

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

NOVEMBER 28, 2018

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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
- LORNA JOHN, Board Member
- CARLTON E. HART, Vice-Chairperson (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

- PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from the Public Meeting held on November 28, 2018.

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C-O-N-T-E-N-T-S

Case No. 12799A: The VIP Room 3
Case No. 19828: 3423 Holmead Place LLC 14
Case No. 19830: Yasmine Sikder 26
Case No. 19804: 716 Upshur LLC 30
Case No. 19848: Kinney Ajiboye 38
Adjourn 41

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

(11:43 a.m.)

CHAIRPERSON HILL: Okay Mr. Moy, you can go ahead and call our first decision case -- or meeting case.

MR. MOY: Thank you, Mr. Chairman. So we're in the Public Meeting Session for the board to make its decision making action. So the first is Case Application Number 12 -- rather 127999A of the VIP Room. And this is a request for a modification of consequence to Condition Number 1 in BZA Order Number 12799 in order to permit the sale and storage of alcohol at the commercial establishment in the MU3 Zone at premises 6201 3rd Street NW, Square 3342, Lot 813.

CHAIRPERSON HILL: All right, okay. So let's see -- So what I think the board, we need to kind of talk about is where you all are with this modification of consequence. I can start in that we did have some opposition to this modification of consequence. And I guess the first thing is kind of deciding whether or not it's a modification consequence and what the board needs. I believe it is a modification of consequence. I believe that it's not a modification of significance. I do think that the board has had an opportunity to get information from the ANC and the community. However, I would not be opposed to following along with the regulations in terms of setting a date for the -- in other words, so determine that the request is actually

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1 for a modification.

2 So I'm believing that it is for a modification of
3 consequence. And that I would be interested in keeping the
4 record open to hearing more from ANCs or the community in
5 terms of support or opposition. And then set this for a
6 decision day. And so since everything is going to 12/19, it
7 seems like, I would then be in line with figuring out a day
8 to have the record open until so that we can continue to hear
9 from people. And then set this for deliberation and decision
10 on December 19th when Mr. May is back. And that's my
11 thoughts. Does anyone have anything they'd like to add?

12 COMMISSIONER MAY: My only question is whether the
13 ANC -- We know that the ANC -- whether the ANC meets between
14 now and the 19th and would be able to consider this case.
15 I mean I assume they would but each ANC is different, their
16 meeting schedule. We don't know, do we?

17 CHAIRPERSON HILL: I actually don't know.

18 COMMISSIONER MAY: Oh, but I think that would be
19 the only concern. It seems like there's somebody in the
20 audience who might know.

21 CHAIRPERSON HILL: I know. Unfortunately I can't
22 take anybody, right? If I do this, then I've got --

23 COMMISSIONER MAY: He could come up and talk to --

24 CHAIRPERSON HILL: Oh, they can come and talk to
25 the secretary. That's true. Mr. May, you're just the

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1 smartest one in the room today. I'm telling you. Let's just
2 first figure this out. So Mr. Moy, what were you going to
3 say?

4 MR. MOY: If that's an ANC member, I don't want
5 to speak for him. But my understanding in my conversation
6 with the Office of Planning is that the ANC would be meeting
7 -- they meet the fourth Monday of the month, which in this
8 case would -- and there's no meeting in December. So that
9 takes us into the fourth week of January when the ANC would
10 meet. But if the ANC is here, he could confirm that for the
11 record.

12 CHAIRPERSON HILL: Okay, before we -- before we --
13 Well what I had always -- or not what I had -- What I
14 understood from OAG and have been told time and time again
15 is that this is a decision process. And that if I open up
16 testimony in any case in any way, that might confuse things.
17 And before Mr. May gives me his opinion on that, I am still
18 trying to figure out whether or not the board is interested
19 in moving in this direction. So let's first figure out that.

20 So what I had on the table was that we would allow
21 time to take testimony from ANC, opposition and support. And
22 then have an opportunity to deliberate and decide this
23 because I believe it to be a modification of consequence, so
24 that's where I am. So Mr. May, I think spoke. Does anyone
25 else have a question or thought?

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1 MEMBER WHITE: My thought is that this is the VIP
2 Room and so there's an whole issue of whether or not they're
3 going to -- they're requesting that they be given support to
4 serve alcohol in the facility. And there appears to be a lot
5 of opposition in the record that I've reviewed. And I do
6 have concerns that the ANC has not weighed in on this because
7 it appears that the community has some serious concerns. So
8 to the extent that we can allow the ANC to weigh in on this,
9 I would be in favor of that.

10 VICE CHAIRMAN HART: Mr. Chairman, I kind of see
11 it as the applicant is requesting -- is making this request
12 because they would like to sell alcohol. They already serve
13 alcohol there. So it is -- as I said, that's the one kind
14 of issue that they're trying to -- alcohol is already
15 consumed on the premises. It is whether or not they can sell
16 it or they can serve it. And yes, there are a number of
17 letters in opposition that we received already.

18 And I think it would be helpful to hear from the
19 ANC, so that may be good to have a -- have their input on it.
20 And you know, as we always note that this case is -- we look
21 at each case on its merits. I would agree with you that I
22 think that it is modification of consequence. And I would
23 also agree that I think we need to hear from the ANC, so
24 that's where I am.

