

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 6, 2019

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Chairperson
ANTHONY HOOD, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on February 6, 2019.

I-N-D-E-X

Application Number 19823 7
Application Number 19831 38
Application Number 19832 40
Application Number 18906B 45
Application Number 18916C 47

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

9:46 a.m.

CHAIRPERSON HILL: The hearing will please come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW.

This is the February 6, 2019 public hearing of the Board of Zoning Adjustment. My name is Fred Hill, chairperson. Joining me today will be Carlton Hart. He is not on our first decision case. Lorna John, Lesyllee White board members and representing the Zoning Commission will be Rob Miller for some time and then joining us later will be Anthony Hood.

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

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

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

All persons planning to testify either in favor

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1 or in opposition must have raised their hand and been sworn
2 in by the secretary.

3 Also each witness must fill out two witness cards.
4 These cards are located on the table near the door and on the
5 witness table.

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

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

16 The order of procedures for special exceptions,
17 variances and appeals are also listed as you walk in through
18 the door.

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

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

1 The board's agenda includes cases set for
2 decision. After the board adjourns the Office of Zoning in
3 consultation with myself will determine whether a full or
4 summary order may be issued.

5 A full order is required when the decision it
6 contains is adverse to a party including an affected ANC.
7 A full order may also be needed if the board's decision
8 differs from the Office of Planning's recommendation.

9 Although the board favors the use of summary
10 orders whenever possible an applicant may not request the
11 board to issue such an order.

12 The District of Columbia Administrative Procedures
13 Act requires that the public hearing on each case be held in
14 the open before the public pursuant to section 405(b) and 406
15 of that act.

16 The board may consistent with its rules and
17 procedures and the act enter into a closed meeting on a case
18 for purposes of seeking legal counsel on a case pursuant to
19 D.C. Official Code Section 2-575(b)(4) and/or deliberating
20 on a case pursuant to D.C. Official Code Section 2-575(b)(13)
21 but only after providing the necessary public notice and in
22 the case of an emergency closed meeting after taking a roll
23 call vote.

24 The decision of the board in cases must be based
25 exclusively on the public record. To avoid any appearance

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1 to the contrary the board requests that persons present not
2 engage the members of the board in conversation. Please turn
3 off all beepers and cell phones at this time so as not to
4 disrupt the proceeding.

5 Preliminary matters are those which relate to
6 whether a case will or should be heard today such as requests
7 for a postponement, continuance, or withdrawal, or whether
8 proper and adequate notice of a hearing has been given.

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

12 Mr. Secretary, do we have any preliminary matters?

13 MR. MOY: Good morning, Mr. Chairman, members of
14 the board.

15 I have a brief announcement regarding today's
16 docket for the record. First off, case application number
17 19842 of Anna DaCruz, D-A-C-R-U-Z, has been postponed,
18 rescheduled to March 13, 2019.

19 Case application number 19884 of Jason Bricker has
20 been withdrawn by the applicant.

21 On today's hearing docket, Mr. Chairman, we have
22 two applications with preliminary matters. And staff would
23 suggest that the board address those preliminary matters when
24 we get to the hearing portion of today's docket. Other than
25 that we can go directly to the meeting session.

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1 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
2 Moy.

3 If there's anyone here that plans to testify
4 either in favor or in opposition if you wouldn't mind
5 standing and taking the oath administered by the secretary
6 to my left.

7 (Whereupon, the witnesses were sworn.)

8 CHAIRPERSON HILL: Okay. Good morning, everybody.
9 So we have a bunch of things to do today and we're going to
10 follow the agenda for the most part.

11 In terms of the decision cases we are going to
12 follow the agenda. In terms of the hearing cases we're going
13 to mix things up just a little bit.

14 The first one is going to be application 19910
15 followed by application number 19911 followed by application
16 number 19914. Then we're going to go back to application
17 number 19904 followed by 19905 followed by 19906 and then
18 we're going to end with 19917. So hopefully that was
19 helpful.

20 And then I guess we're ready for our first meeting
21 case, Mr. Moy.

22 MR. MOY: Thank you, Mr. Chairman. So that would
23 be application number 19823, 19823 of Wisconsin Avenue
24 Baptist Church.

25 This application was for special exceptions under

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1 the use requirements Subtitle U Section 203.1(f) and under
2 Subtitle C Section 1402 from the retaining wall requirements
3 of Subtitle C Section 1401.3(c) and pursuant to Subtitle X
4 Chapter 10 for variances from the height limitations Subtitle
5 D Section 303.1, lot occupancy requirements Subtitle D
6 Section 304.1 and from the side yard requirements Subtitle
7 D Section 307.1.

8 This would construct a new four story church and
9 continuing care retirement facility in the R-1-B zone. This
10 is at 3920 Alton Place NW square 1779 lot 14.

11 As the board is aware this was heard at a hearing
12 on November 14, 2018 then set for decision on January 16,
13 2019. There was not a quorum and that was rescheduled to
14 today's date.

15 And I believe participating on the vote is Chair
16 Hill, Ms. White, Ms. John and Mr. Robert Miller.

17 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
18 Moy. Is the board ready to deliberate? Okay. All right.
19 So I can kind of start or start to set this up.

20 So I'm going to need help with everybody in terms
21 of talking this through.

22 As I recall, or as I'm sure the board recalls we
23 heard like six hours of testimony in terms of this particular
24 application.

25 There was I guess one preliminary matter that I

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1 wanted to discuss with the board which was that we had asked
2 for some information from the applicant and the parties in
3 opposition, and then we received additional information into
4 the record that we had not asked for.

5 So I was not interested in -- as I read in the
6 opening statement that I make the board asks for particular
7 things and we accept what we've asked for. Other than that
8 the record is closed.

9 So I would not be interested unless the board has
10 any other thoughts in allowing anything into the record other
11 than what we asked for. And so I see the board's nodding so
12 that is by consensus.

13 Okay. So as I started before, so we heard like
14 six hours of testimony and read through hundreds if not
15 thousands of pages of documents. And then we had to read it
16 all over again in order to kind of like get ready for our
17 deliberations.

18 I preface this by saying I think that the board
19 is the most well qualified place to decide this case in terms
20 of determining whether or not we think they meet the standard
21 for granting or not granting this application.

22 So I can understand -- well first of all, I'll
23 just say, I'll start at the beginning. After reading through
24 everything I'm probably depending upon how the rest of this
25 deliberation goes I'm going to vote to approve. So I'm just

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1 going to start there.

