

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 11, 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:

ROBERT MILLER, Vice Chair  
MICHAEL TURNBULL, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
TRACEY ROSE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
BRANDICE ELLIOTT  
ANNE FOTHERGILL  
JOEL LAWSON

The transcript constitutes the minutes from the  
Public Meeting held on July 11, 2018.

## CONTENTS

19765 of Elizabeth Rosenberg . . . . .	7
19776 of Georgia Harley and Patrick Dennien . . . . .	10
19728 of Patrick and Becky McGeehan . . . . .	11
19377 of the Boundary Companies and the Missionary Society . . . . .	20
Adjourn . . . . .	35

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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

9:43 a.m.

CHAIRMAN HILL: All right, the hearing will please come to order. Good morning ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, NW.

This is the July 11, 2018 public meeting of the Board of Zoning Adjustment for the District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Carlton Hart, vice chair, Lesyllee White and Lorna John board members and representing the Zoning Commission is Mike Turnbull as well as Rob Miller on a few cases.

Copies of today's hearing agenda are available to you and are located on the wall bin next to the door. Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the board please turn on and speak into the microphone, first stating your name and home address.

When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 or in opposition must have raised their hand and been sworn  
2 in by the secretary. Also each witness must fill out two  
3 witness cards. These cards are located on the table near the  
4 door and on the witness table.

5           Upon coming forward to speak to the board please  
6 give both cards to the reporter sitting at the table to my  
7 right.

8           If you wish to file written testimony or  
9 additional supporting documents today please submit 1  
10 original and 12 copies to the secretary for distribution.  
11 If you do not have the requisite number of copies you can  
12 reproduce copies on an office printer in the Office of Zoning  
13 located across the hall. Please remember to collate your set  
14 of copies.

15           The order of procedure for special exceptions and  
16 variances as well as appeals is also listed as you come into  
17 the door.

18           The record shall be closed at the conclusion of  
19 each case except for any materials specifically requested by  
20 the board. The board and staff will specify at the end of  
21 the hearing exactly what is expected and the date when the  
22 persons must submit the evidence to the Office of Zoning.

23           After the record is closed no other information  
24 shall be accepted by the board.

25           The District of Columbia Administrative Procedures

1 Act requires that the public hearing on each case be held in  
2 the open before the public pursuant to section 405(b) and 406  
3 of that act.

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

12 The decision of the board in cases must be based  
13 exclusively on the public record. To avoid any appearance  
14 to the contrary the board requests that persons present not  
15 engage members of the board in conversation.

16 Please turn off all beepers and cell phones at  
17 this time so as to not disrupt the proceeding.

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

22 If you're not prepared to go forward with a case  
23 today or if you believe that the board should not proceed now  
24 is the time to raise such a matter.

25 Ms. Secretary, do we have any preliminary matters?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. ROSE: Yes, staff has a few preliminary  
2 matters regarding hearings in the following cases.  
3 Application number 19786 of Steve and Nancy Perry has been  
4 postponed to July 25, 2018.

5 Appeal number 19777 of Hilary Dove and Ranieri  
6 Cavaceppi has been postponed to September 26, 2018.

7 And application number 19774 of Philip Qiu and  
8 Associates LLC has been postponed to October 24, 2018.

9 And the other preliminary matters can be addressed  
10 when we call the individual cases.

11 CHAIRMAN HILL: Okay, great, thank you. If  
12 there's anyone here wishing to testify before the board if  
13 you would please stand and take the oath administered by the  
14 secretary to my left.

15 (Witnesses sworn.)

16 CHAIRMAN HILL: Okay, great, thank you. So just  
17 so everyone knows we are going to follow the order of the  
18 hearing cases and the meeting cases except for in terms of  
19 the decision cases we're going to do the first two  
20 application 19765 then 19776. We're going to switch the last  
21 two around and do 19728 and then 19377. Other than that  
22 we're going to follow the agenda. Ms. Rose, feel free to  
23 call our first case.

24 MS. ROSE: We have two cases on the expedited  
25 review calendar. First is application number 19765 of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Elizabeth Rosenberg as amended pursuant to 11 DCMR Subtitle  
2 X Chapter 9 for special exceptions under Subtitle D section  
3 5201 from the lot occupancy requirements of Subtitle D  
4 section 504.1, the rear yard requirements of Subtitle D  
5 section 506.1, the side yard requirements of Subtitle D  
6 section 507.1 and the non-conforming structure requirements  
7 of Subtitle C section 202.2 to construct a rear addition to  
8 an existing principal dwelling unit in the R-9 zone at  
9 premises 3416 Garrison Street NW square 2032 lot 57.