25 CHAIRPERSON HILL: Okay, Ms. John?

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1 MEMBER JOHN: Mr. Chairman, I also agree that it's
2 a modification of consequence. However, the condition that's
3 of concern is the one that says there will be no alcoholic
4 beverages sold on the premises. And ultimately, I believe
5 that's a decision of ABRA to make much more than it is a
6 zoning issue. The condition has been there since 1979, so
7 I have gone, you know, back and forth on this. And I think
8 that it is also good to hear from the ANC, but I'm not sure
9 if I would want to have a hearing because you know, it's
10 really the decision of ABRA as to whether or not --

11 CHAIRPERSON HILL: Okay.

12 MEMBER JOHN: -- this should be done.

13 CHAIRPERSON HILL: All right. I'm sorry I
14 interrupted. So Mr. Moy then, can you confirm -- if there's
15 someone here from the ANC, if they can go -- If there's
16 someone in the audience who knows when the meeting date is
17 for this ANC, if they can go speak to the secretary and let
18 us know. If you don't know, -- Sir, it seems like you have
19 something to say. You can go tell the secretary right over
20 there. You can't speak out loud and you can't talk to me,
21 so -- I'm trying to figure out when the next date is for that
22 ANC. So if it's the fourth week, right? And then that
23 already happened --

24 All right, this is what I suggest then. Okay, so
25 I say, you know, I mean the ANC can submit something at any

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1 time, so we don't have to wait for them to meet. I mean they
2 did, you know -- So okay, we're going to continue to
3 deliberate. In fact before we deliberate, since the Office
4 of Planning is here and there seems to be some information
5 that's being passed along to us, can we hear from the Office
6 of Planning?

7 MR. MORDFIN: Good morning, I'm Stephen Mordfin.
8 And the Office of Planning reviewed this application on
9 whether or not to eliminate this one condition. The
10 applicant can, as was mentioned, serve alcohol but can't sell
11 the alcohol. The case goes back to the late 1970s and only
12 the appeal -- I'm sorry, only the order is in the record
13 leaving no information as to why this condition was actually
14 put in there.

15 The Office of Planning doesn't see a great
16 difference between serving and selling it. There is a
17 difference. They can serve it, so you could have an open bar
18 and somebody could partake of as many drinks. And if you're
19 selling it, you're going to have to purchase them
20 individually. What we found most important was that, you
21 know, they would have to get whatever licenses are needed
22 from ABRA in order to move forward. Because without that,
23 it doesn't matter what this board does in terms of whether
24 or not it's permitted. So the Office of Planning recommended
25 that it be approved because we didn't see any reason why it

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1 should be denied.

2 CHAIRPERSON HILL: Okay. Does anybody have any
3 questions for the Office of Planning? Okay. All right. So
4 again OAG was just helping me to remember how the regulation
5 is. And that the ANC has ten days to respond to a
6 modification of consequence. They have had their ten days
7 to respond. I mean, I'm still back to where I was with, you
8 know, keeping the record open to hearing from the ANC. But
9 still getting back here to where we're making a decision when
10 Mr. May is here on the 19th of December. Mr. Commissioner?

11 COMMISSIONER MAY: Yes. Okay, so when I first
12 read this case and read all of the information that was in
13 the record, I mean it is a -- I was disappointed to not know
14 more about the case from when it was originally heard. But
15 I understand how that came to pass. It was a very old thing.
16 I mean while there is some subtlety in the distinction
17 between selling alcohol and serving alcohol, I can tell you
18 that's a pretty substantial difference. And I don't know why
19 the Office of Planning doesn't think that, but I can tell you
20 it is. Because it is a real pain in the neck. You can't --
21 I mean operating a bar or a tavern with a license where you
22 can just buy it and resell it every day. You can charge
23 cover for people to come in and see live music, all these
24 sorts of things. It's a very different set of impacts than
25 what has been described as being permitted there now, where

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1 they basically get sort of one day licenses to be able to
2 serve. It is a very significant change, I think. And in
3 fact, the question for me was not whether this is a
4 modification of consequence or a minor modification, but
5 whether in fact it is a modification of significance because
6 of the level of impact. And so, you know, while I can
7 appreciate the fact that typically we would offer the -- or
8 that the ANC would be allowed ten days to react and
9 theoretically they had ten days, but I don't -- you know,
10 that's not the way we operate at the Zoning Commission. We
11 take up modifications of consequence. We decide whether or
12 not it is a modification of consequence. And then we set a
13 decision date after that, affording the ANC the opportunity
14 to review and comment. And we are always deferential to
15 their meeting schedule and making sure that we get something
16 from them.

17 This is not a case where there is a rush. There
18 is no reason why we have to decide this before the end of the
19 year or even in January from my perspective. So I think at
20 the very least, we should set this off until they have an
21 opportunity to meet at their normally scheduled time at the
22 fourth Monday. I happen to be in on the Wednesday following
23 the fourth Monday. And that we could set it -- turn it on --
24 sorry -- set the decision making for that date. And I think
25 that, that's what we should do if we're going to consider

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1 this as a modification of consequence. Of course, if you
2 would rather consider a modification of significance and set
3 a hearing date, I'd be very happy to do that too. I do think
4 this is a significant change.

5 And I also to the point that was made earlier
6 would say that when a condition like this enters into a
7 zoning case, it has mitigation for impacts associated with
8 the relief. It is not specific to the question of whether
9 or not alcohol should be served there, which is rightfully
10 ABRAs decision. But there are impacts associated with
11 operating a facility like this that are zoning related. And
12 so sometimes, you know, there are conditions put on those
13 cases. We might limit hours for example or we might limit
14 days. Or we might, you know, limit the types of activities
15 that can occur. Those are all zoning conditions and they're
16 intertwined with alcohol use and service. But we're not
17 making decisions about whether it's appropriate to sell
18 alcohol at a given place. Again, that's ABRAs decision.

19 So I would recommend that we give the opportunity
20 -- give the ANC the opportunity to review it at their
21 otherwise normally scheduled January meeting. And then we
22 take it up on the Wednesday following that.

23 CHAIRPERSON HILL: Okay. Well when's the -- so
24 you know your schedule date out to when you're back again,
25 is that what you're saying?

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1 COMMISSIONER MAY: Yes.

2 CHAIRPERSON HILL: Is that what you're saying?
3 So you're back again the Wednesday after when they would have
4 met.

5 COMMISSIONER MAY: I'm back on January 30th and
6 there's a -- And the 28th would be the fourth Monday.

7 CHAIRPERSON HILL: Okay. So what is here in terms
8 of -- I mean and just so everybody knows, I mean any one of
9 us can pull this off of the calendar and have it, you know,
10 be a hearing. I mean I think -- I mean I'm not comfortable
11 with it being a modification of significance and having a
12 hearing. Because then that sets a lot of other things in
13 motion, you know, and so -- But that's just my opinion and
14 we can, you know, have a discussion on that.

