

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

JANUARY 30, 2019

+ + + + +

The Regular Public Hearing 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 L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Board Member  
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER G. MAY, Zoning Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN  
BRANDICE ELLIOT  
MATT JESICK  
JONATHAN KIRSCHENBAUM

The transcript constitutes the minutes from the  
Public Hearing held on January 30, 2019.

## CONTENTS

Application No. 19891: 1657-1661 Gales St, LLC . . . . .	4
Application No. 19892: Staci Wells . . . . .	10
Application No. 19901: HIP West St Partners, LLC . . . . .	37
Application No. 19903: Tim Baird . . . . .	57
Application No. 19907: Greystar GP II, LLC . . . . .	61
Adjourn . . . . .	76

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

(11:38 a.m.)

1  
2  
3 CHAIRPERSON HILL: All right, Mr. Moy, whenever  
4 you like. Oh, actually, we are going to rearrange something,  
5 Mr. Moy, just now that I think about it.

6 We're going to put 19901 and 19902 of HIP West and  
7 HIP at the -- actually, never mind, we'll just leave it where  
8 it is. Never mind. We'll just leave everything the way it  
9 is. Okay.

10 MR. MOY: All right, the Board is reconvening, and  
11 I have at about 11:39, at or about.

12 So, the first case in this public hearing session  
13 is Case Application Number 19891 of 1657 through 1661 Gales  
14 Street, LLC. Caption advertise for area variance from the  
15 lot dimension requirements of Subtitle E, Section 201.1.  
16 This would construct two new flats in the RF-1 Zone at 1657  
17 through 1661 Gales Street Northeast, Square 4540, Lots 184,  
18 185, and 186.

19 CHAIRPERSON HILL: Okay, great, thank you. All  
20 right, well, good afternoon. No, good morning.

21 If you could please introduce yourselves from my  
22 right to left?

23 MR. MILLER: Christopher Miller with the DC  
24 Housing Finance Agency.

25 MR. NASH: Saud Jabalir Nash, managing member of

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1 HIP Partners, LLC.

2 MS. FERREIRA: Catarina Ferreira, principal at  
3 Architextual PLC. We are the architects.

4 CHAIRPERSON HILL: Sorry, sir, did you say Nash?

5 MR. NASH: Yes.

6 CHAIRPERSON HILL: N-A-S-H?

7 MR. NASH: Yes, sir.

8 CHAIRPERSON HILL: Okay. Ms. Ferreira, are you  
9 going to be presenting to us?

10 MS. FERREIRA: Yes.

11 CHAIRPERSON HILL: Okay. Well, this is great.  
12 I'm so glad we're able to like hear people and talk to people  
13 after that long discussion process. I think we should do  
14 decisions at the end, right?

15 Like just have all the decisions at the end and  
16 then that -- I might just need to switch it around. Then  
17 people will leave.

18 Okay. So, let's see, Ms. Ferreira, I guess you're  
19 going to be presenting to us?

20 MS. FERREIRA: Yes.

21 CHAIRPERSON HILL: Okay. If you could go ahead.  
22 I don't have any specific questions. If you would just go  
23 ahead and walk us through the application in terms of what  
24 you're trying to accomplish, and then also the standards in  
25 which you are meeting for us to grant the application.

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1 I'm going to put 15 minutes on the clock, just so  
2 I know where I am. And you can begin whenever you like.

3 MS. FERREIRA: Pursuant to 11 DCMR, Subtitle X,  
4 Chapter 10, we are requesting an area variance from the lot  
5 dimension requirements of Subtitle E, 201.1, to construct two  
6 flats in the RF-1 Zone at 1657-1661 Gales Street Northeast,  
7 Square 4540, Lots 184, 185, and 186.

8 So, there are three lots current in existence.  
9 And they are 12 feet wide by 65 feet deep and 780 square  
10 feet. Well below the required lot size in this zoning  
11 district.

12 We are proposing consolidating those lots and  
13 subdividing them into two larger lots, which will in fact  
14 bring them closer to conformity than the existing lots at  
15 that location.

16 On those two lots we will be building two, two-  
17 family structures. And they are being built as part of the  
18 D.C. Vacant to Vibrant Program for workforce housing.

19 And they are required to meet certain standards  
20 in terms of providing quality affordable housing for  
21 workforce in the city. Which is part of the motivation  
22 behind actually consolidating the lots and constructing  
23 larger than would otherwise be possible dwellings -- or  
24 closer to normal size.

25 In terms of how we meet the criteria for the

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1 relief requested, obviously in terms of practical difficulty  
2 there is the lot dimensions that I already spoke of. It  
3 would be very difficult to construct livable dwellings on 12  
4 foot wide lots.

5 And those dwellings would also not meet the  
6 quality standards and general requirements of the workforce  
7 housing program that I mentioned.

8 And I should also emphasize that we are requesting  
9 a 35 percent deviation from the minimum lot size requirement.

10 No substantial detriment to the public good or the  
11 integrity of the zone plan. We believe that we are actually  
12 improving upon the existing condition.

13 I should also note that the project has received  
14 a support -- unanimous support of the ANC and several of the  
15 property owners along the street. We have a petition with  
16 several signatures on it expressing their support for the  
17 project.

18 Thank you, and I will answer any questions you  
19 might have.

20 CHAIRPERSON HILL: Okay, great. Does the Board  
21 have any questions for the Applicant? Okay.

22 I'm going to turn to the Office of Planning.

23 MR. COCHRAN: Thanks, Mr. Chair. OP is  
24 recommending approval. It would bring the lots closer into  
25 conformity with the standards for the lot size in the RF-1

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1 zone. And would be more consistent with the pattern of the  
2 RF-1 zone. So we're recommending approval.

3 And that's -- if you have some questions, we're  
4 open to answering them.

5 CHAIRPERSON HILL: Okay. Does the Board have any  
6 questions for the Office of Planning? Okay.

7 Does the Applicant have any questions for the  
8 Office of Planning?

9 MS. FERREIRA: No.

10 CHAIRPERSON HILL: Okay. Is there anyone here  
11 wishing to speak in support?

12 Is there anyone here wishing to speak in  
13 opposition?

14 Okay, Ms. Ferreira, is there anything you would  
15 like to add at the end?

16 MS. FERREIRA: Thank you for your consideration.

17 CHAIRPERSON HILL: Okay, great.

18 (Laughter.)

19 CHAIRPERSON HILL: Okay, this whole day is going  
20 to just be kind of quiet I can tell. Which is fine with me.

21 Okay. So, is the Board ready to deliberate? All  
22 right, I'm going to close the hearing. Is the Board ready  
23 to deliberate? Okay.

24 I can start. I agree with the analysis that was  
25 provided by the Office of Planning. And also the -- sorry,

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1 the ANC. Their report was in support, 6-0, and I agree with  
2 their analysis.

3 In addition to that, there were letters in support  
4 from five neighbors. I thought that it, on the -- in  
5 general, I thought it was just a great project. I mean, the  
6 workforce housing is something that the city is in need of,  
7 and so I will be voting to approve this application.

8 Would anyone else like to add anything?

9 Okay, I'm going to make a motion to approve  
10 Application Number 19891, as captioned and read by the  
11 Secretary, and ask for a second.

12 VICE CHAIRPERSON HART: Second.

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

15 (Chorus of aye.)

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

18 MR. MOY: Mr. Chairman, I didn't hear who seconded  
19 it?

20 CHAIRPERSON HILL: It was Mr. Hart.

21 MR. MOY: Mr. Hart. Before I read the vote count  
22 -- well, let me do that first. The Staff would record the  
23 vote as 4-0-1. This is on the motion of Chairman Hill to  
24 approve the application for the relief requested.

25 Seconding the motion, Vice Chair Hart. Also, in

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1 support Ms. John and Mr. Peter May. No other members  
2 participating. So that motion carries.

3 CHAIRPERSON HILL: Ms. John was not on the --

4 MR. MOY: Oh, I'm sorry, I meant --

5 CHAIRPERSON HILL: That's okay.

6 MR. MOY: Who did I mean?

7 CHAIRPERSON HILL: Ms. White. It's just the three  
8 of us.

9 MR. MOY: Okay. I'm having a moment here.

10 (Laughter.)

11 MR. MOY: For some reason I'm thinking five. But  
12 anyways -- okay, let me start me over. Okay, I'll record the  
13 vote as 3-0-2. And this is on the motion of Chairman Hill  
14 to approve the application.

15 Seconding the motion, Vice Chair Hart. Also, in  
16 support Mr. Peter May and -- yes, that's it.

17 CHAIRPERSON HILL: Okay, great.

18 MR. MOY: So, there are no other members.

19 CHAIRPERSON HILL: Okay, great.

20 MR. MOY: Motion carries.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you  
22 very much. Thank you.

23 MR. MOY: All right, the next application before  
24 the Board is Number 19892, Staci Walkes, W-A-L-K-E-S.

25 Caption advertised for a special exception under

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1 the penthouse regulations of Subtitle C, Section 1500.4, and  
2 under Subtitle C, Section 1504 from the penthouse setback  
3 provisions of Subtitle C, Section 1502.1(c)(1)(A), to  
4 construct a penthouse stair enclosure addition to the  
5 existing, attached principal dwelling unit, RF-3 Zone. This  
6 is at 434 4th Street Northeast, Square 780, Lot 51.

7 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
8 Moy. If you can please introduce yourselves from my right  
9 to left.

10 MR. ZEIGLER: Lonnie Zeigler, from 426 4th Street  
11 Northeast.

12 CHAIRPERSON HILL: Okay. Could you spell your  
13 last name for me, sir?

14 MR. ZEIGLER: Zeigler, Z-E-I-G-L-E-R, Zeigler.

15 CHAIRPERSON HILL: Okay, Mr. Zeigler.

16 MR. ZEIGLER: Mr. Chairman.

17 MS. ZEIGLER: Cynthia Zeigler at 426 4th Street  
18 Northeast.

19 CHAIRPERSON HILL: All right.

20 MR. BURNS: Michael Burns, principal at Rathunas  
21 Architects.

22 CHAIRPERSON HILL: Okay. So are you guys all here  
23 together?

24 MR. ZEIGLER: We're apart.

25 CHAIRPERSON HILL: No? Okay, no, you guys are

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1 here together, okay. So, you are here in opposition?

2 MR. ZEIGLER: Yes.

3 CHAIRPERSON HILL: Okay. So there will be a time  
4 for public discussion for opposition, and that's after we  
5 hear from the Applicant. So we'll call you guys up at that  
6 point during the hearing.

7 MR. ZEIGLER: Sounds great.

8 CHAIRPERSON HILL: Okay. If you could just turn  
9 off that microphone for us? Thanks, Mr. Zeigler.

10 Okay. So, Mr. Burns, let's see. So, if you could  
11 go ahead and, obviously there are people here in opposition,  
12 so if you could go ahead and walk us through your proposal  
13 and tell us what you're trying to achieve. And then also  
14 tell us how you're meeting the criteria for us to grant the  
15 application and we'll just take it from there.

