

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 18, 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
- CARLTON HART, Vice Chairperson (NCPC)
- LORNA JOHN, Board Member
- LESYLLEE M. WHITE, Board Member

ZONING COMMISSION MEMBER PRESENT:

- ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from the Public Meeting held on July 18, 2018.

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

9:40 a.m.

1
2
3 BZA CHAIR HILL: All right, good morning,
4 everybody. The hearing will please come to order. We're
5 located in the Jerrily R. Kress Memorial Hearing Room at
6 441 4th Street. This is the July 18 public hearing of the
7 Board of Zoning Adjustment for the District of Columbia.

8 My name is Fred Hill, chairperson. Joining me
9 today are Carlton Hart, vice chair, Lorna John, board
10 member and representing the Zoning Commission is Anthony
11 Hood.

12 Later on we probably will be joined by also
13 Board Member Lesyllee White.

14 Copies of today's hearing agenda are available
15 to you and located in the wall bin near the door. Please
16 be advised that this proceeding is being recorded by a
17 court reporter and is also webcast live.

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

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

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

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

9 If you wish to file written testimony or
10 additional supporting documents today please submit 1
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. Please remember to
15 collate your copies.

16 The order of procedure for special exceptions,
17 variances and appeals is also listed in the bin as you
18 come through the door.

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

25 After the record is closed no other information

1 shall be accepted by the board.

2 The District of Columbia Administrative
3 Procedures Act requires that the public hearing on each
4 case be held in the open before the public pursuant to
5 section 405(b) and 406 of that act.

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

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

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

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

25 If you're not prepared to go forward with a

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

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

5 MR. MOY: Good morning, Mr. Chairman, members
6 of the board. I do very briefly, Mr. Chairman, and this
7 is for the transcript as to today's docket.

8 Two applications have been withdrawn by the
9 appellant and the applicant respectively. Appeal number
10 19613 of B Monroe Ventures LLC and case application number
11 19614 of B Monroe Ventures LLC.

12 There are other preliminary matters throughout
13 the day but staff would suggest that the board address
14 those when I call the case.

15 BZA CHAIR HILL: Okay, great. Thank you, Mr.
16 Moy. So just to let everybody know here in the audience
17 we are going to basically follow the schedule with the
18 exception of during the public meeting agenda for the
19 decision cases we're going to be moving two of the
20 decision cases to the end of the day because we need to
21 postpone those till the end of the day.

22 And those would be application number 19764 of
23 4926 Wisconsin Avenue as well as application number 19768
24 of CDDC. We're going to postpone those till the end of
25 the day for decision-making. Other than that we're going

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1 to follow the schedule.

2 So if there's anybody here that wishes to
3 testify in front of the board if you wouldn't mind
4 standing and taking the oath which is going to be
5 administered by the secretary to my left.

6 (Whereupon, the witnesses were sworn.)

7 BZA CHAIR HILL: All right, Mr. Moy. Whenever
8 you want to call our first decision case, please.

9 MR. MOY: Thank you, Mr. Chairman. So we have
10 before the board an expedited review application. That
11 application is application number 19792 of Michael Furr,
12 F-U-R-R, captioned and advertised for a special exception
13 under Subtitle E section 5201 from the lot occupancy
14 requirements of Subtitle E section 304.1, rear yard
15 requirements Subtitle E section 306.1, non-conforming
16 structure requirements Subtitle C section 202.2 which
17 would construct a rear addition to an existing principal
18 dwelling unit RF-1 zone. This is at 220 14th Place NE
19 square 1055, lot 98.

20 BZA CHAIR HILL: Okay, great. Thank you, Mr.
21 Moy. Is the board ready to deliberate? Okay. I can
22 start.

23 After reading through the record I didn't
24 really have a lot of concerns about this expedited review.
25 I thought that OP's analysis was well founded.

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1 The applicant addressed the special exception
2 criteria of E 5203 for relief under E 5201 and that was in
3 exhibit 10.

4 There are letters of support from adjoining
5 neighbors of 218 14th Street and 222 14th Street.

6 The ANC 6A was also in support citing no issues
7 or concerns. DDOT had no objection to the approval. And
8 I was not concerned about this expedited review.

9 Does the board have anything else they'd like
10 to add? Okay. Then I'll go ahead and make a motion to
11 approve application number 19792 as captioned and read by
12 the secretary and ask for a second.