2 The beginning of kind of how I went through this
3 process was reading through the entire record, reading
4 through all of the different things that we asked for and
5 there's a lot of things that I'm going to try to touch on
6 during my discussion with this, or at least starting the
7 discussion with you guys here is that we have the Office of
8 Planning's report that provided the analysis as to how they
9 think, the Office of Planning thought that they met the
10 standard. So there was that.

11 Then on top of that we had the ANC's report that
12 also -- they had some conditions that we can probably end up
13 talking about later but that the ANC also after going through
14 their deliberations and discussions also thought that the
15 project should be approved.

16 Now that's not to say that then the board -- the
17 board then takes all the information, takes the testimony
18 then we determine whether or not we as individuals think that
19 the standards are met.

20 I start with those discussions because that's the
21 Office of Planning giving us their opinion and the great
22 weight that we're supposed to give the Office of Planning.

23 Then we have the ANC that supposedly is -- and I
24 say supposedly, I mean it is, it's the best representation
25 of the community that we have. And they have come forward.

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1 Now again, the single member district is not how
2 we get our great weight from, it's the overall ANC that we
3 get our opinion from. And they again went forward and
4 approved it.

5 Then there was kind of a threshold issue in terms
6 of whether or not the applicant, this applicant is actually
7 able to come forward with this application because it is the
8 institution or the developer, the Sunrise Development Company
9 that needed the application to go through in order to do this
10 project.

11 And so we asked the Office of the Attorney General
12 for their analysis on that question that the opposition had
13 brought forward.

14 So we did get a report from the Office of the
15 Attorney General. That's not in the record and the reason
16 why I believe it shouldn't be in the record is that the
17 Office of the Attorney General is our counsel and so under
18 client attorney privileges I didn't think that would be
19 something that necessarily we would want to share.

20 It's just -- it's something that is to help the
21 board. And so as again they are -- we are their client,
22 under attorney-client privileges I do not think that it would
23 be something that would be necessarily needed in the public
24 record.

25 So again that's my thoughts. Unless I hear

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1 anything different from the board then I would assume we'll
2 go -- so I see everyone again nodding in consensus.

3 So the threshold issue again was does the
4 applicant fail the practical difficulties test for the
5 variance because the variance was needed for the private
6 development of a portion of the site by Sunrise which is not
7 the owner.

8 Again we requested legal analysis of the statement
9 made by the party in opposition, Tenleytown Neighborhood
10 Association.

11 At the hearing they stated that only an owner may
12 request a variance for its own purposes. TNA claimed that
13 this standard is not met in this case because the applicant,
14 Wisconsin Avenue Baptist Church, the church, does not need
15 these variances to operate a church but instead all the
16 variances requested are to allow a non-owner to operate a
17 for-profit senior facility.

18 So we again asked the OAG for their analysis on
19 that. And I will speak more to that as I kind of go through
20 this process.

21 In its filings the church asserted that it meets
22 the variance test in part because the church is a public
23 service when inadequate facilities that it cannot upgrade
24 using its own resources and that the inclusion of a for-
25 profit retirement use is the only financially viable option

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1 for it to remain on the site.

2 The church further asserts that the for-profit
3 development cannot succeed without the variance. And that
4 was in exhibit 8.

5 Contrary to TNA's assertion the standard can be
6 met when the practical difficulties pertain to a proposed use
7 of the property by an entity other than the owner such as a
8 contract purchaser or ground lease which we did get some
9 cases to support this from the analysis provided by the
10 Office of the Attorney General such as in application number
11 17556. Also in Monaco v. District of Columbia Board of
12 Adjustments, Draude, D-R-A-U-D-E v. District of Columbia
13 Board of Zoning Adjustment and the Dupont Circle Citizens
14 Association v. District of Columbia Board of Zoning
15 Adjustment.

16 In addition, the board has granted variances in
17 at least three instances permitting a for-profit use of a
18 church site to provide needed revenue for the church to carry
19 out its public service mission such as application number
20 18272, also in application number 18471 and then application
21 number 19133 of St. Thomas Episcopal Parish.

22 In conclusion I guess or finally to the issue the
23 board may find practical difficulties upon the church owner
24 if the church demonstrates that (1) it is a public service
25 with inadequate facilities to carry out its mission, (2) it

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1 does not possess the monetary resources to make the necessary
2 improvements, (3) income resulting from the private
3 development on its site will permit it to make such
4 improvements, and (4) such private development would not be
5 viable without the requested relief.

6 To those points I was persuaded by the testimony
7 given by the applicant for the hearing transcripts. I'm just
8 referencing different points, 501 through 502, 506 through
9 507, 509 through 518 and in their pre-hearing statements on
10 pages 25 through 30.

11 Also in the transcript in pages 509 through 518.
12 And I'll again speak more to this later. I'm just giving you
13 a little bit more exact where I referred back to where it can
14 be found.

15 Finally to the issue I was convinced that the
16 testimony given to the applicant that (a) the church is a
17 public service with inadequate facilities to carry out its
18 mission, that it does not possess the monetary resources to
19 make the necessary improvements on its own from all the
20 testimony that we had taken, that the income resulting from
21 the private development of the site would permit it to make
22 such improvements and remain on that site, and then that
23 Sunrise is a private development that would not be viable
24 without the requested relief.

25 Based on the testimony by the church again I

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1 believe that it clearly is a public service that will
2 continue to be so if this application was approved.

3 There was testimony taken from the opposition
4 trying to -- well, they were making an argument that there
5 wasn't enough members in the church, or that the church
6 wasn't actually viable. And I was not persuaded by that
7 argument.

8 I mean, I think that the testimony that was
9 provided by the church in terms of also how they went about
10 doing their own analysis in terms of how much money they
11 could get for each particular lot, how much it would cost to
12 develop the site, and then if they could keep that -- if they
13 could sell those lots off in order to remain there I do
14 believe they went through the financial analysis and
15 determined that it wasn't possible for them to stay there by
16 just selling off those lots.

17 So again the neighbors in the opposition group
18 made another legal argument at the hearing that they thought
19 that the applicant failed to meet the practical difficulties
20 prong of the variance test because it did not present
21 evidence of its inability to make a reasonable disposition
22 of the property for the permitted use, again from the
23 transcript in 530.

24 I just wasn't persuaded that way. I thought that
25 the applicant did provide -- or I was persuaded by the

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1 applicant, particularly Ms. Duhome testified that they could
2 not find a viable alternative that satisfied their
3 institutional needs of the church. Again in the transcript
4 at 510 and at 531 to 535.

