

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MARCH 13, 2019

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

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Public Meeting held on March 13, 2019.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Commission Case No. 19887,
Application of Marjorie Hutchinson 6

VOTE: Approved with conditions 4-1-0 36

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

(9:45 a.m.)

CHAIRPERSON HILL: The hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the March 13th, 2019 public hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice-Chair, Lorna John, Board Member. And representing the Zoning Commission on one case will be Peter May. And then, following, we will have Anthony Hood for the rest of the day.

Copies of today's hearing agenda are available to you and located on the wall bin near the door.

Please be advised this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noise or action in the hearing room.

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, please turn your microphone off so that your microphone is no longer picking up sound or background noise. All persons planning to testify either in favor or in opposition must have raised

1 their hands and been sworn in by the Secretary.

2 Also, each witness must fill out two witness
3 cards. These cards are located on the table near the door
4 and on the witness table. Upon coming forward to the Board,
5 please give both cards to the reporter sitting to the table
6 at my right.

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

14 The order of procedures for special exceptions and
15 variances as well as appeals is also listed as you come walk
16 into the door. The record shall be closed at the conclusion
17 of each case except for any material specifically requested
18 by the Board. The Board and the staff will specify at the
19 end of the hearing exactly what is expected and the date when
20 the person must submit the evidence to the Office of Zoning.
21 After the record is closed, no other information shall be
22 accepted by the Board.

23 The Board's agenda includes cases set for
24 decision. After the Board adjourns, the Office of Zoning in
25 consultation with myself will determine whether a full or

1 summary order may be issued. A full order is required when
2 the decision it contains is adverse to a party including an
3 affected ANC. A full order may also be needed if the Board's
4 decision differs from the Office of Planning's
5 recommendation. Although the Board favors the use of summary
6 orders whenever possible, an applicant may not request the
7 Board to issue such an order.

8 The District of Columbia Administrative Procedures
9 Act requires that the public hearing on each case be held in
10 the open before the public pursuant to Section 405B and 406
11 of that Act. The Board may, consistent with its rules of
12 procedures and the Act, enter into a closed meeting on a case
13 purposes of seeking legal counsel on a case pursuant to D.C.
14 Official Code, Section 2-575(b)(4) and/or deliberating on a
15 case pursuant to D.C. Official Code, Section 2-575(b)(13),
16 but only after providing the necessary public notice and in
17 the case of a emergency closed meeting after taking a roll
18 call vote.

19 The decision of the Board in cases must be based
20 exclusively on the public record. To avoid any appearance
21 to the contrary, the Board requests that persons present not
22 engage the members of the Board in conversation. Please turn
23 off beepers and cell phones at this time so as to not disrupt
24 the proceedings.

25 Preliminary matters are those which relate to

1 other case will or should be heard today such as requests for
2 postponement, continuance or withdraw, or whether proper and
3 adequate notice of the hearing has been given. If you're not
4 prepared to go forward with the case today or if you believe
5 that the Board should not proceed, now is the time to raise
6 such a matter.

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

8 MR. MOY: Good morning, Mr. Chairman and members
9 of the Board. Very quickly, in matters of today's docket and
10 for the record, Appeal No. 19935 has been postponed and
11 rescheduled to April 24th, 2019. And that's it from the
12 staff, Mr. Chair.

13 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
14 Moy. If anyone is here wishing to testify in either favor
15 and opposition, if you would please stand and take the oath
16 administered by the Secretary to my left.

17 MR. MOY: Good morning. Do you solemnly swear or
18 affirm that the testimony you're about to present in this
19 proceeding is the truth, whole truth, and nothing but the
20 truth? Thank you. Ladies and gentlemen, you may consider
21 yourselves under oath.

22 CHAIRPERSON HILL: Okay. Good morning, everybody.
23 So sorry we're getting started a little late this morning.
24 There was a couple of issues before we began. And then we
25 are going to follow the agenda, both for the meeting cases

1 as well as the hearing cases. And we're probably going to
2 take a lunch at some point. And so I'll just let you know
3 when I do when we'd be doing that.

4 And so Mr. Moy, if you'd like to call our first
5 meeting case whenever you like.

6 MR. MOY: Thank you, Mr. Chairman. That would be
7 Case Application No. 19887 of Marjorie Hutchinson, caption
8 advertised for a use variance from the use provisions. It's
9 Subtitle U, Section 301, to permit the conversion of an
10 existing nonconforming non-residential use to a restaurant
11 in FR-1 Zone. This is at 1724 North Capitol Street
12 Northwest, Square 3105, Lot 72. Participating on the
13 decision is Chairman Hill, Vice-Chair Hart, Ms. White, Ms.
14 John, and Mr. Peter May.

15 CHAIRPERSON HILL: Okay, great. Thank you. Is
16 the Board ready to deliberate? Okay. So we have had I think
17 three hearings on this case, I think three hearings. And so
18 what I would suggest is we go ahead and determine whether or
19 not we will be approving this. And then if so, we can move
20 on to kind of conditions. I know that we kind of basically
21 had a deliberation to a certain extent discussing the merits
22 of the case. But I'm going to go ahead and just start that
23 again. And then we can see whether we get to, again, the
24 conditions.

