the
25 persons must submit the evidence to the Office of Zoning.

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1 After the record is closed, no other information
2 shall be accepted by the Board.

3 The District of Columbia Administrative Procedures
4 Act requires that the public hearing on each case be held in
5 the open before the public.

6 Pursuant to Subtitles 405B and 406 of that Act,
7 the Board may, consistent with its rules and procedures in
8 the Act, enter into a closed meeting on a case for purposes
9 of seeking legal counsel on a case pursuant to D.C. Official
10 Code Subtitle 2-575(b)(4) and/or deliberating on a case
11 pursuant to D.C. Official Code Subtitle 2-575(b)(13), but
12 only after providing the necessary public notice and in the
13 case of an emergency closed meeting, after taking a roll call
14 vote.

15 The decision of the Board in these contested cases
16 must be based exclusively on the public record. To avoid any
17 appearance to the contrary, the Board requests that persons
18 present not engage the members of the Board in conversation.

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

21 Preliminary matters are those which relate to
22 whether a case will or should be heard today such as requests
23 for postponement, continuance or withdrawal or whether proper
24 and adequate notice of the hearing has been given.

25 If you are not prepared to go forward with a case

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1 today or if you believe that the Board should not proceed,
2 now is the time to raise such a matter.

3 Mr. Secretary, do you have any preliminary
4 matters?

5 SECRETARY MOY: Good morning, Mr. Vice Chair,
6 members of the Board. Well, I do. But I think in most
7 cases, I would suggest the Board address those preliminary
8 matters when I call the case.

9 Other than that, while I have the microphone, I
10 do want to state for the record that on today's docket Appeal
11 Number 19632 of AMT-Varnum, LLC has been postponed,
12 rescheduled to December 20, 2017. And that's it from the
13 staff, Mr. Vice Chair.

14 VICE CHAIR HART: Thank you very much, Mr.
15 Secretary. All individuals wishing to testify today please
16 rise and take the oath. Mr. Secretary, would you please
17 administer the oath?

18 SECRETARY MOY: I'll just look around the corner.
19 Good morning. Do you solemnly swear or affirm that the
20 testimony you are about to present in this proceeding is the
21 truth, the whole truth and nothing but the truth?

22 Ladies and gentlemen, you may consider yourselves
23 under oath.

24 VICE CHAIR HART: And Mr. Secretary -- excuse me,
25 Mr. Secretary, can you please call the first case? And we'll

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1 be going in order of the agenda as it was in the bin on my
2 left.

3 SECRETARY MOY: Okay. Thank you, Mr. Vice Chair.
4 This is the meeting session of today's hearing. There are
5 two cases for decision making. And with Mr. Miller here, I'm
6 assuming, Mr. Vice Chair, we're starting with Application
7 Number 19633.

8 VICE CHAIR HART: We're actually doing 19586 of
9 GH Group.

10 SECRETARY MOY: Okay, okay. Okay. Thank you, Mr.
11 Vice Chair. Sorry. So again, that would be Application
12 Number 19586 of GH Group, LLC.

13 This application was captioned for a special
14 exception under Subtitle I, Section 205.5, from the rear
15 yard requirements of Subtitle I, Section 205.1.

16 This would construct a 12-story mixed use building
17 in the D-5 Zone at premises 100 K Street Southeast, Square
18 738, Lot 26. Participating on this decision is the Vice
19 Chair, Ms. White and Mr. Turnbull.

20 Mr. Vice Chair, there is a preliminary matter in
21 this case. In the record, there is a motion to strike from
22 the party in opposition and a response to that motion from
23 the Applicant in your case records.

24 VICE CHAIR HART: Thank you, Mr. Secretary. I
25 guess we should deal with the preliminary matter first.

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1 So the opposition party has submitted a motion to
2 strike, which is Exhibit 50. Sorry. The opposition party
3 has submitted a motion to strike, and they are discussing the
4 Exhibit 50, which is titled the post-hearing submission
5 document. And this was submitted by the Applicant.

6 The opposition is stating that the Applicant has
7 submitted information that was not requested by the Board at
8 the time of the public hearing. And I don't know how Ms.
9 White feels, but I would agree that the BZA didn't request
10 this document and would support the opposition party's motion
11 to strike Exhibit 50.