13 VICE CHAIRPERSON HART: Second.

14 BZA CHAIR HILL: Motion made and seconded. All
15 those in favor aye?

16 (Chorus of ayes)

17 BZA CHAIR HILL: All those opposed? Motion
18 passes, Mr. Moy.

19 MR. MOY: Staff would record the vote as 4-0-1.
20 This is on the motion of Chairman Hill to approve the
21 application for the relief being requested. Seconding the
22 motion Vice Chair Hart. Also in support Mr. Anthony Hood,
23 Ms. John. We have a board member not present. The motion
24 carries, sir.

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

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1 order.

2 MR. MOY: Yes, sir, thank you. The next case
3 application for decision-making is application number
4 19722. This is of Kline Operations as amended for special
5 exceptions under Subtitle I section 205.5 from the rear
6 yard requirements, Subtitle I section 205.1 and under
7 Subtitle C section 1504 from the penthouse setback
8 requirements of Subtitle C, section 1502.1(c)(4) and
9 pursuant to Subtitle X Chapter 10 for variances from the
10 loading berth requirements of Subtitle C section 909.2.
11 This is from the loading access requirements of Subtitle C
12 section 909.3, from the court requirements Subtitle I
13 section 207.1 and from the interior height requirements
14 Subtitle I section 612.4 to construct a new 11-story hotel
15 in the D-4-R zone 925 5th Street NW square 516, lots 827,
16 828, 829, 833.

17 And participating on this vote I believe is
18 Vice Chair Hart, Ms. White, Ms. John and Mr. Hood.

19 BZA CHAIR HILL: As you just mentioned I'm not
20 on this case so I'm going to turn it over to Vice Chair
21 Hart. Thank you.

22 VICE CHAIRPERSON HART: Thank you. So this
23 case, we've had a lot of discussion about the case. We've
24 had several full hearings, very full hearings on the case.
25 I do appreciate the time and effort that everyone has put

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1 into it.

2 We actually had two parties in opposition.
3 They were 450K CAP LLC and Mr. Stephenson, Mr. Aubrey
4 Stephenson.

5 We last had the hearing on June 20 and we also
6 had a hearing on April 4. And during the hearings we
7 heard from the applicant and the -- we gave some direction
8 to the applicant regarding the project.

9 In particular the issue was around the
10 penthouse and penthouse relief. The applicant has met
11 with the Office of Planning a number of times we're
12 understanding and they have made also design changes.
13 Some of those design changes they showed us at the last
14 hearing.

15 And that was in an effort to address the
16 comments from the Office of Planning which in the original
17 report which was exhibit 52 they recommended supporting
18 all of the relief with the exception of the penthouse
19 setback relief.

20 And this was primarily due to the applicant
21 wanting to have a habitable penthouse on the roof.
22 They've now since the last hearing the applicant has
23 definitely taken the hearings seriously or at least it
24 appears they've taken them and understood them and heard
25 the information and they have come back and decided to

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1 change course regarding the penthouse and they no longer
2 are proposing an occupied penthouse. So it's not
3 habitable.

4 So the revised design would only include a
5 mechanical penthouse. The OP report in exhibit 19 --
6 actually there are a number of OP reports so this is a
7 supplemental report -- now states that the Office of
8 Planning can support all of the requested relief which
9 still does include some penthouse setback relief but it is
10 not for the habitable penthouse.

11 And I'll say that I heard the opposition
12 parties. They had some concerns about some of the relief
13 regarding the access to the rear of the building via the
14 alley. Also some concerns about I guess it's the
15 transportation analysis that was done.

16 The applicant provided their transportation
17 consultant here to discuss the case and to describe how
18 they're meeting -- they'd be able to deal with the traffic
19 concerns.

20 I do appreciate the information and the
21 discussion that they've had for this case and I do believe
22 that the applicant has provided sufficient information to
23 show how they are meeting the relief and I take them at
24 the testimony that they provided regarding how they are
25 meeting the relief.

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1 So I would side with the Office of Planning
2 report and I could also support the requested relief as I
3 believe that the applicant has provided sufficient
4 information to demonstrate how they're meeting this
5 request.

6 And it's for a 153 key hotel. There were some
7 conditions regarding some lenience or a little bit of
8 flexibility in whether or not how many hotel units or
9 rooms they should be allowed and some other conditions as
10 well. We can discuss that as we get into this discussion.