16 I'm going to put 15 minutes on the clock so I know  
17 where I am. The clocks are on either side of you. And you  
18 can begin whenever you like.

19 MR. BURNS: Thank you. I hope I don't need  
20 anywhere near 15 minutes but we'll see.

21 I'm here on behalf of the owners, Eric Anderson  
22 and Staci Walkes. We are applying for a special exception  
23 to construct a penthouse at the roof level. This is to  
24 access an intended roof deck.

25 We are also asking for relief from the penthouse

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1 setback provisions. And this relates to the practical  
2 difficulty to construct a penthouse at all one-to-one setback  
3 on a narrow row home.

4 This project has got a little bit of a history to  
5 it. We originally started with an intent to infill the dog-  
6 leg and to, at the upper level of the town home, to provide  
7 stair access to the roof for an intended deck, which also had  
8 a penthouse.

9 When we started the process there was an  
10 indication that potentially this would be handled at the  
11 administrative level -- the Zoning Administrator. Obviously,  
12 that was not the case.

13 We went through HPRB to approve, as the project  
14 is in the historic district. HPRB did approve the project.  
15 At the time, the penthouse was actually larger than what you  
16 see before you now. It included a small toilet room and a  
17 small serving room with a sink and fridge.

18 We ended up pulling out the penthouse and the  
19 deck. We secured a building permit just to infill the dog-  
20 leg, and we are in construction now on that portion of the  
21 project.

22 The owners still wish to construct a roof deck and  
23 to find some way to access the roof deck, so we initially  
24 looked at doing a roof hatch, which would project no more  
25 than four feet. The difficulty with the hatch, in

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1 particular, a specified hatch by DCRA, was that when the door  
2 opened to provide access to the roof, the door opening would  
3 be higher than four foot, and so the Zoning Administrator  
4 would not approve it. Therefore, we are here to construct  
5 the penthouse.

6           The penthouse, as I said, there is a practical  
7 difficulty in that on a lot -- it's 17 feet wide, there is  
8 no way to get a one-to-one setback at any location on the  
9 roof. We are choosing to place it on the side line because  
10 that happens to be above the dog-leg infill, so we have a  
11 circular stair within that new infill construction that leads  
12 up to the roof.

13           We have received support from the Capitol Hill  
14 Restoration Society. That meeting took place on or about  
15 Monday the 14th of January.

16           We received support from the ANC. That was  
17 Wednesday the 9th, I believe, of January. And we have a  
18 letter of support from OP.

19           We also originally had letters of support from  
20 almost all the neighbors, including, I believe, the  
21 Zeigler's, although I might be mistaken, as I don't have that  
22 list in front of me.

23           We did not secure new letters because the scope  
24 of the penthouse had been reduced. I was told the owners  
25 have shared the plans with all the neighbors. And that's

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1 where we are now.

2 CHAIRPERSON HILL: Okay. Does anyone have any  
3 questions for the Applicant?

4 COMMISSIONER MAY: So, we -- I know there have  
5 been other penthouse access stairs with the hatch. Is it  
6 because it's a circular stair that it winds up being taller  
7 than four feet?

8 MR. BURNS: No, actually. We looked at a couple  
9 different hatches. Some are actually, lay flat against the  
10 roof and will slide back. DCRA has a single vendor that's  
11 pre-approved as a vendor.

12 And the hatch that we specified, they always lay  
13 on an angle, so when the door opens, it has to open to a  
14 height of 6'8" for a clear height over the stairs. So that  
15 was the difficulty, even though they told us that was the  
16 hatch to use, the zoning side wouldn't approve it.  
17 Structural would approve it, but zoning wouldn't approve it.

18 COMMISSIONER MAY: Okay. That just seems pretty  
19 bizarre that they would -- and it's only because it's pre-  
20 approved, they wouldn't approve another one?

21 MR. BURNS: We didn't go through a code  
22 modification process, which is what we'd have to do to  
23 approve another one. Because --

24 COMMISSIONER MAY: Because this is easier.

25 MR. BURNS: Well, they were proffering the

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1 specified product so there was no reason not to pursue that  
2 path.

3           Once they did deny it, I actually reached out and  
4 escalated it up. We actually have a zoning interpretation  
5 memo that was written due to my request that said you cannot  
6 use roof hatches which open to a height greater than four  
7 feet above the roof.

8           I may not be beloved any more due to that.

9           COMMISSIONER MAY: All right, thank you, I  
10 appreciate that because that is certain -- I mean, it's  
11 nonsensical that you have to go through this when you could  
12 -- I mean, the hatch doesn't stay up all the time, right?  
13 The house is not weatherproof once the hatch is up, so --

14           MR. BURNS: Correct --

15           COMMISSIONER MAY: -- why would it --

16           MR. BURNS: -- you wouldn't normally leave it up.  
17 You would open it and then you would close it again.

18           COMMISSIONER MAY: It's like, you can put  
19 furniture up there, you can put an umbrella up there --  
20 they're not going to -- that's not a zoning violation.

21           MR. BURNS: Right. And that was our argument,  
22 that it wasn't a permanent fixture. The permanent fixture  
23 was actually, it's slightly less than four feet. And then  
24 it was only an incursion into the airspace above four feet  
25 when it was open.

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1 COMMISSIONER MAY: Okay.

2 MR. BURNS: But --

3 COMMISSIONER MAY: All right.

4 MR. BURNS: -- I mean, every front door that  
5 crosses the property line is, on Capitol Hill, is an  
6 incursion to public space. So, it was sort of the same  
7 thing.

8 COMMISSIONER MAY: Well, the public space thing  
9 is -- different reasons. Anyway, I'll add this one to my  
10 list of things about which I disagree with for the Zoning  
11 Administrator. Thank you.

12 CHAIRPERSON HILL: All right, anyone else?

13 MEMBER JOHN: I have a question for the Applicant.  
14 So, you had originally planned to have a penthouse, right,  
15 but you couldn't get that approved administratively and so  
16 you started construction.

17 So, did you, at that time, consider configuring  
18 the lower floors in such a way that you could put in the  
19 penthouse?

20 Because, your justification now is, that to put  
21 in the penthouse to meet the one-to-one setback, you would  
22 have to reconfigure the floor below, and that it would be  
23 costly to do that. I'm just wondering why we are here now  
24 if you always anticipated getting a penthouse? Putting in  
25 a penthouse.

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1 MR. BURNS: Right. Well, there are two pieces to  
2 that. Number one, the penthouse can't be constructed by  
3 right in the zone, we would have had to come here regardless  
4 of where we put it on the roof.

5 But I think to more directly answer your question,  
6 in order to get a one-to-one setback, you would have to be  
7 eight feet from the side wall. Eight feet is almost halfway  
8 to the center line of the property.

9 So I would be able to build a one foot wide  
10 penthouse to conform to the one-to-one setback. So I'd have  
11 to ask for that relief anyway.

12 In this case, it's actually an existing home. The  
13 only modifications we're doing to the home are within the  
14 dog-leg. So no other modifications are being done. There  
15 is no other alterations to the upper floor, it's only within  
16 the dog-leg.

17 So, to have to go in and to find some other space  
18 to still construct a nonconforming penthouse with regard to  
19 setback, really is no solution.

20 CHAIRPERSON HILL: Okay, is the Office of Planning  
21 here? Can we hear from the Office of Planning?

22 MR. COCHRAN: Thank you, Mr. Chair.

23 CHAIRPERSON HILL: Sorry I wasn't clear, Mr.  
24 Cochran.

25 MR. COCHRAN: Many situations in which I am

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1 unclear, Mr. Chair.

2 CHAIRPERSON HILL: All right. Well, there you go.

3 MR. COCHRAN: The Office of Planning is  
4 recommending approval of all the special exception requests.  
5 This is a not unusual situation that we're confronted -- that  
6 the Applicant is confronted with where there are a series of  
7 row houses.

8 Row houses typically have their stairs on the side  
9 of the building. If you're going to put in a roof deck it's  
10 difficult to put in a separate set of stairs in the middle  
11 of a -- a row house is typically 18 feet wide.

12 The Applicant would be setting back from the rear  
13 of the property. It may be visible from the alley but  
14 certainly not from adjacent rear yards.

15 It wouldn't be visible from the street. It has  
16 the support of the Capitol Hill Restoration Society, which  
17 indicates it would be consistent with the character of the  
18 neighborhood. OP recommends approval.

19 CHAIRPERSON HILL: Okay, great. Thank you. Does  
20 anybody have any questions for the Office of Planning? Okay.

21 Does the Applicant have any questions for the  
22 Office of Planning?

23 MR. BURNS: No, thank you.

24 CHAIRPERSON HILL: Okay. Is there anyone here  
25 wishing to speak in support?

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1 Is there anyone here wishing to speak in  
2 opposition? If you could please come forward? Great, did  
3 you guys get sworn in this morning?

4 MR. ZEIGLER: Yes.

5 MS. ZEIGLER: Yes, we did.

6 CHAIRPERSON HILL: Okay, great. And also, if you  
7 could fill out two witness cards when you get a chance and  
8 make sure that --

9 MR. ZEIGLER: We did.

10 CHAIRPERSON HILL: Oh, you did? Okay, great. All  
11 right. So, if you could please introduce yourselves again,  
12 just so I get it on the record?

13 MR. ZEIGLER: Lonnie Zeigler. Lonnie Zeigler, 426  
14 4th Street Northeast.

15 CHAIRPERSON HILL: Okay.

16 MS. ZEIGLER: Cynthia Zeigler, 426 4th Street  
17 Northeast.

18 CHAIRPERSON HILL: Okay. So, are you guys right  
19 next door to the property?

20 MS. ZEIGLER: No, we are --

21 MR. ZEIGLER: They four doors down from us.

22 MS. ZEIGLER: -- four doors down.

23 CHAIRPERSON HILL: Okay. All right. So you'll  
24 each get three minutes to testify as members of the public.  
25 And the clock is on your left and right, and I think there's

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1 one right in front of you. And, Mr. Zeigler, why don't we  
2 start with you and then we'll go to Ms. Zeigler.

3 MR. ZEIGLER: Okay. I don't want them to put  
4 anything on top of the roof deck. That's a historic area.  
5 I've been there for 61 years. And if they put anything on  
6 the roof it's going to change the structure of the  
7 neighborhood.

8 Everything there is historic. We've got historic  
9 signs on the poles down there. If you're going to put  
10 buildings on top of buildings, what is the historic going to  
11 do? You should just take that right on out.

12 Okay? It's a historic area. None of the houses  
13 out there have popups on them. They're all three -- two or  
14 three-story homes. And I don't want to see that structure  
15 destroyed because I've been there 61 years.

16 This couple that moved there is from New Jersey.  
17 The husband, I know his mother -- his father and his uncle.  
18 They own a liquor store down on Maryland Avenue --

19 MS. ZEIGLER: That's all right, that's their thing  
20 and it's got nothing to do with it.

21 CHAIRPERSON HILL: Okay --

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: All right, so, Mr. Zeigler,  
24 you're opposed, we understand. You don't want anything built  
25 on top of it.