5 In that section of the transcript the applicant
6 again spoke of trying to look at selling the lots to keep
7 their church alive and that it was not feasible which was
8 also addressed in the testimony highlighted again in the
9 transcript at 509 and 510.

10 I was convinced that the church did look at the
11 alternatives to remain there and this was their only course
12 of action in order to remain there. In order to work with
13 this developer.

14 They said and from the testimony that they looked
15 at other options. They have been approached by several
16 developers, many developers about how to sell the lot,
17 develop the lot, move the church and that is not part of what
18 they as a public service that's been there for a very long
19 time -- 100 years. So they wanted to remain there and in
20 that community.

21 So I was again just persuaded that they did look
22 at other alternatives because this isn't a particularly easy
23 process to go through. If you could find another way to do
24 it I believe that they really did try to find another way to
25 do it.

1 With regards to the final prongs of the variance
2 test I'd agree again with the applicant and the analysis of
3 the Office of Planning in terms of those prongs.

4 With regards to the special exception I was also
5 convinced by the testimony given and the analysis of the
6 Office of Planning that the applicant met the standards for
7 the special exceptions.

8 They're meeting the parking requirements which
9 oftentimes the neighborhood is concerned about or that's
10 something they're concerned about and I didn't find an issue
11 with the retaining wall.

12 I understand why somebody wouldn't want a
13 retaining wall, but I didn't necessarily think that it was
14 something that I had any issues with and I haven't even seen
15 on several -- many other projects.

16 I think it's helpful that they bordered the NPS
17 land and was able to propose the setbacks that they proposed.

18
19 If we get to the conditions there are some issues
20 that I have with some of the conditions from the ANC. And
21 we'll get to those if we do.

22 Again we took testimony from neighbors in support
23 and opposition. There was several letters of support from
24 different organizations.

25 I can also understand why some neighbors would not

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1 want this to happen. I mean, they have grown accustomed as
2 someone here on the board just mentioned it's been 100 years
3 that church has been there the way it's been there so I can
4 understand why people would not want that to change.

5 I did think that there could have been a larger,
6 bigger matter of right church put there if in fact they had
7 the finances to do so. So I think that that is again
8 something that I did look at.

9 If they had the finances to do something they
10 could have done a larger matter of right church.

11 During the hearing again we took testimony and one
12 neighbor that indicated that we should listen to the
13 neighbors in opposition and the neighbors that are there.

14 Again, I completely empathize and understand. I
15 mean again I mentioned this many times in terms of my
16 experience here working on this board that I happen to live
17 in a very dense part of the city and I happen to have a
18 condominium and next door there's a hotel going up. I hear
19 the jackhammering all the time next door.

20 It just is things that I have grown -- it's just
21 things that happen to you living where I live in the city.
22 And so at different places in the city if things change
23 you're going to have opposition to it and I can understand
24 it completely, empathize why one would not want that if
25 you're a neighbor.

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1 I mean an immediate neighbor perhaps. I don't
2 know what I would have thought to be quite honest if I was
3 an immediate neighbor. But that's not what my role is.

4 My role here is to look at the standards and
5 whether or not I think based upon all of the testimony that
6 we've taken and the input that we've received from the Office
7 of Planning and the ANC in terms of the great weight that
8 we're supposed to give we did get that information.

9 And again what I'm speaking to when I mention that
10 with listening to the neighbors, that is what the ANC is
11 supposedly representing. They are the neighborhood that
12 we're listening to. But again I understand if you're
13 immediately right next to it how that might -- you might have
14 a different opinion or want to convince your ANC to vote in
15 a different way.

16 Again I guess the applicant in terms of -- I think
17 I've stated how I think the issue concerning ownership has
18 been addressed.

19 I was also in agreement with the proposed findings
20 of facts from the applicant in numbers 7 through 11
21 concerning the church and the CCRC.

22 So I guess after that it would be kind of going
23 to kind of some of the conditions when we get around to it.
24 I think I'm kind of reading through everything that I can
25 because it was six hours of testimony and thousands of pages

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1 of documents. So I want to be as concise as I can in terms
2 of this discussion.

3 So I'm happy to turn it over to anybody else who
4 wants to go next. Okay.

5 MEMBER JOHN: So, I expect I will repeat a lot of
6 what you said, but in the interest of being clear I'll just
7 go through what I had prepared.

8 So this is an application to replace an existing
9 church with a new building that will house a continuing care
10 retirement community and a 250 seat church.

11 The CCRC will have 86 units and a two-level garage
12 below grade for 66 vehicles. The church is permitted as a
13 matter of right and the CCRC is allowed by special exception.

14 The building meets development standards except
15 for lot occupancy, number of stories and one side yard on the
16 west side of the development. And those areas will need
17 variance relief.

18 The applicant also seeks a special exception to
19 build a 13 foot retaining wall.

20 As the chairman just noted this was a very full
21 record and the board heard testimony from the applicant, from
22 the Tenleytown Neighbors Association and their experts and
23 neighbors in support and opposition.

24 The ANC voted in support of the project subject
25 to the terms of an MOU with the applicant.

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1 The applicant's filings and testimony demonstrate
2 that it meets the criteria of the CCRC use because under
3 Section U 203.1(f) it will provide assisted living facilities
4 and a memory care unit and under the regulations there is no
5 limit on the number of units allowed.

6 The CCRC will also include related services that
7 are allowed under the regulations.

8 The fourth criteria for CCRC approval requires the
9 applicant to provide sufficient offstreet parking for
10 employees, residents and visitors.

11 The parties in opposition dispute that the
12 applicant has met this burden. In reviewing this criteria
13 OP applied the standard in Section C 701 and calculated that
14 the church and CCRC use combined would require 66 spaces.
15 Therefore no relief for parking is required.

16 Additionally, many residents such as the memory
17 care residents are unlikely to drive and the applicant
18 commits to prohibiting applicants -- residents from applying
19 for residential parking permits.

20 The applicant also submitted a shared parking
21 demand analysis which is on page 18 of exhibit 52 to support
22 its claim of sufficient parking which DDOT also approved.

23 The opposition objected to DDOT's conclusion.
24 However, the board is entitled to rely on DDOT's analysis
25 because it has more expertise than the board to look at

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1 issues, those issues which doesn't mean that the board can't
2 disagree but it's on its face a position, reasonable position
3 for the board to take.

4 And I think in this case relying on DDOT's
5 recommendation -- analysis and recommendation is reasonable.

6 The fifth criteria was the most contentious. It
7 requires the applicant to demonstrate that the use shall be
8 located and designed so that it is not likely to become
9 objectionable to neighboring properties because of noise,
10 traffic, or other objectionable conditions.