10 CHAIRMAN HILL: Okay, great. Thank you, Ms. Rose.  
11 Is the board ready to deliberate? Okay, I can go ahead and  
12 start.

13 After reviewing the record and also OP's report,  
14 the ANC and DDOT I didn't particularly have any issues with  
15 this. I thought it's expedited review. I thought it was  
16 pretty straightforward.

17 Again OP was in support. ANC 3F was in support  
18 with no issues or concern. And then DDOT had no objection.

19 I thought that OP's analysis was pretty well  
20 founded so I would go ahead and be in favor of this. Does  
21 the board have anything else they'd like to add?

22 MEMBER JOHN: I concur with you, Mr. Chair. I  
23 think this was a straightforward application for a rear  
24 addition to an existing one-family dwelling in the R-1 zone.

25 I also in addition to the items that you gave

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 weight to including OP's recommendation for approval there  
2 was also submissions in the record from the abutting neighbor  
3 supporting the application in addition to the ANC supporting  
4 it with a vote 6-0-0.

5 So I think they clearly met the special exception  
6 criteria as requested in the application.

7 CHAIRMAN HILL: Anyone else?

8 COMMISSIONER TURNBULL: Mr. Chair, I would concur  
9 with the vice chair and just reference that exhibit 11 by the  
10 applicant has both letters of the next door neighbors in it.

11 CHAIRMAN HILL: Okay, great. Thank you, Mr.  
12 Turnbull. Anyone else? Okay. Then I'm going to go ahead  
13 and make a motion to approve application number 19765 as  
14 captioned and read by the secretary and ask for a second.

15 MEMBER WHITE: Second.

16 CHAIRMAN HILL: Motion is made and seconded. All  
17 those in favor say aye.

18 (Chorus of ayes)

19 CHAIRMAN HILL: All those opposed? The motion  
20 passes, Ms. Rose.

21 MS. ROSE: Staff would record the vote as 5-0-0  
22 with a motion by Mr. Hill, seconded by Ms. White and in  
23 support of the motion would be Mr. Hart, Ms. John and Mr.  
24 Turnbull to approve.

25 CHAIRMAN HILL: Summary order, please.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. ROSE: Thank you.

2 CHAIRMAN HILL: Thank you.

3 MS. ROSE: Next is application number 19776 of  
4 Georgia Harley and Patrick Dennien pursuant to 11 DCMR  
5 Subtitle X Chapter 9 for a special exception under Subtitle  
6 E section 5201 from the non-conforming structure requirements  
7 of Subtitle C section 202.2 and the lot occupancy  
8 requirements of Subtitle E 304.1 to construct a rear deck  
9 addition to an existing principal dwelling unit in the RF-1  
10 zone at premises 58 V Street NW square 3117 lot 97, formerly  
11 lot 820.

12 CHAIRMAN HILL: Thank you, Ms. Rose. Is the board  
13 ready to deliberate? Okay, I can again start.

14 Again I thought this was straightforward expedited  
15 review. I thought that the applicant has met the criteria  
16 for us to grant this application. I thought that the  
17 analysis the Office of Planning has provided was very  
18 concise. They were in support of the application as well as  
19 the ANC had voted 8-0 in support with no issues or concerns.

20 Again, I thought it was pretty straightforward in  
21 terms of how they're meeting the criteria so I didn't have  
22 any questions about it. Does the board have anything they'd  
23 like to add?

24 MEMBER JOHN: Mr. Chairman, I would just note I  
25 concur with what you have said. And just to note that there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 was an updated calculation in the lot occupancy but there's  
2 no need to repost or anything like that because the relief  
3 was not changed.

4 CHAIRMAN HILL: Okay. Thank you, Ms. John.  
5 Anyone else? Okay, I'm going to make a motion to approve  
6 application number 19776 as captioned and read by the  
7 secretary and ask for a second.

8 VICE CHAIR HART: Second.

9 CHAIRMAN HILL: Motion made and seconded. All  
10 those in favor aye.

11 (Chorus of ayes)

12 CHAIRMAN HILL: All those opposed? Motion passes,  
13 Ms. Rose.

14 MS. ROSE: Staff will record the vote as 5-0-0 to  
15 approve the application with a motion by Mr. Hill seconded  
16 by Mr. Hart, in support of the motion is Ms. White, Ms. John  
17 and Mr. Turnbull.