15 So then what Commissioner May is suggesting is
16 that the next hearing would have -- the next ANC meeting
17 would have been maybe on Christmas Eve and so that maybe is
18 not going to happen. And so -- it may or may not happen, but
19 we don't know. Right? So we would probably going on the
20 assumption that it wouldn't happen, that means that the ANC
21 wouldn't meet again until the fourth whatever in January.
22 And then that would still allow them to hear this. And then
23 give us something two days after that for us to get here with
24 Mr. May on that Wednesday. Right, Mr. Moy?

25 MR. MOY: Yes, that would be January 3rd.

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1 CHAIRPERSON HILL: Okay, so that's the next item
2 on the table here. And does anyone have any thoughts on that
3 solution -- or not that solution, that process?

4 MEMBER WHITE: I mean I've always been of the
5 opinion that this type of action could have a significant
6 impact on a residential neighborhood like this. And that I
7 feel more comfortable having the ANC weigh in on it. And
8 just making sure that they know that this is going to be
9 decided on the 30th. That's what --

10 CHAIRPERSON HILL: Okay. So Mr. Moy then if you
11 could -- if you could reach out to the ANC, okay? And make
12 sure that, you know, they are aware of what we're trying to
13 do here in order to get information from them. It seems to
14 be that we are in agreement or at least we're going to
15 continue to handle this as a modification of consequence.
16 And we will set it for a decision date when Mr. May is back
17 on -- What day was it, I'm sorry, Commissioner?

18 MR. MOY: January 30th.

19 CHAIRPERSON HILL: January 30th. Okay, so that's
20 it then. Can you re-read what I just said or confirm what
21 I'm saying?

22 MR. MOY: The Chair supports -- made a judgement
23 to reschedule this modification of consequence to the public
24 meeting of the board on January 30th, Wednesday.

25 CHAIRPERSON HILL: Okay. All right, so we'll do

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1 that. And then you'll reach out to the ANC and try to get
2 us some information.

3 MR. MOY: Yes. And then I'll reach out to them
4 and of course hopefully they'll have further information on
5 their position by the board's public meeting --

6 CHAIRPERSON HILL: Okay. And we'll have OP back
7 with us on that day again as well. Okay, all right. Great,
8 thank you.

9 MR. MOY: All right. Mr. Chairman, I believe the
10 next case application for decision making is Number 19828 of
11 3423 Holmead Place, that's H-O-L-M-E-A-D, LLC as amended for
12 special exceptions under the non-residential conversion
13 requirements, Subtitle U Section 320.3, Subtitle E Section
14 5201 from the minimal court requirements of Subtitle E
15 Section 203.1 in the nonconforming structure requirements of
16 Subtitle C Section 202.2. And pursuant to Subtitle X Chapter
17 10. This is for variances from the front setback
18 requirements of Subtitle B Section 315.1C and the limit on
19 number of stories under Subtitle E Section 303.1 to convert
20 an existing church to a seven unit apartment house, RF1 Zone.
21 This is at 3423 Holmead Place NW, Square 2834, Lot 163.

22 CHAIRPERSON HILL: All right, Mr. Moy. And then
23 there was that filing to reopen the record. Is that still --
24 the preliminary matter?

25 MR. MOY: Yes, sir.

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1 CHAIRPERSON HILL: Okay. So there was a filing
2 to reopen the record so that there could be a party -- a
3 person was requesting party status. So I've read the
4 request. I think that I would be opposed to reopening the
5 record for a few reasons. One, the person who was requesting
6 party status did have an opportunity to come and speak in
7 opposition to the project. So we heard that. And second,
8 even if we were to reopen the record to allow for party
9 status, the time that they should have applied for party
10 status has lapsed. So we couldn't even allow them to apply
11 for party status anyway, so I would believe it's moot. So
12 I would go ahead and deny the request to reopen the record.
13 Would anyone agree with me?

14 VICE CHAIRMAN HART: Yes, I would agree with you,
15 Mr. Chairman. I think the other issue that kind of is raised
16 with this is you'd actually have to have -- the person would
17 not have had an opportunity to be able to have a
18 conversation. You know, there was already a lot of testimony
19 that's already been given. And so we would have to then
20 reopen the hearing to have another hearing so that they could
21 then have cross-examination of all the stuff that's been, you
22 know, already discussed. And it seems as though we have
23 quite a bit of information already. And as you said, this
24 person did actually come to the -- and gave testimony, you
25 know, in this case.

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1 The other part of it that you raised, which is
2 just the timeliness aspect of it, it is late in this process.
3 And if this were to be -- I may have a different opinion of
4 this if it were within the timeframe that's set out in the
5 zoning regs, but I don't think I would -- I would not be in
6 support of this request either.

7 CHAIRPERSON HILL: Okay. So unless anyone else
8 has anything to add, I'd just go ahead and deny that request
9 by consensus, Mr. Moy?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Okay. So then after that, is
12 the board ready to deliberate?

13 VICE CHAIRMAN HART: Sure.

14 CHAIRPERSON HILL: Would someone else like to
15 start?

16 VICE CHAIRMAN HART: Sure. So this is an
17 interesting case. You know, after reviewing the case file,
18 I understand that this kind of boils down to whether or not
19 the BZA agrees with the applicant that the rest of the
20 amassing of the building would be allowed. And the massing
21 would be allowed, but the three floors is not allowed. So
22 they are saying that there's a financial hardship and that
23 it's the specific site or building that they are trying to
24 convert into an apartment, I guess.

25 While I understand the argument, I kind of go back

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1 to the OP report, which states that the applicant has failed
2 to identify the exceptional situation resulting in a
3 practical difficulty that justifies the proposed fourth
4 floor. And I would kind of tend to agree with the OP
5 assertion. I mean I understand that there is the -- you
6 know, what the height limit is. I understand that the
7 context -- the buildings next door on either side are at a
8 height. But I also understand that the number of floors that
9 they have is within the -- what's allowed.