12 And I don't know if you have any comments. I
13 mean, it wasn't something that we requested. The --

14 MEMBER WHITE: Yes.

15 VICE CHAIR HART: The Applicant actually has
16 stated that they are fine with either keeping it in or having
17 it removed. So I don't have an issue with granting the
18 motion to strike so.

19 MEMBER WHITE: Yes. I would agree that, you know,
20 we can grant the motion to strike. I mean, obviously, when
21 you ask for additional information just in the interest of
22 fairness, we should only consider information that we
23 specifically requested. That's part of the whole requirement
24 for doing so.

25 So I would be supportive of that, Mr. Vice Chair.

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1 VICE CHAIR HART: So I think we have a -- it
2 sounds like we are kind of unanimous in thinking that we can
3 grant the motion to strike.

4 So that brings us back to the actual case itself.
5 And I'll start with my comments, and you can chime in Ms.
6 White.

7 As the Secretary read a few minutes ago, the case
8 is for a special exception under Subtitle I, 205.5, from the
9 rear yard requirements of Subtitle I, 205.1, to construct a
10 12-story mixed use building in a D-5 Zone.

11 At the hearing on November 8, we designated a
12 party in opposition. We heard testimony from the Applicant
13 about the project and how it was meeting the zoning
14 regulation criteria as well as we heard from the party in
15 opposition who was actually the adjacent landowner.

16 The ANC also came and a neighbor also described
17 the impacts that would be caused by the project if the BZA
18 were to grant the relief.

19 The Office of Planning also gave its testimony
20 through its report -- excuse me. They gave their testimony
21 and they submitted their report and how it reached its
22 conclusion to recommend approval of the project.

23 And we heard from ANC 6D on how it reached its
24 conclusion to recommend that the BZA disapprove the relief
25 because it felt it didn't meet the thresholds exception

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1 criteria.

2 And, you know, our job as Board members is to look
3 at the information presented to us, read the full record,
4 give great weight to the Office of Planning Report and in
5 this case the ANC 6D report and to understand how the zoning
6 regulations inform us.

7 So having considered all of this, I would actually
8 support the Office of Planning's report and their
9 supplemental report which are Exhibits 39 and 49 to approve
10 the application.

11 I believe that they have explained how the
12 Applicant has met the criteria and that would be under
13 Subtitle I, 205.5. And in that criteria, we are the -- the
14 BZA may waive the rear yard requirements as special
15 exceptions pursuant to Subtitle X and subject to the
16 following conditions.

17 There are four conditions. And the OP report laid
18 out how the Applicant is meeting all four of those
19 conditions.

20 No window or residence shall be located within 40
21 feet of another facing building. No window to an office
22 shall be located within 30 feet of another facing window or
23 18 feet from the front of a facing blank wall.

24 And then there is a discussion about a greater
25 distance may be required between windows and a facing

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1 building than a minimum prescribed in A or B. And then the
2 final one is the building shall provide for adequate off
3 street service function, including parking and loading areas
4 and access points. And I felt that the Applicant laid out
5 their case and that I felt that they met the criteria.

6 With regard to the special exception review
7 standards under Subtitle X, which is 901.2, it has been
8 proposed in harmony with the general purpose and the intent
9 of the zoning regulations and zoning maps.

10 And I did feel that the proposal is in harmony
11 with the general purpose and intent of the zoning
12 regulations. And the relief would facilitate the development
13 of this unique small property with a new residential building
14 consistent with the intent of these regulations.

15 There was quite a bit of discussion about at-risk
16 windows. And it seems as though the Office of Planning, the
17 Applicant and the opposition party all acknowledge that there
18 are at-risk windows on the western wall, or a portion of the
19 western wall, of the 909 New Jersey Avenue building because
20 these windows are located on the property line with the
21 Applicant's property, which is 100 K Street.

22 The OP report notes that roughly 4 percent, or 10
23 of those 230 units, would be impacted by the proposed
24 development through the closing of the at-risk windows.
25 Because they are at-risk windows, they are not required to

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1 meet the associated units legal or habitable. Rather their
2 inclusion appears to have facilitated two bedroom use of
3 these units. And I agree with the OP position on this.

