

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MARCH 7, 2018

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
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)
LORNA JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
PETER SHAPIRO, Commissioner
ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
HILLARY LOVICK

The transcript constitutes the minutes from the Public Meeting held on March 7, 2018.

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

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

(9:39 a.m.)

1
2
3 CHAIRPERSON HILL: All right, good morning
4 everyone. The meeting will please come to order. We're
5 located in the Jerrily R. Kress Memorial Hearing Room at
6 441 4th Street, N.W. This is the March 7th Public Hearing
7 of the Board of Zoning Adjustment of the District of
8 Columbia. My name is Fred Hill, Chairperson.

9 Joining me today is Carlton Hart, Vice
10 Chairperson, Lesylee White and Lorna John, Board Members.
11 And Representing the Zoning Commission is Peter May for
12 some decision cases, as well as our meeting cases, as well
13 as Anthony Hood for some meeting cases. And joining us
14 for the majority of the day, will be Peter Shapiro. So we
15 almost have the full Zoning Commission here.

16 Copies of today's Hearing Agenda are available
17 to you, and they are located in the wall bin near the
18 door. Please be advised this proceeding is being recorded
19 by a Court Reporter. And is also Webcast live.
20 Accordingly we must ask you to refrain from any disruptive
21 noises or actions in the Hearing Room.

22 When presenting information to the Board,
23 please turn on and speak into the microphone, first
24 stating your name and home address. When you are finished
25 speaking, please turn the microphone off so that the

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1 microphone is no longer picking sound or background noise.

2 All persons planning to testify either in favor
3 or in opposition must have raised their hand and have been
4 sworn in by the Secretary. Also each witness must fill
5 out two witness cards. These cards are located on the
6 table near the door, and on the witness table. Upon
7 coming forward to speak to the Board, please give both
8 cards to the Reporter sitting at the table at my right.

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

15 The order of procedures for special exceptions,
16 variances, and appeals are also located in the bin as you
17 walk into the room here. The record shall be closed at
18 the conclusion of each case except for any materials
19 specifically requested by the Board. The Board and the
20 staff will specify at the end of the hearing exactly what
21 is expected and the date when the persons must submit the
22 evidence to the Office of Zoning.

23 After the record is closed, no other
24 information shall be accepted by the Board. The District
25 of Columbia Administrative Procedures Act requires that

1 the Public Hearing on each case be held in the public,
2 before the public, pursuant to Section 405(b) and 406 of
3 that act.

4 The Board may, consistent with its rules of
5 procedures and the act, enter into a closed meeting on a
6 case for purposes of seeking legal counsel on the case,
7 pursuant to D.C. Official Code Section 2-575(b)(4) and/or
8 deliberating on a case pursuant to D.C. Official Code
9 Section 2-575(b)(13). But only after providing the
10 necessary public notice. And in the case of an emergency
11 closed meeting, after taking a roll call vote.

12 The decision of the Board in cases must be
13 based exclusively on the public record. To avoid any
14 appearance to the contrary, the Board requests that
15 persons present not engage Members of the Board in
16 conversation. Please turn off all beepers and cell phones
17 at this time so as not to disrupt the proceedings.

18 Preliminary matters are those which relate to
19 whether a case will or should be heard today, such as a
20 request for a postponement, continuance, or withdrawal, or
21 whether proper and adequate notice of the hearing has been
22 given. If you're not prepared to go forward with the case
23 today, or if you believe that the Board should not
24 proceed, now is the time to raise such a matter.

25 Mr. Secretary, do we have any preliminary

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1 matters?

2 SECRETARY MOY: Thank you, good morning Mr.
3 Chairman, Members of the Board. I do have a quick
4 announcement regarding today's docket. And very quickly
5 to say that Case Application Number 19700 of 1241 Morse
6 Street, LLC., has been postponed and rescheduled to May
7 2nd, 2018. And that's it from the staff, Mr. Chair.

8 CHAIRPERSON HILL: Okay great. If anyone is
9 here that plan -- if anyone is here wishing to testify, if
10 you will please stand and be sworn in by the Secretary to
11 my left.

12 SECRETARY MOY: Good morning.

13 (The witnesses are sworn in.)

14 SECRETARY MOY: Thank you, you may consider
15 yourselves under oath.

16 CHAIRPERSON HILL: Okay, great. Just so
17 everyone knows the order. We're going to be a little bit
18 out of order here for the meeting cases. We're going to
19 start with Application 19415A of Verizon Wireless. We're
20 then going to go to Application Number 19693 of 17th
21 Street. Then we're going to go to Application 19672 of
22 Milton Halem. And then we'll go back and forth, and then
23 we're going to follow up with the last two decision cases,
24 which is going to be Application 19635 and 19657.

25 These last two, 19535 and 19657 we're waiting

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1 for another Commissioner to join. So, we might end up
2 going into the hearing, and then we'll just break at a
3 hearing and come back into the meeting, in terms of
4 decisions when that Commissioner arrives.

5 In terms of the hearing, we're going in the
6 order that the agenda is there, so I hope that is helpful.

7 Mr. Moy, please feel free to call our first
8 meeting case whenever you have an opportunity.

9 SECRETARY MOY: Thank you, Mr. Chairman. So
10 that would be Application Number 19415A of Verizon
11 Wireless. And this application is a request for a
12 Modification of Consequence to the time limit condition of
13 BZA Order Number 19415, which would allow the temporary
14 location of a Cell on Wheels, or a COW in the RF-1 Zone,
15 on Square 643E, Lot 800. As the Board will recall, this
16 was previously scheduled for decision on February 23rd, or
17 rather February 21st. And consequently continued to today
18 for decision making.

19 CHAIRPERSON HILL: Okay great. Thank you, Mr.
20 Moy. Is the Board ready to deliberate?

21 (No audible response)

22 CHAIRPERSON HILL: Okay. As we will recall, or
23 you all recall, we did start the deliberations on this and
24 then decided to postpone this so that we could get some
25 added information from the Applicant. I remember us also,

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1 or at least I remember being disappointed that things that
2 the Applicant had said they were going to do during the
3 original application is not what they had done. Or it
4 appears it's not what they had done.

5 So, that being the case I'm going first open it
6 up to the Board and see if there's anyone who would like
7 to begin deliberations? Please.

8 COMMISSIONER MAY: Okay so, this is not a very
9 good case. And I am, I remain unhappy with the
10 circumstances of this particular Cell on Wheels site for a
11 number of reasons. And the Applicant's submission does
12 address some of the specific concerns. And there have
13 been some actions that were taken in response to the
14 meeting on the 21st, but it's still not very good.

15 And, you know, I'm very very disappointed in
16 the Applicant's submission because they've attempted to
17 downplay all of the things they have gotten wrong here,
18 instead of admitting it. You know, I mean if they just
19 admitted, yes, we did not do what we promised to do. And
20 yes, the site looks bad because we did not do it. Because
21 we did not monitor it. I might feel a little bit warmer
22 about this, but I don't.

23 They minimized the description of the damage
24 that has been done. They describe the trampling of the
25 grass along a sidewalk, where you shouldn't even be

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1 driving trucks in the first place, as slight ruts in the
2 grass.

3 And they, you know, the shrub that I pointed
4 out, that got run over when they did the first
5 installation is still -- I mean, it's still alive. And
6 it's hanging in there. And somebody sprayed it with
7 orange paint. I don't know if that means it's going to be
8 removed, like you spray an orange dot in the paint on a
9 tree, and have it removed. And whether they are going to
10 replace it or anything like that?

11 I can still see the trace of where they ran the
12 cable to it, which I called out in the first hearing a
13 year ago, or more than a year ago. And then they provide,
14 well they provide a very poorly written set of conditions.
15 I mean, fortunately I can decipher what they mean but, you
16 know, I guess it's just indicative of the sloppiness that
17 the Applicant has demonstrated on this site.

18 The response that they submitted is riddled
19 with grammatical errors and misspellings. And like I
20 said, they did go out and they spray painted the graffiti.
21 In fact I saw the guy going out there with a bunch of cans
22 of spray paint to cover over the graffiti. And now they
23 promise they're going to monitor things to make it all
24 better.

25 But they also submitted photographic evidence

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1 that in July of 2017, the fencing was a mess. And the
2 site was completely overgrown. And that was, I don't
3 know, how many months after the hearing? And certainly
4 eight or nine months after they did the initial
5 installation, because it went in before the inauguration.
6 It went in, in the late fall of 2016.

7 I just don't feel that the Applicant is being
8 good to the City, in how they treat this site. All that
9 being said, I don't know that I going to get anything any
10 better out of them. And I also don't think that it would
11 be right at this point to vote against this extension,
12 because there is a solution that is far more acceptable
13 than what we talked about a year ago, which would be a
14 permanent cell tower in this location.

15 So, I'm going to, I will vote in favor of it.
16 I'm not happy voting in favor of it, but I think that the
17 provision of, the service that this system provides is
18 more important than the bad behavior of the Applicant.
19 And I just hope that they live up to what they have
20 promised to do in their submission, both in terms of the
21 monitoring over the next six months, and ultimately in the
22 restoration of the site.