25 So we took a lot of testimony for this application

1 as I mentioned from the applicant as well as the ANC.
2 There's a Commissioner from the ANC and a lot of members of
3 the public that also came to support the application,
4 including a letter from Councilmember McDuffie.

5 I was actually convinced by the testimony and the
6 commitment and the entrepreneurial spirit I should say of the
7 applicant that they have been in that community for some
8 time. In terms of the application, I am in agreement with
9 the analysis that the Office of Planning had provided except
10 I'm in disagreement with their conclusion with regard to the
11 variance for the second floor.

12 I thought that the second floor was a commercial
13 use. I thought that the applicant had provided commentary --
14 I'm sorry, commentary -- testimony support that it was a
15 commercial use and that I thought that there was an undue
16 hardship with regards to reconfiguring that space from the
17 previous owners.

18 I do think that -- yes, I think I did mention in
19 the last time when we kind of talked through this, we do look
20 at these on a case-by-case basis. And I don't know -- I
21 think that it was -- in this particular situation, I was
22 convinced of the variance for the second floor. However, I
23 don't know how easily I would be able to be convinced in
24 other situations, I guess. I think that if this were a
25 larger building, that might've had something to do with my

1 being in disagreement with the variance.

2 So under hardship, then there was a variety of
3 conditions that we can get to if we get past this first
4 discussion. So again, I'm in support of the application and
5 would be willing to then talk about some of the conditions
6 that we kind of started to discuss at the last hearing. And
7 I will see who would like to go next.

8 COMMISSIONER MAY: Mr. Chairman, if I could,
9 please. So I'd have to say I disagree on the key point. I
10 agree fully with the Office of Planning's report and that a
11 variance for the second floor is not supportable at all. I
12 think that the case has been made marginally for a ground
13 floor use variance. But the second floor, I just don't think
14 it's supportable at all.

15 I'm not convinced that it was commercial. There's
16 no clear evidence that it was ever commercial space. And
17 there's reason to question whether it ever was. Furthermore,
18 the commercial use that was involved before is nowhere near
19 as impactful as what's being proposed here.

20 And then finally, it is not hardship by any
21 stretch of the imagination to make that into a residential
22 use which is what is permitted in that zone. So I just think
23 it fails miserably on all counts when it comes to the use of
24 the second floor.

25 It is an unfortunate circumstance that the owner

1 purchased the property with the intention of using it that
2 way with I think some misguided assumptions about it. But
3 that's not really our problem to deal with. Our problem is,
4 how do we reconcile this proposed use with the zone that
5 doesn't allow it?

6 And this has happened in other cases not far away
7 but in one that comes to mind. There actually was a Zoning
8 Commission case where a map amendment was done in order to
9 permit that use, and that was something that was -- I mean,
10 it was rather contentious. But it was the right process to
11 undergo. Here effectively the Board of Zoning Adjustment is
12 saying if we vote for it in favor that we disagree with the
13 zoning map. And I don't that that's something that the Board
14 of Zoning Adjustment should be voting to do.

15 I would also say that should I get outvoted on
16 this which previous discussions indicate I will be, the hours
17 should be limited to the original proposal which does not
18 include Sundays or mornings. It was interesting, the
19 outreach, which I think generally has been an earnest effort.
20 But I think it's still a flawed effort. And I think there's
21 sufficient evidence in the record to indicate that it is
22 flawed. That after doing further outreach, what came back
23 was actually expanded hours, expanded use, more impactful on
24 the neighborhood. And I think that's just inappropriate.
25 So I think that the hours should be limited what was in the

1 original proposal.

2 I also think that the Board, again, should -- if
3 they decide to grant the variance for the second floor,
4 should not allow the use of the terrace for outdoor dining,
5 period, because I think that that has must greater potential
6 to impact the neighbors negatively than what could happen on
7 the sidewalk café which is controlled by a number of other
8 means.

9 So I just think that this is -- the Board should
10 not approve it. But if the majority of the Board decides to
11 go ahead with the variance for the second floor that the
12 hours should be limited, more limited than they are proposed.
13 The use of terrace should not be permitted, and that there
14 should be some additional conditions. But I'll hold the
15 discussion on conditions until we go through those one by
16 one.

17 Thank you.

18 CHAIRPERSON HILL: Thank you.

19 VICE CHAIR HART: Mr. Chairman, yeah, after
20 reviewing this, and I think I had said at the -- I'm not even
21 sure which hearing that was now. But I think two hearings
22 ago, I think I was also in support of the applicant with the
23 variance. And I do understand that it wasn't ideal
24 information. Maybe this was just a regular citizen coming
25 to us. It wasn't an attorney coming to us. And while I

1 understand what the zoning allows, the zoning also allows a
2 process by which to go outside of the zoning which is what
3 a variance is.

4 And so both the applicant and the ANC Commissioner
5 stated in testimony that this was a commercial use in the
6 past. They also provided that, I guess, a contractor has
7 sent some information in regarding the use. They had done --
8 or the work that they had done in the past making this into
9 a commercial use on the second floor.