4 The opposition party does describe in their post-
5 hearing response to this issue -- this is Exhibit 46, Page
6 2, second paragraph. They note that at the present time,
7 there is no building on the 100 K Street Southeast that would
8 cause closure of the at-risk windows on the adjacent owner's
9 building.

10 And none would be required to be closed if a
11 matter of right building was constructed on 100 K Street.
12 I would disagree with this at the end part of the statement
13 as the Applicant has provided drawings showing that there
14 would be at-risk windows closed if a matter of right building
15 were constructed.

16 During the hearing, the Applicant and opposition
17 party also discussed a recent BZA case, the Alba case, which
18 is 18878. And that case was deciding upon a variance. And
19 this case, which is a much higher standard, this case is a
20 much lower standard.

21 But I will note that in the Alba case there was
22 a discussion that we had regarding whether or not a matter
23 of right building -- whether or not the impacts from a matter
24 of right building were similar to the actual building.

25 And I think the actual proposal that was before

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1 us then -- and I think that the matter of right option would
2 be a similar impact than the proposal in this case as well.
3 And so that's kind of where I ended up on this.

4 Now with regard to the ANC report, which we are
5 also to give great weight, the issues that were raised were
6 at-risk impacts to the 909 resident unit mix, at-risk impact
7 to the use of adjacent residential units, at-risk impact to
8 the use of 909 exterior space and finally at-risk impacts on
9 the use of a public space or streets and sidewalk conflicts.

10 And while I understand that these impacts are
11 important, I did not believe that this building -- that I
12 would be supportive of approving -- some of the issues I
13 think are issues that have to do with the building that some
14 of these residents live in.

15 Their ownership did not describe that they were
16 going to be the at-risk windows that may actually be closed
17 if another building were to be placed next to it.

18 And I think that the issues that were raised many
19 of them had to do with the inadvertent or, I'm not sure what
20 the rationale was for the owner of 909 New Jersey not to have
21 said anything, but I think that there would be impacts from
22 the building regardless from the building at 100 K Street
23 regardless of a matter of right or the proposal that's before
24 us.

25 And regarding the facing window issue, the 40 foot

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1 rule, I would just point to the OP report and the
2 supplemental OP report, Exhibits 39 and 49, which describe
3 why these are not considered facing windows.

4 And so I guess I'm just in a fairly long winded
5 description thinking that I could support the application
6 that's submitted to us.

7 MEMBER WHITE: Thank you, Mr. Vice Chair. That
8 was very detailed. I may be a little redundant. Happy
9 Hanukkah, everybody.

10 Again, this is a special exception case to
11 construct a 12-story mixed use building in the D-5 Zone
12 located at 100 K Street Southeast.

13 So the application was opposed by the adjacent
14 property at 909 New Jersey Avenue as Mr. Hart indicated, who
15 argues that the Applicant has not and can't meet his burden
16 of proof for a special exception due to the adverse impacts
17 on his property.

18 The primary issue are the effects on light and
19 air. The negative impacts from closing 20 at-risk windows
20 and 10 of the 237 rental apartment units and the claim that
21 the project will not satisfy the general special exception
22 standards or the specific requirements for rear yard special
23 exception requirement for rear yard requirement.

24 So after reviewing the additional filings and
25 there were some additional filings. I won't take into

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1 consideration the ones that were submitted that we didn't ask
2 for, but there were a number of additional filings that were
3 made and graphic representations as well as a supplemental
4 OP report and a supplemental ANC report.

5 And the parties agree that there are at-risk
6 windows. I don't think that they were challenging the
7 definition of that. And really, that's the crux of the
8 problem here that you have a building with a number of
9 windows that are at-risk. So by virtue of the name, that
10 means that there's always that possibility that they could
11 be covered.

12 So the DC Building Code establishes, you know, a
13 sliding scale for the percentage of a building wall that may
14 be devoted to windows. So the 909 New Jersey property
15 asserts that if the special exception is granted that he must
16 cover 20 windows affecting 10 apartment units.

17 And we're obviously very sensitive to that. But
18 the 909 property owner on New Jersey Avenue claims that the
19 10 affected units would have to be converted from two bedroom
20 apartments to one bedroom apartments plus a den and no
21 window.

22 OP notes that under the Building Code that the at-
23 risk windows shall not be counted towards natural light. So
24 that's the other analysis that I incorporated as part of my
25 analysis.