23 And I hope they do a better job restoring the
24 site than the example photograph that they provided, which
25 I would be willing to bet that, you know, the placement of

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1 sod that they showed in that photograph was probably dead
2 within a few months. Because it just does not look like
3 they've done all the right site prep. And that's
4 critically important when you're trying to restore a site
5 like this.

6 So anyway, I'll vote in favor, but I've said my
7 piece. Thank you.

8 CHAIRPERSON HILL: Okay, anyone else?

9 MEMBER WHITE: I concur with what the Board
10 Member just said. But I also had a question in terms of
11 whether or not, I know this a Modification of Consequence,
12 whether or not we can impose any conditions with respect
13 to the cleanup, and the upkeep of that area, tied to the
14 extension of this order? Because, I mean, that is a
15 pretty highly visible area. It's a playground. It
16 really, you know, places a negative visual on the
17 community.

18 But I mean I think they met the standard in
19 order to get the Modification of Consequence. But I don't
20 know if it would be appropriate to impose any types of
21 conditions surrounding the upkeep of that area?

22 And also, I would hope that -- because for this
23 particular case, I don't think we've gotten a report from
24 the ANC on this, which I was a little surprised of because
25 of some of the concerns that were just voiced. But I

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1 would hope that the ANC would also be engaged in what's
2 going on with this particular C-O-W.

3 CHAIRPERSON HILL: Yeah, I don't know, I'd be
4 asking the Office of the Attorney General then in terms of
5 I've never added -- I don't know how one adds conditions
6 at this point?

7 VICE CHAIR HART: I don't think it's legally
8 improper, but it depends upon the condition.

9 SECRETARY MOY: So, I mean the conditions that
10 I would think we could consider would be essentially what
11 they have offered to do in terms of site restoration. And
12 just incorporate that into the Modification of Consequence
13 order. Is that something that we could do?

14 MS. GLAZER: So in other words, you would take
15 that as a proffer from the Applicant that they intend to
16 comply with the maintenance that they detailed, and the
17 restoration as per Exhibit, whatever it is?

18 SECRETARY MOY: Yes, Exhibit 9.

19 CHAIRPERSON HILL: Okay. So, if we can do
20 that, I mean that's fine with me. Does anybody else have
21 any comments?

22 (No audible response)

23 CHAIRPERSON HILL: Okay, all right. Then yes,
24 I mean as far as just any comment I might have. It is
25 disappointing and hopefully, you know, I mean the next

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1 time that Verizon is here, hopefully, you know, we'll
2 remember this I suppose. So, okay I'm going to go ahead
3 and make a motion to approve Application Number 19415A as
4 captioned and advertised, including a condition that they
5 will maintain the site as volunteered in Exhibit Number 9.
6 And ask for a second.

7 MEMBER WHITE: Second.

8 CHAIRPERSON HILL: Sorry, I was just -- okay,
9 the Secretary was just helping me with something. So,
10 again that would to, I'm making a motion to approve
11 Application Number 19415A of Verizon Wireless, as
12 captioned and read by the Secretary including, and
13 pointing out, to extend the term until September 15th,
14 2018, including a condition that they will upkeep the site
15 as stated in their Exhibit Number 9. And ask for a
16 second.

17 MEMBER WHITE: Second.

18 CHAIRPERSON HILL: Motion made and seconded.

19 All those in favor?

20 (Chorus of aye)

21 CHAIRPERSON HILL: All those opposed?

22 (No audible response)

23 CHAIRPERSON HILL: Motion passes. Mr. Moy.

24 SECRETARY MOY: Staff would record the vote as
25 4 -- or rather -- sorry Mr. Chair. Staff would record the

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1 vote as 3-0-1. This on the motion of Chairman Hill to
2 approve the Modification of Consequence, along with the
3 conditions as cited. And seconded the motion, Ms. White.
4 Also in support Mr. Peter May, and the Vice Chair Hart.
5 Actually it would have been 3-0-2. And no other Members
6 participating. So the motion carries.

7 CHAIRPERSON HILL: Okay, we're going to do a
8 summary, is this a summary order?

9 SECRETARY MOY: Okay. Mr. May.

10 COMMISSIONER MAY: Mr. Chair, I would just ask
11 that in addition to whatever monitoring the Applicant will
12 do, I will be monitoring it every morning on the way to
13 work.

14 CHAIRPERSON HILL: Oh, Commissioner May, I love
15 it. Okay, all right. Well, good luck Verizon. Okay.

16 VICE CHAIR HART: Mr. Moy, just so I have it
17 straight. It's 4-0-1, correct?

18 SECRETARY MOY: It's --

19 VICE CHAIR HART: The participating are the
20 Chairman, myself, Ms. White, and Mr. May.

21 SECRETARY MOY: Participating, yes at 3-0-2
22 right? No, 3, 4 --

23 VICE CHAIR HART: It should be 4-0-1.

24 SECRETARY MOY: 4-0-1 -- I'm sorry, I -- that's
25 right, that's right. I'm losing track now that we've a

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1 full Board.

2 VICE CHAIR HART: Yes, I know. It's difficult,
3 I know.

4 SECRETARY MOY: I had been so used to it
5 earlier. Thank you.

6 VICE CHAIR HART: I just wanted to make sure
7 that we had that added correctly. Thank you.

8 SECRETARY MOY: All right. I believe the next
9 case application, which is an expedited review case is
10 Application Number 19693 of 128 17th Street, LLC. Caption
11 advertised for a special exception under Subtitle E,
12 Section 205.5. This is from the rear addition
13 requirements of Subtitle E, Section 205.4 which would
14 construct a rear addition to an existing one-family
15 dwelling and convert it to a flat. RF-1 Zone at 128 17th
16 Street N.E., Square 1083, Lot 56.

17 CHAIRPERSON HILL: Okay thanks. Is the board
18 ready to deliberate?

19 (No audible response)

20 CHAIRPERSON HILL: All right. So after
21 reviewing the record, I mean this is now before us as an
22 expedited review. And after reviewing the record, I
23 didn't really have any particular issues with the project.

24 I mean the Office of Planning I thought did a
25 good analysis in terms of how they, what they thought

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1 about the project in terms of also how the standard was
2 being met. The ANC also, the ANC 6A, supported this 6-0.
3 DDOT did raise several issues and concerns but those have
4 been addressed by the Applicant's submission in Exhibit
5 37. So, again, I don't really have any issues with this
6 expedited review. Does anyone else have anything to add?

7 MEMBER WHITE: Mr. Chair, I would also concur
8 with your comments. This is a special exception request.
9 It's a good example of the Applicant's work to get
10 concurrence with the neighbors, with ANC, with OP, with
11 DDOT. This one is a rear addition. The proposed
12 extension was not that large, but it was an extension.

13 And I'm very sensitive to these rear
14 extensions, but looking at the facts and the criteria, I
15 would also concur that the relief that they're seeking
16 should be granted.

17 CHAIRPERSON HILL: Okay, anyone else?

18 (No audible response)

19 CHAIRPERSON HILL: Okay, going to make a motion
20 then to approve Application Number 19693 of 128 17th
21 Street, LLC., as captioned and read by the Secretary. And
22 ask for a second.

23 VICE CHAIR HART: Second.

24 CHAIRPERSON HILL: Motion is made and seconded.

25 All those in favor?

1 (Chorus of aye)

2 CHAIRPERSON HILL: All those opposed?

3 (No audible response)

4 CHAIRPERSON HILL: Motion passes. Mr. Moy.

5 SECRETARY MOY: Staff would record the vote as
6 5-0-0. This on the motion of Chairman Hill to approve the
7 application for the relief being requested. Seconding the
8 motion, Vice Chair Hart, also in support Mr. Peter
9 Shapiro, Ms. White, Ms. John, and the motion carries 5-0-
10 0.

11 CHAIRPERSON HILL: Okay, thanks Mr. Moy,
12 summary order?

13 (No audible response)

14 CHAIRPERSON HILL: Thank you. Did I say
15 summary order already?

16 SECRETARY MOY: Yes, you did.

17 CHAIRPERSON HILL: Okay, thanks.

18 SECRETARY MOY: All right, the next case
19 application for a decision is Application Number 19672 of
20 Milton Halem, H-A-L-E-M. This is caption advertised for a
21 for a special exception under Subtitle D, Section 5201
22 from the rear addition requirements of Subtitle D, Section
23 1206.4. This would construct a third story and a rear
24 addition to an existing one-family dwelling, R-20 Zone,
25 3608 S Street N.W., Square 1305, Lot 47.

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1 CHAIRPERSON HILL: Okay, great. Is the Board
2 ready to deliberate?

3 (No audible response)

4 CHAIRPERSON HILL: Okay, well since I was, I
5 had the pleasure of being questioned by the Council for
6 the Oversight last week, this was supposed to be the side
7 event. I'll let someone else start the deliberations due
8 to the fact that I did.