10 And I also understand that this is at a corner
11 street, North Capitol, which is a major street in D.C., and
12 Randolph Street which is a residential street. But it is
13 along North Capitol Street is a major street which has
14 commercial uses on it in the -- up and down the street,
15 blocks up, the same block as well blocks south. So it wasn't
16 just an ordinary roadway, I guess, I was thinking that this
17 was on.

18 So I kind of felt that I thought that they had met
19 the variance test. I thought that while I would agree that
20 it wasn't ideal, the information that they provided, I was
21 persuaded by it. I do believe that we do need to have some
22 conditions, and we can talk about those in the subsequent
23 discussions. And because I do believe that the conditions
24 will help to mitigate any impact as this is both on a major
25 street and an intersection with a residential street.

1 So I'm supportive of it, of the applicant, and I
2 would like to have some conditions. I know that there are
3 a list of conditions that we have that have been put forward.
4 So we can talk about those in a minute.

5 CHAIRPERSON HILL: Thank you.

6 MEMBER JOHN: Mr. Chairman, I'd just like to step
7 through the reasons, my reasons for supporting the
8 application. So to meet the variance test, the applicant
9 must show that there is a undue hardship to this particular
10 owner, not that any owner would be able to -- not hardship
11 to some other owner but to this particular owner in using the
12 space for permitted use.

13 As part of this analysis, the Board may consider
14 past use or reconfiguration of this space by previous owners
15 as a part of an applicant's justification for this use
16 variance because it might be a hardship to reconfigure
17 commercial space to a residential use.

18 So I agree with OP's analysis concerning the first
19 floor because there was evidence of the existence of an
20 occupancy permit for the hair salon which existed on the
21 first floor for many years, I believe starting in the '70s
22 in that commercial strip of North Capitol Street.

23 I believe there's also additional evidence in the
24 record to justify extending that use to the second floor.
25 The owner who has operated a business next door for I believe

1 at that location for about 20 years submitted a letter from
2 a contractor describing how he reconfigured the second floor
3 for use as a hair salon by the previous owner. He said he
4 removed a wall and added two work stations and two shampoo
5 bowls.

6 Ms. Stedman testified from personal knowledge by
7 being next door that the second floor was configured as a
8 hair salon. Because Ms. Hutchinson operated the restaurant
9 next door, it would seem reasonable for Ms. Stedman to be
10 aware of the condition of the property and what use was made
11 of that property. And although there was no evidence of an
12 occupancy permit for the hair salon on the second floor,
13 there is ample evidence that it was used as a hair salon.

14 And in fact, one neighbor who submitted a letter
15 to the file noted that the second floor was used as a salon
16 in the previous owner's later years although it was not a
17 regular salon. I took that to mean that it did not have an
18 occupancy permit. But anyway, there was some testimony that
19 it was used as a salon, the second floor.

20 And then there's no evidence in the record that
21 it was not used as a hair salon. So there is, I agree, in
22 the absence of an occupancy permit for the second floor, some
23 dispute. But I believe there is enough in the record that
24 a reasonable person could conclude that the previous owner
25 did use the second floor as a hair salon.

1 The owner testified that it would be a financial
2 hardship for her to reconfigure the space for residential use
3 and estimated the cost at about 150,000 dollars. And for
4 her, that would not be a reasonable cost.

5 This building sits directly across a street from
6 a very conspicuous funeral home which has been there for some
7 time. On the other side of the street -- so the funeral home
8 is at the intersection of Randolph and North Capitol. It
9 fronts on North Capitol in the same way that this building
10 sits to the -- I believe it's to the south of the funeral
11 home. So on that eastern strip of north. So on that strip
12 of North Capitol, there's commercial activity on both sides.
13 To the other side of the street of North Capitol, there's a
14 church and there's a carry-out restaurant on the first floor.
15 So this is not an intersection where there is no commercial
16 activity.

17 In that context, the owner intends to retain the
18 third floor to maintain the residential use of the building
19 partially which will continue to contribute to the housing
20 stock. My colleague noted there is another restaurant
21 further down the street that's been in the neighborhood as
22 well. So it's not as if there is no commercial use in the
23 area.

24 I agree that allowing the restaurant on the second
25 floor could increase the intensity of use compared to a hair

1 salon which existed there before. But subject to DCRA
2 approval, the space will accommodate on 15 seats and 7 bar
3 stools on each floor. And so that's not a very large
4 restaurant.

5 However, I agree there could be adverse impacts.
6 But I also believe that those can be mitigated by proposed
7 conditions that the Board will impose. Based in part on the
8 recommendations and discussions of the ANC, I do not agree
9 that the outreach was flawed because there was ample notice
10 of the meetings. And it's unfortunate if persons could not
11 attend because it was a holiday. The fact is that there was
12 ample notice of the meeting.

13 Nevertheless, neighbors participated. They had
14 notice of all of the hearings. And many took the occasion
15 to write letters into the Board which I have considered very
16 carefully. This restaurant has been in the neighborhood for
17 over 20 years and has run a successful operation. And based
18 on the record, I give great weight to OP's analysis with
19 respect to the first floor and great weight as well to ANC's
20 issues and concerns. And the ANC is in full support of the
21 application. I am ready to discuss any conditions.