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1 And I also looked at the argument that we should
2 apply the Alba case. But again that, as Mr. Hart stated, the
3 facts were different here. There was also a request for a
4 variance as opposed to a special exception. So the standards
5 in that particular case are much higher.

6 So the Applicant asserts that the claimed adverse
7 impacts have not been substantiated by 909 New Jersey. And
8 there's nothing in the record about the loss of value from
9 those windows.

10 And so he bases the analysis on the fact that
11 there is no undue adverse impact shown in things like the
12 shadow studies, which really kind of showed a negligible
13 amount of shade on the building. And that was only about 4
14 percent of the unit.

15 So I was also persuaded that covering 2 percent
16 of those windows that are at-risk windows would not meet the
17 standard of it being an undue degree of influence.

18 So with respect to the argument that Subtitle I,
19 205.5(a), is not being complied with and that no window to
20 a residence use shall be located within 40 feet of another
21 facing building, or under 205.5(c) a greater distance may be
22 required between windows in a facing building, I wasn't
23 persuaded that there are any facing windows as supported by
24 Exhibit 39, I believe, of the Office of Planning's report.

25 So I do agree with the residents of 909 New Jersey

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1 Avenue that this is going to have some impact on them. And
2 I did agree and I did give weight to the ANC's report in
3 terms of how it's going to impact the individuals within that
4 ANC that live in that building. But I also found the fact
5 that the development of the additional building, 100 K
6 Street, is also going to add some supply of additional two
7 bedroom family units as well.

8 So looking at the Office of Planning's report,
9 looking at the standards for special exception, while also
10 giving, you know, great weight to the ANC's report and the
11 testimony of the residents, which I'm very sensitive to, but
12 the definition of at-risk windows and how it applies to this
13 particular fact pattern and to these particular people, I
14 found that the Applicant did meet the standard for special
15 exception in order to construct the building.

16 VICE CHAIR HART: Thank you, Ms. White. So it
17 sounds like, I think, I can make a motion to approve
18 Application 19586 of GH Group as read by the Secretary. And,
19 yes, as read by the Secretary.

20 MEMBER WHITE: Second.

21 COMMISSIONER MILLER: Mr. Hart, I just wanted to
22 state for the record what Mr. Moriarty indicated.

23 VICE CHAIR HART: Yes.

24 COMMISSIONER MILLER: Mr. Turnbull was the Zoning
25 Commissioner who participated in this case. And he has an

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1 absentee ballot. I'm participating in the next decision
2 case, and I'm just sitting here for quorum purposes, I think.
3 I think that's why I'm sitting here.

4 VICE CHAIR HART: Well, I appreciate that.

5 MEMBER WHITE: So I guess we have to get
6 information on the absentee ballot before we --

7 VICE CHAIR HART: Sure.

8 MEMBER WHITE: -- move forward with the motion.

9 SECRETARY MOY: Yes. Thank you, Mr. Vice
10 Chairman. So before I tally the vote count, we do have an
11 absentee ballot from a Mr. Michael Turnbull, who also
12 participated.

13 And his absentee ballot is to approve with any
14 condition as the Board may impose. So that would give a
15 total vote of 3 to 0 to 2. This is on the motion of --

16 MEMBER WHITE: Mr. Moy, I'm not sure that the
17 motion was made.

18 SECRETARY MOY: Oh, I'm sorry.

19 VICE CHAIR HART: Yes. I hadn't finished making
20 the motion.

21 SECRETARY MOY: Oh, I'm sorry. I jumped the gun.
22 I'm sorry.

23 VICE CHAIR HART: Mr. Miller, thank you very much
24 for your clarification, and I appreciate that.

25 I just want to make sure of just one thing. Okay.

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1 So I'll now make the motion to approve Application Number
2 19586 of GH Group, LLC as read by the Secretary, and can I
3 have a second?

4 MEMBER WHITE: You have a second.

5 VICE CHAIR HART: Thank you, Ms. White. All those
6 in favor of the motion say aye.

7 (Chorus of ayes.)

8 VICE CHAIR HART: All opposed?

9 (No audible response.)

10 VICE CHAIR HART: Looks like the motion has it.
11 The motion carries.

12 SECRETARY MOY: Thank you, Mr. Vice Chair. I'm
13 trying to get mentally in sync with you. So let me restate
14 what I just said earlier.