11 In my view OP's analysis of the noise, traffic and
12 other objectionable conditions is thorough and clear, and I
13 agree with that analysis including OP's discussion and
14 recommendation regarding lighting and ambulance visit.

15 And here I need to say that I really appreciated
16 all of the testimony from the neighbors. And as the chairman
17 mentioned I probably might not want to have a facility like
18 that, you know, behind my house if I had had a nice tranquil
19 church with a huge yard before.

20 But the regulations don't take my personal
21 preference into account and the board's responsibility is to
22 look at each application to see if it complies with the
23 regulations. So I completely understand the opposition of
24 the neighbors, but I also know it's possible for the church
25 and the neighbors and the CCRC facility to work together to

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1 make it work.

2 So I will continue. So, in addition to meeting
3 the specialized criteria of Section U 203.1(f) the applicant
4 also met the special exception criteria of Subtitle X 901.2.

5 The applicant -- the CCRC is a residential use
6 allowed by special exception in the R-1-B zone. Therefore
7 it is consistent with the zoning regulations and maps.

8 For the reasons stated in my discussion of
9 Subtitle U 203.1(f)(4) and (5) the proposed use will not
10 adversely affect the use of neighboring property. And here
11 I will also rely on OP's analysis which I thought was very
12 clear.

13 I also want to note that there was a lot of
14 discussion about the private driveway and the traffic that
15 would go through the driveway to access the garage.

16 But the applicant described that access to the
17 underground garage and loading facilities is on their private
18 driveway and it runs from Alton Place to Yuma Street with
19 egress only on Yuma Street and that would help the flow of
20 traffic through the project.

21 The buffer zone created on the east side of the
22 property will also minimize adverse impacts to the five
23 properties on 39th Street who in my view could be the most
24 impacted by the project.

25 I also agree with OP's analysis that the special

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1 exception for the 13 foot retaining wall is appropriate.
2 There was a lot of testimony about the depth of the retaining
3 wall and how it would be a security issue -- security and
4 safety issue.

5 The wall is necessary to allow the project to
6 build this two story -- I believe it's a two story
7 underground garage. And so I think that in this case relief,
8 special exception relief is appropriate as OP discussed.

9 And now we get to the variance. I won't -- well,
10 I agree with the chairman that the applicant meets the
11 practical difficulty criteria for the area variances
12 requested.

13 And as was discussed the threshold issue is
14 whether a current -- whether only a current owner of a
15 property may request a variance and a contract purchaser such
16 as Sunrise is not an owner and therefore cannot request
17 variance relief.

18 But this statement is inconsistent with the
19 board's practice of imputing the contract purchaser's
20 difficulty to the owner. And the chairman also referenced
21 a number of cases that are helpful in this analysis.

22 In this case the church states that it has
23 inadequate facilities requiring costly repairs which it
24 cannot meet without partnering with a for-profit entity such
25 as CCRC which is a compatible use as the church indicated.

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1 And in this case the practical difficulty in
2 developing a CCRC will be imputed to the church.

3 In evaluating whether the practical difficulty
4 standard is met it's appropriate to apply the Monaco
5 standard. And in Monaco the Court of Appeals held that a
6 non-profit organization could be evaluated under the flexible
7 standard in finding that an exceptional condition exists.

8 Under that standard the board may consider the
9 applicant's need for a particular site.

10 Recent Court of Appeals decisions also equated a
11 non-profit organization with a public service and clarified
12 that the church may be a public service organization entitled
13 to additional flexibility in the board's variance analysis.

14 In its testimony and filings the church has shown
15 it is an operating church with 85 members which it hopes to
16 grow to 100.

17 In exhibit 121 and in testimony the church
18 describes its spiritual mission and all of the options it
19 considered before deciding to remain at its current location.

20 Those options included a mega church that could
21 be built as a matter of right in the R-1-B zone.

22 The current proposal would allow potential growth
23 for 100 member congregation and income stream from the CCRC
24 which is the for-profit entity, and it would also allow the
25 church to meet its needs for relatives and friends of members

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1 who need to hold weddings and other events to support the
2 congregation's mission.

3 So in essence the church's argument is that the
4 specific design of the building is an institutional necessity
5 to allow it to remain at its present location and grow its
6 congregation through partnership with CCRC.

7 The applicant states it cannot build the church
8 and an economically viable CCRC without relief from lot
9 occupancy, number of stories -- and number of stories.

10 Although it would meet the 40 foot height
11 requirement it would need the additional floor to provide
12 more rooms to offset the construction and operational costs
13 and provide income stream for the church.

14 Side yard relief is also necessary on the west
15 side of the project next to the park so that there will be
16 a larger side yard on the east side and provide a wider
17 buffer for the homes on 39th Street.

18 So the design of the project took into
19 consideration the concerns of the neighbors in terms of noise
20 and traffic and tried to within the limitations of the lot
21 provide as good a buffer that they could.

22 And the diagrams show the landscaping and other
23 efforts to ameliorate the noise issue.

24 So I agree with OP's analysis that granting these
25 variances would not be detrimental to the public good or

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1 cause substantial harm to the zoning regulations.

2 I note that DDOT has no objection to the proposal
3 as described in exhibit 53 and 137. So DDOT addressed the
4 issue twice, but imposed conditions that the proposed TDM
5 plan and loading management plan in the applicant's CTR study
6 be implemented.

7 And here I note that the opposition took issue
8 with DDOT's conclusions that DDOT apparently did not -- let
9 me -- I don't have an exact memory of that so I'll pass on
10 that comment.

11 So, in summary I will give great weigh to OP's
12 report and the ANC's issues and concerns and note that the
13 ANC supports the project subject to the MOU. And those are
14 my thoughts.

15 CHAIRPERSON HILL: Okay, thank you. Anyone else?

16 MEMBER WHITE: I'll add some comments. Those were
17 very comprehensive so I'll just share some of the notes that
18 I have and hopefully not to be too repetitive.

19 But essentially we heard a considerable amount of
20 testimony and we had a large amount of filings in the record.
21 I think last time I checked we probably had about 150 filings
22 or more.

23 But I looked at a couple of issues and I just
24 wanted to share some of those with you.

25 The first issue that I wanted to comment on is on

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1 the Tenleytown Neighborhood Association claim that the
2 variance standard is not met because the applicant Wisconsin
3 Avenue Baptist Church does not need variance relief to
4 operate as a church and that the variances are being used to
5 allow a non-owner to operate a for-profit service facility.