22 CHAIRPERSON HILL: Okay, great. Okay. All right.
23 So I think we know where we are with that portion. And so
24 now we can go ahead and start to talk about the conditions
25 with which we started to -- well, which we did have a hearing

1 with. I think it was even -- was it last week? And so what
2 I was going to ask now OAG, since you're going to be writing
3 the report at some point, if you could pay attention to this
4 discussion. And I'm going to try to kind of go through these
5 conditions the way that I kind of see them.

6 There was a couple of items of note during the
7 last hearing that we talked about. One was the terrace.
8 Commissioner May just brought up some discussion about hours
9 which we can get to. And then there was discussion about
10 signage that I recall in terms of lit signage.

11 I mean, maybe we can hold the discussion for --
12 well, let's go through some of this and just see where we get
13 to everything. Okay? So I'm kind of going off of what were
14 the conditions that were proposed after the applicant and the
15 ANC got together with the community to kind of come up with
16 conditions to mitigate adverse impact. Now again whether or
17 not we believe in those conditions, we're going to kind of
18 see here.

19 So I'm going to just start with one was noise and
20 that there was a -- in terms amplified and recorded loud
21 music, a condition, there shall be no live, recorded, or
22 amplified music in any outdoor space of the property. Are
23 we in agreement with this? Okay.

24 The next would be sound insulation shall be
25 installed and maintained in the walls of the second floor

1 terrace facing residents. We're not necessarily in agreement
2 with this yet. We'll see what happens if we do approve the
3 terrace or not, right? Okay. So that's on hold, OAG, number
4 two.

5 Three, if a sidewalk café is approved and
6 permitted, there shall be planters and plantings installed
7 and maintained to abate noise emanating from the sidewalk
8 café. We're in agreement? Okay. All right.

9 So hours of operation. So indoors, the hours of
10 indoor operation of the restaurant shall be limited to 8:00
11 a.m. to midnight. I have no problem with that. Okay.

12 The next is, again, we're back to the outdoors
13 which is the hours of outdoor operation of the restaurant
14 shall be limited to 10:00 a.m. to 10:00 p.m. Sunday through
15 Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday.
16 And I guess we're still not to where -- I guess there's the
17 sidewalk café and there's the rooftop terrace. So if there
18 was a sidewalk -- well, I'll put that on hold again. Okay.
19 So we'll get to the rooftop terrace thing.

20 DDOT, so prior to the issuance of a certificate
21 of occupancy for the restaurant use, the applicant shall
22 submit to DDOT a request to install bollards and/or apply
23 street markings on the north side corner of Randolph Place
24 Northwest and North Capitol Street. There's no objection,
25 correct? Okay.

1 The next, prior to the issuance of a certificate
2 of occupancy for the restaurant use, the applicant shall
3 submit to DDOT a request to designate one side of the unit
4 block of Randolph Place Northwest as resident parking only
5 from 2:00 p.m. to midnight on all days of the week. Okay.

6 The next, prior to the issuance of a certificate
7 of occupancy for the restaurant use, the applicant shall
8 submit to DDOT a request to designate a loading zone with
9 limited hours of 8:00 a.m. to 12:00 p.m. Okay.

10 Next, prior to the issuance of a certificate of
11 occupancy for the restaurant use, the applicant shall submit
12 to DDOT a request to install a bike rack near the property.
13 Okay.

14 So there was a condition that was put in that the
15 owner will support traffic and parking remediation
16 initiatives for the unit block of Randolph Place Northwest
17 that are documented to be supported by more than 50 percent
18 of the block's property owners and residents. And I guess
19 it seems a little unclear what those measures are or will be
20 and whether they will mitigate a potential adverse impact.
21 So I would not be in favor of that condition. Okay. All
22 right. So we're not doing that, Jake. All right.

23 So now I'm getting to trash. Trash, the applicant
24 shall remove trash, garbage, and grease from the property at
25 least three times per week. The applicant shall remove

1 recycling at least once per week. All such removal shall
2 occur during morning hours. The applicant shall retain a
3 private contractor for all such removal. The applicant shall
4 ensure that the contractor shall not block traffic or impede
5 traffic flow. Okay? All right.

6 The second condition that they had discussed was
7 the private contractor. So I think that that is discussed
8 in what I just read.

9 The third condition was that they talked again
10 about impeding traffic. So I think that that also is clear
11 in the condition that I just read. The fourth item that the
12 ANC and the applicant have put forward, I also think is
13 covered in what I had just read.

14 VICE CHAIR HART: Actually, for this one, I think,
15 Mr. Chairman, that --

16 CHAIRPERSON HILL: Oh, I'm sorry.

17 VICE CHAIR HART: -- this should be an internal
18 location. I think that's what we're looking at.

19 CHAIRPERSON HILL: Right. All trash, garbage,
20 grease, and recycling shall be stored in an internal
21 location. So that would be added. Right. So that's fine.
22 So we're in agreement with that? Okay. So that is a
23 condition, Jake. All trash, garbage, grease, and recycling
24 shall be stored in an internal location.

25 The next one was so prior to the issuance of a

1 certificate of occupancy for the restaurant use, the
2 applicant shall evaluate the use of a refuse compacting
3 machine and the availability of D.C. grants for purchase of
4 such a machine by the restaurant. Fine. Okay.