10 So I just -- I just could not get to the point
11 where I could say yes, I agree with this and I think that the
12 fourth floor should be allowed. I mean this is kind of a
13 density question as well. So I just believe that the --
14 because there is this requirement of three floors and that
15 I don't think that the applicant has successfully in my mind
16 identified their exceptional situation that resulted in this
17 in a practical difficulty, I just couldn't get to the point
18 that I agreed with them. So I'm okay with the other relief
19 that they're looking for. So I guess we can talk about that
20 later. I'd like to hear what my other board members think
21 about this. But right now, that's kind of where I am. I can
22 be persuaded otherwise. But I just don't have that -- That's
23 where I am right now.

24 CHAIRPERSON HILL: Okay. Anyone else?

25 MEMBER WHITE: Okay, I'll just kind of read my

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1 thoughts on it. So again, you know, this is an application
2 for a special exception to convert an existing church to a
3 seven unit apartment house in an RF1 Zone at 3423 Holmead.
4 We completed the hearing on the 17th of October. We
5 requested a submission from the applicant analyzing
6 financials, marketability, impacts regarding the development
7 of the site. I looked at OPs response in Exhibit 47,
8 basically affirming its recommendation to allow -- to allow
9 the variance to allow four stories in the height because they
10 didn't believe that the applicant identified an exceptional
11 condition relating to the structure or site.

12 OP found in Exhibit 46, I think, that a three
13 story building is feasible. And they were in denial of the
14 variance for the fourth story. And the applicant is
15 requesting a number of items here in this application. It
16 includes a nonresidential conversion, which I, you know,
17 didn't have a problem with. It seemed as though they met
18 that special exception criteria, nonconforming structure,
19 court relief, special exception relief. They also asked for
20 front side back -- front set back relief under the variance
21 request.

22 But the one that was really tricky was the number
23 of stories -- the fourth story. So there is an ANC 1A report
24 that I looked at that was filed in October, Exhibit 42, that
25 approved the request. It was a very close vote 4:3:0. They

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1 weren't concerned about the fourth story, I think based on
2 the record. They didn't believe that the structure would
3 result in a building that was taller than the neighboring
4 buildings. They were supportive of the family size units.
5 It provided seven larger family units that the ANC was okay
6 with since it wouldn't have, in their mind, a significant
7 adverse impact on the surrounding area.

8 So yes again, this was a very close ANC vote. But
9 regarding the variance relief, I had questions regarding the
10 applicant's -- the applicant meeting the first prong of the
11 variance test for purposes of granting the fourth story,
12 instead of the third story. The fact that the adjacent
13 building exceeds 40 feet doesn't relate to the structure or
14 the site. I didn't see it as an exceptional -- meeting the
15 exceptional condition test. And I believed, as OP does as
16 well that the variance prongs were met as it relates to the
17 front set back criteria. But I agree with the applicant's
18 argument that there is an exceptional condition because the
19 existing anterior lot -- building on the lot is a purpose
20 built church. And two, the existing buildings on the first
21 floor is elevated five feet above the first floors of the
22 adjacent buildings. And can't be moved unless the building
23 is actually raised.

24 Regarding the practical difficulty aspect of it
25 argument, the applicant claims exception condition results

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1 in a practical difficulty because without the fourth story,
2 the owner can't maximize the floor area ratio. Right? So
3 under the case that was brought to our attention, the metro
4 poll condo association versus BZA case, this case, you know,
5 provided that the applicant must show that matter of right
6 development of a three story apartment house would be
7 unnecessarily burdensome.

8 The zoning regs don't guarantee that every
9 property can be developed to its full potential. So to deny
10 the -- I'm of the opinion that I don't think that there's
11 adequate support to support the fourth story in this
12 particular case. I think if -- and if we were to go with the
13 third story recommendation, currently we don't have the
14 revised drawings in the records. And I don't know whether
15 or not the applicant would even be on board with it. So I
16 think we don't want to move forward with an approval until
17 -- on the other aspects of it until we kind of get a sense
18 of whether or not this would be something that the applicant
19 would even be willing to do.

20 I know that's a lot of information, but that's
21 where I am. So I think I'm kind of in line with what Vice
22 Chair Hart is saying. The major sticking point for me is
23 that fourth story request that they're making for variance.

24 MEMBER JOHN: Mr. Chairman, I just have a couple
25 thoughts. Just too, I agree in principle with what's been

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1 said so far. The issue for me was that the regulations allow
2 by special exception, height of up to 40 feet. But limits
3 the number of stories. And the same language that grants the
4 special exception for the height, does not include the level
5 -- does not include stories. So we're looking at the
6 variance test. And I struggled with this case because on the
7 one hand, I can see where it makes great sense to have this
8 infill development that can go up to 40 feet and that would
9 maximize the use of the property.

10 But on the other hand, looking strictly at the
11 regulations, there is no exceptional condition even if we
12 look at the issue of the confluence of factors. So the
13 applicant says that the first floor counts as a basement.
14 So it counts as a story. If it were a cellar, it would not
15 count in counting the stories. So that argument I think
16 affects properties everywhere. There are properties all over
17 the city where the first floor is higher and cannot meet the
18 cellar requirement.

19 The other argument that the applicant made was
20 that it's a purpose built church and that the first floor
21 cannot be lowered, so it would become a cellar without great
22 expense. So I agree with Ms. White's comments that -- based
23 on the metro poll case citing, I believe it's Capitol Hill
24 Restoration Society. Two things, the intended use is really
25 not what we should look at. We can't grant a variance

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1 because we agree that the intended use is great. That's not
2 the test. It has to be related to the first prong. And we
3 also can't look at the prior use or the fact that it was a
4 purpose built church does not really help us either way.

5 And while I can see very clearly that the not
6 having that extra story would not allow the best project,
7 we're stuck with the regulations that do not give us the
8 latitude to make that determination. So reluctantly, I do
9 not -- I cannot support the application because I don't think
10 that first prong has been satisfied.