11 But I wanted to hear from my fellow board
12 members regarding the application.

13 MEMBER JOHN: Mr. Vice Chair, I will add a few
14 comments to yours and I may repeat some of what you said
15 but I will try to be brief.

16 As Vice Chairman Hart noted this is an
17 application to build an 11-story hotel in the DR-4-R zone
18 at 925 5th Street NW.

19 The application was amended several times.
20 There are 114 exhibits with testimony on several days.

21 As amended the applicant now seeks variances
22 from the loading berth requirements of Subtitle C 909.2,
23 loading access under C 909.3, court requirements under I
24 207.1 and interior height as well.

25 With respect to the court requirements and the

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1 interior height variances the applicant demonstrated that
2 there was an exceptional condition affecting the property
3 resulting in a practical difficulty as noted in the Office
4 of Planning report on March 23, 2018 which I've relief on.

5 To summarize the Office of Planning noted that
6 the small size with respect to the area width as well the
7 Office of Planning noted that the small size of the court
8 compared to others in the square has a practical
9 difficulty of optimizing the design to provide adequate
10 separation, light and air for the building were factors to
11 be considered.

12 The Office of Planning also noted the
13 inefficiencies of losing the third story to achieve 2 foot
14 height and a 12 foot depth to comply with the interior
15 height requirement. So that was also a consideration for
16 granting that variance.

17 Variances from the loading access requirement
18 and loading berth requirement were not -- were the most
19 controversial issues for the opposition parties because of
20 the narrow alley at the rear of the structure.

21 Witnesses identified safety concerns from
22 potential congestion in the alley. Because the applicant
23 could not obtain approval for a curb cut the applicant
24 placed the loading berth under the building with entry
25 from the larger section of the alley at the rear of the

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1 structure. At that location OP noted that adding a second
2 loading berth as required would result in significant loss
3 of use on portions of the building.

4 There was also testimony that having one
5 loading berth would reduce the level of traffic in the
6 alley which I considered significant information.

7 DDOT does not oppose the application and based
8 its recommendation on implementation of the applicant's
9 proposed loading management plan.

10 With respect to the special exception relief
11 from the rear yard requirement there was also significant
12 testimony from the opposition including the
13 representatives of 450 K Street.

14 The applicant in response revised the design to
15 provide a 1.5 foot rear yard instead of no yard which
16 created a 10 foot separation between the building at 450 K
17 Street NW and the proposed structure.

18 The applicant also rearranged the location of
19 windows to minimize the impact on 450 K Street because
20 there was a lot of testimony about at risk windows and how
21 there would be loss of privacy from the proximity to 450 K
22 Street.

23 As Vice Chairman Hart noted the applicant
24 withdrew its request to construct a two-story penthouse
25 with habitable space and instead is now seeking only

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1 relief for a mechanical one-story penthouse.

2 As revised the relief requested would have
3 significantly less impact on the neighboring residential
4 uses and a number of the residents complained of potential
5 noise and loss of privacy from having a habitable
6 penthouse.

7 The size of the mechanical penthouse was also
8 reduced.

9 The ANC supports the application. And so in
10 the interest of time I have highlighted the most
11 significant issues but I have given great weight to the
12 thorough analysis of the Office of Planning, DDOT's
13 recommendation with regard to how the applicant meets the
14 criteria in the regulations for variances and special
15 exception relief.

16 I appreciate the testimony of the witnesses and
17 in the final analysis the design now offered has
18 accommodated most if not all of the witnesses' concerns.

19 The applicant's request for flexibility can be
20 accommodated by the zoning administrator who has the
21 discretion to waive or to approve a 2 percent deviation or
22 change to the requirements and so I would not support that
23 request at this time.

24 VICE CHAIRPERSON HART: Thank you, Board Member
25 John.

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1 ZC CHAIR HOOD: Mr. Vice Chairman, I appreciate
2 all the work that went into this. This is our fourth
3 Office of Planning report.

4 I am not inclined again as we've done away with
5 the penthouse and I'm stuck on the penthouse issue. I
6 believe as stated and the applicant has showed due
7 diligence in redesigning to get us to where we are now.

8 Even the amenity of the habitable space which
9 was taken out off the map I believe they can continue to
10 conform to the regulations which the Zoning Commission put
11 in place for even the mechanical.