5 COMMISSIONER MAY: I don't know why that's even
6 a condition. I mean, if they want to do it, they can do it.
7 They don't have to. If it's going to be inside, I think that
8 addresses the issue.

9 CHAIRPERSON HILL: Okay, fine. So we're all in
10 agreement with Commissioner May? All right. So we're
11 striking that condition, Jake.

12 The owner -- in terms of number six that have been
13 submitted to us, so the applicant shall maintain the
14 property's sidewalks and abutting public space in a trash-
15 free and snow-free condition. I mean, that seems fine, I
16 guess, right? Yeah, they're required to do that as well,
17 right? Okay. So we don't need that as a condition. Okay.

18 So then pest and rodent control. The owner will
19 maintain a contract with a pest abatement interior and
20 exterior. So if we were to do something like this, the
21 wording might be, the applicant shall make best efforts to
22 minimize and eliminate vermin on the property and shall
23 maintain a contract with a pest abatement service provider
24 to do so. I'm fine with that. Okay.

25 And then there was -- I haven't gone inside yet.

1 And then the sewage, there was something about water, sewage,
2 city lines. And I think that's something that would be
3 sorted out in the permitting stage and is the applicant's
4 responsibility to do so. And so I don't think we need the
5 condition about the sewage. Okay. So we're all clear on the
6 conditions that we are so far. Okay.

7 So the next, let's go ahead and talk about -- I
8 guess we'll talk about the signage because that's the next
9 thing at least I have an opinion upon. And then you all can
10 say what you all want to say. Like, I just thought it was
11 too confusing in terms of, like, electric versus non-electric
12 and all that. And so I would be -- they have an -- and
13 again, what seemed to be confusing during the testimony, it
14 was, like, an electric sign that says Open versus, like, some
15 neon sign that says the name of the business.

16 I mean, so I would be fine with an electric sign
17 on North Capitol because it's North Capitol Street and then
18 a non-illuminated sign on Randolph Place. And when I say --
19 and this is where we might be getting too far into the weeds
20 on this, but maybe not in terms of mitigating adverse impact.
21 Like, if there are lights on the sign, I don't have an issue
22 with that as opposed to it being an illuminated sign. So
23 pardon me?

24 PARTICIPANT: Backlit.

25 CHAIRPERSON HILL: Backlit, right. So backlit,

1 I would be opposed to backlit. But front lighting on the
2 sign, on a wooden sign I don't think is a problem to the
3 neighbors. So that's where I'm on the signage. So can we
4 do that discussion?

5 COMMISSIONER MAY: Yes. So I mean, I would --
6 rather than try to say what's allowed, I think what we should
7 just say is what we would not want to see. And what I boiled
8 down out of what you said is no external backlit sign facing
9 Randolph Street.

10 Now I would say no external lit sign because I am
11 not totally comfortable with the ideal of lights on a sign
12 because I think that can be a problem too, depending on what
13 the sign is and what the lighting is. So I would say no
14 external lit sign facing Randolph, period.

15 CHAIRPERSON HILL: Okay. So that's --

16 COMMISSIONER MAY: They'll still have a sign.
17 They can still --

18 CHAIRPERSON HILL: Right. I'm just trying to be
19 clear so it's clear to the applicant. So your current
20 condition is that no external lit sign on Randolph Street.
21 They can have a sign, just can't be lit.

22 COMMISSIONER MAY: I think it's --

23 CHAIRPERSON HILL: Does that --

24 COMMISSIONER MAY: -- facing Randolph.

25 CHAIRPERSON HILL: Sorry, facing Randolph Street.

1 Does anyone else have an opinion?

2 VICE CHAIR HART: The only thing that I -- I had
3 written some language and I understand what Commissioner May
4 just raised. But I had this before he said it, so I'll just
5 read it. While signage shall be allowed on both Randolph
6 Street and North Capitol -- or Randolph Place and North
7 Capitol Street, there shall be no illuminated signage on the
8 outside of the property on Randolph Place. That's it.

9 COMMISSIONER MAY: That's the same thing, I think,
10 right?

11 VICE CHAIR HART: I just said signage will be
12 allowed --

13 COMMISSIONER MAY: No, no, no, I know. I mean,
14 you have more words.

15 VICE CHAIR HART: Yes, I'm just saying -- yes, but
16 I'm just saying that's all I --

17 COMMISSIONER MAY: It's essentially the same as
18 what I was saying, right, in your view? Yeah.

19 VICE CHAIR HART: Yeah, I just said that I was --
20 the reason I thought we should at least that there should be
21 signage is I'm not sure what BZA would kind of -- how DCRA
22 would say, well, they don't say it so I don't know if they
23 are okay with having signage on North Capitol at all.

24 COMMISSIONER MAY: I don't mind. I don't mind.
25 It's not that many more words.

1 VICE CHAIR HART: So that's it.

2 CHAIRPERSON HILL: Okay. Ms. John, are you
3 comfortable with that?

4 MEMBER JOHN: I think I am. I just note that the
5 restaurant directly faces the funeral home on Randolph
6 Street. So there is no house in front of the restaurant on
7 Randolph Street. The houses are to the west. So I would
8 just add that. But I'm fine with what you've discussed so
9 far.