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1 MS. ZEIGLER: Okay.

2 CHAIRPERSON HILL: Okay.

3 MR. ZEIGLER: He lived in Maryland --

4 CHAIRPERSON HILL: No, Mr. Zeigler, it doesn't  
5 matter where anybody lived --

6 MR. ZEIGLER: Okay.

7 CHAIRPERSON HILL: -- okay?

8 MR. ZEIGLER: All right.

9 CHAIRPERSON HILL: Okay. All right, Ms. Zeigler?

10 MS. ZEIGLER: Okay. To his question that he said  
11 that we signed for, for the approval of it, we didn't sign.  
12 We didn't know anything about it. Our daughter signed. Our  
13 daughter does not live with us.

14 CHAIRPERSON HILL: Okay, that's all right. That's  
15 all right.

16 MS. ZEIGLER: Okay, I'm just clarifying --

17 CHAIRPERSON HILL: I'm pretty clear.

18 MS. ZEIGLER: Okay.

19 CHAIRPERSON HILL: I'm pretty clear you guys are  
20 here in opposition --

21 MS. ZEIGLER: Okay.

22 CHAIRPERSON HILL: -- you don't have to worry  
23 about that.

24 MS. ZEIGLER: Okay. And here are my reasons why  
25 I say no. The popup will increase the value of their home

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1 and this will affect more tax revenue for the city and will  
2 increase our taxes for us that don't make the money that they  
3 do.

4           When snow is on the popup roof, which is a popup,  
5 it's not a penthouse --

6           MR. ZEIGLER: Penthouse.

7           MS. ZEIGLER: -- a penthouse is a structure that's  
8 already in existence and you just, it's already a building  
9 in existence and it's at the top level. This is just a  
10 popup.

11           The neighbors surrounding the popup will impact  
12 more snow flow, if there's snow, at the height of the popup.  
13 If the popup have to shovel -- if they have to shovel the  
14 snow from the rooftop because of the weight, and you know --  
15 surrounding houses will get hit with the shoveled snow.

16           When it rains, the same houses will collect more  
17 rain from the height of the popup.

18           The houses in the 400 Block of 4th Street were  
19 built as row houses with certain layouts. These houses are  
20 considered historical.

21           A neighbor installed a new door with new dimension  
22 and was told it had to be changed back to its original  
23 dimension. Another time a neighbor installed an outer door,  
24 beautiful, and was told it was not within the code and will  
25 be fined. They both had to change their doors back.

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1 Mind you, these were just doors with a small price  
2 tag. These popups are unproportional as row houses or  
3 townhouses. They will take a great looking neighborhood and  
4 make it look like someone just had a bad thought and stuck  
5 something on top of the house.

6 We need to preserve the character of our  
7 neighborhood. I am for change but not this.

8 We can talk about fire and getting out and the  
9 neighbors with floor structures will get a lot of debris.  
10 Popups -- not a safe structure. We talk about solar panels  
11 not getting the sun that is needed.

12 If one need more space, build on the back and  
13 taking parking spaces that they have. There are many more  
14 other ways of getting extra space from the back, not on the  
15 roof.

16 And I went around, they have signs all in the  
17 neighborhood that say historical. Now, if you're going to  
18 change the structure of the neighborhood with all these  
19 historical, that -- you all are defeating the purpose. You  
20 all may as well just do away with a historical --

21 MR. ZEIGLER: It's in a historical area.

22 MS. ZEIGLER: And the signs are all over the  
23 place.

24 And this is the way our neighborhood look, now.  
25 A very nice neighborhood. And this is what it's going to

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1 look like -- I don't know what his looks like, but even the  
2 schools Stewart, built addition -- that's not Stewart, no.

3 Well, the school, Stewart Junior High, instead of  
4 them going up they went out and built. This is the school.  
5 And they built in the back, they didn't go up.

6 And this is a popup that will make the house look  
7 terrible.

8 CHAIRPERSON HILL: Ms. Zeigler, I'm sorry, I  
9 can't, nobody can see those in terms of the submittals, I  
10 guess, but I understand your testimony.

11 Okay, does the Board have any questions for the  
12 Witnesses?

13 COMMISSIONER MAY: Yes.

14 CHAIRPERSON HILL: Sure, go ahead.

15 COMMISSIONER MAY: So, you're concerned about the  
16 historic character of the neighborhood. Did you testify at  
17 the Historic Preservation Review Board hearing?

18 MS. ZEIGLER: We didn't know anything about it.

19 COMMISSIONER MAY: When it was -- that was done  
20 when it was originally -- the original proposal, right?

21 MS. ZEIGLER: And I --

22 MR. BURNS: Correct.

23 COMMISSIONER MAY: Okay.

24 MS. ZEIGLER: Yes, I didn't know anything about  
25 it. I found out about it later and I called Staci, whatever

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1 her name is, and she told me it was too late for me to submit  
2 a --

3 COMMISSIONER MAY: Sure. Okay.

4 MS. ZEIGLER: And so I found out from the big  
5 orange sign by the door --

6 COMMISSIONER MAY: Right.

7 MS. ZEIGLER: -- their front door. That's why we  
8 are here today.

9 COMMISSIONER MAY: I think our signage  
10 requirements are a little different from the Historic  
11 Preservation Review Board's, but they -- was the property  
12 actually posted with the sign?

13 MR. BURNS: Yes. They have the same requirements,  
14 a big green sign.

15 MS. ZEIGLER: No, it was --

16 COMMISSIONER MAY: It's a big green sign?

17 MS. ZEIGLER: No --

18 MR. BURNS: Yes.

19 COMMISSIONER MAY: Okay.

20 MS. ZEIGLER: -- it was a little, they must have  
21 had -- I saw something on the window. A little piece of  
22 paper on the window way back.

23 COMMISSIONER MAY: So that's a -- I think that's  
24 a building permit.

25 MS. ZEIGLER: Oh. Well, and that's all I saw.

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1 I didn't go up on their porch.

2 COMMISSIONER MAY: They do have some -- they have  
3 notification requirements to the public. It's unfortunate  
4 you didn't get to see that, because they probably would have  
5 had better views of what it looks like. What the addition  
6 will look like than what we have in our record. Right?

7 I mean, we have a drawing that shows, I mean, it's  
8 a very, very small structure upon the roof. That's why we  
9 call it a penthouse.

10 Penthouse is the technical term for anything like  
11 this. It's not a popup, that's not a technical term. We  
12 only dealing with technical terms.

13 It is setback from the front wall, it looks like,  
14 I don't know, 15, 20 feet, something like that. And so you  
15 can't -- you cannot see that addition from across the street.

16 MR. ZEIGLER: Where all the neighbors can see.

17 COMMISSIONER MAY: No. If you're standing across  
18 the street from this house, you will not be able to see the  
19 addition. Nor will you see the deck.

20 MS. ZEIGLER: So you will see -- but you will see  
21 a portion of it on the roof, right? From any angle.

22 COMMISSIONER MAY: You will not be able -- the  
23 front of the -- the front facade of the house, you're  
24 standing here and you look up at it, it is so far back you  
25 cannot see it. The only way you'll see it is if you're --

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1 MR. ZEIGLER: Go in the back.

2 COMMISSIONER MAY: -- probably even on the roof  
3 of the house across the way. Maybe on the second floor you  
4 can see a little tiny bit of it. But it's going to be mostly  
5 invisible from the street.

6 And we have a drawing that shows that. Maybe you  
7 want to bring that -- is your presentation loaded up?

8 MR. ZEIGLER: They should have gave everybody in  
9 the neighborhood a picture of it.

10 MR. BURNS: Maybe. I think I grabbed the wrong  
11 flash drive, but I can see.

12 COMMISSIONER MAY: Okay. Do you have it on paper,  
13 because maybe --

14 MR. BURNS: I do.

15 COMMISSIONER MAY: -- you can show it to them on  
16 paper.

17 MR. BURNS: I do.

18 COMMISSIONER MAY: So, I'm looking at drawing  
19 Number A1-1 -- or 1.1.

20 MR. BURNS: Correct.

21 COMMISSIONER MAY: And so, you can see in that  
22 drawing, in the lower part of the drawing, there's a little  
23 figure of a person who is six foot tall, looking across in  
24 the line of sight. That line shows what a person can see.

25 The addition is that darker gray section that is

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1 setback.

2 MR. ZEIGLER: So this is the house here?

3 MR. BURNS: This is the house, correct.

4 COMMISSIONER MAY: Yes.

5 MS. ZEIGLER: And this right here is -- and this  
6 is the deck or penthouse, whatever?

7 COMMISSIONER MAY: Yes, it's the penthouse.

8 MR. BURNS: Correct.

9 COMMISSIONER MAY: And it's at 27 feet from the  
10 back.

11 MS. ZEIGLER: Additional structure.

12 MR. BURNS: Yes, it's a structure.

13 COMMISSIONER MAY: Yes.

14 MR. BURNS: Yes.

15 COMMISSIONER MAY: Yes. So it's very far back.  
16 I mean, it's probably visible from the alley. But, in  
17 addition, if they build out the back, the addition would be  
18 in the alley. I mean, you'd see that from the alley too.

19 MS. ZEIGLER: If this is visible only from the  
20 back, that's okay.

21 COMMISSIONER MAY: Okay.

22 MS. ZEIGLER: Because it's in the back. But if  
23 it's visible to the front --

24 COMMISSIONER MAY: Yes.

25 MS. ZEIGLER: -- and will take away the old

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1 architecture structure of the neighborhood, no.

2 COMMISSIONER MAY: Yes. And I'm pretty convinced  
3 that it will not affect the look of the building from the  
4 front.

5 MS. ZEIGLER: Okay. So if it does, if he build  
6 it, we can come back and sue you?

7 (Laughter.)

8 COMMISSIONER MAY: You know --

9 MS. ZEIGLER: Yes. Yes.

10 COMMISSIONER MAY: I'm not going to comment on  
11 your ability to sue us.

12 MS. ZEIGLER: Yes. Yes, because you said --

13 COMMISSIONER MAY: But our lawyers over there  
14 maybe --

15 MS. ZEIGLER: -- you said it was okay.

16 (Laughter.)

17 MS. ZEIGLER: Yes.

18 COMMISSIONER MAY: No. I mean, again, we're  
19 basing our opinions on what's presented to us. And what's  
20 presented to us in the record indicates that a person  
21 standing across the street will not be able to see this  
22 structure on the roof.

23 MS. ZEIGLER: Okay, so if it's approved and  
24 they're out there building, and I'm going to watch, and if  
25 I see a beam coming up too close to the front, who I'm coming

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1 to see, you, Peter May?

2 COMMISSIONER MAY: No, but I think that you can  
3 go to the Department of Consumer Regulatory Affairs and lodge  
4 a complaint with them. Because that would mean that they are  
5 building something that's inconsistent with their zoning  
6 approval.