6 The church is arguing that it meets the variance
7 test because the church has inadequate facilities and that
8 its resources are limited to upgrade and that the inclusion
9 of a for-profit retirement use is the only financially viable
10 option to allow them to stay on the site.

11 As the chair mentioned we asked for OAG's feedback
12 on this issue and I reviewed this information to determine
13 whether or not the standard was met.

14 As you know, the board has considered practical
15 difficulties in a non-owner's private development of a church
16 site before when the revenues of that development are needed
17 for the church to carry out its public service mission.

18 I agree that the church meets the more relaxed
19 standard for determining the existence of exceptional
20 circumstances and practical difficulties for a public service
21 organization.

22 The church does seem to be leveraging its property
23 with a mission compatible use.

24 Furthermore I find that the church is also meeting
25 its -- meeting the four-part test that I believe that you

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1 mentioned in some of your comments which provides a more
2 relaxed variance standard which includes, one, the owner of
3 the property is a public service with adequate facilities to
4 carry out its mission. Two, it doesn't have monetary
5 resources to make necessary improvements. Three, income from
6 the private development on the site will permit it to make
7 such improvements. And four, such private development would
8 not be viable without the requested relief.

9 So I don't think that the applicant failed. I do
10 not think the applicant failed the practical difficulties
11 test because they are needed for Sunrise and not just the
12 church.

13 I think that it is appropriate to consider
14 practical difficulties of contract purchasers which I think
15 Ms. John noted and also ground lessees as these are as those
16 of the owner.

17 There is precedent for this with other cases that
18 are in the record. I think the Dupont Circle case was
19 mentioned by one of my colleagues. A Court of Appeals
20 decision. There are some other cases that included some
21 discussion on the four-part relaxed variance test that I just
22 stated.

23 And there's a lot of information in the record
24 that talks about this. Ms. Duhome, which was one of the
25 witnesses, provided some information about some of those

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1 issues as it relates to the church.

2 I guess we'll save some of the discussion
3 regarding the conditions for the end, but there are some
4 conditions that are part of the MOU agreement which I believe
5 is in exhibit 119 that I think are relevant and show that the
6 parties were trying to work out some of these issues.

7 But I think there are maybe a number of those
8 conditions that we may not want to incorporate as part of the
9 order as we go through the discussion.

10 I found the DDOT's report to be helpful as well
11 as the report from the Office of Planning. But also I found
12 the ANC's documents that were filed to be very helpful.

13 But I think they also showed a willingness to try
14 to work through some of these issues that were of most
15 concern to the community.

16 So where I stand right now is that I will be
17 voting in favor of the application. I believe we went
18 through some of the specifics regarding the standards of
19 review with respect to the relief that was requested as it
20 relates to the special exception relief for continuing care
21 use as well as the retaining wall so I won't be repetitive
22 but I would just concur with my colleagues with respect to
23 the fact that I believe that the standards were met for the
24 special exception relief.

25 With respect to the variance relief covering

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1 number of stories under Subtitle D 303.1, lot occupancy under
2 D 304.1 as well as side yard Subtitle D 307.1 I will also
3 concur with my colleagues with respect to the fact that I
4 believe that the applicant did meet those standards.

5 So those are my comments, Mr. Chair.

6 CHAIRPERSON HILL: Thank you. Commissioner.

7 ZC BOARD MEMBER MILLER: Thank you, Mr. Chairman.

8 One of the great things about this board is that you're all
9 really smart and diligent and comprehensive and if you're the
10 last person to speak you really -- I can say I concur but
11 I'll just say a little bit more. But I appreciate all the
12 comprehensive analysis that you've provided.

13 I appreciate all the time and effort that so many
14 people in the neighborhood and in the city put in on this who
15 participated in this case.

16 But I totally agree with the analysis that my
17 colleagues have given, with the analysis the Office of
18 Planning provided in this case, with the analysis that DDOT
19 provided, with the analysis and proposed findings of fact and
20 conclusions of law that the applicant provided.

21 And I think the standards for relief both for the
22 variance and the special exception have been satisfied in
23 this case especially as articulated by the Office of Planning
24 and by the former director of the Office of Planning Andrew
25 Altman. I thought his testimony was very compelling.

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1 I would just note as the applicant noted in their
2 conclusion which I was re-watching last night because it
3 wasn't enough to go through it once for six hours the
4 applicant noted that the Office of Planning in their analysis
5 of the variance said it didn't even look -- I think they said
6 that they didn't look at the public service necessity more
7 lenient standard. They evaluated the -- concluded that they
8 had met the variance standard under the more strict standard.

9 I happen to think that this case qualifies for the
10 public service necessity standard but OP in its analysis said
11 they evaluated it under the normal rigid three-pronged
12 variance test and that it met that standard.

13 I appreciate the post hearing submissions that the
14 applicant provided in response to our requests, particularly
15 the perspective renderings from 39th, Alton and Yuma Street.

16 And hopefully if and when this project is built
17 the neighbors will find a way to live together as neighbors
18 in a city always do. So I support this project by Wisconsin
19 Avenue Baptist Church and Sunrise, Mr. Chairman.

20 CHAIRPERSON HILL: Okay, great. All right, well
21 again, thank all of you for your analysis and time spent on
22 this as well as all of the parties involved.

23 Obviously everyone has spent a tremendous amount
24 of time and effort coming forward with this.

25 One thing that I did want to again just -- I know

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1 I did mention it once before, but again the argument in terms
2 of the applicant making an inability to demonstrate that
3 there was another way to do this project.

4 I again just wanted to highlight the testimony
5 that Ms. Duhome gave in terms of the financial aspect, how
6 they went through it and how the build out, and what they
7 thought, and why those numbers didn't work. I agreed with
8 that analysis.

9 In terms of the conditions I guess there was a
10 couple of that I was just a little bit want the board's
11 opinion upon.

12 So there was all of the conditions that the MOU
13 had with regard to the ANC and the applicant which was in
14 exhibit 119A.

15 I thought that they all seemed to mitigate the
16 adverse impacts concerning the -- or the potential adverse
17 impacts I suppose of the project.

18 I again would like to state for the record that
19 I hope if this project does go through that the church and
20 the Sunrise organization will continue to work with the
21 community, particularly the neighbors most closely affected
22 to the project to make sure that this is done in a way that
23 is as disruptive -- does not disrupt the community as much
24 as possible.

25 And I think that that MOU does provide some

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1 guidance in terms of how to do that.

2 The issues that I had were that -- and I didn't
3 have any problem or issues with the conditions that DDOT had
4 put forth.