18 CHAIRMAN HILL: Summary order, please.

19 MS. ROSE: Thank you.

20 CHAIRMAN HILL: Thank you.

21 MS. ROSE: Next is application number 19728 of  
22 Patrick and Becky McGeehan pursuant to 11 DCMR Subtitle X  
23 Chapter 9 for special exceptions under Subtitle E section  
24 5201 from the non-conforming structure requirements of  
25 Subtitle C section 202.2, from the rear yard requirements of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Subtitle E section 306.1, and from the lot occupancy  
2 requirements of Subtitle E section 304.1 to construct a two-  
3 story addition to an existing one-story rear addition to an  
4 attached principal dwelling unit in the RF-1 zone at premises  
5 121 Tennessee Avenue NE square 1012 lot 20.

6 Participating on this case Mr. Hill, Mr. Hart, Ms.  
7 White, Ms. John and Mr. Shapiro.

8 CHAIRMAN HILL: Okay, great, thank you. Is the  
9 board ready to deliberate? Okay, I can kind of start.

10 So this was pretty well attended and contested.  
11 We took a lot of testimony concerning the project. Just to  
12 kind of summarize the Office of Planning was in support and  
13 provided their analysis.

14 The ANC 6A was in support 4-1 and DDOT had no  
15 objection.

16 I guess there was a lot of -- there was party  
17 status that we had granted in terms of the neighbors and  
18 their concerns. And even kind of beyond the analysis of the  
19 standards we asked the applicant to work with the neighbors  
20 concerning a construction management agreement.

21 And I believe that they did submit an agreement  
22 or what they were proposing as the agreement. Although they  
23 didn't seem to agree with everything I thought that the  
24 applicant had made a good effort to address the concerns of  
25 the neighbors.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And then I did go back and look again at the  
2 hearing and all the testimony that we took and reviewed the  
3 different criteria. And I would -- at the end I agreed with  
4 the Office of Planning's report in terms of the analysis that  
5 they've provided.

6           And then I would be in approval of the  
7 application.

8           There was the construction management agreement  
9 that came forward and then there was some comments from the  
10 people in party status to that construction management  
11 agreement. Then there was a revised construction management  
12 agreement that was put forth at exhibit 68.

13           And then there was further discussion from the  
14 party status people in terms of their opposition to it in  
15 exhibit 69 where they were talking about parking and a few  
16 other items.

17           However, I still did think that the exhibit in  
18 exhibit 68 that the applicant -- and this is again beyond  
19 even necessarily the standards that we're looking at for  
20 review of the application, but that the applicant has put  
21 forward a good effort in terms of coming up with a  
22 construction management agreement.

23           Some of the things that the people in opposition  
24 were bringing up were things that they would be able to do  
25 matter of right anyway meaning the construction hours that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 the city has put forward is from 7 a.m. to 7 p.m. That's  
2 what they're able to do even if it was a matter of right  
3 project. So I don't see how those hours should be changed  
4 or how we even necessarily would be able to change those  
5 hours because those are the hours the city has allowed for  
6 construction to take place.

7 So that's my thoughts. Anybody want to add  
8 anything?

9 MEMBER WHITE: I'll just add a few thoughts.  
10 There was a lot of testimony in this case and all of us are  
11 very respectful of the concerns of the neighbor.

12 I agree with your comments with respect to the  
13 evolution of the construction management agreement. The  
14 applicant I believe made a reasonable effort to make some  
15 revisions to address some of the concerns of the neighbors  
16 as you've mentioned in exhibit 68 to respond to the  
17 opposition's comments.

18 The opposition was also allowed to respond to the  
19 revised agreement making a point regarding as you said  
20 parking and a point regarding the construction hours which  
21 I believe we don't have jurisdiction to make modifications  
22 if they have the ability to have the construction go on from  
23 7 a.m. to 7 p.m. as a matter of right.

24 There were also some concerns that we took very  
25 seriously regarding potential damage that could occur to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 adjoining properties. And one of the items that they  
2 included was to do a pre-construction inspection as part of  
3 the agreement to address concerns. That was also indicated  
4 in exhibit 68.

5 The opposition party Ms. Boyer had expressed a  
6 number of concerns which we definitely took into  
7 consideration. And there were also comments from OP, ANC as  
8 well as DDOT.

9 There was a letter in support from the Capitol  
10 Hill Restoration Society. But then they withdrew it to not  
11 take a position based upon some of the neighbors' opposition.

12 So again they wanted to construct a two-story  
13 addition to an existing one-story rear addition. And one  
14 point that I wanted to also indicate to try to mitigate  
15 potential damage to the neighbors was that the CMA maintains  
16 liability insurance in the amount of \$500,000 in addition to  
17 the general contractor's insurance policy. So that is also  
18 for the protection of the neighbors as well.