9 VICE CHAIR HART: Sure, Mr. Chairman. How
10 about I start? After reviewing the record and hearing the
11 testimony of the Applicant, the ANC, the Office of
12 Planning, and the neighbors, I believe that the Applicant
13 has met the criteria in the Zoning regulations. I agree
14 with the OP report, Exhibits 55 & 69. And I would support
15 the requested relief.

16 I do understand that the Applicant has
17 requested relief that is not supported by the ANC 2E.
18 There are several exhibits 50, 71, and 70. And it is not
19 also supported by members of the neighborhood, even though
20 there are some that do support it.

21 The ANC raised several concerns about privacy
22 and impacts, light and air. They noted that the three
23 design elements, the rear balcony on the second floor, the
24 third floor rear deck, and the roof deck were all issues
25 that they had.

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1 They also had some issues about the shadow
2 studies, and that was because several members of the
3 community raised some inconsistencies with those. And
4 then they also didn't like the third story on the front
5 facade, which they believed would intrude on the street
6 character and pattern.

7 I will say that the Applicant had agreed to add
8 some things like a privacy screen to the rear deck. They
9 removed the roof deck completely to reduce the privacy
10 concerns. And a little bit better new window pane
11 proposed on either side of the addition, just on the rear.

12 The Applicant provided a shadow study for the
13 existing condition, matter-of-right option and the
14 proposal itself. And I understand that the neighbors
15 pointed out several inconsistencies with these, but the
16 Applicants stated that they conducted those study using an
17 architectural modeling program. And the shadows are
18 displayed from that.

19 The Applicant noted that any missing shadows
20 were accidental regardless, and I mean I've had
21 architectural training. I find the shadow study
22 acceptable. This is in Exhibit 68. And I also find that
23 I agree with the Office of Planning that the project would
24 not unduly affect the light and air of the neighbors. And
25 I think in one, if I could have this one correctly, one

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1 actually supports the proposal, and the other had not
2 actually weighted.

3 Regarding the third story, the Applicant is not
4 requesting zoning relief from the building height. The
5 maximum building height is 35 feet, and they are below
6 that. And I think that is something that we have to take
7 into account as well. I mean, not take into account, but
8 it's not something that is -- we can't reduce the height,
9 if the height is actually within the allowable height of
10 the zone.

11 So, regarding the special exception relief to
12 allow the building to extend 22 feet beyond the next door
13 neighbor, and then on the first and second floors, and 14
14 feet on the third floor. I believe that the Applicant has
15 demonstrated how they have met their criteria. They are
16 actually stepping back the, or reducing the massing of the
17 extension on the back.

18 And my final note is that the Applicant is
19 within the allowable maximum lot coverage for the
20 property. And all of these things led me to the decision
21 that I believe they have met the criteria. And that I
22 would support the application. And that's it.

23 CHAIRPERSON HILL: Okay, thank you. Next, or
24 please Mr. May -- I mean, Shapiro. Sorry, you're both
25 Peters. Let's go with Peter.

1 COMISSIONER SHAPIRO: Thank you, Mr. Chair. I
2 would, simply I would associate myself with the thorough
3 and full remarks of the Vice Chair. And I would also note
4 though I was not here on February the 21st when we had
5 that hearing, I was able to review the record. I'll leave
6 it at that. Thank you, Mr. Chair.

7 CHAIRPERSON HILL: Okay, anyone else?

8 MEMBER WHITE: I will add some comments. I
9 think with this particular case, I have some issues with
10 these rear additions. And, you know, I think OP, you
11 know, did a very good in terms of their analysis. And
12 looking at the configuration and that particular block, as
13 well as the comments from the adjacent neighbors
14 indicating that they would support the project. And I
15 think that those adjacent neighbors are the ones that are
16 going to be the most impacted by this particular project.

17 I think with Vice Chair Hart's comments
18 regarding the shadow studies, after taking another look at
19 this particular case, I think that I can now support the
20 relief for the rear addition for this particular
21 application for Milton Halem.

22 CHAIRPERSON HILL: Okay, thank you. I'll start
23 to comment on this because we have a lot of deliberations
24 about these things today. And so even though Commissioner
25 Shapiro you're not on the next few that we're going to

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1 talk about.

2 The rear additions that have been kind of
3 coming before us, I mean I do find them very complicated.
4 And I find it very difficult to kind of easily say one, I
5 mean easily say one way or the other. And again the way
6 that we are to look at these is on an individual basis.
7 And what we think in terms of the information and the
8 testimony that we've heard. And then determine whether or
9 not we think the standards are being met, right?

10 And so, you know, whether or not something is
11 unduly affected seems to be constantly the term, the
12 phrase that, you know, I continue to kind of just struggle
13 with. I do want to speak to some of it because there was
14 a lot of opposition from the community as to, you know,
15 the testimony that we heard.

16 I do think that the Applicant did provide what
17 they could do by matter-of-right. And that that could
18 have even been a more -- could have negatively affected
19 the shadowing of the neighbors even more. But what I
20 continue to struggle with, with these matter-of-right
21 comparisons, I'm just curious as to what could be done as
22 matter-of-right, as to when we're kind of looking at
23 these?

24 And it doesn't really necessarily speak to the
25 standard. The thing that I also thought was that the

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1 discussion about matter-of-right sometimes doesn't seem to
2 necessarily apply. And this is -- and I'm speaking in
3 that the matter-of-rights sometimes couldn't even be done.

4 Like maybe they couldn't financially do the
5 project as matter-of-right. But that's a whole another
6 discussion, and we don't really have information
7 financially as to whether or not they could or couldn't do
8 something as matter-of-right. But and again, it's not
9 something that we look at necessarily to review the
10 standards.

11 The shadow study, and there's again something
12 with shadow studies in other cases that we're going to be
13 talking about, so I'll just save it for then, but also,
14 you know, there is an architectural model that they're
15 providing in terms of the shadow study. And so that is a
16 standard that we have come to understand. And so I think
17 that, you know, the shadow study was an accurate one.

18 Again, as Vice Chair Hart mentioned here,
19 they're not even going up to the height that they're
20 allowed to go up to, or could go up to in terms of 35
21 feet. And I do think that they've made some adjustments
22 concerning the privacy screening for the neighborhood.

23 But again, what I continue to come back to
24 again is the standard in terms of unduly affected. And
25 the most affected people would be the immediate neighbors.

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1 Now, does that mean that, you know, if you get the
2 immediate neighbors, it's going to get approved, no. But,
3 you know, it seems to, you know, it helps.

4 So, all those things being said, I would also
5 agree with the analysis that the Office of Planning has
6 provided in terms of how this does meet the criteria. And
7 so, I'll leave it at that for, you know, beginning
8 discussions on the other cases that we're going to have
9 before us.

10 So, it sounds like we're all kind of at the
11 same place. So, I'm going to go ahead and make a motion
12 to approve Application Number 19672 as captioned and read
13 by the Secretary, and ask for a second.

14 VICE CHAIR HART: Second.

15 CHAIRPERSON HILL: Motion is made and seconded.
16 All those in favor?

17 (Chorus of aye)

18 CHAIRPERSON HILL: All those opposed?

19 (No audible response)

20 CHAIRPERSON HILL: The motion passes. Mr. Moy.

21 SECRETARY MOY: Staff would record the vote as
22 4-0-1. This on the motion of Chairman Hill to approve the
23 application for the special exceptions in the variance
24 request, or rather the special exception request.

25 Seconded the motion, Vice Chair Hart, also in support Ms.

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1 White, Mr. Peter Shapiro. We have a Board Member not
2 participating on this case application. The motion
3 carried.

4 CHAIRPERSON HILL: Great, thank you. A full
5 order, Mr. Moy?

6 SECRETARY MOY: Yes, sir.

7 CHAIRPERSON HILL: Okay. So, if anyone missed
8 it from earlier, we're going to be deliberating on the
9 next two cases later. Because we still have to, there's a
10 Commissioner that's going to be joining us later for the
11 deliberation.

12 So, that means that we're going to put on hold
13 the deliberations for Application 19635, as well as
14 Application 19657. So now, we're going to move into the
15 Hearing portion of our day.

16 (Whereupon, the above-entitled matter went off
17 the record at 10:12 a.m. and resumed at 11:07 a.m.)

18 CHAIRPERSON HILL: Are we ready to get started
19 again? Okay. I'm waiting for everybody to get off their
20 phones. Sorry to bother everybody. Thank you.

21 Okay, Mr. Moy.

22 SECRETARY MOY: Yes. Thank you, Mr. Chairman.
23 So this is the next case application scheduled for
24 decision making. We're back to that session with Chairman
25 Anthony Hood sitting with the Board now.

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1 That's Application No. 19635 of HJB Properties,
2 LLC, captioned and advertised as amended for special
3 exception for the residential building conversion
4 requirements of Section 320.2, to construct a rear
5 addition to an existing one-family dwelling and convert it
6 to a three-unit apartment house in the RF-1 Zone. This is
7 at premises 1121 Morse Street, N.E., Square 4070, Lot 138.