11 CHAIRPERSON HILL: Okay. I don't have anything
12 else to add. I thought that -- I'm in agreement with
13 everyone here. The only issue now I think is that -- I'm
14 also in agreement though with what I think Ms. White was
15 speaking of in terms of -- Well actually everybody, I guess,
16 doesn't have -- is in agreement with the Office of Planning's
17 report in terms of the approval of the other areas of relief
18 that were requested. But the problem that, that kind of
19 throws in for us now is I don't know what that is. You know,
20 I don't know what we're necessarily approving. And so I
21 suppose if we wanted to, we could either deny the whole thing
22 and then that's the end of that. Or we could go ahead and
23 continue this.

24 Mr. May is not on this and that day is filling up.
25 I've got to keep it a little bit open to try to leave -- or

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1 maybe we will do it on the 19th, I guess -- continue this to
2 see if -- Like we will make a -- I'm going to make a motion
3 to deny the height. And so that -- I'm sorry, the height and
4 the three story maximum. And so -- I'm sorry, the fourth
5 story, right? To deny the fourth story. And so if that were
6 to pass, which it sounds like it does, then we could keep the
7 record open for a continued hearing. We'd have to have a
8 continued hearing because we'd have to see the revised
9 drawings.

10 And then I guess we'd have to -- I'm kind of
11 looking at the board to see -- I mean I guess we'd have a
12 continued hearing on the revised drawings because we'd want
13 to ask questions then of the applicant. And so we could see
14 whether or not they did want to come forward or they just
15 wanted to try to do something else with the property. And
16 I'm kind of looking to OAG at some point about this thought
17 process. If we did a continued hearing, we would re-open the
18 hearing then for that date. And so who was on this
19 originally? Oh, Chairman Hood was on this, right? And so
20 he's back next week, right? I think he's back next week.

21 MR. MOY: He is -- Yes, next week.

22 CHAIRPERSON HILL: Okay, so then I would go ahead
23 and at least we can know relatively quickly. I'm sure the
24 applicant is either here or watching. And so I'm going to
25 go ahead and make a -- And so we could then put this on for

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1 a continued hearing next week to at least understand if the
2 applicant wants to even continue the hearing further so that
3 they could -- you know, they could ask for a postponement of
4 that hearing so they could get drawings in or we could at
5 least see where we are. So that would be my thoughts. And
6 I'm seeing nods from my fellow board members. So with that,
7 I'm going to go ahead and make a motion to deny the height
8 under Subtitle E301 -- 303.1 pursuant to Subtitle X 1000 for
9 three story maximum permitted, three stories existing. I'm
10 making a motion to deny the fourth story and ask for a
11 second. Under, I'm sorry -- Under Application Number 19828
12 and ask for a second.

13 VICE CHAIRMAN HART: Second.

14 CHAIRPERSON HILL: Okay, that motion has been made
15 and seconded. All those in favor say aye.

16 (Chorus of ayes.)

17 CHAIRPERSON HILL: All those opposed?

18 All right, so that portion of the application has
19 been denied. The remaining portions are open. And it seems
20 as though the board is in agreement with approving those.
21 However, we have nothing to look at. And so Mr. Moy, if you
22 could reach out to the applicant and see -- and let them know
23 that we're going to put this on for a continued hearing next
24 week. And I guess we'll have to see what happens. I don't
25 know whether we're going to get drawings. If those drawings

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1 are then going to have to go back to the ANC. We're going
2 to have to figure that out. But Mr. Hood will be here and
3 so therefore since he was on the original case, he can sit
4 on the continued hearing or at least see whether it's going
5 to get postponed or not. Mr. Moy, does that make sense?

6 MR. MOY: It does. The only aspect I have with
7 Mr. Hood not being present, because I do have his absentee
8 ballot. Say that he would be voting with the board, but
9 given what has just been discussed, I don't know whether I
10 should put his vote into the third column to make it 4:0:1.

11 CHAIRPERSON HILL: Well we have four right now,
12 so I guess I would just suggest --

13 MR. MOY: Let's do that.

14 CHAIRPERSON HILL: -- just leave his vote out of
15 it. Because we've changed a lot of things here --

16 MR. MOY: I agree with that.

17 CHAIRPERSON HILL: -- without him being here.

18 MR. MOY: So the vote count then on your motion
19 to deny to the fourth story would be 4:0:1 on your motion,
20 Mr. Chairman. Seconded by Vice Chair Hart. Also in support,
21 Ms. White and Ms. John. And Mr. Hood not voting, not being
22 present.

23 CHAIRPERSON HILL: All right, so we're going to
24 continue this to 12/05.

25 MR. MOY: To December 5th.

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1 CHAIRPERSON HILL: Okay, all right. Okay. Thank
2 you, Mr. Moy. Okay, so I just want to again clue everyone
3 in here for the audience. So I think the way -- We still
4 have a couple of decisions to go. And then I'm not really
5 sure if a couple of applicants are here. So we are going to
6 at least call 19808 and 19809 just to see the status of
7 those, whether or not those applicants are here. And then
8 we are going to take lunch. And believe me, you want us to
9 take lunch. So I'm done. So I'm not on the next hearing
10 case -- or decision case.

11 VICE CHAIRMAN HART: Yes. So Mr. Moy if you'd --

12 MR. MOY: Yes, sure.

13 VICE CHAIRMAN HART: -- call the next case please.

14 MR. MOY: Yes. Okay, that first Case Application
15 is 19808 of Mark Rogers.

16 VICE CHAIRMAN HART: I'm sorry, the case I was
17 looking for was 19830. It's a decision case.

18 CHAIRPERSON HILL: We're going to keep going
19 through the decision cases. I'm sorry to try to confuse the
20 situation.

21 MR. MOY: That's what I thought, but I thought you
22 had made a shift. Okay, so here we go. So your next
23 decision case is Case Application Number 19830 of Yasmine
24 Sikder. This is for an area variance from the side yard
25 requirements, Subtitle D Section 307.4, which would construct

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1 a new principle dwelling unit in the R3 Zone at 3902 First
2 Street SE Square 6128, Lot 834.