19 I gave great weight to all the information in the  
20 record, especially OP's report. Their comment was that the  
21 proposed addition will align with the neighboring properties  
22 at 123 Tennessee and should not unduly impact the shadowing  
23 or other issues with respect to the neighboring properties  
24 with respect to light and air.

25 So I would concur with your comments, Mr. Chair,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 as well as the comments of the ANC which I gave great weight  
2 to as well that this particular project will not  
3 substantially visually intrude upon the character and the  
4 pattern of the houses in the neighborhood with respect to  
5 this particular application.

6 So I would concur and would be in support of the  
7 application.

8 VICE CHAIR HART: The only part, Mr. Chairman,  
9 that I'd like to add. I think I would be inclined to be in  
10 agreement with both your and Board Member White's assessment  
11 so far and analysis so far.

12 There is the shadow study that was very helpful  
13 to see. I do note that there were some instances where there  
14 was kind of additional shadow on the adjoining neighbor and  
15 I think that that is important. But I also understand that  
16 that is at a very limited time -- I only saw two of the  
17 instances where there was a greater shadow from the existing  
18 to what is being proposed.

19 And I think that that would not be considered  
20 unduly. It is an impact for sure but I did not perceive that  
21 to be unduly impacted.

22 Just looking through the criteria I didn't find  
23 any other, anything else that I was really concerned about.  
24 I echo the analysis that you brought up regarding the  
25 construction management agreements and would be in support

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 of the application.

2 I think the Office of Planning provided sufficient  
3 information and rationale for us to be able to approve this  
4 application. And I'll leave it at that.

5 MEMBER JOHN: Mr. Chairman, I would just add I  
6 agree with everything that's been said so far. I would just  
7 add that the relief requested is not substantial.

8 The property is already non-conforming at 65.9  
9 percent lot occupancy with a proposed increase of 66.7  
10 percent which ends up being about 8.8 square foot difference.

11 And the relief from the rear yard is approximately  
12 2.3 feet or something. No, 2.3 feet. So because it's not  
13 a significant or substantial request and all of the other  
14 conditions are met I would support the application.

15 CHAIRMAN HILL: Great. So that being the case  
16 we're just having a public hearing right now. We're not  
17 taking testimony from anybody.

18 So it's just a deliberation. That's all this is  
19 right now. So to be clear, and I'm just making a comment  
20 here, so this is a public hearing wherein we don't take any  
21 testimony from anyone. We have everything that's already in  
22 the record that we've looked at and this is just taking the  
23 time here to discuss things in front of everyone on the dais  
24 based on what we have in the record.

25 So it's not something that we're able to change.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 That's just the way the system works.

2           So again I'm not having a discussion because  
3 you're not able to stand and speak up in this way. We have  
4 taken testimony from people in the record.

5           And so unless there's something else that I'm  
6 missing and anyone else thinks that's the case. Sir, even  
7 the fact that you're standing up right now, we're not able  
8 to take testimony or discussion. So I'm basically saying  
9 this out to everyone that's here.

10           This is the public meeting portion of the hearing  
11 wherein we just discuss what is in the record currently to  
12 come to a decision. So that's what we're doing right now.

13           Okay, so again I don't understand -- okay. All  
14 right, so OAG is providing further clarification for me. So  
15 again what we're doing here is having a discussion based upon  
16 what is in the record.

17           So at the time there was -- as I had stated at the  
18 very beginning when we were discussing things there was a  
19 construction management agreement that was submitted and then  
20 there was -- and I'm just kind of clarifying for the board  
21 as well, there was information that was submitted from people  
22 in opposition to that construction management agreement.

23           There was a construction management agreement  
24 revision that was then submitted. Somehow I guess or not  
25 somehow, commenting upon or making adjustments to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 comments that were presented in the record.

2           So then what we had allowed was the people in  
3 opposition to again in the record submit comments to that  
4 revised CMA. So the revised CMA was in exhibit 68. And then  
5 the comments that were taken from that revised CMA in exhibit  
6 68 were in exhibit 69.

7           And so as I had made comments about that whatever,  
8 their testimony, they again were talking about parking and  
9 a few -- and I can look it up but a few other things. And  
10 I felt comfortable with what the revised CMA had addressed.

11           And again that CMA is really something that is  
12 beyond necessarily even the standards that we look at when  
13 we're actually determining whether or not to approve a case.

14           So we were trying to get something from the  
15 applicant to help alleviate the concerns of the neighbors  
16 which is how the CMA went forward. So that is just kind of  
17 again going through how we here in this portion of the  
18 hearing are able to take testimony. It's just strictly off  
19 the written record that everyone has had the opportunity to  
20 participate in.