10 CHAIRPERSON HILL: Okay. All right. So let's go
11 ahead and go with that. So I'm just trying to be clear for
12 the applicant. The applicant had a sign. It just can't be
13 lit in any way. Okay. So can you repeat your condition
14 again, Mr. Hart, for OAG?

15 VICE CHAIR HART: Yes, with so many words. While
16 signage shall be allowed on both Randolph Place and North
17 Capitol Street, there shall be no illuminated signage on the
18 outside of the property on Randolph Place.

19 CHAIRPERSON HILL: Okay, okay. Yeah, that's fine.
20 Just give me one second. I'm looking at some of the notes.

21 VICE CHAIR HART: And I don't know if the outside
22 of the property would be an issue, like, if they put a lit
23 sign inside the property, if that's -- I don't know if that's
24 too many words.

25 COMMISSIONER MAY: No, I mean, I don't mind there

1 being a qualifier on the signage thing external because I
2 don't think there's a big problem with a neon Open sign
3 behind glass. That's not really the issue. It's the higher
4 up lit sign, whether it's lit with neon or something else.

5 VICE CHAIR HART: That you could see down the
6 street potentially or across the street, whatever. It's just
7 --

8 COMMISSIONER MAY: I mean, again, I don't have a
9 big issue with the Open sign they have on the face right now
10 I don't think is a problem, even if it was facing --

11 CHAIRPERSON HILL: Okay. Now you guys are
12 confusing me. So I thought the Open sign was facing North
13 Capitol anyway.

14 COMMISSIONER MAY: Well, but their restaurant is
15 on North Capitol now.

16 CHAIRPERSON HILL: Yes.

17 COMMISSIONER MAY: I don't know how they're going
18 to do their signs in the future.

19 CHAIRPERSON HILL: Yes. Okay. So how would you
20 like to adjust the condition that Mr. --

21 MR. SIEGEL: Just add the word, external. You can
22 add the word, external, the prohibition on signage being no
23 external lit signs, whatever it was.

24 CHAIRPERSON HILL: OAG, do you understand?

25 MR. RITTING: I think I do. I think you're adding

1 the modifier external to Mr. Hart's language. Is that
2 correct --

3 COMMISSIONER MAY: Yeah.

4 MR. RITTING: -- Mr. May?

5 MR. SIEGEL: His prohibition of lit sign facing
6 Randolph Street would be only external lit signs.

7 MR. RITTING: I think I understand it and I can
8 craft a condition based on the discussion.

9 CHAIRPERSON HILL: Okay. We'll keep going for a
10 little while then. Like, my problem with that then, right,
11 is that if you have an -- I can have a big indoor sign up
12 against the window. And then it's all lit and inside. Okay.
13 All right. So that's fine.

14 MR. SIEGEL: Well, I mean, if you want to go back
15 to Mr. Hart's original wording, that's fine by me too. I was
16 trying to address the concerns --

17 CHAIRPERSON HILL: Ms. John, do you have any
18 thoughts one way or the other?

19 MEMBER JOHN: I have no thoughts on the sign.

20 CHAIRPERSON HILL: Okay. That's fine. Okay.

21 MEMBER JOHN: The signs will be limited by DCRA,
22 the size of the sign.

23 CHAIRPERSON HILL: Okay.

24 MEMBER JOHN: And there is no house facing the
25 property on Randolph Street.

1 CHAIRPERSON HILL: But there might be later.

2 MEMBER JOHN: There is a few -- well, that's --

3 CHAIRPERSON HILL: I mean, the funeral home.

4 MEMBER JOHN: Yes, that is true, Mr. Chairman.

5 CHAIRPERSON HILL: Probably in the future, we're
6 just going to disappear.

7 MEMBER JOHN: That is true, Mr. Chairman. It
8 could become condominiums. You're right.

9 CHAIRPERSON HILL: All right. Okay. So OAG, you
10 understand, so I'm going to leave it the way it is with Mr.
11 May's suggestion adding the qualifier there. Okay.

12 So now we're back to the outdoor terrace. Okay.
13 So I don't have any issue with the sidewalk. And so I don't
14 think we have any issues with the sidewalk, correct? Because
15 if we don't -- so okay. We don't know yet. Let me get to
16 the terrace first.

17 So what's everybody's thoughts on the terrace?
18 I mean, what we had discussed before, I mean, I do think that
19 the terrace possibly could have adverse impact. I would
20 agree with that. And then there was a discussion about
21 limiting the terrace to a five-year term. And then they
22 would have to come back to the BZA. Like, we can actually
23 then after discussing with OAG, it is possible to put in a
24 condition there that speaks to the terrace and the limitation
25 on term.

1 And so I would be -- and to be quite honest at
2 this point, I don't even know if I think that you have to
3 have the terrace either. So I mean, I'm kind of like I know
4 Mr. May's position. Before I get over there, does anybody
5 have any thoughts on the terrace?