12 As you've heard through you all deliberations
13 it talks about design. And again I'm not there -- while
14 the design for the one-story penthouse, we appreciate the
15 redesign to lessen impact, I believe the redesign to be
16 able to meet the regulations of the penthouse setback
17 rules.

18 So I am not inclined to vote in favor of this
19 application today due to that. And I'll just leave it at
20 that.

21 If it passes I'm not sure whether I'm going to
22 take it to the Zoning Commission sua sponte. I'm just
23 putting it out there so everyone knows where I am.
24 Because I don't think they met the threshold for any
25 relief for the penthouse regulations. And that's where I

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1 am.

2 VICE CHAIRPERSON HART: Thank you. So I think
3 that I've heard from both of the board members that are
4 here. I know we have an absentee ballot from Ms. White.
5 I guess we'll hear from that later.

6 But I did want to talk a little bit about the -
7 - well, actually we shouldn't talk about the conditions
8 yet because we don't know where we are with it.

9 Would anybody like to make a motion? Would you
10 like me to make a motion?

11 MEMBER JOHN: Mr. Vice Chair, I move that we
12 approve that the application as requested.

13 VICE CHAIRPERSON HART: And we actually have
14 the conditions that are included in this. So maybe it is
15 better that we discuss the conditions.

16 There were some conditions from the ANC,
17 conditions from DDOT. The applicant actually provided --
18 because I think we need to discuss the conditions.

19 ZC CHAIR HOOD: So we need to take the motion
20 off the table.

21 VICE CHAIRPERSON HART: Yes.

22 ZC CHAIR HOOD: And also I would ask that we
23 break it up. Break the motion up. Because I can vote for
24 the variances, I just would not be voting for the
25 penthouse setback.

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1 VICE CHAIRPERSON HART: Okay. So what I was
2 going to do is to discuss the conditions that the ANC,
3 DDOT and the applicant have put forward.

4 The conditions from the applicant were
5 regarding some flexibility with regard to the interior
6 layout and number of hotel units. They also wanted some
7 flexibility around the exterior materials and flexibility
8 to make some changes or refinements to the exterior
9 details and dimensions that are outstanding necessary to
10 obtain a final building permit.

11 They finally also had some condition regarding
12 the penthouse use but since the penthouse is no longer to
13 be used I didn't think that that condition -- or there's
14 not going to be a habitable penthouse I didn't think that
15 condition was really necessary.

16 From the ANC we had three conditions. One was
17 that the applicant requesting three reserved parking
18 spaces in front of the property on 5th Street from DDOT.
19 The applicant working with the surrounding property owners
20 to construct a workable plan to prevent congestion in the
21 access in the narrow alleyway. And then finally that the
22 owner ensure that the operator adheres to neighborhood
23 norms -- oh, this is actually with regard to the rooftop
24 issue which we no longer have that as an issue. So it's
25 really just those two conditions.

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1 And from DDOT it was two kind of overall issues
2 were the implementation of the following loading
3 management plan. And then it talks about some issues
4 regarding the loading management plan and then
5 implementation of the TDM transportation demand management
6 plan as proposed in the March 1, 2018 transportation and
7 assessment memorandum. And so those are a number of
8 bullets that are included in that.

9 I didn't know if you had any discussion around
10 those to change any of those. I had some concerns around
11 the issues around how many units. Right now the applicant
12 had brought in 153 room hotel. And the applicant is
13 basically saying that they may have 160 depending on the
14 layout of the interior, or they may have more than that,
15 or maybe a few less. And so they were just trying to
16 figure out how to deal with that particular issue.

17 Anyone have any thoughts on any of those
18 conditions?

19 MEMBER JOHN: Mr. Vice Chair, as I mentioned
20 earlier I am of the opinion that the zoning administrator
21 has the discretion to provide relief in the amount of
22 about 2 percent and could make those determinations. In
23 the event that more relief was needed the applicant should
24 be required to return to the board.

25 I think granting this type of flexibility could

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1 prevent the board from exercising its authority should
2 there be something significant that would impact the
3 order.