8 I believe, Mr. Chair, there was -- unless
9 someone corrects me, on February 27, 2018 the applicant
10 filed a motion to reopen the record for additional
11 discussions or plan revisions which is under Exhibit 68.
12 From what I can tell from the record, there has been no
13 responses to that filing as of yesterday.

14 CHAIRPERSON HILL: Okay. I remember now the
15 request. I would like the Board to kind of help with this
16 in terms of we didn't ask for any continued information.
17 I would like to get to the discussion in terms of the
18 deliberations here that we're going to have.

19 The shadow study that we had received was,
20 again, one that had been submitted from the applicant and
21 kind of has the standard program to it in terms of it's an
22 architectural program that gives the shadow so I don't
23 think that we're going to get any new information in terms
24 of any submittal of our shadow study so I would be in
25 favor of denying the motion. Does anyone have any

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1 thoughts?

2 VICE CHAIR HART: The shadow study?

3 MS. GLAZER: Mr. Chair, are we on 19635?

4 CHAIRPERSON HILL: Oh, I'm sorry. I'm getting
5 confused.

6 VICE CHAIR HART: I think this was just they
7 wanted to add the ability to -- the applicant wanted to
8 have a motion in case they wanted to add some other plans
9 in. This was -- let me see. Where do they say this.
10 This is under the first paragraph on Exhibit 68.

11 "The Board was inclined to deny the application
12 on the basis of the rear addition. The applicant would
13 like the opportunity to revise the plans in accordance
14 with the Board's recommendations." So I think they were
15 just looking to, I don't know, hedge their bets a little
16 bit but I just don't think that's -- I think it's very
17 messy. I don't like that particular motion.

18 CHAIRPERSON HILL: So you would deny the
19 motion?

20 VICE CHAIR HART: I would.

21 CHAIRPERSON HILL: Okay. I got confused.

22 VICE CHAIR HART: That's okay. They're not
23 actually submitting drawings. They are saying they would
24 like the opportunity to do that if we were to --

25 CHAIR HOOD: Mr. Chairman, the problem I have

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1 is with the Board's recommendations. I don't think -- I
2 didn't make any recommendations.

3 CHAIRPERSON HILL: That's all right. We're
4 just going to deny this.

5 CHAIR HOOD: But I think it's important if the
6 Board was not sending the signal of making a
7 recommendation. I think it was more deliberation than a
8 recommendation.

9 VICE CHAIR HART: That's correct, Chairman
10 Hood.

11 CHAIRPERSON HILL: Okay. So we don't need
12 anything new. Are we ready to deliberate? Okay. I've
13 been thinking about this a lot and I continue to think
14 about this a lot. I think it is a very difficult place
15 that we are kind of in and I continue to kind of look at,
16 you know, the Zoning Commission to help clarify or provide
17 -- I should say provide more clarification to what they
18 might have had in mind.

19 It is fortunate, and I don't mean to put you on
20 the spot, Chairman Hood, that you're here but you are the
21 chair and have gone through the process of how the
22 regulation got changed so this is a special exception in
23 terms of what is before us.

24 Again, I mean, I know there's a lot of members
25 from the community here and I really emphasize and feel

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1 very strongly about my feelings towards the community in
2 terms of if I lived right next door to something like this
3 that was happening, I wouldn't want this to be happening
4 for me so I would be here personally and trying to stop
5 it.

6 I'm here with the standards that have been put
7 before us and how I'm getting to the same place that I
8 guess I was the last time which is that, you know, the
9 standards that they want; "The light and air available to
10 neighboring properties shall not be unduly affected." The
11 unduly affected term is there that, again, one struggles
12 with.

13 "The privacy of use in adjoining neighboring
14 properties shall not be unduly compromised." There's been
15 arguments about how a project such as this might actually
16 even create more privacy even though that's again just
17 someone's argument as to how much more privacy you might
18 have in your backyard now that there's a development or
19 wall next to you.

20 Then 3, "The conversion and any associated
21 additions as viewed from the street, alley, and other
22 public way shall not substantially visually intrude upon
23 the character, scale, and pattern of houses along the
24 subject street or alley." So, again, it turns into this -
25 - I mean, this is all just for me and we're going to have

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1 a long discussion, I think.

2 There's two of these cases and I want to have a
3 very thorough discussion because this continues to kind of
4 come up with us. It's like what visually intrudes upon
5 the character, you know, scale and pattern of houses along
6 the subject street or alley.

7 What I kind of continue to struggle with it's
8 like visually intruding. The character, the feel of the
9 neighborhood. In the standard is says does it visually
10 intrude. So that's kind of the things that I was thinking
11 about in terms of whether it visually intrudes or not.

12 If there was something in the regulation that
13 said something more to the overall feel of the block or
14 something, that would be another way to be able to vote
15 against this for me. But the reason that I'm still at
16 this place that I'm voting in favor of it again, then what
17 is the light and air that's available to neighboring
18 properties.

19 Both properties and, in this case, one of the
20 properties has already been developed under the old
21 regulations, I think it was, where it goes back farther,
22 or as far, as the project that they are trying to develop.
23 The two neighboring properties don't have any issues with
24 this development -- I'm sorry, this project. They are the
25 ones that would be most affected by the light and air.

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1 Again, I wish that I -- I shouldn't wish.

2 If there was something -- if we didn't have the
3 standards and I wasn't reading the standards the way that
4 I was reading the standards, and the way that the Office
5 of Planning was reading the standards, you know, I would
6 be able to vote differently, but I'm kind of stuck with
7 where I am in terms of how I'm reading the standards.

8 The ANC weighed in, as did the neighbors, and I
9 think it's just so disappointing that, you know, the
10 neighborhood are not in favor of it and I can understand
11 why they are not in favor of it. Again, there was -- so,
12 let's see.

13 They did show kind of -- the applicant showed
14 what the matter of right option might be, or could be.
15 They showed where the front of the building could be torn
16 down so it would look completely different from the front
17 if they did the matter of right in terms of that changing
18 the character of the neighborhood.

19 Again, as per whoever was here when we were
20 deliberating another one like this, the matter of right
21 I'm always just kind of curious about seeing what it is so
22 that it kind of is what I'm particularly comparing it
23 against, although that's not, again, how we're supposed to
24 look at it. I just take it as more information to be able
25 to process.

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1 To add more to that discussion, you know, I
2 don't even know if the people who are proposing the matter
3 of right option can even be able to do that because maybe
4 they need the special exception or the variance in order
5 to -- in this case, special exception -- to get the square
6 footage that they need to make the project work. That
7 would require financial information and an analysis.

8 That's not really kind of where -- I don't
9 think that's helpful for the Board. The immediate
10 neighbors, again, were in support, as I said. The
11 character, again, it's the visually -- I keep coming back
12 to the visually intrude upon the character, scale, and
13 pattern of houses along the subject area.

14 I think we heard testimony that from the rear
15 of the property it's not necessarily, I think, going to
16 look a whole lot different and the front isn't changing at
17 all. Again, this is just -- I'm just looking at the
18 standards that are put down in the regulation or what we
19 are supposed to be looking at.

20 I kind of look, again, to -- I don't think
21 there was testimony from this application, I'm not sure,
22 but there was people that had testified and it made me
23 think about the Zoning Commission when they went through
24 all of the testimony that they took as to whether or not
25 to make this a special exception, I suppose, as opposed to

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1 a variance.

2 But there people on the other side of this
3 discussion that the matter of right used to be that you
4 could go as far back as you wanted to as long as you
5 stayed within the rear setback and also the amount of
6 space you are able to take up in the yard and the FAR was
7 fine. You could have gone up to 40 feet.

8 I make note of that because there is the other
9 side in terms of like what people want to be able to do
10 with their property. That 10 feet is not really a lot of
11 room, I don't think. I mean, you know, you're going to
12 spend a lot of money to do 10 feet so I doubt you're going
13 to do the 10 feet so that basically means you're not
14 probably going to do anything.

15 Again, I just continue to circle around all
16 this because it's just such a difficult discussion, I
17 think, which is why we have been kind of stuck here. I
18 think it continues to be a difficult discussion. There
19 was like discussion about families and, you know, the
20 character of the neighborhood with families. You know,
21 families could end up living in some of these places so,
22 you know, whether or not it eventually develops into more
23 families in the neighborhood.

24 Again, I understand the side that the community
25 is bringing forward. I even emphasize with the fact that

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1 this particular block has very deep lots. More and more
2 people will be trying to do this. That, again, makes me
3 want to look to the Zoning Commission or someone else if
4 there's something else that needs to be changed, but this
5 is the way it is before us now.

6 I also -- I might even come back to
7 deliberations, but I'm going to let go of the microphone
8 in a second. I also think about how, you know, the
9 property owners that might be in opposition to this now,
10 if they were -- if further rights were going to be taken
11 away and this special exception wasn't even going to
12 happen, they actually are making their property less
13 valuable, even though I know they want to keep it the way
14 they want to keep it.