15 I do have an absentee ballot from Michael
16 Turnbull, who participated and again, whose absentee ballot
17 vote is to approve. So that would give a final vote of 3 to
18 0 to 2.

19 This would be on your motion, Vice Chair Hart, to
20 approve the application for the relief requested. Seconding
21 the motion Ms. White and also in support Mr. Turnbull. There
22 is a Board seat vacant and another member not participating.
23 The motion carries.

24 VICE CHAIR HART: Thank you, Mr. Moy. And, you
25 know, I was thinking as I was reading through this there was

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1 something that was hitting me that I thought I hadn't
2 remembered, and it was.

3 There was a condition that DDOT had regarding
4 Applicant provide at least two short-term bicycle parking
5 spaces. And I am looking at the Office of Zoning staff
6 report. And I think we probably should incorporate that into
7 the motion itself.

8 So I will make another motion to -- I don't know.
9 What should we do, looking at the Office of Attorney General?

10 MS. GLAZER: I would just suggest that you move
11 to amend your motion to --

12 VICE CHAIR HART: Okay.

13 MS. GLAZER: -- include that condition.

14 VICE CHAIR HART: Okay. I'll then make a motion
15 to amend the motion that I just made to approve the
16 application to include the DDOT condition which is to provide
17 -- that the Applicant provide at least two short-term bicycle
18 parking spaces.

19 MEMBER WHITE: I'll second the motion as amended.

20 VICE CHAIR HART: Okay. So all in favor of the
21 amended motion say aye.

22 (Chorus of ayes.)

23 VICE CHAIR HART: Any opposed?

24 (No audible response.)

25 VICE CHAIR HART: So the motion and the absentee

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1 motion -- the absentee ballot you already have.

2 SECRETARY MOY: Yes, that's correct. The absentee
3 ballot, of course, included with any such conditions as the
4 Board may impose.

5 So, again, it was still a vote of 3 to 0 to 2 on
6 your amended motion. Seconded by Ms. White. Of course, Mr.
7 Turnbull in support. Again, the motion carries.

8 VICE CHAIR HART: Thank you. Sorry for the
9 confusion, but I thought there was something else that was
10 nagging at me. And I couldn't remember what it was. And I
11 think when you said any conditions that is what jogged it in
12 my head.

13 Okay. So I guess we can move to the next case.
14 And can you read it, Mr. Moy?

15 SECRETARY MOY: Mr. Vice Chair, yes, again, that
16 would Application Number 19586 of GH Group, LLC. This is an
17 application for special exception under Subtitle I, Section
18 205.5, from the rear yard requirements of Subtitle I, Section
19 205.1. Okay. Strike that.

20 This is Application Number 19633 of VI 3629 T
21 Street LLC as amended for a special exception, relief under
22 Subtitle D, Section 5201. This is from the rear yard
23 requirements of Subtitle D, Section 1206.4.

24 This would construct a three-story rear addition
25 to an existing one family dwelling, R-20 Zone, Premises 3629

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1 T Street Northwest, Square 1296, Lot 804.

2 As the Board will recall, the hearing was on
3 December 6. The Board closed the record and requested
4 additional supplemental information from the Applicant.

5 This was submitted in your case folders under
6 Exhibit 82 and 82B. And this is before you for decision.

7 VICE CHAIR HART: I'll let the Chairman get all
8 situated now so. So in this case, the Applicant is looking
9 to construct a three story rear addition to an existing one
10 story dwelling in an R-20 Zone. And we kind of come back to
11 this issue about the rear addition requirements under
12 Subtitle D, 1206.4.

13 And in this case, there was quite a bit of
14 opposition from the neighborhood. The next door, the owner
15 of the building next door to this site, they actually -- I
16 guess it's to the east. They actually were in support of the
17 application.

18 Some community members noted that the Applicant
19 doesn't live there, but owns the property, which is, you
20 know, I don't think as much of an issue, the fact that she
21 doesn't live there.

22 And there isn't a neighbor adjacent on the west
23 side of the property. And the Applicant has provided
24 information that the Board asked for regarding what the
25 street frontage looked like.

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1 In particular, I was more interested in
2 understanding what the kind of character of the street was.
3 And there are quite a number of two-story buildings, two-
4 story residential buildings there. I saw one or two that
5 were three story.