21           So that all being said does anybody have anything  
22 else they'd like to add?

23           MEMBER WHITE: I concur with your assessment, Mr.  
24 Chair. I think we considered all the information that's been  
25 submitted into the record which is now closed as part of our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 decision and deliberation today. So at this point we can't  
2 take additional testimony.

3 CHAIRMAN HILL: Okay. So that being the state  
4 I'll go ahead and make a motion to approve application number  
5 19728 as captioned and read by the secretary and ask for a  
6 second.

7 VICE CHAIR HART: Second.

8 CHAIRMAN HILL: Motion made and seconded. All  
9 those in favor aye.

10 (Chorus of ayes)

11 CHAIRMAN HILL: All those opposed? The motion  
12 passes, Ms. Rose.

13 MS. ROSE: Staff has received an absentee ballot  
14 from Mr. Shapiro to approve the application with such  
15 conditions as the board may impose. So staff would record  
16 the vote as 5-0-0 to approve the application with a motion  
17 by Mr. Hill seconded by Mr. Hart with Ms. White, Ms. John and  
18 Mr. Shapiro in support of the motion by absentee ballot.

19 CHAIRMAN HILL: Okay, great. Full order, Ms.  
20 Rose. Thank you.

21 MS. ROSE: The next application is 19377 of the  
22 Boundary Companies and the Missionary Society as amended  
23 pursuant to 11 DCMR Subtitle X Chapter 9 for special  
24 exceptions under the theoretical lot subdivision requirements  
25 of Subtitle C section 305.1, the roof structure requirements

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of Subtitle C section 1500.4 and the new residential  
2 development requirements of Subtitle U section 421, and  
3 pursuant to 11 DCMR Subtitle X Chapter 10 variances from the  
4 vehicular access requirements and the RA-1 zone development  
5 standards of Subtitle C section 305.3 to construct 60 row  
6 dwellings and a new clerical residential building in the RA-1  
7 zone at premises 3015 4th Street NE, square 3648, lot 915.

8 CHAIRMAN HILL: All right. Is the board ready to  
9 deliberate? Okay. Somebody else want to start?

10 VICE CHAIR HART: Sure, Mr. Chairman. So this  
11 case has been I guess around for a little while now. I guess  
12 we first had the case -- well before us it started last year,  
13 but we really did have the hearings more of this year.

14 And we've heard a lot from the testimony from the  
15 applicant and people that are either supporting the applicant  
16 or folks that are representing the applicant regarding why  
17 this -- how this case, this application meets the criteria  
18 for both variance relief and special exception relief.

19 And I do appreciate the testimony provided by both  
20 the applicant, the opposition party, the Office of Planning  
21 and others who spoke regarding this application.

22 And so the applicant is seeking as I noted both  
23 variances and special exception relief from the zoning regs.  
24 I do believe that they have provided sufficient information  
25 for me to be able to support their application, how they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 demonstrate how they can meet the criteria to approve the  
2 relief.

3           And I do note that there were some conditions that  
4 have been proposed for the project to reduce impacts that are  
5 anticipated with the project.

6           And there were these 12 conditions which were  
7 developed to mitigate these impacts from the proposed  
8 development. And I do agree that these conditions are  
9 necessary to mitigate the impacts from the proposed  
10 development.

11           Regarding the variance test of course there are  
12 the three prongs, exceptional situation that results in a  
13 practical difficulty. I do agree with the Office of Planning  
14 report which is exhibit 89 which states the property is  
15 affected by an exceptional situation that results in a  
16 practical difficulty.

17           These have to do with both the slope and  
18 topography, the historic St. Paul's College building which  
19 is the existing building on the site which is approximately  
20 25 feet above 4th Street at the top of a small hill. And  
21 this slopes down -- this sloping site includes the viewsheds  
22 for this historic St. Paul's College building. So they're  
23 kind of moving the new development a little bit off of that.

24           Furthermore the applicant has committed to the  
25 preservation of a number of trees onsite. And I believe that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 these factors have combined to create an exceptional  
2 situation that results in a practical difficulty.

3 So the topography is a factor because views to and  
4 from the St. Paul's College building which needs to sit on  
5 top of this topographic hill and needs to be preserved and  
6 the buildings are placed away from the college building so  
7 that will help to protect and preserve the existing trees as  
8 well as the views towards this building.

9 Regarding the detriment to the public good --  
10 excuse me, no detriment to the public good the project would  
11 provide several access ways or I guess the 26 foot wide  
12 vehicular access way at the northern end of the site and the  
13 narrower 20 foot wide access way at the southern end of the  
14 site. And this southern one would permit the access into the  
15 site as well as to the St. Paul's College building which is  
16 now being used as a school.