15 After all that, I mean, I'm just back in the
16 same place which I'm stuck with how I'm viewing the
17 regulations and how I'm viewing the way we're supposed to
18 decide this. With the analysis I would agree with how the
19 Office of Planning has provided its analysis with concerns
20 of the three criteria that I mentioned earlier. I suspect
21 we're going to be talking about this for a little while.
22 I'm going to -- if the Chairman would be so inclined to
23 begin the next round, Chairman Hood, that would be
24 wonderful.

25 CHAIR HOOD: Thank you, Mr. Chairman. I don't

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1 know how much more I can add to what I said previously in
2 this case. I heard you mention about the Zoning
3 Commission's regulations or rules that were put in place.
4 There was a cry out in this area of the city at the time
5 about pop-ups, pop-backs -- I think I mentioned this
6 before -- about changing the character of different
7 neighborhoods and different types of houses.

8 One of the things that we try to achieve is to
9 try to find and strike that balance. One of the hard and
10 fast rules, though, it says, "It shall not extend farther
11 than 10 feet past the farthest rear wall of any principal
12 residential building on an adjacent property."

13 We are trying to balance that with people who
14 wanted to do some modest extensions. What I've seen in
15 front of us now does not fall into that category. That's
16 why this is a special exception. There are some other
17 things I have asked the Office of Planning, and I
18 mentioned this at our oversight hearing.

19 I have asked Office of Planning to look at
20 that. I've asked my colleagues to let's reevaluate this
21 again so we can give the Board of Zoning Adjustment the
22 tools they need to better inform these cases.

23 I can tell you from what I see and what I see
24 is coming forward, I don't see how you all -- I don't
25 think we gave you all you need as far as to be able to

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1 make an informed decision now, even though you can. I'm
2 sure you can evaluate it but sometimes it may depend on
3 whether -- we didn't try to get more predictability. The
4 Board may change. Circumstances may change. I guess what
5 I'm saying is we need to try to give you more
6 predictability.

7 The other thing is the problem was there were
8 no regulations, and I mentioned this before, like the
9 Solid Waste Handling Facility regulations that were put in
10 place by the Zoning Commission in 1997. People found a
11 loophole and they got in front of it so we had to play
12 catch-up and try to put some regulations in place. It
13 doesn't just happen in this jurisdiction. I happens all
14 over.

15 There was nothing in place to preserve the
16 character and people said, "Oh, I can continue to move
17 forward." Whether it's the developer or resident or
18 whomever, there was nothing in place to have rules and
19 regulations for a lot of zoning that we have in our city.
20 Zoning was started in New York, I believe, some years ago.

21 I think that it's crucial, first of all, that
22 we evaluate each case on its merit. If the person next
23 door got it and they got it when there were no regulations
24 in place, to me that has no bearing on this case. I'm
25 looking at this case and the rules and regulations in

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1 place which is the hard and fast rule.

2 If you look at most jurisdictions, I know there
3 are different scenarios. Conversions are not even allowed
4 in some jurisdictions. You don't go in and change the
5 housing stock. I think the people who are invested in it
6 -- this is where we had the balance. Some people are
7 invested in their neighborhood who have been there, the
8 long-timers, and then you have the short-timers so trying
9 to balance those competing interests is, I think, where
10 the Zoning Commission was.

11 I can tell you from looking at this, I still
12 believe the hard fast rule. One of the things that used
13 to stand alone in the old regulations was changing the
14 character. We are changing the character in all of our
15 neighborhoods. At some point we need to preserve them.

16 We need to respect the future, but we also need
17 to respect the past because some people walk under the
18 auspice of what they have. Then some people want to
19 expand what they have because they want to stay in the
20 city so trying to strike that balance is what we do here.

21 Do we continue to allow pop-backs to go back 32
22 feet, 40 feet, 50 feet? I don't know what the number is.
23 That's why I've asked the Office of Planning to start the
24 conversation so the Zoning Commission can get on top of
25 this to give the Board of Zoning Adjustment the tools that

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1 we need to continue making informative and educated
2 decisions.

3 I've talked about the merits of the case. Then
4 we talk about affordable housing. This came up at our
5 oversight hearing. We talk about affordable housing.
6 Instead of getting \$750,000 now for one unit, you can get
7 it for free. For me that's a whole other discussion. I
8 think the Chairman or the council also mentioned that
9 whole discussion has been going on for years about
10 affordable housing.

11 People say, "If you don't allow the
12 conversions, you're not creating affordable housing." No.
13 The way I see it if you don't try \$750,000 for one and
14 you're getting \$750,000 for three, it looks to me like
15 what we're doing is creating a windfall and we should be
16 trying to create affordable housing.

17 Mr. Chairman, I think that this -- my stance
18 stays where it was the week before last when we
19 deliberated on this. The Zoning Commission put these
20 rules in place for a reason and it was striking the
21 balance from what we heard. We made a special exception.
22 There may be some allowances but I think we need to go
23 back and revisit this. Right now I'm not going to be
24 changing my stance and I'll be voting against this.

25 Also, I'm not compelled yet -- I'm not sure how

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1 it's going to turn out and I'm just putting this out
2 there. I'm not compelled yet to do it sua sponte as I've
3 done in other cases and nothing materialized. I'm not
4 putting it out there that you've got to do it my way
5 because you don't. I think this is serious enough to
6 where I may just have to do a sua sponte on this case.

7 Those are my comments.

8 MEMBER WHITE: I don't know how I top that but,
9 you know, I kind of read through some of my comments
10 during the previous deliberations and you're welcome to
11 listen to those again. I haven't changed my stance with
12 respect to this particular case where they are trying to
13 do a rear addition of 32 feet past the rear wall in the
14 Trinidad neighborhood.

15 I felt as though that was outside of the
16 character of this particular neighborhood in spite of the
17 fact that the adjacent owners were kind of on board with
18 it. The neighborhood as a whole seemed to broadly not be
19 in support as well as the ANC. As a lawyer, this is --
20 these cases I find to be very subjective.

21 You can kind of go either way based upon
22 looking at the criteria so I think there is somewhat a
23 hole in the regulations in terms of providing better
24 guidance. You know, in terms of looking at the
25 legislative history, I mean, they obviously had something

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1 in mind when they set these standards of you needing an
2 exception if you go past the 10 feet of the rear wall.

3 There must have been something that was on the
4 record that talked about their intent and not wanting to
5 change the neighborhood. I don't believe they've met the
6 criteria with respect to the rear relief that they were
7 seeking.

8 But beyond that, I also think just looking at
9 the special exception criteria in general, I think you
10 also have to look at the question of whether or not this
11 will adversely affect the use of the neighboring property
12 in accordance with the zoning regs and the zoning maps and
13 whether or not it's going to be in general harmony with
14 the purpose and the intent of the zoning regulations and
15 the zoning maps.

16 Just hearing Commissioner Hood's comments, I
17 don't think this was the intent of what they were looking
18 at when they set these regulations up. I think it would
19 be outside of the parameters of the criteria to set
20 ongoing precedence for acknowledging and providing relief
21 for rear wall development that go -- that are pretty big,
22 32 feet past the rear wall.

23 You think about how far that is. I think it
24 would have -- when you start to have patterns of this, I
25 think it would begin to set patterns that are outside of

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1 the confines of the regulations.

2 VICE CHAIR HART: Mr. Chairman, thank you. I
3 have looked at this project again, looked at the previous
4 hearing -- actually, the previous meeting that we had --
5 to understand where -- to make sure that I was either
6 staying at that same place or if I could move to a
7 different -- have a different decision, I guess, on the
8 case.

9 You understand that the zoning regulations set
10 out some criteria for us to be able to use to determine
11 whether or not a case should or should not be approved.
12 In this case, the rear yard -- the addition to an existing
13 building it does set out that it may not extend for more
14 than 10 feet past the rear yard of the adjacent house.
15 That's kind of set.

16 But the zoning regulations also give an ability
17 for an applicant and homeowner to -- property owner to
18 make a waiver or request a waiver from any one of the
19 regulations within 320.2. They have the -- the applicant
20 in this case is requesting a waiver for this 10-foot
21 setback. It seems as though they have described how they
22 are going to be able to meet the criteria.

23 They did set up -- provide for us in a variety
24 of exhibits the shadow studies to show what that impact
25 might be. There were some photographs as well. Looking

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1 at all that I still get to the same point which is I
2 believe that they have actually met the criteria for
3 approving this special exception. Special exceptions are
4 not as rigorous as variances. Special exceptions are
5 aspects of the zoning code that are allowed within the
6 regulations themselves. I believe that they've met that.