7 So there is a Zoning Administrator who has to  
8 review and approve and default -- and review these things and  
9 approve them at the time of permitting. And they will have  
10 to make sure that it is built according to the plans.

11 MR. ZEIGLER: Right.

12 COMMISSIONER MAY: So if you see something that's  
13 happening that is inconsistent with these drawings, and you  
14 can get a copy of these drawings, it's available to you  
15 online, or the office may be able to print a copy for you so  
16 you can take it home today -- I don't know, but you'll be  
17 able to see what would be approved if we approve it.

18 And if they try to build something that is  
19 different from that then, well, first of all, many of your  
20 neighbors will notice as well and people will be up in arms  
21 --

22 MS. ZEIGLER: A lot of --

23 COMMISSIONER MAY: -- because it's a historic  
24 neighborhood and that's what happens.

25 MS. ZEIGLER: Some of my neighbors I spoke with,

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1 they didn't know anything about this either.

2 COMMISSIONER MAY: I believe that.

3 MS. ZEIGLER: So I don't know who you spoke with.

4 COMMISSIONER MAY: A number of them do though.

5 A number of people are aware. We know that from the record.

6 And, again, it is a historic neighborhood and so  
7 many people are watching. And people have tried to get away  
8 with building things. I mean, I live in the same historic  
9 district that you do, people try to get away with building  
10 things that are not on their approvals. And very often they  
11 get caught.

12 There's a guy around the corner from us, they got  
13 held up for more than a year because they got caught building  
14 a popup, effectively, on their house that was not approved.  
15 So, there are means for you to be able to make sure that this  
16 is enforced. It's through the Zoning Administrator.

17 MS. ZEIGLER: I'm very persistent because -- I'm  
18 like a bee, I'll sting you.

19 (Laughter.)

20 CHAIRPERSON HILL: Okay.

21 COMMISSIONER MAY: I'm sure.

22 CHAIRPERSON HILL: All right, Ms. Zeigler. So,  
23 honestly, Mr. Burns -- I mean, I'm glad that what seems to  
24 be your issue is not going to be an issue. You're not going  
25 to be able to see it from the front. But Mr. Burns can give

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1 you a copy or direct you to the drawings that are currently  
2 in the record that you can take a look at.

3 Does the Board have any other questions of the  
4 Witness?

5 VICE CHAIRPERSON HART: No.

6 CHAIRPERSON HILL: Okay. All right, thank you all  
7 -- go ahead.

8 VICE CHAIRPERSON HART: Not more than just  
9 thanking you for coming to provide -- I mean, I know this is  
10 something you probably don't do often --

11 MS. ZEIGLER: No.

12 VICE CHAIRPERSON HART: -- but I just wanted to  
13 thank both of you --

14 MS. ZEIGLER: Oh, yes.

15 VICE CHAIRPERSON HART: -- both of you for coming.

16 MS. ZEIGLER: Well, I'm a Washingtonian and I'm  
17 for change but I don't like -- I like old structure. And if  
18 you start messing with the structure, I'm going to fight you.

19 VICE CHAIRPERSON HART: All right.

20 MS. ZEIGLER: Excuse me, I'm going to fight you  
21 to the end.

22 VICE CHAIRPERSON HART: I fully understand that.

23 MS. ZEIGLER: Yes.

24 VICE CHAIRPERSON HART: And I mean, and that's why  
25 they have these proceedings so people can come and give us

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1 your opinions on stuff and we can understand and hear that.  
2 And sometimes you can get information that you may not have  
3 had before, so --

4 MS. ZEIGLER: Oh, I'm good on the computer.

5 VICE CHAIRPERSON HART: All right. That's good.

6 MS. ZEIGLER: Oh I'm good.

7 VICE CHAIRPERSON HART: So that's it, I was just  
8 thanking you for coming. Thanks.

9 MR. ZEIGLER: You're welcome.

10 MS. ZEIGLER: Yes.

11 CHAIRPERSON HILL: Yes, thank you very much.  
12 Thank you all very much.

13 MS. ZEIGLER: Thank you all.

14 CHAIRPERSON HILL: Okay. Mr. Burns, maybe you can  
15 just -- well, I'll let you -- if the Zeigler's -- if you just  
16 wait in the back there, Mr. and Ms. Zeigler, and Mr. Burns  
17 can give you his information after this hearing.

18 MS. ZEIGLER: Okay.

19 CHAIRPERSON HILL: Okay. Okay, great. All right.  
20 And he's the architect so that's helpful. All right, just --  
21 we'll see how this goes here now.

22 So, Mr. Burns, do you have anything else to add?

23 MR. BURNS: No, thank you.

24 CHAIRPERSON HILL: Okay. All right, I'm going to  
25 go ahead and close the hearing. Is the Board ready to

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1 deliberate?

2 COMMISSIONER MAY: Yes.

3 CHAIRPERSON HILL: Okay. Does somebody else want  
4 to start?

5 COMMISSIONER MAY: Sure. So I do think that this  
6 is a pretty straightforward case. I was glad to hear from  
7 the Zeigler's and their concerns and hopefully we have  
8 addressed some of those concerns. Which is not typically the  
9 case, so hopefully that's -- they will be satisfied with what  
10 actually is going to be built.

11 Office of Planning support, ANC support, Capitol  
12 Restoration Society support. The immediately abutting  
13 neighbors are both in support, according to what we have in  
14 the record.

15 And I think that it's reasonable to grant this  
16 relief, although I do intend to try to pursue this issue of  
17 the hatch complication because it would have been an easier  
18 path for the Applicant if they could have just gotten a hatch  
19 approved.

20 So, with that -- I mean, unless others have  
21 comments, I would make a motion to approve.

22 CHAIRPERSON HILL: All right, sorry. Does anybody  
23 got any comments? Mr. Hart?

24 VICE CHAIRPERSON HART: I was just going to second  
25 that motion.

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1 CHAIRPERSON HILL: Oh, we've got a second, okay.  
2 Your list is getting very long today, Mr. May, so please, go  
3 ahead.

4 COMMISSIONER MAY: So, I would move that we  
5 approve Zoning Commission -- sorry, golly, not used to doing  
6 this -- Board of Zoning Adjustment Case Number 19892, Staci  
7 Walkes, to construct a penthouse stair enclosure in the RF-3  
8 Zone at premises 434 4th Street Northeast. And the relief  
9 being under Subtitle C, Section 1500.4, to permit a penthouse  
10 on a row dwelling, and Subtitle C, 1504, to permit a  
11 penthouse not meeting the one-to-one setback requirement.

12 VICE CHAIRPERSON HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded, all  
14 those in favor say aye?

15 (Chorus of aye.)

16 CHAIRPERSON HILL: All those opposed? The motion  
17 passes. Mr. Moy?

18 MR. MOY: Staff would record the vote as 4-0-1.  
19 This is on the motion of Mr. Peter May to approve the  
20 application for the relief requested. Seconding the motion,  
21 Vice Chair Hart. Also, in support Ms. John and Chairman  
22 Hill. No other member present today. The motion carries.

23 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.  
24 Thank you very much.

25 All right, Mr. Moy, before we move on, I think

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1 that -- I'm trying to think what's going to happen. We might  
2 actually take lunch. Well, let's see what happens.

3 Okay, so we're going to definitely get through the  
4 next two cases. And whether we take lunch or not, we'll see.  
5 Because, definitely, you don't want -- well, anyway. Okay.

6 So, Mr. Moy, you can call your case whenever you  
7 get a chance. Thank you.

8 MR. MOY: All right. So, if I can have -- the  
9 Board can have parties to the table to Case Applicant Number  
10 19901 of HIP West Street Partners, LLC.

11 As amended for special exception under Subtitle  
12 C, Section 1002.2 from the Inclusionary Zoning minimum lot  
13 requirements of Subtitle C, Section 1001.2(e)(3), and  
14 pursuant to 11 DCMR Subtitle X, Chapter 10, for an area  
15 variance from the lot dimension requirements of Subtitle D,  
16 Section 302.1, side yard requirements of Subtitle D, Section  
17 307.4, to construct six new, attached, principal dwelling  
18 units, R-3 Zone at 2501 through 2509 West Street, Southeast,  
19 Square 5808, Lots 824, 69, and 50.

20 CHAIRPERSON HILL: Okay, great, thank you. If you  
21 could please introduce yourselves from my right to left?

22 MR. MILLER: Chris Miller, D.C. Housing Finance  
23 Agency.

24 MR. YANCEY: Harvey Yancey, principal, H2  
25 Development.

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1 MS. FERREIRA: Catarina Ferreira, principal at  
2 Architextual. We are the architects.

3 CHAIRPERSON HILL: All right, Ms. Ferreira, you're  
4 going to be presenting to us?

5 MS. FERREIRA: Yes.

6 CHAIRPERSON HILL: Okay. So, I'm going to go  
7 ahead and let you do what we normally do, which is go ahead  
8 and give your presentation. Please walk us through what  
9 you're trying to achieve, and also how you're meeting the  
10 requirements for us to grant or deny the application.

11 The one question that we did have, and I don't  
12 know if somebody reached out to you or not, but it was the  
13 whole issue about DDOT and the curb cuts. And so, if you  
14 could address that, because what we -- well, I was confused  
15 about while going through the application, was that if you  
16 didn't get the curb cuts were you going to be back with us  
17 again, and therefore why wouldn't you figure that out first?

18 But I'll go ahead and let you walk us through your  
19 presentation. I know that it's the same issue even on the  
20 next application, but there is 15 minutes on the clock, and  
21 you can begin whenever you like.

22 MS. FERREIRA: Thank you. I would like to, first  
23 of all, clarify the relief being sought because there was a  
24 revision that was made.

25 And what we are seeking now, and this was done

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1 also in coordination with the Office of Planning, what we are  
2 seeking is a special exception for opting into the IZ Program  
3 per Subtitle C, 1002.2, pursuant to Subtitle C, 1001.2 and  
4 per Subtitle X, 900.

5 So that is a special exception. We are no longer  
6 seeking relief from the lot area requirements given that we  
7 are opting into IZ instead. Does that make sense?

8 CHAIRPERSON HILL: Yes, thanks.

9 MS. FERREIRA: Okay.

10 CHAIRPERSON HILL: It makes sense, I'm just trying  
11 to figure out what I got in front of me here. Do you have  
12 that written down somewhere? That you can hand to the  
13 Secretary.

14 MS. FERREIRA: It is in the record. This was  
15 submitted a little while back. I'm not sure why the  
16 information is not reflecting the latest version, but I can  
17 hand in my copy of the burden of proof. But the application  
18 form is also revised. And the burden of proof was replaced  
19 to reflect the current requests.

20 CHAIRPERSON HILL: Do you know what exhibit that's  
21 in? Oh, 36?

22 MS. FERREIRA: Number 35 is the revised burden of  
23 proof. And I believe the Office of Planning's report also  
24 reflects this relief request, not the previous request.