4 The conditions are not specific enough to agree
5 to them.

6 VICE CHAIRPERSON HART: So you're saying that
7 the conditions that the applicant has --

8 MEMBER JOHN: The applicant has proposed for
9 the 2 percent increase, increase the number of stories,
10 for example. I would support having the applicant return
11 to receive --

12 VICE CHAIRPERSON HART: And I appreciate that.
13 You were just saying that you would support them coming
14 back to us for any changes.

15 MEMBER JOHN: Yes.

16 VICE CHAIRPERSON HART: And I think I would be
17 in the same place as you.

18 I think that the ANC conditions are somewhat
19 general. I'm not sure how we -- I think that the DDOT
20 conditions go to the relief requested regarding the
21 loading management and the transportation demand
22 management plan. And I would be in support of those.

23 I think the ANC while I understand them I just
24 think that they're also a little bit kind of general and
25 I'm not sure how those connect to the relief that's being

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1 requested.

2 MEMBER JOHN: So I would agree with that, Mr.
3 Vice Chair. For example, what is a workable plan to
4 prevent congestion and is that something the board would
5 enforce. So that's something that could be worked out
6 between the applicant and the ANC in a separate agreement.

7 VICE CHAIRPERSON HART: I would agree with
8 that. In the loading management plan they actually talk
9 about the alleyway and the number of inbound and outbound
10 trucks and maneuvering through that and monitoring of
11 that. So I think that that actually includes, encompasses
12 that so it didn't seem like we needed to reiterate it.

13 ZC CHAIR HOOD: As long as it doesn't really
14 change the scope I don't have an issue normally with the
15 ZA 2 percent as Board Member John has mentioned.

16 And also as long as we don't go too far out of
17 the scope we approve here today. If they go too far they
18 would need to come back for a modification of consequence
19 or significance back to this board at the appropriate
20 time.

21 VICE CHAIRPERSON HART: Okay. So it seems as
22 though Commissioner Hood you also requested that we take
23 an action on all of the relief without including the
24 penthouse setback requirements and have a separate vote on
25 just that.

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1 ZC CHAIR HOOD: If you would, Mr. Vice Chairman
2 because I plan on voting against the setback.

3 VICE CHAIRPERSON HART: Okay. So I'll make a
4 motion to approve application number 19722 of Kline
5 Operations and I'll read it as amended pursuant to 11 DCMR
6 Subtitle 10 Chapter 9 for a special exception under
7 Subtitle 1 202.5 -- excuse me, 205.5 from the rear yard
8 requirements of Subtitle 1 205.1, and pursuant to Subtitle
9 10 for variances for loading berth requirements of
10 Subtitle C 909.2, from the loading access requirements of
11 Subtitle C 909.3, from the court requirements of Subtitle
12 1 207.1 and from the interior height requirements of
13 Subtitle 1 612.4 to construct a new 11-story hotel in the
14 D-4-R zone at premises 925 5th Street NW square 516, lots
15 827, 828, 829 and 833. Including the conditions that were
16 put forward by the District Department of Transportation
17 regarding the implementation of following loading
18 management plan. And there were a number of bullets that
19 were included in that. I can't remember which exhibit
20 that's in however.

21 MS. LOVICK: Exhibit 45.

22 VICE CHAIRPERSON HART: Thank you. Exhibit 45.
23 Do I have a second?

24 MEMBER JOHN: I second.

25 VICE CHAIRPERSON HART: All in favor say aye.

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1 (Chorus of ayes)

2 VICE CHAIRPERSON HART: All opposed. Do you
3 want us to go through the other, Mr. Moy?

4 MR. MOY: Let me record this vote on this
5 motion first, Mr. Vice Chair. As you indicated earlier we
6 do have an absentee ballot vote from Lesyllee White who
7 participated and her absentee vote is to approve the
8 relief with such conditions as the board may impose. So
9 that would give a resulting total vote of 4-0-1.

10 This is on your motion, Mr. Vice Chair Hart, to
11 approve the application for the relief as you've cited
12 with the conditions as you cited. Seconding the motion is
13 Ms. John. Also in support Mr. Hood and with the absentee
14 ballot of Ms. White, so that's four. We have one board
15 member not participating. And the motion carries.

16 VICE CHAIRPERSON HART: I know that's a full
17 order.

18 MR. MOY: Yes.

19 VICE CHAIRPERSON HART: So Commissioner Hood,
20 how do you want to proceed with the other part of this?

21 ZC CHAIR HOOD: I guess you would just go ahead
22 and make a motion. I guess you all would approve.
23 Because if I make a motion there's not going to be a
24 second.