7 I will say that it is a substantial addition
8 that they are adding to the building. I'm not negating
9 that or saying that I think it's a small addition. As I
10 look at the shadow studies that they have used, which I
11 think that they have provided that help to help me to
12 understand what that might -- what those impacts might be,
13 I still get to the same point which is how will the
14 addition be different and more impactful, unduly
15 impactful, than what is being -- than what is existing. I
16 can't get to a point that I can say that it won't be.

17 Now, I understand that we all have -- we are
18 all looking at this and we may be coming up with some
19 different results or decisions on it, but I think that we
20 are all looking at the same information and trying to
21 grapple with what that word means.

22 In this case, I do believe that the project
23 does not unduly impact and I would be in support as I was
24 when the project was before us. I'm not even sure when
25 that was. Two weeks ago. My stance is the same as it was

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1 in the previous time. Thank you.

2 CHAIRPERSON HILL: Before we get to Ms. John, I
3 just want to comment again to Chairman Hood, or I guess
4 also Ms. White, in terms of my thoughts. You know, this
5 is so -- I think, again, this is just so -- you mentioned,
6 Chairman Hood, like tools for the BZA that we might have.
7 I think this is difficult and I don't like the position
8 that I'm necessarily in. At least, the position that I
9 feel that I'm in.

10 What I've been told in my training that I go
11 to, we have trainings here all the time, and I'm just kind
12 of saying this just so I feel better. I'm also clarifying
13 that, you know, looking at the things individually as
14 what's happening, again the way that the -- like I voted
15 against one of these before because I thought that the
16 immediate neighbor was unduly affected and they, the
17 immediate neighbor, was opposed to this.

18 I'm trying to also think that people should
19 know how we're kind of going to get to our decision. I
20 guess I'm just kind of, again, pointing out that the way I
21 was looking at it was this was a -- this is the way this
22 particular case is with the house next to it already been
23 done and the neighbor next to is and how they were
24 affected by the light.

25 I would appreciate any tools that you all might

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1 have for us that makes this easier to get to -- easier to
2 get to a decision and would welcome anything you all did
3 with this case, or even the next case that we might be
4 talking about.

5 CHAIR HOOD: Mr. Chairman, I'm one
6 commissioner. Even as the chairman I still have one vote.
7 Commissioner/chairman one vote. I've just mentioned this
8 to my colleagues. We got here because we have different
9 values and different ways that we thought how we should do
10 this. I'm just asking us to take another look at it
11 because I see how things are going.

12 I heard you say you voted against one. I don't
13 know what that was. I'm not going to ask you what the
14 Office of Planning approved. I'm not going to ask you for
15 that. One of the things that Vice Chair Hart said, he
16 said, "I'm not saying this is not a substantial addition."
17 I understand that but to me it is.

18 I think you and I agree it's not a small thing
19 they are asking for here. I think that's the intent the
20 Zoning Commission is trying to do. Not create -- I don't
21 want to use the word -- I want to be very correct because
22 certain words I say get out there like, "He called it a
23 monstrosity." I'm not saying that. What I'm saying is
24 bigger than what should be within the character of the
25 neighborhood.

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1 I think Vice Chair Hart's comments really
2 helped me that my position, and Board Member White's
3 position thus far, are correct in what we see as intent.
4 Now, do we need to probably do some more things? My
5 colleagues may disagree with me but I've already mentioned
6 it and we need to just have some more exhaustive
7 discussion among ourselves is what we put out there is
8 this working.

9 That's all I'm saying because I don't see where
10 it's working. I really don't see technically even though
11 I know we have to judge the case on its merits, I keep
12 hearing also, Mr. Chairman, about what happened next door.
13 Next door didn't have any rules or regulations and that
14 was the problem. That was the problem.

15 So what we did we put something in place
16 because there was an outcry from the city. It wasn't just
17 in the Trinidad area and it wasn't just in Ward 5. It was
18 in Ward 1 basically. That's where I am. I mean, I think
19 this is healthy because maybe this will help us put some
20 better stuff in place.

21 CHAIRPERSON HILL: I just want to again express
22 my frustration. It's not a black and white yes or no. I
23 mean, it is something that I'm not happy about being in
24 this spot. But thank you. You made me feel bad again.
25 Thanks a lot.

1 CHAIR HOOD: As we go along I can tell you
2 since the Board of Zoning Adjustment has more experience
3 on these cases, I would really -- I'm going to enlist it
4 because, and all my colleagues agree, we want to get as
5 much input as possible and I would hope the Board -- I
6 know in the past the Board of Zoning Adjustment at that
7 time the chairman came down and gave us input what you all
8 experience every week. I'm here once every five weeks.
9 Well, it seems like I'm here every week now but I'm
10 supposed to be here every five weeks.

11 CHAIRPERSON HILL: You can be here every week
12 if you want. You are welcome to come.

13 CHAIR HOOD: Okay. Thank you, Mr. Chair.

14 CHAIRPERSON HILL: Okay. All right.

15 Ms. John, you want to take a deep breath and
16 tell us what you think?

17 MEMBER JOHN: I am taking a deep breath, Mr.
18 Chairman. This is not a good place to be at. I reviewed
19 the record, the complete record, including oral testimony.
20 I'm as troubled as everyone else is by the lack of
21 specificity in the regulations.

22 Even though the Board does have some discretion
23 to go beyond the 10-foot rule, it's very difficult to
24 apply that discretion in a reasonable way so we have to
25 look at each case to see what particular facts are and to

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1 try as best as we can to weigh those facts against the
2 criteria.

3 In this particular case, I am concerned that
4 the new addition would be almost 33 feet. Part of the
5 rationale for extending this addition 33 feet, as I
6 understand it, is that the neighboring property has a
7 similarly large extension and that this addition would be
8 in line with that neighboring property that was developed
9 before the rules were changed.

10 I think the special exception criteria then allows us to
11 go somewhere between 10 feet and what's next door.

12 The other thing about this case is that the
13 first and second floors are both 33 feet. There's no
14 setback on the second floor. Looking at it from the side,
15 and I'm looking at Exhibit 47, it's just a big block and
16 so the mass troubles me in that case.

17 I also looked at the light studies, the sun
18 studies, and it does appear as if the shade could be
19 coming from the large apartment building right next to it.
20 I believe that would be 1123 Morse Street. I can't imagine
21 that the intent of passing this rule was to allow us to
22 just replicate what is already there in terms of allowing
23 this new structure to go all the way back to what was
24 there before the regulations were passed.

25 I've also listened to the testimony of the

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1 neighbors and I would not want to live beside a big wall
2 so I did appreciate that testimony, but that's not really
3 what led me to the decision voting against this addition.
4 I have credited the testimony of the Office of Planning.
5 However, I do believe that 33 feet on two levels is
6 intrusive and would unduly impact the neighborhood from
7 especially the street side. So that's where I am, Mr.
8 Chairman.

9 CHAIRPERSON HILL: Okay. All right.

10 Chairman Hood, can you make a motion since I'm
11 kind of the minority here?

12 CHAIR HOOD: First off, I want to commend Board
13 Member John.

14 CHAIRPERSON HILL: Why do you have to commend
15 somebody? I already clarified she's a quick study.

16 CHAIR HOOD: That's not easy. I've had the
17 same problem when I first got on. I had to break a tie.

18 CHAIRPERSON HILL: No, I agree. Board Member
19 John, it is a difficult thing. It is. It really is. I
20 also do commend you. I really do. No, really. I really
21 do.

22 CHAIR HOOD: Okay. Let me give -- I wasn't
23 expecting this. Okay, great. Mr. Chairman, I move to
24 deny Application No. 19635 of the HJB Properties, LLC as
25 noted for special exception for the building conversion

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1 requirements under Subtitle U Section 320.2, construct a
2 rear addition to an existing one-family dwelling and
3 convert it to a three-unit apartment house in the RF-1
4 Zone at premises 1121 Morse Street, N.E., Square 4070, Lot
5 138 and I would ask for a second.

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: Motion made and seconded.

8 All those in favor?

9 MEMBERS: Aye.

10 CHAIRPERSON HILL: All those opposed?

11 MEMBERS: Nay.

12 CHAIRPERSON HILL: Mr. Moy, the motion passes.

13 SECRETARY MOY: Yes, sir. The staff would
14 record the vote as three to two to zero on the motion of
15 Mr. Hood to deny the application. Seconding the motion
16 was Member White. Also in support Ms. John. Opposed to
17 the motion Chairman Hill and Vice Chair Hart. This motion
18 carries.

19 CHAIRPERSON HILL: Thank you. Full order?

20 SECRETARY MOY: Yes, it's a denial order.

21 CHAIRPERSON HILL: All right. Thank you.

22 Mr. Moy.

23 SECRETARY MOY: The next and last case
24 application that was scheduled for decision making is
25 Application No. 19657, Mala Mahmood, M-A-H-M-O-O-D. This

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1 is an application for a special exception under the
2 residential conversion requirements of that review,
3 Section 320.2. This would construct a rear addition and
4 convert an existing one-family dwelling into a three-unit
5 apartment house in the RF-1 Zone, premises 1135 Morse
6 Street, N.E., Square 4070, Lot 145.