6 The only zoning relief that is being sought is the
7 actual rear addition issue, not a height issue. And I
8 thought that the building was definitely larger than the
9 other buildings, but it is within what the zoning would
10 require.

11 I also looked at the light and air issue under
12 Subtitle D, 5201.3. And I felt that the Applicant has
13 provided information and support from the adjacent neighbor.

14 Again, there was some neighbors that did not like
15 the fact that if this were approved, it would be blocking
16 some light. But I get back to the next door neighbor that
17 actually was in support of the application.

18 And there was some question about the lot
19 occupancy issue. The Applicant has provided information from
20 the zoning administrator, an email from the zoning
21 administrator, regarding this issue. And that maximum is 70
22 percent. The Applicant is less than that at 45 percent,
23 excuse me.

24 And I think, kind of taking all of this into
25 account, having read the full record while I understand that

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1 the neighbors are in opposition to this, I felt that the
2 Applicant has actually provided sufficient information to let
3 me know that they've -- to show me that they've addressed and
4 met all the criteria under the Zoning Code. So I would be
5 able to support the application.

6 MEMBER WHITE: Thanks, Mr. Vice Chair. Again, not
7 to be too monotonous, but I did have some different views on
8 things.

9 But again, this an application for a special
10 exception request to construct a three-story rear addition
11 to an existing one family dwelling in, as Mr. Hart said, an
12 R-20 Zone at 3629 T Street, which is a corner lot.

13 The addition will extend 25 feet 6 inches past the
14 farthest rear wall of the adjoining property. The ANC's
15 comments were incorporated to eliminate some of the windows
16 on the west elevation to provide more privacy into the rear
17 yards.

18 The adjoining property owner, Ms. Lamb, testified,
19 and as Mr. Hart noted, she is the property owner. There was
20 some question about whether or not she actually lived there.
21 But she was the one -- that particular property was the
22 property that would be the most impacted by this particular
23 rear addition.

24 And she testified in support, had no issue. I did
25 give her testimony weight in terms of the relief that was

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1 being sought. So the Applicant can go back 10 feet with the
2 rear addition as a matter of right.

3 So they were asking for additional space to go
4 back even more. So they were seeking a special exception
5 under D, 1206.4, to extend beyond the 10 feet for a rear
6 addition by seeking the special exception under Subtitle D,
7 5201.3, of the regulation.

8 So I have to note that there has been a lot of
9 opposition to this case. If you look at the record, I
10 counted a number of letters that were submitted. It appears
11 that maybe only two of those letters, there may be more, that
12 were within the 200 feet radius.

13 The ANC 2E did not make a recommendation with this
14 particular case, but they kind of put the onus on the Board
15 to voice a ruling on this particular case.

16 So I considered whether, you know, there would be
17 under, you know, 5201, whether or not there would be a
18 negative impact of light and air of the house to the east and
19 the third story addition windows, whether or not they will
20 have a negative impact on the privacy of the neighbors.

21 I also gave great weight to the Office of
22 Planning's report that recommended approval. But the rear
23 yard remains, as Mr. Hart noted, conforming at, I think,
24 about 45 feet.

25 But in reviewing the record, I looked at the

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1 regulations to determine my opinion on granting the special
2 exception request. And specifically I looked at -- you know,
3 I spent a lot of time looking at the light and air impacts
4 to the neighboring properties and tried to determine whether
5 or not there would be -- whether or not those properties
6 would be unduly affected. And I also looked at the shadow
7 studies as well.

8 I also looked at the whole issue of privacy and
9 the use of enjoyment, whether or not the neighbors would be
10 unduly compromised. If you looked at Page 4 of the OP's
11 report, it went into some detail that I found persuasive
12 while also looking at the letters that were submitted, the
13 numerous letters that were submitted into the record by the
14 neighbors.

15 I didn't find that there was an impact in terms
16 of the street frontage, the pattern of the street frontage
17 for that particular street. And I think that they also
18 provided adequate graphical representation with respect to
19 how that particular addition would impact the neighborhood.

20 So, you know, I did have some hesitation, you
21 know, in granting the relief because of the numerous
22 neighbors that voiced some concern.