25 VICE CHAIRPERSON HART: Okay. So I'll make a

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1 motion to approve application number 19722 of Kline
2 Operations. And this is just for the penthouse setback
3 requirements of Subtitle C 1502.1(c)(4). And I'll leave
4 it at that. I'm looking at OAG. Do I need to say
5 anything else regarding the location?

6 MS. LOVICK: Go ahead and do what you did
7 previously.

8 VICE CHAIRPERSON HART: But I didn't include
9 this particular aspect of the relief.

10 MS. LOVICK: Right. Go ahead and mention the
11 address again and add in the exhibit 45 as well.

12 VICE CHAIRPERSON HART: Okay. So I'll make a
13 motion to approve application number 19722 of Kline
14 Operations as amended pursuant to 11 DCMR Subtitle 10
15 Chapter 9. And this is for the penthouse setback
16 requirements of Subtitle C 1502.1(c)(4). And this would
17 help to construct a new 11-story hotel in the D-4-R zone
18 at premises 925 5th Street NW in square 516, lots 827,
19 828, 829 and 833 with conditions from DDOT that are in
20 exhibit 45. Do I have a second?

21 MEMBER JOHN: Second.

22 VICE CHAIRPERSON HART: All those in favor say
23 aye.

24 (Chorus of ayes)

25 VICE CHAIRPERSON HART: Any opposed?

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1 ZC CHAIR HOOD: Opposed.

2 MR. MOY: Again, Mr. Vice Chair I'm using the
3 same absentee vote that was submitted by Ms. White who was
4 in full support of the relief. That would give a
5 resulting vote of 3-1-1. This is on the motion of Vice
6 Chair Hart. This is at to the relief for the penthouse
7 setback requirements Subtitle C section 1502.1(c)(4) and I
8 believe with conditions unless you tell me otherwise.

9 Seconding the motion Ms. John. Of course in
10 support of that motion Ms. White. We have a board member
11 not participating on this application. We have Mr. Hood
12 opposed to the motion. Again the vote count is 3-1-1.
13 The motion carries.

14 VICE CHAIRPERSON HART: Yes. And that would
15 include the conditions in exhibit 45.

16 MR. MOY: My understanding is this would be one
17 full order as opposed to two separate orders.

18 VICE CHAIRPERSON HART: I'll let you handle
19 that. Commissioner Hood.

20 ZC CHAIR HOOD: Yes, I had a question actually
21 for Ms. Lovick. I was just wondering if I choose to go
22 back and revisit this with the Zoning Commission is
23 everything open or is it just the part that I voted
24 against, the penthouse? Is the whole application back
25 open? Because I just really wanted to narrow to the

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1 penthouse if I choose to go sua sponte.

2 MS. LOVICK: Yes, you can sua sponte specific
3 aspects if that's what you choose to do.

4 ZC CHAIR HOOD: Okay, thank you. I wanted to
5 make sure I'm on notice that that's a possibility. Thank
6 you, Mr. Vice Chair.

7 VICE CHAIRPERSON HART: You're welcome. I
8 appreciate the comments and as I said before the hard work
9 that everyone has put in and the discussion that we've
10 had. So I hand it back to you, Mr. Chairman.

11 BZA CHAIR HILL: Okay. That was a lot of work.
12 That was a good one to miss.

13 VICE CHAIRPERSON HART: Thank you, Mr.
14 Chairman.

15 BZA CHAIR HILL: All right, Mr. Moy.

16 MR. MOY: Thank you, Mr. Chairman. The last
17 application before the board in its public meeting session
18 is there was a request for reconsideration. This is to
19 case application number 19581 of Latin American Montessori
20 Bilingual Charter School, captioned and advertised for
21 special exception under Subtitle U section 205.1(a) to
22 establish a public charter school in the R-16 zone at
23 premises 5000 14th Street NW square 2711 lot 802.

24 This request for reconsideration was filed by
25 the party in opposition which is under exhibit number 176.

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1 BZA CHAIR HILL: Okay, great. Thank you, Mr.
2 Moy. Is the board ready to deliberate? Okay. I can
3 start.

4 I was a little disappointed to see this to be
5 quite honest. This was something that took a tremendous
6 amount of time on all of our parts including the
7 applicant. We heard a lot of testimony. We took a lot of
8 testimony also from the organization in opposition.