25 CHAIRPERSON HILL: All right, go ahead and go

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1 through your case and we'll see where we are in terms of the  
2 questions.

3 MS. FERREIRA: Okay. So we are requesting the  
4 special exception for opting into IZ, as I previously stated.  
5 We are also requesting a variance from the five foot side  
6 yard requirement at Lot A6, which is the lot abutting the  
7 alley at the end of the development.

8 As you are aware, the Zoning Commission recently  
9 approved a text amendment that eliminates that five foot side  
10 yard requirement, so I am unclear about how that will be  
11 handled at this hearing. However, since the order has not  
12 officially been issued, we are still requesting that relief.  
13 And your guidance is welcomed in that department.

14 Going through the special exception variance test,  
15 in terms of the special exception test for opting into IZ,  
16 what we are proposing are lots that are 18.33 feet wide by  
17 104 foot long, and therefore they exceed the requirements for  
18 IZ lots. So, there is no deviation there.

19 And we also believe that the proposed development  
20 will be in harmony with the general purpose and intent of the  
21 zoning regulations and zoning maps as every other aspect of  
22 the development does conform with the requirements in the  
23 zoning regulations. As far as the variance for the  
24 elimination of the five foot side yard, and how we meet the  
25 variance test. There is a paper alley that exists currently

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1 on that particular end of the property that is ten feet wide.  
2 And that is part of the justification for eliminating the  
3 side yard on that side.

4 Additional justification or special condition is  
5 that we are opting into IZ but we are exceeding the  
6 requirement because we are contributing more than ten percent  
7 area normally required for an IZ unit, given that we are  
8 building six town houses and not ten. And we are doing so,  
9 again, in order to be able to provide smaller lot sizes.

10 And the other special -- or exceptional condition  
11 is that this property is a classic illustration of the issues  
12 raised by the now approved text amendment outlined in Zoning  
13 Commission Case 17-23, for redefining attached versus  
14 semidetached dwellings and whether to provide the five foot  
15 side yard or not. And then I quote as well some of the text  
16 amendment.

17 In terms of practical difficulty, providing the  
18 required five foot side yard at the end of row lot would  
19 result in reduction of width for that dwelling to 13.33 feet.  
20 Which would be less than adequate for interior spaces and for  
21 livability, for similar reasons as the previous case we had  
22 discussed, and would not meet the HIP Program parameters for  
23 providing quality workforce housing, which this project is  
24 also a part of.

25 No substantial detriment to the public good or

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1 integrity of the zone plan. Given that the proposed  
2 development will actually exceed IZ requirements, we feel  
3 that it is certainly not a detriment to the public good and  
4 is not out of conformance with the zoning regulations in that  
5 respect.

6 And bringing this development to the neighborhood  
7 and much needed workforce housing to the area, we see as a  
8 benefit to the public good.

9 Regarding the curb cuts that you had touched upon,  
10 we did discuss the issue with DDOT a few times. And we have  
11 read the report that was provided.

12 And first off, I think that some of the  
13 information in the report regarding the number of parking  
14 spots that will be eliminated could be resolved through the  
15 design process as we get into a more detailed site plan  
16 design for the project. And we've already gone through that  
17 exercise, and I have had subsequent discussions with DDOT  
18 about it.

19 We do feel that we would be able to conform with  
20 a five foot -- 24 foot distance required between curb cuts  
21 and that if we provide shared curb cuts, 14 foot wide shared  
22 curb cuts, that we would only be eliminated most likely three  
23 parking spots, not six, as quoted in the report.

24 So, we have been continuing to discuss the issue  
25 with DDOT and we understand that their preference would be

1 for access to be provided from the alley side. That avenue  
2 was not pursued from the get-go because of the steep  
3 topography on the site, which you can get a sense of on the  
4 site plan that's on the screen now.

5 I also uploaded an additional document into the  
6 record to give some more clarity to that issue. That's the  
7 actual topo survey done by a civil engineer for the entire  
8 site.

9 And as you can see there, there is a significant  
10 grade change specifically from east to west, along the rear  
11 of the site where the paper alley currently exists. And  
12 there is also the paper alley towards 90 degrees and that  
13 meets West Street on the other side. On that side there's  
14 less of a grade.

15 One of the things that was discussed -- or,  
16 proposed by DDOT, was potentially using that paper alley that  
17 connects to West Street, since it has less of a significant  
18 grade. However, we would still come across the same issue  
19 at the rear of our lots, the topography. If we were to use  
20 the rear of those lots to access parking by creating an  
21 easement that cuts across the various lots and have back-  
22 loading garages instead of front-loading garages, we would  
23 have to effectively re-grade the entire site.

24 This site is pretty heavily forested. There are  
25 very large rocks. This would represent a significant amount

1 of site work that my clients are not prepared to undertake.  
2 And I can pass the microphone onto them to get into that in  
3 more detail. I look forward to answering your questions.

4 CHAIRPERSON HILL: Okay, that's okay, let's just  
5 see if we have any questions about the grading.  
6 Commissioner.

7 COMMISSIONER MAY: Yes, just about the parking.  
8 I mean, if you were not able to do the curb cuts as you would  
9 like, as you think DDOT should approve them, if they still  
10 won't approve them, and obviously I understand that it's a  
11 problem to try to put the burden of paving the alley onto  
12 this project, what happens then? Do you wind up just with  
13 street parking and is that going to be acceptable to you?

14 And is that, I can't remember, do we windup -- it  
15 doesn't trigger a -- I mean, you're not required to have  
16 parking for these buildings, are you, when you don't have  
17 street access -- or, alley access?

18 MS. FERREIRA: It's part of the program goals that  
19 they have parking. You are not required, if there is no  
20 alley from a zoning standpoint, you're absolutely correct.

21 COMMISSIONER MAY: Right.

22 MS. FERREIRA: And I'll pass it on to Chris Miller  
23 from the Housing Finance Agency who has more information  
24 about the program requirements.

25 COMMISSIONER MAY: Right.

1 MR. MILLER: This is still an area where you need  
2 multi-modal transportation, and so a car is kind of necessary  
3 to do a lot of the day-to-day activities, if you're a  
4 workforce family living in this neighborhood.

5 COMMISSIONER MAY: I don't think I'm questioning  
6 the need for car, I'm questioning the need for a parking  
7 space on the property.

8 MR. MILLER: Oh. Our preference is to have the  
9 parking space on the property. We're in conversation with  
10 DDOT if, depending on where those conversations lead, there  
11 might be a reevaluation of whether we want --

12 COMMISSIONER MAY: So, it's a preference. So it's  
13 a matter of policy that somebody could waive? Conceivably.

14 MR. MILLER: Essentially.

15 COMMISSIONER MAY: Conceivably, okay. Well, I  
16 mean, it sounds like it is something of a risk because I'm  
17 not convince that DDOT would grant the permission for the  
18 curb cuts nor do I think they should.

19 Because, frankly, a garage entrance on a front of  
20 a house is just awful. And I cringe. I mean, we've had to  
21 approve them every once in a while, but I don't -- I won't  
22 vote yes without complaining about how bad it looks.

23 And frankly, DDOT has a legitimate concern about  
24 the safety of that approach. So, alley approaches are much  
25 better. And it doesn't seem like there is a problem with

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1 getting parking in this neighborhood based on the photographs  
2 that we have.

3 CHAIRPERSON HILL: Can you guys turn off your  
4 microphones, I'm just getting a little feedback. If there  
5 is an actual question at you then you can answer.

6 COMMISSIONER MAY: Yes, that's okay, sometimes I  
7 do have questions. All right.

8 Well, I just wanted to know that there might be  
9 another route that you could go because we'd hate to give you  
10 the approval today and then you'd have to come back and get  
11 some sort of modification of the relief as a result of what  
12 comes out of the DDOT discussion. But it sounds like if you  
13 wind up with street parking, that there might be some  
14 discretionary action on the part of the Housing Finance  
15 Agency. Okay.

16 CHAIRPERSON HILL: Okay. All right. Does anybody  
17 have a question?

18 VICE CHAIRPERSON HART: Yes, actually I do. So,  
19 kind of to connect with this, with Commissioners May  
20 question, or the comment that he made. What happens to the  
21 parking garage if you guys don't have a parking -- if you  
22 don't get the access than that becomes another room?

23 I mean, the drawings that we have don't include  
24 anything other than a -- it's not an option, like, you do  
25 this or this -- we have a garage. And so, I just was curious

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1 as to what you would kind of do with that?

2 MS. FERREIRA: Yes, I think it's reasonable to  
3 assume that it would become another room. There would be no  
4 significant changes to the exterior of the buildings other  
5 than changing the garage doors to large windows perhaps.

6 But, beyond that, I don't foresee that there would  
7 be any changes to the footprint of the buildings or anything  
8 that's actually -- that we're seeking relief for.

9 CHAIRPERSON HILL: Okay, that's all right. All  
10 we're trying to talk about in this was the original comment,  
11 was that you have to come back here again if you're going to  
12 change the plans so -- okay. So, does anybody have any other  
13 comments?

14 VICE CHAIRPERSON HART: No. I think the only  
15 other one I had was about the paper alley. And so, what I'm  
16 understanding is that the alley -- there is no alley at all  
17 behind you or behind the neighbors? I mean, this square does  
18 not have an alley network. It's a paper alley but not an  
19 actual paved alley?

20 MS. FERREIRA: That's correct.

21 VICE CHAIRPERSON HART: Okay.

22 MS. FERREIRA: Not only is not paved, it's  
23 completely undeveloped. Right.

24 VICE CHAIRPERSON HART: Okay.

25 MS. FERREIRA: I think some parts of it have been

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1 deforested, the last time that I was onsite. But for the  
2 most part it is -- there is vegetation on it, there are rocks  
3 on it, there's a steep grade. So developing that alley would  
4 be a significant undertaking.

5 I would like to add, if I may, that I did have  
6 discussions with DDOT again about the curb cut issue  
7 yesterday and we went over their report, and the specific  
8 items that they flagged as being of concern to them. Such  
9 as the elimination of the six parking spots and, from their  
10 point of view, not being able to meet the 24 foot distance  
11 between curb cuts.

12 And I think I was able to communicate to them that  
13 through the design process we feel confident that we would  
14 be able to resolve those issues. So I think some progress  
15 has been made in that department.

16 In addition, there are other conversations that  
17 are taking place between D.C. Housing Finance Agency and DDOT  
18 regarding this topic and we are hopeful that it will be  
19 resolved in a way that's satisfactory to both parties.

20 VICE CHAIRPERSON HART: Okay. And I'm also  
21 understanding that -- I mean, I'm just looking at some of the  
22 images that you provided as well, that were just actually  
23 photographs. It's your exhibit -- I don't know what exhibit  
24 this is. It's the drawings that you -- 38 I think, that  
25 says. So, yes, these images.