23 I think if the adjacent neighbor would have had
24 some concern with the addition, I definitely would have
25 pulled back on supporting the application. But I think as

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1 it stands right now unless my colleagues can provide some
2 additional thoughts, I'm leaning towards supporting the
3 application because I found that they met the standards for
4 a special exception.

5 CHAIRMAN HILL: Sure. Commissioner Miller, I'll
6 let you go last. You can go last. I mean, you came in.
7 Thanks so much for coming in because this has been something
8 that we continue to struggle with, or, I think, you know,
9 this special exception to go beyond the 10 feet.

10 And what continues to kind of come down to it for
11 me again is just this unduly affected. You know, I mean, it
12 is difficult to kind of figure out -- and that is what we're
13 charged to do -- figure out what is unduly affected, right?

14 And I'm smiling because you're from the Zoning
15 Commission so you were part of how it all kind of came about.
16 But each case we hear is, as we've said many times, each case
17 is unique, and each property is unique. And we look at each
18 particular case.

19 So I know that what we might find unduly affected
20 in this case is not what we might find unduly affected in
21 other cases, you know, as per this special exception
22 criteria.

23 As far as me, and I'm not trying to put you on the
24 spot, Commissioner, just in terms of how this kind of came
25 about. But with this particular property, again, what was,

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1 you know, you're able to go back 10 feet by right. It's the
2 additional 15 feet that I'm kind of taking a look at as to
3 whether or not the special exception criteria is met.

4 And the ones that kind of stick out is, again, you
5 know, A, which was light and air available to neighboring
6 properties shall not be unduly affected. B, privacy of use
7 and enjoyment of neighboring property shall not be unduly
8 compromised and then the rest of the criteria, including the
9 one that Ms. White mentioned with the frontage.

10 So I just continually struggle with this, you
11 know, in terms of, you know, that particular property. And
12 I voted the other way before. I'm going to be in support of
13 this.

14 I mean, I agree with the analysis that the Office
15 of Planning provided. There was a lot of opposition to it.
16 And we had a lot of, you know, full testimony to it.

17 And, I guess, the part that I get torn about again
18 is, you know, as a member of, you know, my own community,
19 whatever we come up with, you know, I live in a densely
20 populated area. But this community is not happy with this
21 particular project.

22 So it comes to us again. And the ANC just, they
23 have some concerns, but they didn't vote one way or the
24 other. And so, you know, the Office of Planning gave their
25 opinions in terms of how it was meeting the criteria. I

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1 agree with how they came to meeting those criteria.

2 And then in addition with this particular unit,
3 this particular project, it was on the end. And it was on
4 the end that faced an alley. And so you didn't even
5 necessarily get much of a view from the front in terms of,
6 you know, how it changed the character of the neighborhood.
7 I mean, you can't really see unless you're kind of coming
8 right around that alley down into the alley to see how back
9 it was going farther -- how far back it was going.

10 And then, again, the fact that the neighboring
11 property was in support of this. I know that this was put
12 as special exception because when basically the rights of the
13 property was, I mean, you know, some of it was taken away
14 because they aren't able to go up as high or as far back by
15 right.

16 The Zoning Commission made this a special
17 exception so that it could come before this process so that
18 the public could have their -- we could take testimony from
19 the public so that the neighboring properties would have an
20 opportunity to weigh in. And I feel that, you know, in this
21 particular case, that criteria had been met.

22 I guess I'm going through all of this because
23 there will be more of these that kind of come through and how
24 we kind of determined whether or not it is unduly affecting
25 the adjacent properties and whether or not the character of

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1 the frontage of the street patterns is being affected.

2 So I'm in support. And I appreciate, Commissioner
3 Miller, you coming down here because you're just here for
4 this one. And so, you know, but -- so that's what I have to
5 say.

6 COMMISSIONER MILLER: Thank you, Mr. Chairman.
7 My colleagues have covered a lot of ground here and very
8 comprehensively. And I'm generally in agreement with all the
9 comments that have been stated.

10 This isn't a perfect rule. But the special
11 exception process for going beyond 10 feet was what was
12 established and with the criteria and if you meet the
13 criteria, most of which involves what the immediate neighbors
14 think about it because it's the adverse impact on them.