7 We have a preliminary matter here, Mr. Chair,
8 because there is a filing from ANC-5D dated Monday, March
9 5th under Exhibit 57 requesting to reopen the record.
10 There is a response from the applicant which was filed
11 that evening of March 5th. That is under Exhibit 58.

12 CHAIRPERSON HILL: Okay. Here's what I was
13 thinking about. Just my thoughts in terms of the motion.
14 Again, I think we got the information that we needed in
15 order to get to the deliberation so I don't think we need
16 any extra information, particularly the sun study, because
17 we did get a sun study and it was, again, as I mentioned
18 before, done in a program that comes before us pretty
19 often so I would be denying the motion to reopen the
20 record.

21 Does anybody have thoughts?

22 VICE CHAIR HART: Yes, Mr. Chairman. I would
23 agree with you. I think the applicant has provided a sun
24 study for this case. The ANC submitted this motion
25 several days ago. However, the first sun study that was

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1 provided by the applicant was Exhibit 7 dated October 17,
2 2017, and uploaded on October 19, 2017.

3 To me if the ANC would have wanted to refute
4 the sun study or impacts, that they could have provided
5 anything to us since that time so from October to kind of
6 now. Or, actually, from October to when we heard this
7 case last on February 14th. We actually did reopen the
8 hearing on February 14th and heard testimony at that time.

9 The applicant did have a revised design, but
10 that revised design was actually less impactful than what
11 they had proposed previously as the largest portion of the
12 addition went from 40 feet down to 30 feet, and then
13 actually stepped back to 20 feet on the top floor. I just
14 feel that the ANC could have raised this issue prior to
15 now. I think we have more than enough information so I
16 would also vote to deny the motion for those reasons.

17 CHAIRPERSON HILL: Unless anybody has any
18 thoughts about denying the motion, I'm just going to deny
19 the motion. We are going to deny the motion to reopen the
20 record.

21 So we are back to deliberating and we're back
22 to deliberating a lot of the same issues. Would someone
23 else like to start?

24 VICE CHAIR HART: Sure.

25 CHAIRPERSON HILL: Chairman Hood -- I mean,

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1 Vice Chair Hart.

2 VICE CHAIR HART: That guy over there. After
3 reviewing the record and hearing the testimony of the
4 applicant, the neighbors, the ANC, and the OP reports, I
5 would be in support of this application because I believe
6 they have met the criteria with the testimony that they
7 provided, as well as the Office of Planning report.

8 This case is a little -- is, of course, a
9 little bit different than all the other cases that we
10 hear. There are pieces that may be similar but there is
11 always something that is specific to this particular -- to
12 any case that we have before us.

13 In this case, the applicant went from -- as I
14 noted with the motion, they went from an addition that was
15 40 feet long to now 30 feet. That 30 feet is only at the
16 basement level. It steps back from that basement level to
17 20 feet at the 3rd floor level.

18 They have actually made -- in my understanding
19 they have -- or in my opinion they have taken the comments
20 that had been provided to them and the applicant had
21 actually changed the design so that it would be less
22 impactful than it was previously proposed. And kind of
23 how they do this, I think part of this is that they reduce
24 some of the actual what they were proposing, but they also
25 look to find ways of kind of making due with the space

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1 that they had.

2 I do believe that these are, again, very long
3 lots. They are 145 feet long. Even with the expansion
4 that we're talking, the amount of back yard, rear yard, is
5 actually 62 feet from the rear yard to the actual proposed
6 building, the addition. I will say that this is not --
7 while this is longer than the 10 feet that is allowed
8 within the zoning, it does seek to provide some -- to
9 minimize the amount of impact on neighbors by doing the
10 step-back fashion from the basement level up to the roof
11 level.

12 They are not asking for height relief. They
13 are not asking for really any other relief other than
14 trying to get the 10-foot relief, the special exception
15 for the rear addition. Then they are also looking to
16 convert, of course, from the existing one-family dwelling
17 to a three-unit apartment house. I believe that the
18 applicant has provided sufficient information to show how
19 they are meeting that. That's it.

20 MEMBER WHITE: I'm going to jump in here. So
21 this is the Mahmood case. There are similarities in terms
22 of my thinking with respect to this application. You
23 heard my comments earlier, some of them. This is
24 essentially in the same neighboring area. This is an
25 application to construct a rear addition to convert a one-

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1 family dwelling into a three-unit apartment house in RF-1
2 zone at 1121 Morse Street, N.E.

3 This is a special exception under the
4 residential conversion regulations Subtitle U 320.2.
5 After reviewing the record and the testimony acknowledging
6 and respecting OP's report, giving weight to the ANC's
7 report and testimony as well as input that we received
8 from the public, at this point I think my thinking is
9 going to be similar to the previous case in terms of the
10 impact that this type of development will have to the
11 neighboring properties. They are looking for a waiver of
12 the 10-foot extension past the rear wall under 320.2,
13 Subtitle U.

14 OP recommended approval in Exhibit 51. They
15 also submitted that supplemental report and this was
16 submitted after the applicant revised their original
17 proposal to do a much bigger rear wall extension of 40
18 feet. There was some questions back and forth about the
19 veracity of the sun study, but we do have one sun study on
20 the record that I did review carefully.

21 The applicant is requesting, if I'm getting
22 this right, an extension from the rear of 30 feet on the
23 basement level, 25 feet for the first and second floors,
24 and 20 feet for the third floor if I'm correct. That is
25 right? Thank you.

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1 Again, I applied the criteria under this
2 exception. I don't have a problem with them converting
3 the one-family unit into an apartment house, but I think
4 there is a substantial adverse impact for the neighborhood
5 in terms of the use and enjoyment of those dwellings. You
6 know, the look and feel of those dwellings. The light
7 perhaps is somewhat impacted.

8 But, again, I go back to my original opinion in
9 terms of the intent of those regulations, in terms of why
10 they set that 10-foot limitation and why they required
11 applicants to come before the BZA if they were looking to
12 make some modest adjustments to that limitation. Where I
13 am right now, and I'm willing to listen to maybe some of
14 the differences in terms of how you looked at this
15 particular case. Where I am right now is that I'm leaning
16 towards opposing the application as submitted.

17 CHAIRPERSON HILL: Okay. Great.

18 Board Member John, I'm going to go to you next
19 and then we'll go over to Chairman Hood.

20 MEMBER JOHN: Thank you, Mr. Chairman. So I
21 looked at this case a little differently than I did the
22 last one. To me the difference here is that the bulk of
23 the 30-foot -- the basement level is where the largest --
24 the longest side of the building is so it would not be --
25 it should not be readily available --

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1 CHAIRPERSON HILL: I'm sorry. I think you have
2 to push that all the way up there and speak more directly
3 into it. We want to hear you really clearly.

4 MEMBER JOHN: I'm trying not to be heard.

5 CHAIRPERSON HILL: You're not going to have
6 that opportunity. Mr. Moy is going to keep coming over
7 here.

8 MEMBER JOHN: So as I was saying, the basement
9 is where the bulk of the addition is. The design does
10 have that step-back feature along the first and second
11 floors that reduces the mass. In my view, that's a little
12 less -- what's the word? Impactful. Thank you.

13 The other thing I looked at was, as Mr. Hart
14 said, that the lot in this case is long as was the other
15 case. For me the most important or significant aspect is
16 that there was some attempt to reduce the mass and to put
17 the bulk of the addition in the basement. Only two floors
18 would go beyond the 10-foot matter of right requirement.

19 I continue to believe that in granting the
20 Board discretion to go beyond 10 feet that the Board --
21 that the commission wanted to create some flexibility and
22 the commission could have prohibited the Board from
23 granting any extension between 10 feet. This is where I
24 am, 33 feet going up two floors creates two large a mass.

25 As we all decided earlier, 16 feet back from

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1 acceptable. Somewhere between 16 and 33 feet is where I
2 think we're stuck from listening to everyone so far this
3 morning. In the very first case which was there for the
4 expedited hearing, I believe that was a 16-foot rear
5 addition. We just looked at the 30 something rear
6 addition. Now we're at 30 in the basement, 20 feet at one
7 and two.

8 In looking at this case, notwithstanding the
9 Office of Planning analysis, I continue to believe that
10 the design of this addition is less intrusive than the one
11 we reviewed earlier. I would be inclined to vote in favor
12 of this.

13 VICE CHAIR HART: Mr. Chairman, just one point
14 that I also wanted to make. I appreciate that both from
15 Board Members John and White. The one thing that I kind
16 of forgot to add but I think is actually a significant
17 part of this as well is that the applicant actually added
18 in a four-foot court, a setback from the east, I guess.

19 That also helped to reduce the mass of the
20 addition so there is kind of a setback on one side of the
21 property. The wall that it shares with 1137 Morse, that's
22 the part that I'm talking about. I think that also helps
23 me to be able to support this.

24 CHAIRPERSON HILL: Okay. Okay. Ms. John, I
25 didn't know whether you were on or off for a while there

1 and everything.