17 The requested relief would help to maximize open  
18 space, preserve existing tree cover along 4th Street and  
19 maintain the viewshed of the existing St. Paul's College  
20 building.

21 Then regarding the no substantial harm to the  
22 zoning regs I just felt that the area of variance relief, the  
23 residential use is contemplated in this zone and the  
24 applicant is proposing the construction of 60 new row houses  
25 or townhomes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           This development that they're proposing is  
2 actually very much in keeping with an existing development  
3 that's already constructed on the site or constructed east  
4 of this proposed site. And I just felt that that was very  
5 much in the same vein of what is already existing.

6           The construction of 60 row houses, and this is  
7 from the Office of Planning report. The construction of 60  
8 row houses on more conforming lots would result in increased  
9 site disturbance, grading and loss of trees. And although  
10 individual lots would be non-conforming the overall  
11 development would conform to lot occupancy and height  
12 regulations for the site as a whole which is consistent with  
13 the theoretical lot provisions.

14           So in looking at this I felt that the high bar was  
15 of course the variance regulations and I believe that they  
16 had met the variance regulations reading through the  
17 applicant's pre-hearing statement as well as hearing the  
18 testimony from them and the Office of Planning.

19           Regarding the special exception relief I did not  
20 find -- I found that I could also agree with the Office of  
21 Planning's report in this and would be supportive of the  
22 relief that was being sought for the project.

23           I'll note that there was quite a bit of discussion  
24 between the applicant and the opposition party regarding this  
25 project. And I'm hopeful that they'll be able to continue

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 their discussion and be able to reach an agreement that would  
2 be beneficial for everyone.

3           And I understand that the opposition party and  
4 some others that spoke had an expectation of open space for  
5 this entire property and were somewhat taken aback by the  
6 proposed development.

7           But I do believe that they have worked in earnest  
8 with the applicant to try to come to an agreement that they  
9 can kind of live with and be okay with.

10           So I did feel that they met the zoning regs and  
11 would be supportive of that noting that there's been quite  
12 a number of discussions that have happened over time and that  
13 this has been a fairly difficult process to date.

14           As I said I'm hopeful that they'll be able to come  
15 to an agreement that would be beneficial to all.

16           MEMBER WHITE: I'll add some of my comments as  
17 well. This case had 194 exhibits in it. I mean it was a  
18 very thorough record and we all have jobs as well, but as  
19 members of the board we're responsible for reviewing the  
20 record in full.

21           So I just wanted to say to the audience just to  
22 kind of reiterate how detailed this case is. But it's also  
23 a very important case as Mr. Hart mentioned. The applicant  
24 is seeking zoning relief to allow 60 townhomes in 11 clusters  
25 and a new building, a religious residential building. So

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 it's a very large project so we take it very seriously in  
2 terms of how it impacts the neighbors.

3           The party in opposition, St. Paul College Neighbor  
4 of Thoughtful Development submitted information and provided  
5 testimony in terms of how this project and application would  
6 impact them. And we did give thoughtful consideration to  
7 that.

8           We received submissions from the U.S. Conference  
9 of Catholic Bishops reiterating their concerns regarding the  
10 proposed 4th Street driveway that they argue adversely  
11 impacts their property because of the close proximity.

12           And the applicant in response has agreed to a  
13 number of the DDOT conditions that you have all seen in the  
14 record.

15           The applicant did make a number of changes to the  
16 location as an aside to the nine inclusionary zoning units  
17 in exhibit 192(c). The ANC had some objections with some of  
18 the original proposals of the applicant regarding the  
19 location so I do -- wanted to comment that it appears that  
20 they're not as clustered as before and there seems to be some  
21 dispersion of the IZ units.

22           The ANC support was very vocal in this case  
23 regarding the IZ component of the nine homes, three homes at  
24 50 percent, 60 percent and 80 percent AMI levels and to offer  
25 use of the playground, green space in the broader community,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 recreation areas were detailed, tree preservation plan as  
2 well as the location of the new building at least 70 feet  
3 from the existing homes and the new townhomes and at least  
4 40 feet from the existing homes.

5 I gave weight to as Mr. Hart indicated to OP's  
6 report and the testimony at the hearing recommending approval  
7 of the application.

8 They indicated that the proposed development  
9 satisfied the special exception and variance criteria which  
10 is a very high standard and that the development is in  
11 harmony with the general purpose and intent of the zoning  
12 regulations and maps and wouldn't adversely affect the use  
13 of the neighboring property or adversely affect the present  
14 character and future development of the neighborhood.