6 MEMBER JOHN: So I like terraces, especially for
7 brunch on a Sunday morning. However, the other thing is this
8 particular space would accommodate four tops, four tables,
9 I believe. It's not a very big space. So I would agree with
10 the five-year limit if that's a good compromise to see if it
11 works. If it's not a nuisance to the neighbors, then I guess
12 they can come back in and ask to extend it.

13 CHAIRPERSON HILL: Okay. Mr. Hart?

14 VICE CHAIR HART: I'm fine with the five-year
15 limit.

16 COMMISSIONER MAY: Well, Chairman Hill, do you
17 want to say what I think because --

18 CHAIRPERSON HILL: No, you said it first. You
19 started saying what you were going to say.

20 COMMISSIONER MAY: I know.

21 CHAIRPERSON HILL: Nothing's changed in this
22 discussion.

23 COMMISSIONER MAY: I know, but we didn't discuss
24 the five-year limitation.

25 CHAIRPERSON HILL: No, I know. But that was just

1 -- you said no, flat nothing.

2 COMMISSIONER MAY: I said no, but okay, good. Now
3 I will just add to that by saying that if we're going to
4 allow it, I would strongly support having a five-year limit
5 on it.

6 CHAIRPERSON HILL: So then I'm in favor of the
7 five-year limit as well. So now we're to the hours again.
8 So the hours, so now we would put in a condition that says,
9 sound insulation shall be installed and maintained in the
10 walls of the second floor terrace facing residents. I can't
11 believe we're going to talk anymore about this. But what I'm
12 confused about that is I don't understand if there were
13 walls. I didn't think there were walls, right? You'd have
14 to, like, install or create walls.

15 COMMISSIONER MAY: Yeah, I mean, that's what I
16 find confusing too. There are not walls that surround the
17 terrace. There are walls against their building. I mean,
18 there would be some marginal benefit to having sound
19 absorbing material on the exterior they're building to
20 consume some of the sound so that there's less bouncing off
21 of it. So if that's what's being described, I think that has
22 to be a little bit more explicit as opposed to if we're
23 talking about building walls all the way around it, I think
24 we'd have to see that.

25 CHAIRPERSON HILL: Right. So I'm not in favor of

1 this condition because I find it just confusing. If we were
2 to say something again about --

3 COMMISSIONER MAY: Well, we could say that sound
4 -- install sound absorbing material on the existing walls at
5 the terrace level.

6 MR. RITTING: May I interrupt and make a --

7 CHAIRPERSON HILL: Sure.

8 MR. RITTING: -- suggestion?

9 CHAIRPERSON HILL: Yes.

10 MR. RITTING: Could you look at Exhibit No. 29
11 which is the plans that were submitted by the applicant. And
12 if you look at Sheet A100, there is what's an overhead view
13 of the second floor and it shows the terrace.

14 COMMISSIONER MAY: I see the drawing when we see
15 the terrace.

16 MR. RITTING: If you look at the terrace, there
17 appears to be what looks like double lines around the outside
18 of the terrace. And I think this condition contemplates that
19 those double lines are walls and that they will contain
20 insulation. At least that was my understanding. And I just
21 wanted to interject at this point because it seemed like you
22 were making a different assumption.

23 COMMISSIONER MAY: Are you talking about the upper
24 right-hand corner?

25 MR. RITTING: Yes.

1 COMMISSIONER MAY: Yeah. I would not interpret
2 that way. I mean, they're not very descriptive drawings.
3 I'll leave it at that. I mean, if you just look at the size
4 of the chairs and tables, they look more like flowers than
5 actual chairs and tables. So I didn't read a whole lot into
6 that drawing, and I don't -- I mean, if that were correct,
7 then essentially what you're suggesting is that they would
8 be building a full wall around all four sides of that terrace
9 area or one existing and three new walls.

10 CHAIRPERSON HILL: Okay. Can I --

11 COMMISSIONER MAY: I don't think that's the case.

12 CHAIRPERSON HILL: Can I interrupt? I'm sorry.
13 So I would be in favor of, again, then something along the
14 same lines that we spoke to for the sidewalk café which is
15 that the rooftop terrace, there shall be planters and
16 plantings installed and maintained to abate noise emanating
17 from the rooftop terrace. And that would be my condition.

18 My condition would be at the rooftop terrace,
19 there shall be planters and plantings installed and
20 maintained to abate noise emanating from the rooftop terrace.
21 And I say that because I don't understand the wall thing.
22 I don't think this necessarily means that there's walls. And
23 I would have to bring the applicant back in here again to
24 clarify what these drawings were.

25 And since we are going to put a time limit on it,

1 that's what the whole point is of the time limit is that if
2 this doesn't work out that the community will have an
3 opportunity to say that this isn't work out. And I would
4 imagine that the applicant will do everything that they can
5 to make sure that this works out so that when they come back
6 here in five years, they also get approval.

7 COMMISSIONER MAY: So Mr. Chairman, I agree with
8 you on the plantings. Those should be there, although it's
9 more of a psychological difference than it is an acoustical
10 difference. But I do think it would be acceptable for us to
11 add a condition that's a little bit more explicit that says
12 that they would add sound absorbing materials to the existing
13 walls of the terrace. And so that means the four, against
14 the back wall of the building and then if there are parapet
15 walls or anything like that, that those might get the similar
16 treatment. And I think that can be helpful. Sounding or
17 absorbing materials on the existing walls surrounding the
18 terrace.