3 VICE CHAIRMAN HART: Thank you. Is the board --
4 I guess it's just Commissioner May, Board Member John and
5 myself that are on this case. Are the three of you ready to
6 deliberate?

7 MEMBER WHITE: Yes, Mr. Vice Chair.

8 VICE CHAIRMAN HART: Okay. So in the past
9 hearing, I know that we had -- Actually we closed the hearing
10 and we -- I'm sorry, I'm trying to get my notes here. And
11 requested that the applicant meet with the ANC and that we
12 get an ANC report. I think the only thing that we got in the
13 -- on the record was a letter from the SMD if I'm correct on
14 that. Yes. Yes, because it doesn't seem like there's --
15 Well there's Exhibit 40. It seems like it's just from the
16 SMD, but it's hard to -- hard to tell. But they were saying
17 that they were in support of the -- of this case with the
18 relief that was requested.

19 I think for this case, I do agree with the
20 applicant that it is a practical difficulty. But I have a
21 hard time with the exceptional condition aspect of it. There
22 are other lots on the block that are the same size -- that
23 are a very similar size. And I just wasn't sure how to get
24 past this part of the prong. The other aspects of the zoning
25 -- Excuse me -- of the variance relief, I was okay with. But

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1 because of that first part of it, I don't know what other
2 board members feel about it, I was having a hard time with
3 that aspect of it. So because of that, then I would not be
4 in support of it. But I could hear from my other board
5 members on their thoughts.

6 MEMBER JOHN: Mr. Vice Chair, I thought that the
7 applicant had met the test in this case based on the size of
8 the lot. And that without the relief, the resulting building
9 would not be -- would not be very efficient. So that's sort
10 of how I ended up with being able to support the application.
11 It is also an infill lot that would be in support of the
12 public good in the sense that there wouldn't be a gaping, you
13 know, vacant lot in the neighborhood. And this is the issue
14 of not having a common wall, which we've talked about with
15 the neighboring property, which we have talked about from
16 time to time on this board. So in this particular case,
17 because of the circumstances and the size of the lot, I am
18 able to support the application.

19 VICE CHAIRMAN HART: Commissioner May?

20 COMMISSIONER MAY: Yes, I agree. I mean I
21 understand that it's -- it is not necessarily truly clear-
22 cut, but this is the circumstance that happens occasionally
23 so much so that the Zoning Commission is considering
24 modifying the regulations to address this kind of a
25 circumstance. And I'm not a big fan of, you know, what would

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1 otherwise be a detached house, being essentially face on line
2 on the property line. But I think that if we, you know, if
3 we go -- if we stick with the strict interpretation of the
4 regulations, you wind up with an exceptionally narrow house.
5 And that would not be consistent with the rest of the
6 neighborhood. So I think that in this circumstance, it is
7 a -- it's a reasonable solution and so I'm supportive of the
8 request of relief.

9 VICE CHAIRMAN HART: Okay. And as I said, I did
10 not have a strong opposition to it. It was more how you see
11 the -- whether or not we each believe that it actually met
12 the variance test. I can definitely -- I can definitely say
13 that I am -- that I can support it. I think that we are --
14 I think that this is a -- that this is a I don't want to say
15 interesting case -- It's a case where you would have a fairly
16 narrow building that would be the result of not granting the
17 application. So I'll just make the -- I'll just make the --
18 I'll just propose that we approve Application Number 19830
19 of Yasmine Sikder as read and captioned by the applicant --
20 oh, excuse me -- read and captioned by the secretary. And
21 do I have a second?

22 MEMBER JOHN: Second.

23 VICE CHAIRMAN HART: Hearing a second. All those
24 in favor, say aye.

25 (Chorus of ayes)

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1 VICE CHAIRMAN HART: Any opposed?

2 MR. MOY: Staff would record the vote as 3:0:2.
3 This is on a motion of Vice Chair Hart to approve the
4 application for the relief. Seconded the motion Ms. John.
5 Also in support Mr. Peter May. And no other board members
6 participating, the motion carries.

7 VICE CHAIRMAN HART: Thank you, Mr. Moy. I'll
8 hand it back to you, Mr. Chairman.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. Whenever
10 you are ready, you can call our next case.

11 MR. MOY: Thank you, Mr. Chairman. That would be
12 Case Application Number 19804 of 716 Upshur, LLC. Caption
13 and advertise for special exception under the Residential
14 Conversion Provision, Subtitle U Section 320.2. This would
15 construct a three story rear addition and convert the
16 existing principle dwelling unit to a three unit apartment
17 house in an RF1 Zone at 716 Upshur Street NW, Square 3135,
18 Lot 91.

19 CHAIRPERSON HILL: Okay. Mr. Moy, is there still
20 -- I'm a little confused as to what did just kind of get put
21 in the record possibly from the ANC. They're requesting a
22 postponement and then there seems to be something else in
23 Number 71.

24 MS. LOVICK: So I think initially they requested
25 until November 15th to file something into the record. And

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1 then there was a subsequent submission requesting until today
2 to file something. Apparently they've voted in opposition
3 twice on this application. But they haven't voted on the
4 revised drawings that were submitted to the record at Exhibit
5 65. And so that's what they were asking for an opportunity
6 to comment on. Is there a new submission to the record as
7 of today?

8 CHAIRPERSON HILL: I thought there was something
9 here in 71.

10 MS. LOVICK: No, I don't -- so I don't there's --
11 I don't think anything's been filed as of today based on a
12 third vote.

13 CHAIRPERSON HILL: Okay, thank you. All right,
14 so I guess -- I guess we can tackle that issue first. I mean
15 we've -- this has been going on a pretty long time in terms
16 of all the material that we've taken and all of the testimony
17 that we've taken and the information that's been put into the
18 record. I'm able to have a discussion about my opinion as
19 to whether or not to support or disapprove of this
20 application.