15 For example, they discussed the separation of the  
16 development from the Chancellor Row community which gave --  
17 neighbors gave quite a bit of testimony that we considered.  
18 It would be 50 feet in the northwestern corner and 75 feet  
19 in the southern portion of the property.

20 OP also discussed the compatibility of the design  
21 with the Chancellor Row community design.

22 In exhibit 192(a) the applicant agreed to a number  
23 of conditions and there are quite a few conditions. I don't  
24 know if we will read each one of those. Probably not, right,  
25 Mr. Chair? To mitigate the impacts to the communities.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           And I believe that these include recommendations  
2 from DDOT which include designs that comply with DDOT's 2017  
3 DEM standards where they connect with the public street  
4 network, TDM plan, public pedestrian and vehicular access  
5 easements as specified in the seventh condition.

6           In looking at the relief proposed by the applicant  
7 the applicant requested both variance and special exception  
8 relief.

9           Variance relief under C 305.3. The property is  
10 affected by an exceptional situation resulting in a practical  
11 difficulty from my perspective. The property is constrained  
12 by sloping topography.

13           OP also noted that multifamily structure low-rise  
14 would minimize these difficulties but a rowhouse type  
15 structure is more in keeping with this particular area.

16           We also have to prove under the variance standard  
17 that there is no substantial detriment to the public good.  
18 There's 25 foot wide vehicular access way at the northern end  
19 of the site and 20 feet access way at the southern end of the  
20 site which would maximize open space, tree cover, viewshed  
21 of St. Paul College building.

22           I also found that there was no significant harm  
23 to the zoning regulations from area variance relief. The  
24 residential use is contemplated by RF-1 zone.

25           The overall development would conform to lot

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 occupancy and height regulations for the site as a whole  
2 consistent with the intent of the theoretical lot provisions.

3           And then with respect to the special exception  
4 relief that they're requesting under C 305.1 for multiple  
5 buildings on a single lot the applicant is proposing to  
6 construct 11 groupings of row homes with the shortest bar  
7 consisting of 2 semidetached buildings and the longest bar  
8 consisting of 10 rowhouses and a new building for the  
9 Missionary Society of St. Paul the Apostle.

10           The applicant I believe has met that criteria as  
11 well as the special exception relief pursuant to U 421 for  
12 new residential development and the RA zone.

13           The applicant met the criteria to refer the  
14 application. By referring the application to the relevant  
15 D.C. agencies which commented and provided information and  
16 recommendations including the Deputy Mayor of Education.  
17 Office of Zoning referred the application to DPR. And Office  
18 of Zoning also referred the application to the Office of  
19 Planning.

20           With respect to the special exception relief  
21 requested for roof structures on rowhouses I believe the  
22 applicant complies since it would provide access to the roof  
23 deck and would measure 8 feet 10 inches on 16 foot wide units  
24 and measure 10 feet in height on 20 foot wide units.

25           Also, theoretical lots 1 through 7 and 20 through

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 28 would have penthouses but all other lots could include  
2 penthouse structures and that proposed penthouse structure  
3 would contain only access stairs to the roof.

4           So in conclusion after this long-winded comment  
5 that I provided I would support the application with the  
6 proposed conditions. I believe the development will have an  
7 effect on the neighboring properties, but I think that the  
8 conditions mitigate the adverse impacts that it will  
9 ultimately have on the neighborhood. So those are my  
10 comments.

11           COMMISSIONER MILLER: Thank you, Mr. Chairman, and  
12 thank you, Vice Chair Hart and Board Member White for those  
13 very comprehensive comments and analysis and conclusions all  
14 of which makes it easy for me simply to say I concur with  
15 them and maybe just reiterate the support that this  
16 application does have from ANC 5E and Office of Planning and  
17 DDOT with all of the conditions that do address the many  
18 concerns that those agencies expressed and that were  
19 expressed by neighbors in the record.

20           The only additional information I would note they  
21 may have touched on was in terms of the inclusionary zoning  
22 I think the applicant is providing a greater amount of  
23 affordable housing and a deeper level of affordability than  
24 the minimum amounts within the minimum amount of  
25 affordability that inclusionary zoning requires which is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 good thing.

2           There's also a condition that was added, this is  
3 the relative to the testimony we had that limited the use of  
4 the Paulist building that's going to remain to clerical  
5 residency use.

6           So the concern that was expressed that oh my God,  
7 we're not going to have another charter school here as a  
8 matter of right, that could not happen as a matter of right.  
9 Any use other than clerical residency for the number of  
10 clerical residents that's specified in that condition would  
11 have to come back to this board for a modification and a  
12 public hearing.