15 But in this case, you have the adjacent neighbor
16 to the east who is most impacted who is in support, but the
17 wall will go 15 feet beyond her rear wall. And, as Board
18 member White said, if that property owner had come here in
19 opposition, I wouldn't be supporting this application because
20 it's her light and air that is impacted. She's saying she's
21 okay with that.

22 But the other two -- the two properties that were
23 within 200 feet that Board member White referenced, among the
24 many opposition testimony that we heard, those two
25 properties, as I recall, are separated from the property here

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1 that we're considering by an alley, an alley to the west, a
2 15 foot alley, and an alley to the north, which I think is
3 also a 15 foot wide alley.

4 And I think it was interesting that the property
5 to the west did a matter of right addition to their property
6 at 37th Street at the corner of T that went all the way back
7 to the conforming rear yard. And that was before the Zoning
8 Commission changed the rule to only allow 10 feet with the
9 special -- but more with the special exception.

10 So in this case, as has been stated, the rear
11 yard, the height and the lot occupancy, we've been given
12 information that's all within the matter of right envelope.
13 And I think what the neighbors are complaining about might
14 be what the matter of right envelope allows in this
15 neighborhood, which does have mostly two-story buildings.

16 And so they may be looking to, I don't know, I'm
17 just speculating, to have a special conforming -- not
18 conforming -- I can't remember the word -- a special zone for
19 relief. And they may be looking at that with the Office of
20 Planning.

21 But we do have the Office of Planning
22 recommendation in support of this special exception
23 application. We do have the rear yard lot occupancy and
24 height all within the matter of right envelope according to
25 the information that we've been getting.

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1 And the Applicant did make changes from the
2 original plans to mitigate any adverse effects from the
3 front. They changed the third floor from being flush with
4 the second floor to make it a pitched roof and a dormer to
5 make it go more compatible with the street frontage.

6 And you don't see from the street frontage what
7 you see from the alley or the back, this extra 15 feet
8 extension. The criteria mentions the street frontage. It
9 doesn't say from the alley or from the back. Maybe it
10 should, but it doesn't say that. It's just the street
11 frontage.

12 And so I think it does fit into the character of
13 the neighbor within the special exception criteria in this
14 particular case. These are case-by-case situations where we
15 evaluate the adverse impacts on the neighbors. So I'm ready
16 to go forward with it.

17 VICE CHAIR HART: Okay. So it sounds like I
18 should be making a motion at this time to approve Application
19 19663, excuse me, 19633 of VI 36329 T Street, LLC, as read
20 by the Secretary. Do I have a second? I'm making a motion
21 to approve Application 19633 of VI 36329 T Street, LLC, as
22 read by the Secretary.

23 CHAIRMAN HILL: Second.

24 VICE CHAIR HART: All those in favor of the motion
25 say aye.

1 (Chorus of ayes.)

2 VICE CHAIR HART: Any opposed?

3 (No audible response.)

4 VICE CHAIR HART: Motion carries. Mr. Moy?

5 SECRETARY MOY: Staff would record it as 4 to 0
6 to 1. This is on the motion of Vice Chair Hart to approve
7 the application for the relief being requested. Seconding
8 the motion, Chairman Hill. Also in support, Mr. Robert
9 Miller, Ms. White. We have a Board seat vacant. The motion
10 carries.

11 VICE CHAIR HART: I was looking to see if we had
12 a -- can we do a Summary Order?

13 SECRETARY MOY: Yes. I was just consulting with
14 OHA. The ANC 2E report, they did not take a position on it
15 so the Board can move towards a Summary Order if you wish.

16 VICE CHAIR HART: Yes. I think we can do a
17 Summary Order for this unless you have a --

18 MEMBER WHITE: Mr. Chair the, Mr. Vice Chair,
19 rather.

20 VICE CHAIR HART: Yes.

21 MEMBER WHITE: The ANC did not raise any issues
22 and concerns and that's what the Board is to give great
23 weight to. So there's nothing really to give great weight
24 to.

25 VICE CHAIR HART: Okay. All right. Well, then,

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1 Summary Order. Thank you.

2 We'll take a two minute break. Do some changing
3 of the guard here. Thank you, Mr. Miller. We'll be back in
4 a few minutes.

5 (Whereupon, the above-entitled matter went off the
6 record at 10:36 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: DCBZA

Date: 12-13-17

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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