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1           So, the interesting part about this is, there are  
2 no curb cuts along this. And I know that that's not a huge  
3 -- I know that that's just an aspect of this but it's just  
4 interesting that, again, there are -- one, there are not a  
5 lot of units along here, that's understood. But there are --  
6 also aren't a lot of curb cuts as well, so it's just a point  
7 that I was just --

8           MS. FERREIRA: I believe there is one curb cut on  
9 the south side of West Street.

10          VICE CHAIRPERSON HART: Yes, I saw one --

11          MS. FERREIRA: Yes.

12          VICE CHAIRPERSON HART: -- on it. But it --

13          MS. FERREIRA: But yes, it's a large undeveloped  
14 block with no curb cuts as a result of being undeveloped.  
15 For sure. Yes.

16          VICE CHAIRPERSON HART: All right. Okay, thanks.

17          COMMISSIONER MAY: Mr. Chairman, I had a question.  
18 I was wondering maybe if I could ask the Office of the  
19 Attorney General about the relief as it relates to the curb  
20 cuts?

21          CHAIRPERSON HILL: Sure. Of course.

22          COMMISSIONER MAY: So, the essential question I  
23 have is, if they wind up being denied the curb cuts, do they  
24 actually need to come back to us because of a change in the  
25 plans?

1           Because the curb cuts don't affect the relief  
2 that's requested in any way.

3           MR. RITTING: I'm not sure the answer. Usually  
4 your orders require that they build in accordance with the  
5 plans they've submitted.

6           COMMISSIONER MAY: Right.

7           MR. RITTING: And there is some flexibility given  
8 to the Zoning Administrator to allow modifications to those  
9 plans.

10          COMMISSIONER MAY: Yes.

11          MR. RITTING: What I don't know is how -- what  
12 changes they'll actually make --

13          COMMISSIONER MAY: Right.

14          MR. RITTING: -- and whether they will qualify for  
15 that flexibility as a result.

16          COMMISSIONER MAY: Okay. But we can probably make  
17 that clear in a decision, in the order that we issue, noting  
18 that the possibility of the curb cuts may be eliminated, and  
19 if they are, that they would not be required to return to the  
20 Board.

21          Because, again, it does nothing to do with the  
22 relief that's requested.

23          MR. RITTING: I understand what you're asking.

24          COMMISSIONER MAY: Yes.

25          MR. RITTING: The hesitancy I have is, I'm not

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1 sure how capture that while maintaining the requirement that  
2 the project be built in accordance with the plans they've  
3 submitted.

4 COMMISSIONER MAY: Well, but I mean, we can  
5 require that there be -- they be built in accordance with the  
6 plans that have been submitted, however, noting that if the  
7 curb cuts are not approved by DDOT that they can be  
8 eliminated -- period. I don't know what else.

9 MR. RITTING: I don't see any particular legal  
10 problem with doing that.

11 COMMISSIONER MAY: Yes.

12 MR. RITTING: So, if that's the way the Board  
13 wants to go and --

14 COMMISSIONER MAY: Yes.

15 MR. RITTING: -- you feel confident that you can  
16 articulate that in a specific enough way that you're not  
17 going to regret --

18 COMMISSIONER MAY: Yes. Right.

19 MR. RITTING: -- giving that flexibility, then I  
20 have no reason to object to it.

21 COMMISSIONER MAY: Right. Again, since it's not  
22 material to any relief that's requested, I would think that  
23 we could come up with a sentence or two that could cover that  
24 eventuality. Because the last thing we want to do is make  
25 them have to go through all this again after they are

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1 finished wrestling with DDOT.

2 CHAIRPERSON HILL: Commissioner May, are you  
3 trying to be helpful?

4 COMMISSIONER MAY: No, don't accuse me of that.

5 (Laughter.)

6 CHAIRPERSON HILL: All right. So, does anybody  
7 have any more questions? Okay, I'm going to turn to the  
8 Office of Planning

9 MS. ELLIOT: Good afternoon, Mr. Chairman and  
10 Members of the Board, I'm Brandice Elliot representing the  
11 Office of Planning.

12 And the Office of Planning, well this particular  
13 application has evolved quite a bit from what we originally  
14 saw in terms of relief, so we really appreciated that the  
15 Applicant worked with us to work the relief down from a  
16 variance to a special exception.

17 The Office of Planning is recommending approval  
18 of the special exception, as has been requested, to opt into  
19 IZ. As well as approval of the variance relief for the side  
20 yard. I'm happy to answer any questions you have, but I'll  
21 leave it there.

22 CHAIRPERSON HILL: Okay. Does anybody have any  
23 questions for the Office of Planning? Okay.

24 Does the Applicant have any questions for the  
25 Office of Planning?

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1 MS. FERREIRA: We do not.

2 CHAIRPERSON HILL: Okay. I had a quick question  
3 for you, and maybe the Secretary is going to bring it up.  
4 You were the next case on the docket, did you pull that? You  
5 withdrew that case?

6 MS. FERREIRA: We did pull it out of consideration  
7 for your time, given that the text amendment eliminating the  
8 five foot side yard requirement --

9 CHAIRPERSON HILL: Okay, I just needed to  
10 understand.

11 MS. FERREIRA: Sure.

12 CHAIRPERSON HILL: So that's great. Okay, yes,  
13 great. Okay. So, is there anybody here wishing to speak in  
14 support?

15 Is there anyone here wishing to speak in  
16 opposition? Okay.

17 Is there anything else you would like to add?

18 Okay. All right, I'm going to close the hearing.  
19 I don't know how to specify, Mr. May, what you were speaking  
20 of. In terms of my thoughts on the application, I think that  
21 they do meet the standards with which we could grant the  
22 application.

23 I would agree with the Office of Planning's  
24 analysis, as well as the support of ANC 8A. Again, as my  
25 earlier comment, that we had a previous workforce housing

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1 case, it's great to see this type of project. And also, the  
2 ability of us to grant this proposal.

3 I would turn, kind of, to the architects in terms  
4 of, if there is a specific way that we could make this  
5 motion, if in fact we were going to pass the motion, to  
6 provide an opportunity for the Applicant not to have to come  
7 back here, if all they're going to do is get rid of those  
8 garages if DDOT doesn't give them a curb cut.

9 And so, I am now turning to the Board. So, if you  
10 all agree with me in terms of granting the application, then  
11 I am looking for language.

12 COMMISSIONER MAY: Well, Mr. Chairman, I obviously  
13 agree -- well, maybe not obviously. Yes, I agree that the  
14 relief requested in this circumstance is sensible and can be  
15 granted and I think they've met the test.

16 I think the curb cut issue is really a side bar  
17 to the meat of the matter here. It is not relevant to the  
18 relief that's being granted.

19 And so that -- I would suggest that we could  
20 approve the requested relief and require that the buildings  
21 be built in accordance with the plans that have been  
22 submitted. However, noting that the garage and curb cuts,  
23 and driveway, may be eliminated and can be eliminated,  
24 without any effect on this order, because they do not relate  
25 to the relief.

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1 CHAIRPERSON HILL: Okay. All right. Mr. Hart,  
2 do you have any comments?

3 Okay. All right. So I'm going to go ahead and  
4 make a motion to approve Application Number 19901 of HIP West  
5 Street Partners, LLC, as amended pursuant to 11 DCMR,  
6 Subtitle X, Chapter 9 for a special exception under Subtitle  
7 C, Section 1002.2, from the Inclusionary Zoning minimum lot  
8 requirements of Subtitle C, 1001.2(e)(3) and pursuant to 11  
9 DCMR Subtitle X, Chapter 10 and from the side yard  
10 requirements of Subtitle D, 307.4, to construct six new  
11 attached principal dwelling units in RF-3 Zone at premises  
12 2501 through 2509 West Street Southeast, Square 5808, Lots  
13 824, 69, and 50.

14 And in the order, please to note that we are  
15 allowing flexibility -- the design will be built as plans  
16 provided, with flexibility to remove the curb cuts and the  
17 garage if needed -- pardon me?

18 VICE CHAIRPERSON HART: And driveway.

19 CHAIRPERSON HILL: And driveway, garage and  
20 driveway and curb cuts, if needed after working with DDOT.  
21 And I ask for a second.

22 VICE CHAIRPERSON HART: Second.

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

25 (Chorus of aye.)

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

3 MR. MOY: Staff would record the vote as 3-0-2.  
4 This is on the motion of Chairman Hill to approve the  
5 application for the amended relief as he's cited.

6 Seconding the motion, Vice Chair Hart. Also, in  
7 support Mr. Peter May, and that's, M-A-Y. No other Board  
8 Members participating. The motion carries.

9 CHAIRPERSON HILL: Okay, great, thank you. Thank  
10 you all very much.

11 MS. FERREIRA: Thank you.

12 MR. MOY: If I could add, Mr. Chair, well --

13 CHAIRPERSON HILL: I'm assuming the Applicant --

14 MR. MOY: -- if Ms. Ferreira is still here, I just  
15 want to cite for the record, so it's clear that the next  
16 application, 19902 of HIP West Street Partners, LLC has been  
17 withdrawn by the Applicant. And that's in the case files  
18 record under Exhibit 47.

19 MS. FERREIRA: Thank you.

20 CHAIRPERSON HILL: Okay, thank you.

21 Okay. All right, so we're going to take a break  
22 for lunch. And so, we're going to come back for our last two  
23 cases.

24 So, let's see, yes. Yes, we'll try to do half an  
25 hour. So we'll be back here at 1:15.

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1 (Whereupon, the above-entitled matter went off the  
2 record at 12:42 p.m. and resumed at 1:30 p.m.)

3 CHAIRPERSON HILL: All right, Mr. Moy, we are  
4 back. And you can call our next case when you get a chance.

5 MR. MOY: Thank you, Mr. Chairman. The Board is  
6 reconvening after its lunch recess and the time is about 1:30  
7 p.m.

8 And if we can have parties to the table to Case  
9 Application Number 19903 of Tim Baird, it's pronounced. B-A-  
10 I-R-D.

11 This is captioned for special exception under  
12 Subtitle E, Section 5201 from the lot occupancy requirements  
13 of Subtitle E, Section 304.1, and rear yard requirements of  
14 Subtitle E, Section 306.1. And this is amended to add  
15 nonconforming structure provisions under Section 202 as well.

16 And this would construct a third-floor rear  
17 addition to an existing semi-detached principal dwelling unit  
18 and convert it to a flat in the RF-1 Zone at 410 Franklin  
19 Street Northwest, Square 510, Lot 139.

20 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
21 Moy. Could you please introduce yourself for the record?

22 MR. BAIRD: Sure. My name is Tim Baird.

23 CHAIRPERSON HILL: And, Mr. Baird, did you get  
24 sworn in earlier?

25 MR. BAIRD: I did.

1           CHAIRPERSON HILL: Okay, great. All right. So,  
2 we can see what -- if the Board has any specifics they'd like  
3 to hear during your presentation. I don't have any  
4 specifics.

5           I guess if you could just speak to the project  
6 you're trying to do as well as how you're meeting the  
7 criteria for us to grant the requested relief. I'm going to  
8 put 15 minutes on the clock so I know where I am, and you can  
9 begin whenever you like.