2 Mr. Hood, we're going to go to you.

3 CHAIR HOOD: Mr. Chairman, I looked at this
4 case and I note that Ms. Mahmood had done some -- that's
5 why I wanted another week or so to think about it because
6 I, too, thought maybe this was going in the direction that
7 I thought the commission was which would lessen the
8 impacts. Then I started really looking at this. For me
9 this is more egregious than the other case because this
10 changed the character more significantly than the other
11 case.

12 We're only talking about what we used to call -
13 - no disrespect to Ms. Mahmood or anyone else -- it's
14 called the wedding cake. We did that in another area in
15 the city. If you look at a wedding cake, you see how it
16 moves in. We're only talking five feet.

17 I thought when I first heard this and noted the
18 change, and I applaud her for going in that direction, but
19 I think it misses the intent totally from my perspective.
20 I'm glad my colleague wants to hear what we're saying
21 because I noticed when Ms. John was not speaking into the
22 mic, he comes out because he wants to hear this. I know
23 he's at least listening. I'm sure the others are also
24 listening. I think this is important so we can rectify
25 this.

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1 I think this case here is more egregious in the
2 character as Board Member White -- she didn't use those
3 words -- as part as adverse impacts. This, to me, totally
4 just destroys the character of that housing area but I
5 applaud them. I know it sounds contradictory and Ms.
6 Mahmood looking at me saying, "That guy is crazy."

7 But actually I'm not because I was buying it
8 for a minute and as I looked at it and started looking at
9 the five-foot step-ins as we go up, I just really think
10 that this is really just totally destroying the character
11 of that neighborhood. Also the 10-foot setback. I'm kind
12 of with Ms. John on where we look between but I don't know
13 what that magical number is.

14 I think it needs to be thought about and have
15 discussions. I don't think this does it for me. I think
16 within the regulations I think we need to stay hard fast
17 to the rule. I think that the step back actually does the
18 reverse opposite of what I think we're thinking it's
19 achieving.

20 Then I don't think there is any difference in
21 what the first initial report loss of plan was denied.
22 Mr. Chairman, I will be voting against this. I again also
23 will state that possibly depending on how this ends I
24 still may sua sponte this one as well.

25 CHAIRPERSON HILL: Okay. So my thoughts,

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1 again, are very similar to what they were in the previous
2 case. Now I don't even know what's going on to a certain
3 extent. If you're watching, you can go back and look at
4 Application 19635 and hear again what I had to say then.

5 We have been put with -- I'm just now defending
6 my position which is that there are standards that we have
7 been asked to look at and the way that I'm getting to the
8 place that I'm getting to is, again, those three
9 standards. I'm going to read them again just because I
10 don't think they are very easy, you know, for us to -- we
11 don't have the tools, I think, that are easily able to get
12 to where we need to get to.

13 Again, I want to reiterate I am not in this
14 position in -- as I'm sure Ms. -- other members might be
15 in terms of I'm not happy about it. Right? What I'm
16 asked to do and have been asked to do and trying to set at
17 least some continuity for the public in terms of what my
18 position is, based upon the standard that we've been
19 given, the way that we've been given it to look at, it
20 says, "The light and air available to neighboring
21 properties shall not be unduly affected. The privacy of
22 use and enjoyment of neighboring properties shall not be
23 unduly compromised." Again, unduly affected, unduly
24 compromised.

25 Those are kind of the next-door neighbors are

1 the ones that in the past, in past cases, people have been
2 most affected by or they have been the ones of whether or
3 not, you know, they are in support of meaning that if the
4 next-door neighbors are in support, it doesn't necessarily
5 mean we should be in support of it but that seems to have
6 provided some indication as to whether or not there is
7 unduly affected shadowing on the most immediate people.

8 Then the conversation about the associated
9 addition as viewed from the street, alley, and other
10 public way shall not substantially visually intrude upon
11 the character, scale, and pattern of housing along the
12 subject street or alley. That is, again, where I continue
13 to struggle.

14 I think that we are having a healthy discussion
15 about it but I don't know how I can get past the visually
16 intruding upon the character. If there was a different
17 word where it's more, I don't know, the feel or the
18 intent. I don't know what word it is that can get me past
19 the way the regulation is written with visually.

20 I don't think that it's visually intrusive upon
21 the character, scale, and pattern of the houses. I mean,
22 I think that, again, there seems to be some need to have
23 some kind of clarity for the public so that they know, and
24 the neighbors know, what could or could not happen so it's
25 not just -- it is difficult. I mean, I don't know how --

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1 it seems like if there were a more clear way to do this so
2 that the ANCs would know, the neighborhood would know what
3 is going to happen.

4 That's where, again, I am back to in terms of
5 my thought process for this. I thought we were going to
6 be rejecting this again and we're not it seems like. I
7 don't know, but if you want to sua sponte both of them, I
8 won't be offended.

9 CHAIR HOOD: I'm not going to sua sponte the
10 other one.

11 VICE CHAIR HART: Mr. Chair, just one piece. I
12 think we're going to be moving to a motion but, if I
13 could, one aspect of this, and I brought up the court on
14 the east elevation, the four-foot court that the applicant
15 has proposed. In the OP report, which I don't have the
16 number for. Just a second. I think it's Exhibit 51.
17 Yeah, it is 51. The OP report on page 3, I think. I'm
18 trying to look at this. I'm sorry.

19 What I wanted to do is just to add -- it is
20 page 3. When they talk about the privacy issue, the OP
21 report describes how the applicant -- how they are not
22 getting any windows on the west side. There are windows
23 on the east side.

24 The OP report actually says, and I quote, "The
25 proposed rear addition would not have windows on the west

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1 elevation and the windows provided along the east
2 elevation would be covered with a privacy film to ensure
3 the privacy of the neighboring property." Can we make
4 that a condition?

5 CHAIRPERSON HILL: Sure.

6 VICE CHAIR HART: I just would offer that just
7 so that has some -- this is supposed to be -- I understand
8 that the applicant may be already agreeing to it but I
9 thought it would be helpful to have that as a condition in
10 the wording.

11 CHAIRPERSON HILL: Okay. Does anyone else have
12 anything else they would like to add?

13 CHAIR HOOD: I do, Mr. Chairman.

14 CHAIRPERSON HILL: Sure.

15 CHAIR HOOD: If there is no more discussion, I
16 would move that we deny Zoning Commission Case No. 19657
17 for a special exception under the residential conversation
18 regulation Subtitle U 320.2 to construct a rear addition
19 to the existing one-family dwelling into a three-unit
20 apartment house in RF-1 Zone and take note that the ANC,
21 which we require by -- give great weight by law, has noted
22 the impacts of light and air and inconsistency of the
23 character with the streetscape. That's my motion and I
24 ask for a second.

25 MEMBER WHITE: Second.

1 CHAIRPERSON HILL: Motion made and seconded.
2 All those in favor say aye.

3 MEMBERS: Aye.

4 CHAIRPERSON HILL: All those opposed say nay.

5 MEMBERS: Nay.

6 CHAIRPERSON HILL: The motion fails.

7 CHAIR HOOD: Can we get a roll call, please.

8 SECRETARY MOY: Staff would record the vote as
9 two to three to zero. This is on the motion of Mr. Hood
10 to deny the application. Seconding the motion was Ms.
11 White. Those members opposed to the motion is Chairman
12 Hill, Vice Chair Hart, and Ms. John so the motion fails.

13 VICE CHAIR HART: I would like to make a motion
14 to approve Application 19657 of Mala Mahmood as read by
15 the secretary. I'm going to read this. Pursuant to 11
16 DCMR Subtitle X Chapter 9 for special exception of the
17 residential conversion regulations of Subtitle U 320.2 to
18 construct a rear-yard addition and convert an existing
19 one-family dwelling into a three-unit apartment house in
20 the RF-1 Zone at premises 1135 Morse Street, N.E., Square
21 4070, Lot 145 with the condition that there is a privacy
22 film on the east elevation windows.

23 CHAIRPERSON HILL: Second. Motion made and
24 seconded. All those in favor say aye.

25 MEMBERS: Aye.

1 CHAIRPERSON HILL: All those opposed.

2 MEMBERS: Opposed

3 CHAIRPERSON HILL: Mr. Moy, the motion passes.

4 SECRETARY MOY: The staff would record the vote
5 as three to two to zero. This is on the motion of Vice
6 Chair Hart to approve the application for the conversion
7 being requested with the condition as he has cited in his
8 motion. Seconding the motion was Chairman Hill. Also in
9 support Ms. John. Opposed to the motion Ms. White and Mr.
10 Hood. The motion carries.

11 CHAIRPERSON HILL: Full order, Mr. Moy?

12 SECRETARY MOY: Yes, sir.

13 CHAIRPERSON HILL: Okay. We're going to take a
14 quick break.

15 (Whereupon, the above-entitled matter went off
16 the record at 12:13 p.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: 03-07-18

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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