5 I do believe that all of DDOT's conditions are in
6 that exhibit 119A. However, if not I would ask the Office
7 of Attorney General when they go ahead and write up their
8 report to be sure that all of DDOT's conditions are actually
9 included in the conditions that we have put forth.

10 The ones that I had issue with were the community
11 outreach fund and then the Sunrise intergenerational fund,
12 and then the construction management agreement.

13 I mean, I hope that or would hope that the
14 organization in terms of the MOU that they have come to agree
15 with, they would honor those obligations that they're putting
16 forward. I just feel a little uncomfortable tying money to
17 conditions. And so it just seems a little peculiar.

18 But I think it's great. And I think that if
19 Sunrise is willing to do that and seeing they have actually
20 offered to do that then I don't see why they would not live
21 by their word and actually do what they say they're going to
22 do.

23 Just in terms of this board putting together
24 financial ties I feel uncomfortable with. And if anybody has
25 any difference they can tell me.

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1 As well as then construction agreements that tends
2 to be out of our purview as has been pointed out to me again
3 several times.

4 So I would be against those three conditions.
5 However, all the rest of them to me seem like it did work for
6 adverse impact as well as the ones from DDOT. Does anybody
7 have any thoughts?

8 MEMBER WHITE: My thought is as I mentioned during
9 my comments I did have some issues with those three
10 conditions that you just mentioned regarding the construction
11 agreement, the intergenerational fund and the community
12 outreach fund notation in the MOU.

13 So the issue is that's a part of the MOU and
14 that's an agreement that the community and Sunrise has agreed
15 to with the applicant.

16 But in terms of incorporating it into the actual
17 order that's something that I probably would hesitate on.

18 MEMBER JOHN: That would be my feeling as well.

19 ZC BOARD MEMBER MILLER: I would only note, Mr.
20 Chairman, some of our Zoning Commission orders while we don't
21 make the construction management agreement a condition of our
22 order we note that it exists in our findings of fact.

23 So I think we could note that it exists without
24 making it a specific condition of our zoning, BZA zoning
25 order. I'll leave that to OAG. I thought that's what we've

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1 done in PUD cases when we used to do PUD cases.

2 CHAIRPERSON HILL: That's great. I learned
3 something new. Last week if you were here, Commissioner
4 Miller, you might have helped me out.

5 Okay. Then I'm going to go ahead and make a
6 motion which is to approve application number 19823 as
7 captioned and read by the secretary including the conditions
8 that are in exhibit 119A excluding the community outreach
9 fund condition as well as the Sunrise intergenerational fund
10 condition as well as the construction agreement. However,
11 noting in the order that a construction management agreement
12 exists. And we hope -- that one exists and that we hope that
13 it gets followed. And ask for a second.

14 MEMBER JOHN: Second.

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

17 (Chorus of ayes)

18 CHAIRPERSON HILL: Hold on one second. OAG.

19 MR. RITTING: I just wanted to remind you that
20 there was also proposed conditions from the Office of
21 Planning that you stated that you were inclined to include.

22 CHAIRPERSON HILL: Oh, I'm sorry. Thanks. The
23 lighting and the amplified music. Okay, thanks. All right,
24 so I get to do this again.

25 I'm going to go ahead and make a motion to approve

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1 application number 19823 as captioned and read by the
2 secretary including the conditions in the MOU at 119A,
3 excluding the community outreach fund as well as excluding
4 the Sunrise intergenerational fund as well as the
5 construction agreement. However, making note of the
6 construction agreement as well as the conditions provided by
7 the Office of Planning which is, one, all lighting on the
8 roof deck shall be downlit and amplified music on the roof
9 deck shall not be permitted as well as all of DDOT's
10 conditions be incorporated into the order. And ask for a
11 second.

12 MEMBER JOHN: Second.

13 CHAIRPERSON HILL: Once again the motion made and
14 seconded. All those in favor say aye.

15 (Chorus of ayes)

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 Chairman Hill to approve the
20 application for relief requested with the conditions that you
21 cited in your motion.

22 Seconding the motion, Ms. John. Also in support
23 Ms. White and Mr. Robert -- or Commissioner Robert Miller.
24 We have a board member not participating. Motion carries.

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

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1 All right, Mr. Moy, you can call our next case.

2 MR. MOY: The next case application for board
3 decision is number 19831 of Rupsha, R-U-P-S-H-A 2011, or 2-0-
4 1-1 LLC as amended for area variances from the side yard
5 requirements Subtitle D Section 307.1, common division wall
6 requirement Subtitle D Section 307.4.

7 This would construct a new semi-detached principal
8 dwelling unit R-2 zone. This is at 4813 J Street NE square
9 5149 lot 87.

10 Participating on the vote is Chairman Hill, Ms.
11 White, Ms. John and Commissioner Robert Miller.

12 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
13 Moy. All right, so as the board recalls we did hear a lot
14 of testimony from the applicant and asked for -- well, we
15 lacked a quorum the last time this came through and so we
16 asked the members who were missing to watch the video of the
17 testimony so we could have a quorum.

18 We did take a lot of testimony from the applicant
19 and also there was a new design. And ANC 7C has submitted
20 support for the new design.

21 The Office of Planning's report was in support.
22 DDOT had no objection.

23 After hearing the testimony from the applicant I
24 would agree that the applicant has made their case for the
25 relief requested.

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1 I also agreed with the analysis provided by the
2 Office of Planning as well as at least nice to see that there
3 was support from the ANC in terms of no issues or concerns.

4 And so I'm going to be voting in favor of the
5 application. Does anyone have anything they'd like to add?

6 MEMBER JOHN: No, Mr. Chairman. Just to note that
7 in OP's supplemental report that OP notes that the applicant
8 consulted with OP in coming up with the revised design. And
9 so I have no objection to this application.

10 CHAIRPERSON HILL: Okay. Anyone else?

11 ZC BOARD MEMBER MILLER: I would just note that
12 I did review the record and the video in this case.

13 CHAIRPERSON HILL: Okay.

14 MEMBER WHITE: I would also say the same thing
15 because I had to leave a little earlier that day. But I
16 would also commend the applicant, OP and ANC in terms of
17 working together to figure out a work product that would be
18 satisfactory to everybody.

19 So I will be supporting this application as well.

20 CHAIRPERSON HILL: Okay. I'm going to go ahead
21 and make a motion then to approve application number 19831
22 as captioned and read by the secretary and ask for a second.