10           MR. BAIRD: Sure. Thank you very much. I am the  
11 owner at 410 Franklin Street. My architect, unfortunately,  
12 had to duck out unexpectedly but I'm obviously really  
13 familiar with the case.

14           So, essentially, we are asking for a special  
15 exception to increase the lot occupancy to 69.2 percent.  
16 Still keeping within the special exception. Bumping it up  
17 from about 60 percent as it is already.

18           And that essentially just fills in the dog-leg on  
19 the end unit house in a stream of row houses. So it will  
20 just kick in that end unit -- fill in the dog-leg on the side  
21 of an alley.

22           So that's for the special exception. And then the  
23 rear yard already has 13 feet to the back of the house, and  
24 that won't impact that any further. It will just extent out  
25 to where the dog-leg already -- as far as the dog-leg already

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1 extends out.

2 CHAIRPERSON HILL: Okay. Does the Board have any  
3 questions for the Applicant? Okay.

4 All right, I'm going to turn to the Office of  
5 Planning.

6 MR. JESICK: Thank you, Mr. Chairman and Members  
7 of the Board, I'm name is Matt Jesick. The Office of  
8 Planning is happy to stand on the record in support of the  
9 application, but I can take any questions if the Board has  
10 any.

11 CHAIRPERSON HILL: Okay, thank you. Does the  
12 Board have any questions for the Office of Planning? Okay.

13 Does the Applicant have any questions for the  
14 Office of Planning?

15 MR. BAIRD: No, thank you.

16 CHAIRPERSON HILL: Okay. Is there anyone here  
17 wishing to speak in support?

18 Is there anyone here wishing to speak in  
19 opposition?

20 All right, Mr. Baird, is there anything you would  
21 like to add at the end?

22 MR. BAIRD: No. Thank you very much for your  
23 time.

24 CHAIRPERSON HILL: Okay. I'm going to go ahead  
25 and close the hearing. Is the Board ready to deliberate?

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1           Okay, I can start. I would actually agree with  
2 the analysis that the Office of Planning has provided in  
3 terms of how they're meeting the standards for us to grant  
4 the request to relief.

5           I'm also in agreement with the analysis that ANC  
6 6E has provided, as well them being in support. Height is  
7 a matter of right. I know they have now added C202 to their  
8 application. And I'll be voting in favor of the application.

9           Does anyone have anything else they would like to  
10 add? Okay, then I'm going to make the motion to approve  
11 Application Number 19903 as read by the Secretary, and ask  
12 for a second?

13           MEMBER JOHN: Second.

14           CHAIRPERSON HILL: Motion made and seconded, all  
15 those in favor say aye?

16           (Chorus of aye.)

17           CHAIRPERSON 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 as amended.

22           Seconding the motion, Ms. John. Also, in support  
23 Vice Chair Hart and Mr. Peter May. No other Board Members  
24 participating today. Motion carries.

25           CHAIRPERSON HILL: Okay, great, thank you, Mr.

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1 Moy. Thank you, guys. All right.

2 All right, Mr. Moy, you can call our last case  
3 whenever you get a chance.

4 MR. MOY: Thank you, sir. That would be Case  
5 Application Number 19907 of Greystar GP II, LLC. This is a  
6 request for a zoning relief for a special exception under  
7 Subtitle I, Section 203.3 from the front build-to line  
8 requirements of Subtitle I, Section 203.1, to construct a  
9 hotel with ground floor retail uses in the D-5 Zone at  
10 premises 861 New Jersey Avenue Southeast, Square 695, Lots  
11 820 and 823.

12 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
13 Moy. Could you please introduce yourselves for the record?

14 MR. TUMMONDS: Sure. I'm Paul Tummonds with  
15 Goulston & Storrs.

16 MR. ROSEN: I'm Sacha Rosen with R2L Architects.

17 CHAIRPERSON HILL: Okay, great. So, Mr. Tummonds?

18 MR. TUMMONDS: Yes.

19 CHAIRPERSON HILL: All right. Sorry. Mr.  
20 Tummonds, so, unless the Board has any other specific  
21 questions for you -- I do not -- if you could just go ahead  
22 and walk us through your application. And also the -- how  
23 you're meeting the criteria for us to grant the application  
24 and also the conditions that have been put forward. And I'll  
25 put 15 minutes on the clock.

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1           And we're getting some items handed to us here.  
2 And you can begin whenever you like.

3           MR. TUMMONDS: Sure, great. Thank you very much.  
4 Again, Paul Tummonds with Goulston & Storrs.

5           We believe the application we're presenting to you  
6 is very straightforward and simple. We note that it has  
7 received the unanimous support of OP, DDOT, and ANC 6D.

8           The materials that we submitted to you today are  
9 updated plans of the sidewalk and the streetscape area that  
10 address the comments that were in DDOT's report that was  
11 submitted yesterday.

12           DDOT had asked us to increase the sidewalk width  
13 to a degree that we could. We've done that with the plans  
14 that we're submitting. And we think we are now fully  
15 consistent with the comments of DDOT.

16           This is kind of a unique situation in that this  
17 property does not extend all the way -- this property extends  
18 all the way to New Jersey Avenue where we're typically used  
19 to seeing a property that has a sidewalk and public space in  
20 front of it, prior to the public right-of-way. That does not  
21 occur in this situation.

22           Therefore, the requirements of Subtitle I, Section  
23 203.1 require us to build within four feet of a property  
24 line. If we can't do that, we have to meet the special  
25 exception criteria of 203.1 which says, we have to make sure

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1 the integrity of the block face is maintained. And then in  
2 those areas where we are exceeding the four foot setback, the  
3 property needs to be used for public space.

4 As we've shown here, we are aligning the building  
5 with the building to the south, so we think that by granting  
6 this relief we are making sure that we are 100 percent  
7 maintaining the integrity of the block face and having a  
8 consistent building line along this stretch of New Jersey  
9 Avenue.

10 Second, as we've noted, we are proposing that all  
11 of this area will be public space. Both sidewalk and tree  
12 pit area. And as we've shown in the plans we submitted, we  
13 are increasing the sidewalk width further to the north.

14 There was questions about -- with the pedestrian  
15 activity associated with the Whole Foods Supermarket across  
16 the street, we think that people coming from Capitol Hill,  
17 coming south on New Jersey are more likely to cross over at  
18 H Street. The new all-way intersection we're proposing. So  
19 we've increased the sidewalk width there.

20 Similarly, people coming up, say, heading north  
21 on New Jersey Avenue are more likely to cross at the  
22 intersection of New Jersey and I Street. So then they get  
23 across there, to that side of the street.

24 With regards to the conditions that we've proposed  
25 in Exhibit 30A, those were all based on discussions we had

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1 with ANC 6D. They include a loading management plan  
2 associated with the operations of the hotel, a construction  
3 management plan and then finally, some conditions regarding  
4 security issues during construction and operation of the  
5 hotel, and possibly a dog park in the adjacent area.

6 We were amenable to having those conditions be  
7 part of the approval today. With that, I think we stand on  
8 the record as submitted. And Mr. Rosen is here to answer any  
9 questions you may have.

10 CHAIRPERSON HILL: What about the items from the  
11 Office of Planning in terms of the doors?

12 MR. TUMMONDS: Yes. That is part of one of our  
13 conditions as well.

14 CHAIRPERSON HILL: Is it in 30A?

15 MR. TUMMONDS: Yes.

16 CHAIRPERSON HILL: Okay. Does the Board have any  
17 questions for the Applicant?

18 COMMISSIONER MAY: Yes. So this is not really  
19 very -- it's not specific to the zoning case but it just --  
20 it's coincidental that I got a notification from you about  
21 safeguards during construction. Is this your project?

22 MR. TUMMONDS: Yes.

23 COMMISSIONER MAY: Okay. And it's very strange  
24 because it's referring to the adjoining owners, the Architect  
25 of the Capitol, and then it has my name and the National Park

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1 Service on it. And as far as I can tell, none of us have any  
2 interests in this property or anywhere near this property.

3 MR. TUMMONDS: Interestingly enough, the  
4 Architect of the Capitol has two easements that run through  
5 portions of it. Again, not anything impacted by the BZA  
6 application today.

7 COMMISSIONER MAY: Right.

8 MR. TUMMONDS: It's on the other part of the site.

9 COMMISSIONER MAY: I see. Okay. Yes, I knew they  
10 had stuff sort of in the area --

11 MR. TUMMONDS: Correct.

12 COMMISSIONER MAY: -- I mean, the coal yard or  
13 whatever is not far from there, and we did have property in  
14 the area that had been transferred to the District decades  
15 ago and then conveyed to the District that -- where the old  
16 trash transfer station was.

17 MR. TUMMONDS: Correct.

18 COMMISSIONER MAY: Which is right through there.

19 MR. TUMMONDS: And I think that also may be  
20 brought to your attention as well. This property goes all  
21 the way over to North -- South Capitol.

22 COMMISSIONER MAY: I see.

23 MR. TUMMONDS: And so, I think you're getting that  
24 notice as National Park Service maybe because of the  
25 adjacency to property maintained on South Capitol side, not

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1 on the New Jersey side.

2 COMMISSIONER MAY: Okay. Which we also don't own  
3 anymore.

4 MR. TUMMONDS: D.C. land records.

5 COMMISSIONER MAY: For ten years.

6 MR. TUMMONDS: Yes, sir.

7 COMMISSIONER MAY: Okay. Yes. I mean, we do not  
8 have anything in that area whatsoever anymore.

9 MR. TUMMONDS: Got you.

10 COMMISSIONER MAY: All right. Well, I appreciate  
11 your --

12 MR. TUMMONDS: Sure.

13 COMMISSIONER MAY: -- clarifying that for me  
14 because that was just, we should deal with this and let you  
15 all know and make sure that you're talking to the right  
16 folks.

17 Do you know if a notice actually did go to the  
18 Architect of the Capitol?

19 MR. TUMMONDS: Yes. And we've been in discussions  
20 with -- and Mr. Rosen could -- the Architect has two huge,  
21 I want to say, lines. Are they sewer lines, are they --

22 MR. ROSEN: There are two existing 36 inch  
23 diameter water lines and an existing 48 inch diameter sewer  
24 line that run across the property.

25 COMMISSIONER MAY: Okay. Yes. All right. Well,

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1 just as long as you're talking to the Architect of the  
2 Capitol because they would have interests that we wouldn't  
3 have. And it just got confusing because it referred to us  
4 as the Architect of the Capitol, so maybe that was just a  
5 typo on the form.

6 MR. TUMMONDS: I'll make sure that we have that --

7 COMMISSIONER MAY: All right.

8 MR. TUMMONDS: -- appropriately addressed.

9 COMMISSIONER MAY: Okay, thank you. I don't have  
10 any questions about the zoning of this, but I appreciate you  
11 taking a minute to do this.