19 CHAIRPERSON HILL: Yes, you need to put the
20 microphone on. I'm sorry.

21 MEMBER JOHN: Why not state on any walls surround
22 the terrace just in case walls are added later?

23 COMMISSIONER MAY: Yeah, or --

24 MEMBER JOHN: You said existing walls.

25 COMMISSIONER MAY: Yeah, I mean --

1 MEMBER JOHN: But they could --

2 COMMISSIONER MAY: Yeah, but if they decide to put
3 up a wall between -- or a fence between them and the next
4 door neighbor on North Capitol, yeah, I mean, I think that
5 would make sense, that they would put sound absorbing
6 material there as well. So I think that maybe we say
7 existing or new walls or future walls, something like that.
8 That would be good.

9 CHAIRPERSON HILL: All right. So the condition
10 now is going to be sound absorbing material -- oh, no. On
11 the terrace level, sound absorbing material will be installed
12 on existing and future walls to abate emanating noise from
13 the terrace.

14 COMMISSIONER MAY: I think that's good because
15 then it doesn't require them to build walls around it. But
16 if they're going to build walls, that they would have the
17 sound absorbing material.

18 CHAIRPERSON HILL: OAG, do you understand? Okay.
19 And I'm going to throw in there the planters. And there
20 shall be planters and plantings installed and maintained at
21 the terrace level to abate noise. Even though it's not
22 really sound, I'm always quieter when there's, like, plants
23 around. We should have hedge right here. Okay. All right.
24 So that's that one. Okay.

25 So the last is then just the hours of operation.

1 So I, again -- oh, I'm sorry. So the actual proposed
2 condition for the time limit, I would propose the restaurant
3 use of the outdoor space on the -- I'm sorry. The restaurant
4 use of the outdoor spaces, so that then, I guess, kind of
5 includes the sidewalk which I guess I'd be fine with. We can
6 talk that through a little bit more.

7 The restaurant use of the outdoor spaces on the
8 property as requested and described by the applicant in the
9 application and in testimony shall expire in five years from
10 the effective date of this order to allow the Board to review
11 the potential harm to the public good caused by this outdoor
12 space aspect of the use variance. An application to extend
13 this time limit shall be in the form of a modification of
14 significance requiring a public hearing.

15 So that's what the proposed condition is.
16 Thoughts? Yes.

17 MEMBER JOHN: Mr. Chairman, could you make that
18 effective from the date of the issuance of the certificate
19 of occupancy?

20 CHAIRPERSON HILL: Sure.

21 MEMBER JOHN: Thank you.

22 CHAIRPERSON HILL: Okay. So then OAG, you have
23 that condition? Okay. So just to be clear, and I'm going
24 to get on the record here for any future discussion with a
25 Board that I will not be here for. This is only about the

1 outdoor spaces. We're not talking about the use variance or
2 anything like that. This is just about the outdoor spaces.
3 They're not coming back for the use variance. They're just
4 coming back for the outdoor spaces. Okay. All right.

5 So then the hours of operation, the last condition
6 is the hours of the outdoor operation of the restaurant shall
7 be limited to 10:00 a.m. to 10:00 p.m. Sunday through
8 Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday.
9 Okay. All right.

10 Then that's the end of everything, I think. So
11 you have all of the conditions, OAG. And they will be
12 listed, correct? I mean, in the order. I mean, I guess
13 there was a lot of discussion and so just for the applicant.
14 Okay.

15 So I'm going to go ahead and make a motion. So
16 I'm going to make a motion to approve Application No. 19887
17 as captioned and read by the Secretary including all of the
18 conditions that we just went through and ask for a second.

19 VICE CHAIR HART: Second.

20 CHAIRPERSON HILL: The motion is made and
21 seconded. All those in favor, say aye.

22 (Chorus of aye.)

23 CHAIRPERSON HILL: All those opposed?

24 COMMISSIONER MAY: No.

25 CHAIRPERSON HILL: All right. Mr. Moy, I believe

1 we have an absentee also.

2 MR. MOY: Yes, I do, Mr. Chairman. Before I give
3 a final vote count, we have an absentee ballot vote from
4 Lesyllee White, and her vote is to approve the application
5 with such conditions as the Board may impose. So that would
6 give a final count of four to one to zero.

7 This is on the motion to approve the application
8 with conditions as cited by the Board. That's from Chairman
9 Hill. Second motion, Vice-Chair Hart. In support of that
10 motion, Ms. John and in this case also Ms. White. Opposed
11 to the motion is Commissioner Peter May. So that's four to
12 one to zero.

13 CHAIRPERSON HILL: All right. Okay. Thank you.
14 And so now we're going to switch out commissioners. Good
15 afternoon, Commissioner May. It's going to be just a couple
16 minutes here while we switch out commissioners.

17 (Pause.)

18 CHAIRPERSON HILL: All right, Mr. Moy. Whenever
19 you like.

20 MR. MOY: Thank you, Mr. Chairman.

21 (Whereupon, the above-entitled matter went off the
22 record at 10:36 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC Board of Zoning Adjustment

Date: 03-13-19

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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