23 MEMBER WHITE: Second.

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

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1 (Chorus of ayes)

2 CHAIRPERSON HILL: All those opposed? Motion
3 passes, Mr. Moy.

4 MR. MOY: Staff would record the vote as 4-0-1.
5 This on the motion of Chairman Hill to approve the
6 application for the relief requested. Seconding the motion
7 Ms. White. Also in support Ms. John, Commissioner Robert
8 Miller. No other board member participating. Motion
9 carries.

10 CHAIRPERSON HILL: Thank you, Mr. Moy.

11 MR. MOY: The next application for decision-making
12 is case application number 19832 Yasmin Sikder, S-I-K-D-E-R
13 as amended for area variances from the side yard requirements
14 Subtitle D Section 307.1 and the common division wall
15 requirement of Subtitle D Section 307.4 to construct a new
16 semi-detached principal dwelling unit R-2 zone at 308 62nd
17 Street NE square 5267 lot 44.

18 Participating on the vote is Chairman Hill, Ms.
19 White, Ms. John and Commissioner Robert Miller.

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

22 Again this was a similar situation as the previous
23 case where we didn't have a quorum and we asked members of
24 the board to watch the video in terms of the hearing that had
25 come forward.

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1 The one issue that the ANC had or one of their
2 primary concerns and why -- or at least what I understood
3 from the testimony as to why they were in opposition was that
4 the alley, they were concerned that the alley was too small
5 for the vehicles. So that's something I can kind of set
6 aside for one moment.

7 After hearing the testimony from the applicant as
8 well as the analysis of the Office of Planning I did think
9 that the applicant had met the standard for us to grant the
10 relief requested.

11 In terms of the alley I was a little confused in
12 terms of the applicant's not making the alley any smaller
13 than it already is and so I didn't really understand in terms
14 of it's not as if you could drive a car -- there was going
15 to be a truck then that could then drive into the property
16 of the applicant. So I didn't necessarily understand the
17 concern.

18 I didn't really understand how it was going to be
19 resolved. Like the applicant wasn't going to give land to
20 make the alley bigger.

21 And so I do think, however, they met the test for
22 the relief requested and I'm going to agree with the analysis
23 provided by the Office of Planning and be voting in favor.

24 Does anyone have anything they'd like to add?

25 MEMBER JOHN: No, Mr. Chairman. I too thought

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1 that the applicant met the requirement for granting relief
2 and I was disappointed that we did not have a final report
3 from the ANC. At least I did not see one in the record. I
4 understand there was testimony but I didn't see a report from
5 the ANC.

6 CHAIRPERSON HILL: Okay. OAG, I don't know if you
7 want to comment on whether it was a report or whether it was
8 just testimony.

9 MS. NAGELHOUT: Talking about the ANC 7C report
10 exhibit 30?

11 MEMBER JOHN: Yes, it's there, 52. I take that
12 back.

13 CHAIRPERSON HILL: Okay. But you're still in
14 favor?

15 MEMBER JOHN: Pardon?

16 CHAIRPERSON HILL: You're still in favor with the
17 analysis.

18 MEMBER JOHN: Yes.

19 CHAIRPERSON HILL: Okay. All right. Anyone else?

20 ZC BOARD MEMBER MILLER: I just want to again say
21 that I reviewed the record and the video and I am prepared
22 to vote.

23 CHAIRPERSON HILL: Okay. Ms. White, anything?

24 MEMBER WHITE: Yes. I also had to review the
25 testimony on video. It was good because I felt as though

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1 that the applicant probably could have done a better job in
2 making the argument that they met the test.

3 The testimony was helpful as well as the Office
4 of Planning. The ANC did have concerns with this particular
5 application so they felt as though that it was -- they had
6 concerns about the alley, but the applicant was not extending
7 into the alley but they also had concerns that the project
8 was from their perspective a bit out of character for that
9 block.

10 But I did look at that and I think that the
11 applicant proposes to construct a two story semi-detached
12 single family home set back 3 feet on the south property line
13 but not on the north property line while there's no common
14 division wall.

15 I think the Office of Planning's report was very
16 helpful. I did not see that the project would have any
17 impact to light and air. But at this point I think I can
18 support the application at this point, that I did not find
19 that there was -- that the project was substantially out of
20 character for that area. So I'll be voting in support.

21 CHAIRPERSON HILL: Okay, thank you. Yes, Ms.
22 John, I guess right to that ANC report which is in 52 that
23 was when I was talking about the alleyway. And they were
24 talking about the emergency response vehicles to maneuver in
25 that area. And I was just confused as to how this applicant

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1 has anything to do with the width of that alleyway. I mean,
2 they can't make the alley bigger. So that's where that item
3 was.

4 So I'll go ahead and make a motion to approve
5 application number 19832 as captioned and read by the
6 secretary and ask for a second.

7 MEMBER JOHN: Second.

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

10 (Chorus of ayes)

11 CHAIRPERSON HILL: All those opposed? Motion
12 passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 4-0-1.
14 This is on the motion of Chairman Hill to approve the
15 application for the relief requested. Seconding the motion
16 is Ms. John. Also in support Ms. White and Commissioner
17 Robert Miller. No other board members participating. Motion
18 carries.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,
20 Mr. Miller. Send in another commissioner. I might ask the
21 board we've got two more cases. If we can we'll take a break
22 before the hearing cases start.

23 Well, Chairman Hood, thank you for joining us.
24 We'll give you a moment there to get kind of settled in and
25 plugged in.

1 ZC CHAIRPERSON HOOD: Thank you. Good morning to
2 everyone.

3 MR. MOY: All right. Thank you, Mr. Chairman.
4 Next up for decision-making is application number 18906B of
5 Endeka Enterprises and 1320 P-E-N-E-L-O-P-E -- I can't
6 pronounce that for some reason -- LLC.

7 Captioned and advertised for -- this is a request
8 for a modification of consequence to the plans approved in
9 BZA order numbers 18906 and 19806A to expand the proposed
10 mechanical penthouse area into a partial seventh floor for
11 use as an accessory restaurant space.

12 This is in a mixed use building, DC/SP-1 and C-3-C
13 districts at 1337 Connecticut Avenue NW square 137 lot 55.

14 CHAIRPERSON HILL: All right. Thank you, Mr.
15 Moy. Is the board ready to deliberate? Okay. You can
16 always tell you're being old when you've got to push the
17 paper all the way out there.

18 So, okay. After reviewing the record concerning
19 the application in this modification this has been an
20 application that's been I think at the BZA now this is the
21 fourth time and so it seems to evolve.

22 But I do think that I would be agreeing with the
23 analysis provided by the Office of Planning as well as the
24 support that we received from ANC 2B which was unanimous 9-0-
25 0.