13           So with all of that I appreciate all of the  
14 analysis and conclusions that my fellow colleagues have made  
15 and I'm ready to move forward.

16           MEMBER JOHN: Mr. Chairman, I just have a couple  
17 of comments. I concur with everything that's been said. I  
18 thought the analysis so far provided by Board Member White  
19 and Vice Chairman Hart.

20           So I need to add that because I joined the board  
21 after this application was first filed I have reviewed the  
22 record and participated in the April 25 and I believe the May  
23 hearing, not I believe, the May hearing.

24           I'd like to note that there was as Board Member  
25 White said significant testimony from many witnesses. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I thought that the major issues involved traffic and the harm  
2 or potential harm to the Chancellor Row houses.

3 In terms of those issues I believe the applicant  
4 worked well with the neighbors and the party in opposition  
5 and other witnesses who testified, not worked well with them  
6 but addressed their concerns so that the final design is more  
7 reasonable. It was reduced to about 61 houses which makes  
8 the development less dense.

9 The project was supported by the ANC and the ANC  
10 expressed an interest in having a mix of housing in the  
11 neighborhood which I will give great weight to.

12 I'm also giving great weight to DDOT's analysis  
13 and recommendations because many of the witnesses testified  
14 concerning the fact that there would be too much traffic in  
15 the neighborhood and was concerned about how the traffic  
16 would enter and exit the neighborhood.

17 And so because DDOT is the expert and there was  
18 no testimony that credibly contradicted DDOT's  
19 recommendations then I would give great weight to what DDOT  
20 has proposed.

21 The only thing that I need to add is that I  
22 believe that the conditions will help -- as agreed to by the  
23 applicant will help to mitigate some of the concerns of the  
24 neighbors in terms of any potential adverse impact of the  
25 project. So, thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           CHAIRMAN HILL:       Okay, great.       Thank you,  
2 everybody. And thank you all for your thorough thoughts and  
3 analysis so I don't really have a lot to add other than I  
4 guess the conditions that we're specifying that we're putting  
5 into the record if this were to move forward would be the  
6 ones from DDOT's report on pages 2 through 3 as well as the  
7 conditions in exhibit 192(a) pages 18 through 20. So those  
8 are the ones that I believe we're all speaking of and let me  
9 know if you think that that's different.

10           The only other things I guess I wanted to add I  
11 suppose is that I did see the information from USCCB in terms  
12 of their concerns about traffic and water drainage. And  
13 although I do respect and understand their concerns I thought  
14 that the DDOT report and the conditions would mitigate  
15 anything concerning enough that I would not be opposed to the  
16 application moving forward.

17           I also did want to say that I as you, Ms. John,  
18 I did review this record as I don't think I was here for the  
19 full testimony. I watched the whole testimony as well as --  
20 I would like to comment actually that I even thought that the  
21 people in opposition, they did a very clear argument I  
22 thought and it was very respectful in terms of the  
23 professionalism, particularly Mr. John Anderson and how he  
24 went through his arguments. Although he's not a land use  
25 attorney I thought that he did a very good job.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I also did listen to and think that it was  
2 interesting in terms of the argument of getting a second bite  
3 at the apple in terms of the project. I went back and looked  
4 at the ZC and there was nothing there that claimed that that  
5 area was to remain undeveloped. So I didn't see anything  
6 that clearly said that so that's kind of how my thoughts on  
7 that particular argument.

8 And so I don't have anything else to add. So if  
9 that's the case then I'll go ahead and approve application  
10 number -- or make a motion I should say to approve  
11 application number 19377 as captioned and read by the  
12 secretary including the conditions from DDOT's report on  
13 pages 2 through 3 as well as the conditions in exhibit 192(a)  
14 pages 18 through 20 and ask for a second.

15 VICE CHAIR HART: Second.

16 CHAIRMAN HILL: Motion made and seconded. All  
17 those in favor aye.

18 (Chorus of ayes)

19 CHAIRMAN HILL: All those opposed? The motion  
20 passes, Ms. Rose.

21 MS. ROSE: Staff would record the vote as 5-0-0  
22 on a motion by Mr. Hill seconded by Mr. Hart with Ms. White,  
23 Ms. John and Mr. Miller in support of the motion.

24 CHAIRMAN HILL: Full order, Ms. Rose.

25 MS. ROSE: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   CHAIRMAN HILL: We're going to actually take a  
2 really quick break and then we'll be right back with our  
3 first hearing case.

4                   (Whereupon, the above-entitled matter went off the  
5 record at 10:35 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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: 07-11-18

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.



-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701