21 In terms of the request from the ANC asking for
22 the postponement so they can look at the most recent design,
23 the issue that I have with that request is that the ANC
24 seemed to be in opposition to the conversion. And that was
25 kind of what their whole issue was. So I don't necessarily

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1 think there's going to be anything different from the ANC
2 based upon the design change. There's still the conversion
3 there. So I don't see we're going to get any new information
4 from the ANC. So I respectfully would decline that only
5 because there's nothing changing in terms of what they were
6 in opposition to. So the new design still has three units.
7 The new design still is something that the ANC was opposed
8 to because of the conversion. So any thoughts on that
9 statement?

10 VICE CHAIRMAN HART: Yes, I'm okay with that. I
11 think we've -- I think we've gotten some kind of back and
12 forth about what the ANC voted. But I think this last
13 submission 71 gives some clarity on that in what their
14 position is. Which is that they voted to oppose 3:2:2. And
15 so I know that they were opposing a previous design and that
16 they have not looked at the most recent design. But they
17 were clarifying something that was earlier in the record.
18 That's all.

19 CHAIRPERSON HILL: Okay.

20 VICE CHAIRMAN HART: So I don't have a problem
21 with --

22 CHAIRPERSON HILL: So unless anyone has any
23 objection, I would go ahead and deny the request for an
24 extension on our deliberation just by consensus? Okay, I see
25 everyone nodding. All right Mr. Moy, so we're going to deny

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1 that again based on the reasoning that I provided. And then
2 now is the board ready to deliberate? Okay, I can start.

3 I mean, again, we went back and forth on this in
4 terms of what we had -- the testimony that we had taken and
5 the information that we had received from the different
6 people in the community, both the ANC, as well as people in
7 favor and opposition, as well as the report by the Office of
8 Planning.

9 The Office of Planning actually had provided their
10 analysis in terms of how they believe that the applicant has
11 met its burden. And were approving even the initial drawings
12 that were subsequently changed after the board had some
13 discussion with the applicant. My concerns were I believe
14 voiced at the last hearing wherein I was mainly primarily
15 concerned with the privacy as it was affecting by that very
16 long stairwell that was being proposed in the rear of the
17 property. Since that time, they have revised their plans
18 that are in Exhibit 65. And I thought that I was in favor
19 of that design, which we talked about in the last hearing.
20 And I'm in favor of the new design even which -- I was even
21 in favor of the design before this design if that makes any
22 -- if that's clear. But because I remember Commissioner
23 Turnbull had some questions about the privacy from, I believe
24 the deck. And so that I believe was then pulled back.

25 So I would agree with the analysis that was

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1 provided by the Office of Planning in the original report.
2 But I would be in favor of the revised plans that are in
3 Exhibit 65. In addition to that however, I do think that if
4 we were to grant this, I would recommend that we put a
5 condition in there that discusses the compliance with U320.2F
6 concerning the chimney. And I can read that if we do in fact
7 get to a point where we're approving this with conditions.

8 So again, my vote would be to be in favor of this
9 with Exhibit 65 as mentioned with the condition about the
10 chimney and the design that was put forward by the applicant
11 in Exhibit 65. And I ask my fellow board members for their
12 input.

13 VICE CHAIRMAN HART: Yes, I think that the
14 applicant has provided sufficient information showing how it
15 meets their relief under Subtitle U 322 -- 320.2E, which
16 allows a three story addition to be attached to a principle
17 dwelling. The applicant has made several changes to the
18 design to lessen the impacts of the project since it was
19 originally submitted to us. And these impacts would -- and
20 these changes were to reduce the size of the rear addition,
21 redesigning the rear existing exit stair, reducing the size
22 of the roof deck and stepping the design so that it is -- it
23 doesn't move back, I guess, in the lot as far as it did at
24 the first instance -- the first time that we saw the original
25 design.

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1 And I think that your condition regarding the
2 neighboring chimney, I think is fine. I think I would be
3 supportive of that condition as well. And I thought that the
4 -- as I noted earlier that the applicant had demonstrated how
5 they met the regulations. And again, I would be in support
6 of it.

7 MEMBER JOHN: Mr. Chairman, I would also support
8 this application. We have a very full record. And we had
9 several neighbors testify in opposition. They objected to
10 the massing of the building and noise through the petitions,
11 I think -- potential noise. And so the applicant revised the
12 design to accommodate the neighbors' concerns. And I think
13 Exhibit 65, which we labeled Concept B1 is the final revised
14 design, which as my other board members have stated have
15 stepped back the second and third floors and reduced the size
16 of the deck. And so the design is -- the building is much
17 less intrusive than it was before. And because the applicant
18 is requesting a special exception for the conversion and
19 meets the standard in the regulation, I am able to support
20 the application. While also giving great weight to OPs
21 initial and supplemental analysis.

22 The only other thing I would agree with is that
23 we need to include something concerning the agreement with
24 the neighbor about the chimney. And ANC, I support, you
25 know, going ahead with no additional response from the ANC.

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1 CHAIRPERSON HILL: Anyone else?

2 MEMBER WHITE: I'll just concur with my
3 colleagues. I remember this case. There's a lot of
4 opposition to it. I was leaning more on the Option C side,
5 but I think the applicant made a number of adjustments to
6 respond to some of the concerns that we had. So I think with
7 the final revision that they've submitted to the record, I
8 think that they have mitigated a lot of the concerns and met
9 the criteria, especially with the report that we've received
10 from the ANC. And I would concur that we would also need to
11 add some language regarding the agreement that the applicant
12 has signed with the neighbor regarding the chimney. But at
13 this point, Mr. Chair, I would support the application.

14 VICE CHAIRMAN HART: And one more thing, when
15 Board Member John raised an issue -- or spoke about -- gave
16 her opinion and thoughts on this, one of the things that I
17 recalled from our last hearing was that there was a concern
18 about the sound transmittal. And that the applicant stated
19 -- sound transmittal through the walls. And the applicant
20 stated that they would be -- that the walls would be
21 receiving wood furring built out with insulation to help to
22 reduce the sound transmission through the walls. So that was
23 one thing that they -- that the applicant had, you know,
24 stated that they were going to be doing. I just remembered
25 that, that was part of the conversation that we had with the

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1 applicant.