12 CHAIRPERSON HILL: Okay. Just as far as the  
13 conditions, Mr. Tummonds.

14 The Office of Planning report, and I think I've  
15 got the right piece here, all doors fronting New Jersey  
16 Southeast should be designed to not swing into the sidewalk  
17 to ensure the sidewalk is fully opened to the public as  
18 proposed by the Applicant in Exhibit 2.

19 And the sidewalk abutting New Jersey Avenue  
20 Southeast should be maintained as a publicly accessible  
21 sidewalk at all times of the day as proposed by the Applicant  
22 in Exhibit 30A.

23 I don't see where you talk -- in your 30A Exhibit  
24 I see the doors and it's the first bullet of additional  
25 comments of the Applicant. And what you're speaking to is

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1 that it doesn't necessarily say they're going to swing in,  
2 which is another question that somebody had at some point,  
3 but is that the adjacent streetscape will prevent the  
4 possibility of pedestrians being hit by doors opening out  
5 into the pedestrian travel way. So that was that OP  
6 condition, right?

7 MR. TUMMONDS: OP had that condition in as well,  
8 and I'm not sure.

9 CHAIRPERSON HILL: Well, I'll ask them --

10 MR. TUMMONDS: Yes.

11 CHAIRPERSON HILL: -- but that's the one you're  
12 talking about?

13 MR. TUMMONDS: Correct. And that also came from  
14 ANC 6D.

15 CHAIRPERSON HILL: Okay.

16 MR. TUMMONDS: I want to make sure I give  
17 Commissioner Fiscett her due for bringing that to our  
18 attention.

19 CHAIRPERSON HILL: Okay. And then the one with  
20 the publicly accessible sidewalk at all times of the day, is  
21 that anywhere in your 30A?

22 MR. TUMMONDS: We can amend 30A to make it --

23 CHAIRPERSON HILL: Okay.

24 MR. TUMMONDS: -- explicit, but --

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

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1 what happens with the Office of Planning in a minute, but,  
2 I mean, if we get to that point, we can always add that in  
3 the motion.

4 Okay, does any have anything else for the  
5 Applicant?

6 VICE CHAIRPERSON HART: And so, what you've done,  
7 Mr. Tummonds, is to not have the doors swing in but to swing  
8 out, but put them in an alcove so that you're able to have  
9 them swinging out and also have -- they're not in the right-  
10 of-way for people -- the sidewalk for people to bump into,  
11 or whatever -- they're now within the building envelope so  
12 that's not an issue?

13 MR. TUMMONDS: That's correct.

14 VICE CHAIRPERSON HART: Okay.

15 CHAIRPERSON HILL: Okay. I'm going to turn to the  
16 Office of Planning.

17 MR. KIRSCHENBAUM: Good afternoon, Board Members.  
18 Jonathan Kirschenbaum from the Office of Planning. And we  
19 recommend approval.

20 And just regarding those conditions, those were  
21 what the Applicant stated in those respective exhibits.

22 CHAIRPERSON HILL: Okay. So, just to be clear,  
23 the Office of Planning is fine with all of the conditions  
24 that are in 30A?

25 MR. KIRSCHENBAUM: Yes. 30A -- you know, I don't

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1 have the computer in front of me, so I can't look at the  
2 document, but yes, we are fine.

3 CHAIRPERSON HILL: Okay.

4 MR. KIRSCHENBAUM: Yes.

5 CHAIRPERSON HILL: Okay. All right. Does the  
6 Board have any questions for the Office of Planning?

7 Does the Applicant have any questions for the  
8 Office of Planning?

9 MR. TUMMONDS: No question.

10 CHAIRPERSON HILL: Is there anyone here wishing  
11 to speak in support?

12 Is there anyone here wishing to speak in  
13 opposition?

14 Mr. Tummonds, is there anything you would like to  
15 add at the end?

16 MR. TUMMONDS: No. Just that we're amendable to  
17 adding that condition that you mentioned to make sure that  
18 the areas that we've shown on the plans, being depicted as  
19 sidewalk and tree pits, will meet the conditions of OP's  
20 support for this project, that they be open to the public  
21 during daylight hours.

22 CHAIRPERSON HILL: Okay. It says at all times of  
23 the day.

24 MR. TUMMONDS: That works for us.

25 CHAIRPERSON HILL: Okay. I don't know how you

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1 would close it at night, so -- all right, is that it? Okay.

2 All right, I'm going to close the hearing. Is the  
3 Board ready to deliberate? Does somebody else want to start?

4 MEMBER JOHN: I had a question.

5 CHAIRPERSON HILL: Oh, you have a question, for  
6 us or --

7 MEMBER JOHN: About the conditions -- can we  
8 discuss that when we get there?

9 CHAIRPERSON HILL: Sure.

10 MEMBER JOHN: Okay.

11 CHAIRPERSON HILL: We can do it now.

12 MEMBER JOHN: Oh, sure. So, are we thinking,  
13 assuming we approve the application, are we thinking of  
14 including only the two conditions from OP or are we looking  
15 at Exhibit 30A?

16 CHAIRPERSON HILL: I was thinking that we were  
17 going to include the conditions in 30A, as well as the one  
18 condition that spoke about the sidewalk. The other one that  
19 the Office of Planning had was already in the conditions of  
20 30A, which was the first bullet of additional commitments of  
21 the Applicant.

22 MEMBER JOHN: So, 30A includes the construction  
23 management plan and additional conditions that I don't  
24 believe are part of the zoning issue. And so, I'd like to  
25 hear what my fellow Board Members think.

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1 CHAIRPERSON HILL: Okay.

2 MEMBER JOHN: We don't typically include  
3 construction management plans in the order.

4 CHAIRPERSON HILL: I mean, I'm fine with the  
5 conditions the way they are and have been agreed on with this  
6 application because the Applicant has gone through this  
7 process with the ANC and the ANC was -- I'm giving my  
8 opinion, and so the ANC was okay with these conditions. But  
9 if you want to try to figure out how to do it differently,  
10 that's fine.

11 But I'm stating my vote would be for the 30A,  
12 including the one bullet point. But I'll let the other  
13 Members of the Board give their opinion.

14 VICE CHAIRPERSON HART: Yes, I think that -- I  
15 mean, I understand what Board Member John is saying and the  
16 alternative would be to, kind of, use the loading management  
17 plan conditions and the additional commitments by the  
18 Applicant and then remove the construction management plan  
19 conditions. I mean, that would be the -- if you're looking  
20 to do that.

21 COMMISSIONER MAY: I didn't quite follow that, say  
22 that one again?

23 VICE CHAIRPERSON HART: Just to keep the  
24 conditions that are from the loading management plan and the  
25 ones that are on Page 2 of 30A, that are additional

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1 commitments by the Applicant, and just not have the  
2 construction management plan in there -- conditions in there.

3 COMMISSIONER MAY: Yes. I mean, I am not inclined  
4 to include the construction management plan as a condition  
5 because it does not relate to the specific relief involved.  
6 I think the -- even the loading management plan is somewhat  
7 marginal, but it does relate to DDOT's support of it, so, I  
8 don't know.

9 I mean, the thing about it is that it's not -- I  
10 don't think that it's a supportable condition, right? I  
11 mean, if we were ever challenged on it, which is not likely  
12 to happen, I don't think that we can be challenged when it --  
13 I mean, I don't think it would sustain a challenge to a  
14 condition relating to the construction management plan.

15 Certainly, when it comes to other conditions, the  
16 swing of the doors and things like the occupied -- when the  
17 space is open and all that sort of stuff, that relates to the  
18 specifics of the relief that's requested. So, I'm inclined  
19 to keep it as limited as possible.

20 But if they -- you know, when it comes to a  
21 construction management plan, if they have reached an  
22 agreement with the ANC, I assume that they will live up to  
23 that agreement and the ANC will -- has their own ways of  
24 trying to see that that's enforced.

25 CHAIRPERSON HILL: So, just so I'm clear what's

1 on the table -- so you are or aren't in favor of the loading  
2 management plan?

3 COMMISSIONER MAY: I'm iffy on the loading  
4 management plan, I think that marginally more connected to  
5 the case.

6 CHAIRPERSON HILL: Okay. Ms. John?

7 MEMBER JOHN: I'm in favor of the loading plan.

8 CHAIRPERSON HILL: Okay. All right.

9 MEMBER JOHN: Loading management plan.

10 CHAIRPERSON HILL: Okay. So, the loading  
11 management plan, the construction management plan, since it  
12 has been agreed to by the Applicant, and this isn't a small  
13 project, I'm sure they will agree to what they've adhered to  
14 already with the ANC, so we'd strike the construction  
15 management plan, and then the additional commitments, we'll  
16 keep the additional commitments and add the one about the --  
17 and I'll read all this later, about the sidewalk being open  
18 and publicly accessible at all times of the day on New Jersey  
19 Avenue?

20 MEMBER JOHN: Correct.

21 VICE CHAIRPERSON HART: Yes.

22 CHAIRPERSON HILL: Okay. All right. So, outside  
23 of those conditions, I am in agreement that with the analysis  
24 that the Office of Planning has provided with regard to the  
25 standards in terms of how we can approve this application,

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1 the ANC, again, did vote 5-0-2 in support, but with these  
2 conditions.

3           So I'm not -- I still think they're in support but  
4 I guess it's a little -- I'm a little confused now in terms  
5 of, since we're taking away some of their conditions. But  
6 I still am basing my decision on the record and the -- and  
7 I would agree with the analysis of the Office of Planning.  
8 So I would be in favor of the application.

9           If everyone else is in favor of the application,  
10 then I make a motion considering everything with the  
11 conditions. Does anyone have anything they would like to  
12 add, in terms of the application? Okay.

13           All right, then I'll make a motion to approve  
14 Application Number 19907, as captioned and read by the  
15 Secretary, including the conditions that are in Exhibit 30A,  
16 which is the loading management plan, as well as the  
17 additional commitments of the Applicant and the four bulleted  
18 commitments of the Applicant that on the second page of 30A,  
19 including one more condition, which is the sidewalk abutting  
20 New Jersey Avenue, Southwest should be maintained as a  
21 publicly accessible sidewalk at all times of the day, and ask  
22 for a second?

23           MEMBER JOHN: Second.

24           CHAIRPERSON HILL: The motion was made and  
25 seconded, all those in favor say aye?

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1 (Chorus of aye.)

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

4 MR. MOY: The staff would record the vote as 4-0-1.  
5 This is on the motion of Chairman Hill to approve the  
6 application for the relief requested, as well as the  
7 conditions that have been cited.

8 Seconding the motion, Ms. John. Also, in support,  
9 Vice Hart and Mr. Peter May. No other members participating.  
10 Motion carries.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. All right,  
12 thank you gentlemen.

13 Mr. Moy, does the Board have anything else in  
14 front of us today?

15 MR. MOY: No, there's nothing from the Staff, sir.

16 CHAIRPERSON HILL: Okay, great. We stand  
17 adjourned.

18 (Whereupon, the above-entitled matter went off the  
19 record at 1:54 p.m.)

20

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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 Hearing

Before: DC BZA

Date: 01-30-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



-----  
Court Reporter

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