9 I can certainly appreciate the fact that party
10 in opposition has the ability to ask for a reconsideration
11 and that they are doing so.

12 However, what we are tasked with doing is
13 taking that application and looking at it as to whether or
14 not we think that the motion should be granted.

15 I thought that the applicant basically just
16 tried to relitigate the hearing. They didn't particularly
17 specify any way that the board erred. But they had I
18 think it was a 23-page filing, just extremely long request
19 that again went back and went through all of basically I
20 think as I said before just tried to relitigate the
21 hearing. And it was a very long hearing that we had.

22 Also during that hearing I thought that the
23 party in opposition had a very good opportunity to work
24 with the applicant and come up with a variety of
25 conditions that were going to mitigate any adverse

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1 impacts. So again I'm kind of pointing that out that it
2 was a very long process that I think that they had a very
3 good opportunity and ability to discuss the conditions
4 that could mitigate any adverse impact.

5 I do recall that the ANC was in support and
6 came to testify in support. And the Office of Planning's
7 report was in support and I thought that they as my
8 original analysis was that they had provided a good
9 analysis of how the application was meeting the standards
10 and the criteria for us to approve it.

11 So that all being said I would be in denial or
12 my vote would be to deny this motion to -- or I should say
13 deny the request for reconsideration. Does anyone have
14 anything else they'd like to add?

15 ZC CHAIR HOOD: Let me just say this. I would
16 agree, Mr. Chairman. When I looked at this to start
17 reevaluating whether or not I was going to go along with
18 the reconsideration I start relitigating myself the merits
19 of the case.

20 So that showed me that I think that we did due
21 diligence as we went through this and I think we sent them
22 back and we dealt with this. We sent them back to the
23 community a number of times.

24 And I think we did our due diligence. And I
25 know there were some questions about whether or not

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1 certain things occur whether they come back to board. And
2 I think all that was worked through. I think we've done
3 our due diligence.

4 And as I stated when I started looking back at
5 the request for reconsideration I start going back through
6 the case again. I said no, that's not actually -- I think
7 we've come up with a win-win for that community. They
8 might not agree with it but I think we've come up with a
9 win-win.

10 They do have a right to ask for reconsideration
11 and anything else they choose to do. So that's my
12 opinion, Mr. Chairman. I'm ready to go along with you as
13 we move forward with this case.

14 VICE CHAIRPERSON HART: Mr. Chairman, I'll just
15 add that we had three full hearings on this case. We had
16 this set for decision three times and we actually had
17 discussion with the applicant and with the parties in
18 opposition at least two of those times for the decision
19 cases which is -- was actually fairly unusual.

20 So I also agree that I think we've had a
21 substantial amount of discussion regarding the case and I
22 would stand by the decision that we made previously and I
23 don't think that we should be approving this, approving
24 the request for reconsideration.

25 BZA CHAIR HILL: Ms. John, you weren't on this,

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1 correct? All right, so I'm going to go ahead and make a
2 motion to deny the request for reconsideration of
3 application number 19581 and ask for a second.

4 ZC CHAIR HOOD: Second.

5 BZA CHAIR HILL: Motion made and seconded. All
6 those in favor say aye.

7 (Chorus of ayes)

8 BZA CHAIR HILL: All those opposed? The motion
9 passes, Mr. Moy.

10 MR. MOY: Before I read back the vote count,
11 Mr. Chair, we do have an absentee ballot vote from Ms.
12 Lesyllee White who also participated on this
13 reconsideration. And her vote is to deny the request for
14 reconsideration.

15 This would give a final vote of 4-0-1. This is
16 on your motion, Mr. Chairman, to deny the request for
17 reconsideration. Seconding the motion Mr. Hood. Also in
18 support of the motion Vice Chairman Hart and Ms. White.
19 We have no other board member participating. The motion
20 carries.

21 BZA CHAIR HILL: Is that a summary order type
22 thing?

23 MR. MOY: We can write that.

24 BZA CHAIR HILL: Okay. Summary order. Okay,
25 thank you. All right, Mr. Moy, we're coming up on our

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1 break time but maybe we'll go ahead and do a hearing case
2 and we'll see how far we get.

3 (Whereupon, the above-entitled matter went off
4 the record at 10:23 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 07-18-18

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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