2 CHAIRPERSON HILL: Okay, all right. Well then
3 that being the case, I'm going to go ahead and make a motion
4 -- I'm going to go ahead and make a motion to approve
5 Application Number 19804 as captioned and read by the
6 secretary for the plans that were submitted in Exhibit 65.
7 With the condition that prior to the issuance of any building
8 permit authorized by this order, the applicant shall obtain
9 the issuance of a building permit for 718 Upshur Street NW
10 to raise the chimney or otherwise ensure the compliance of
11 the project approved by this order with the requirements of
12 Subtitle U 320.2F. And ask for a second?

13 VICE CHAIRMAN HART: Second.

14 CHAIRPERSON HILL: Motion made and seconded. All
15 those in favor say aye.

16 (Chorus of ayes)

17 CHAIRPERSON HILL: All those opposed? Motion
18 passes. Mr. Moy?

19 MR. MOY: Before I give a final vote count, Mr.
20 Chairman. We do have an absentee ballot from Mr. Michael
21 Turnbull who participated. And his absentee vote is to
22 approve the application with any conditions that the board
23 may impose. So that would give a final vote of 5:0:0. This
24 is on the motion of Chairman Hill to approve the application.
25 And with the one condition as you've cited in your motion.

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1 Seconded the motion, Vice Chair Hart. Also in support, Ms.
2 White and Ms. John. The motion carries.

3 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

4 MR. MOY: All right. Thank you, Mr. Chairman.
5 The last case application for decision is Number 19848 of
6 Kinney Ajiboye. It's captioned advertised for area variance
7 from the side yard requirements, Subtitle D Section D 307.1.
8 This would construct a new principle dwelling unit R2 Zone
9 at 519 48th Place NE Square 5243, Lot 3.

10 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
11 Is the board ready to deliberate? Okay, I can start. There
12 was -- We've got the most recent ANC report. So anyway, as
13 I was looking through the case again and reviewing what the
14 drawings were and the argument for the applicant and the
15 variance, I really thought it clearly met the test for the --
16 I mean it's a tiny narrow lot. I mean without -- I mean
17 that's why that variance in my -- You know, that's why the
18 variance is there for us as a board to be able to provide
19 relief when they can't do something that the -- that the
20 zoning was allowing them to do.

21 There was concern that the ANC had concerning like
22 water issues. And I suppose that I didn't think that, that
23 was under our purview. That, that wasn't really things that
24 we necessarily would take any zoning concerns up with. But
25 that would be something that would be dealt with during

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1 permitting. And so I didn't -- As much as I understand that
2 the ANC had concerns, I just didn't think it was in our
3 purview to necessarily delve into those water issues that you
4 know we -- that they had brought up.

5 In addition to that, the immediate neighbors were
6 actually in support of the project. We took again a lot of
7 testimony from the neighbors, the community, and it is
8 disappointing that the ANC again was in objection to this.
9 But I thought that the analysis that the Office of Planning
10 had provided is actually accurate, as well as the fact that
11 I thought that this is exactly why the variance isn't set up
12 in the first place so we were able to provide this kind of
13 relief so that the properties -- these type of properties
14 could get developed. So I'm going to be in support of the
15 application. And ask my fellow board members for their
16 comments.

17 VICE CHAIRMAN HART: Yes, Mr. Chairman, I would
18 agree with you on the case. And I would be in support of it
19 as well. The one thing that I'll note is that the storm
20 water management issues that the ANC raised were -- they were
21 issues that the -- that the applicant was -- the applicant --
22 the neighborhood was trying to deal with another Agency on.
23 It wasn't our -- it wasn't our -- I mean sometimes storm
24 water is -- can be under our purview, but I think in this
25 case, it was really about an issue that the -- the applicant

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1 was -- that the neighborhood was trying to work on a
2 neighborhood issue that was independent or not related to
3 this particular application.

4 So while I understood that they had an issue with
5 the storm water management or the storm water not draining
6 I guess in the alley that's behind the -- that's the
7 undeveloped alley behind the lot. It seemed as though that
8 was a -- I think they were trying to work with DC Water and
9 the District to fix that concern. It didn't seem like there
10 was a particular concern relating to this application.

11 So I would -- As I said, I would agree with your statement
12 earlier about the -- about the project. And that I would be
13 in support of it as well. But I wanted to make -- just kind
14 of point that out.

15 CHAIRPERSON HILL: Okay, anyone else?

16 MEMBER JOHN: Just briefly, Mr. Chairman. I agree
17 that the applicant has met the test for granting the variance
18 based on the size of the lot. And I also agree that the
19 matter of the drainage is not something that the board has
20 jurisdiction over. And so I would support the application.

21 CHAIRPERSON HILL: All right. I'm going to go
22 ahead and make a motion to approve Application Number 19848
23 as captioned and read by the secretary and ask for a second.

24 MEMBER JOHN: Second. Motion made and seconded.
25 All those in favor say aye.

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1 (Chorus of ayes)

2 CHAIRPERSON HILL: All those opposed? The motion
3 passes. Mr. Moy?

4 MR. MOY: Before I read the final votes, Mr.
5 Chairman, again we have an absentee ballot from Mr. Michael
6 Turnbull who participated. And his vote is to approve the
7 application. And reading his comment for the record that he
8 believes that on his review of the surveyor's plot with the
9 grading as shown, appears not to direct water on the
10 neighbors properties, but rather toward the alley. So that
11 will give a final vote of 5:0:0 on the motion of Chairman
12 Hill to approve. Seconded the motion, Ms. John. Also in
13 support Ms. White and Mr. Turnbull and Vice Chair Hart. Was
14 it Ms. John or that was Ms. White seconding? Oh, it was Ms.
15 White. I'm sorry. All right, I sit corrected. Thank you,
16 sir.

17 (Whereupon, the above-entitled matter went off the
18 record at 12:52 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 11-28-18

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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