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1 DDOT's not to be notified in this particular case
2 for modification of consequence.

3 ANC did voice some concerns. The ANC 2B did voice
4 some concerns from the neighbors about noise from the
5 rooftop, but the ANC as well as I would agree that this would
6 be issues that would be addressed during the ABRA process.

7 And so I'll be agreeing with you know again the
8 analysis of the Office of Planning as well as the record and
9 voting to approve the modification. Anyone else?

10 MEMBER HART: In agreement with the Office of
11 Planning after reviewing the material provided by the
12 applicant as well as the rest of the record.

13 I guess OP report exhibit 8 noted that this
14 project is a modification of consequence since the
15 application would not require any additional zoning relief.

16 And it is definitely kind of a redesign of the --
17 a portion of the interior.

18 The proposed use is allowed in this zone and they
19 are I think following -- adhering to Subtitle Y 703.4 for the
20 -- which deals with modification criteria. So I would
21 support the application as well. And that's it.

22 MEMBER JOHN: Mr. Chairman, I support the
23 application as well and I also will rely on OP's analysis and
24 note that the restaurant use is itself a matter of right and
25 there's no new relief being requested.

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1 CHAIRPERSON HILL: Okay. Anyone else? Okay. All
2 right, I'm going to make a motion to approve application
3 number 18906B as captioned and read by the secretary and ask
4 for a second.

5 MEMBER HART: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All
7 those in favor say aye.

8 (Chorus of ayes)

9 CHAIRPERSON HILL: All those opposed? Motion
10 passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as 5-0-0.
12 This is on the motion of Chairman Hill to approve the
13 application for the request for a minor modification of
14 consequence. Seconding the motion Vice Chair Hart. Also in
15 support of the motion is Ms. White, Ms. John and Commissioner
16 Chair Anthony Hood. Motion carries.

17 CHAIRPERSON HILL: Thank you, Mr. Moy.

18 MR. MOY: All right, the next and last application
19 for decision-making is application number 18916C of 49th
20 Street Developer LLC.

21 This is a request for a two-year time extension
22 of BZA order number 18916B approving special exception from
23 the new residential development requirements under Section
24 353 to construct a new affordable multifamily residential
25 development for seniors and 21 affordable one-family

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1 dwellings in the R-5-A district on undeveloped land at the
2 intersection of East Capitol Street SE and 47th Street SE
3 square 5348 lots 1 through 8.

4 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
5 Moy. Is the board ready to deliberate? Somebody else want
6 to start?

7 MEMBER WHITE: I'll start, Mr. Chair, if it's
8 okay. So this is an application for a time extension, two-
9 year time extension of BZA order number 18916B approving a
10 special exception from a new residential development
11 requirements for affordable housing multifamily project.

12 This two-year time extension is really to allow
13 them time to get their financing in place. That's basically
14 what the holdup is.

15 They're constructing a new multifamily affordable
16 housing development for seniors and 21 affordable one-family
17 dwellings in the R-5-A district on undeveloped land.

18 Under Subtitle Y 705.1 we can extend the time
19 period of an order for good cause shown provided that certain
20 requirements are met.

21 And one of the requirements include the fact that
22 there have been no substantial changes to the project and I
23 don't think that after reviewing the record it doesn't appear
24 that there have been any changes in the project or any
25 changes with any of the material facts.

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1 They've shown good cause by providing evidence
2 that -- about their inability to obtain substantial project
3 financing due to economic conditions.

4 So I would be inclined to give them additional
5 time to work with DHCD to get the financing together for part
6 of that project but also to explore other vehicles that might
7 be available and interested in financing this project. So
8 I would be in support.

9 MEMBER HART: The only comment -- I would agree
10 with Board Member White that I would also be in support of
11 it.

12 The only comment that I would add is that they
13 have received one extension already. This is the second
14 extension. And just noting, just encouraging them to
15 continue to kind of move to try to get this project
16 constructed because I'm not really sure if it would be
17 helpful to continue to give time extensions just kind of
18 infinite number of those.

19 I think they need to figure out some way of
20 getting as you say if it's not this particular funding some
21 other funding to be able to make sure that this project moves
22 forward.

23 So I would be supportive of this and encourage
24 them to continue in their endeavors to get other funding if
25 this becomes non-feasible. That's it.

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1 ZC CHAIRPERSON HOOD: Mr. Chairman, I also would
2 agree with the board members who have already spoken. But
3 I also would note that when you do these affordability
4 projects sometimes it's a little difficult to do funding.

5 I'm hoping that they ask for enough time. And I
6 know we usually do two years, but when you talk about
7 affordability projects I'm hoping that they asked for enough
8 time and not need three years and ask for two because it's
9 already been mentioned this is already another request for
10 a time extension.

11 I think this definitely is one of those cases
12 where I would be -- even if I was here the next time and they
13 came back I would be inclined to waive that rule and continue
14 to try to get this affordability project moving forward. So
15 I'm in support of this. Thank you.

16 CHAIRPERSON HILL: Okay. Well just to tag onto
17 those things I agree with Vice Chair Hart's comments,
18 Chairman Hood's comments. I would also hope that they have
19 enough time now to get this done.

20 I mean, I do think that it does take a lot of
21 effort. Wherever -- it sounds like this has gone through the
22 process already in terms of being approved and it's something
23 they're trying to get the finance for.

24 I think it is a very worthwhile project and hope
25 that as you mentioned, Chairman Hood, that they are able to

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1 get everything in process now.

2 I do not plan on being here if this comes back
3 again. That will be two years from now. And so if whoever
4 is here I hope that they also would if they have proper
5 justification for a further time extension are able to meet
6 that. But I in this case will be also voting to approve.

7 So, I'm going to make a motion to approve
8 application number 18916C as captioned and read by the
9 secretary and ask for a second.

10 MEMBER WHITE: Second.

11 CHAIRPERSON HILL: Motion made and seconded. All
12 those in favor say aye.

13 (Chorus of ayes)

14 CHAIRPERSON HILL: All those opposed? Motion
15 passes, Mr. Moy.

16 MR. MOY: Staff would record the vote as 5-0-0.
17 This is on the motion of Chairman Hill to approve the request
18 for time extension. Seconding the motion Ms. White. Also
19 in support Ms. John, Vice Chair Hart and Mr. Anthony Hood.
20 Motion carries.

21 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
22 Moy. We're going to take a 15-minute break, everybody.
23 Thank you.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:05 a.m.)

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In the matter of: Public Meeting

Before: DCZC

Date: 02-06-19

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.



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