

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MARCH 20, 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
CARLTON HART, Vice Chairperson
LESYLLEE M. WHITE, Board Member
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from the Public Meeting held on March 20, 2019.

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AGENDA

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

9:46 a.m.

1
2
3 CHAIRPERSON HILL: All right. Good morning,
4 everyone. The hearing will please come to order. We're
5 located in the Jerrily R. Kress Memorial Hearing Room at 441
6 4th Street, N.W. This is the March 20, 2019 public hearing
7 of the Board of Zoning Adjustment of the District of
8 Columbia.

9 My name is Fred Hill, Chairperson. Joining me
10 today is Carlton Hart, Vice Chair, Lesyllee White and Lorna
11 John, Board members, and representing the Zoning Commission
12 is Peter Shapiro.

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

15 Please be advised that this proceeding is being
16 recorded by a court reporter and is also webcast live.
17 Accordingly, we must ask you to refrain from any disruptive
18 noises or actions in the hearing room.

19 When presenting information to the Board, please
20 turn on and speak into the microphone, first stating your
21 name and home address. When you're finished speaking, please
22 turn off your microphone so that your microphone is no longer
23 picking up background noise.

24 All persons planning to testify either in favor
25 or in opposition must have raised their hand and been sworn

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1 in by the Secretary. Also, each witness must fill out two
2 witness cards. These cards are located on the table near the
3 door and on the witness table. Coming forward, please give
4 the cards to the reporter sitting to the table at my right.

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

12 The order of procedures for special exceptions,
13 variances, and appeals is also listed as you come into the
14 hearing room.

15 The record shall be closed at the conclusion of
16 each case except for any materials specifically requested by
17 the Board. The Board and staff will specify at the end of
18 the hearing exactly what is expected and when, and the date
19 when the persons must submit the evidence to the Office of
20 Zoning. After the record is closed, no other information
21 shall be accepted by the Board.

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

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1 A full order is required when the decision it
2 contains is adverse to a party, including an affected ANC.
3 A full order may also be needed if the Board's decision
4 differs from the Office of Planning's recommendation.

5 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 405(b) and 406
11 of that Act.

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

20 The decision of the Board in cases must be based
21 exclusively on the public record. To avoid any appearance
22 to the contrary, the Board requests that persons present not
23 engage members of the Board in conversation.

24 Please turn off all beepers and cell phones at
25 this time so as not to disrupt the proceedings.

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1 Preliminary matters are those which relate whether
2 to a case will be or should be heard today, such as requests
3 for a postponement, continuance, or withdrawal, or whether
4 proper and adequate notice of the hearing has been given.
5 If you're not prepared to go forward with the case today or
6 believe the Board should not proceed, now is the time to
7 raise such a matter. Mr. Secretary, do we have any
8 preliminary matters?

9 MR. MOY: Good morning, Mr. Chairman, members of
10 the Board. Very quickly, sir, as to today's docket, there
11 is one application that has been postponed and rescheduled.
12 And that is Case Application Number 19872, Rupsha, R-U-P-S-H-
13 A, 2011 LLC. This has been rescheduled to April 17, 2019.

14 Other than that, the other prominent preliminary
15 matter is to Application Number 19914 of 3110 Monroe Street
16 Associates. And that's a preliminary matter for, regarding
17 a request for a postponement which was submitted late
18 yesterday, March 19th. And I believe that's all for me, sir.

19 CHAIRPERSON HILL: Okay. All right. Well, let's
20 do -- so Monroe Street is asking for a postponement, Mr. Moy.
21 Is that what you're saying? And then they have to have been
22 here I assume. Was Monroe Street here? Okay. So we're
23 going to do our meetings first, and then we'll get to that
24 preliminary matter.

25 So, before all that, if anyone is here wishing to

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1 testify either in support or in favor or what have you, if
2 you could please stand and take the oath administered to the,
3 from the Secretary to my left.

4 MR. MOY: Even if you plan to, even if you don't
5 know whether or not you're going to testify, this is not
6 going to hurt. Good morning. Do you solemnly swear or
7 affirm that the testimony you are about to present in this
8 proceeding is the truth, the whole truth, and nothing but the
9 truth? Thank you. Ladies and gentlemen, you are under oath.

10 CHAIRPERSON HILL: All right. So we are going to
11 go somewhat in order. I just want to let everybody know what
12 the plan is. So we have our meeting cases first in terms of
13 decision cases. Then we have -- and those are going to go
14 in the order in which you see on the agenda.

15 In terms of the meeting cases, I guess we're going
16 to actually hear Monroe Street first. And then we're going
17 to hear Application 19949, followed by Application 19940,
18 followed by Application 19929, followed by Application 19941,
19 and concluding with the appeal at 19938.

20 So, at some point, we'll probably have lunch. I
21 don't know when. So that hopefully is helpful. And if not,
22 that's the best I can do. So, Mr. Moy, if you want to call
23 our first meeting case.

24 MR. MOY: I'm sorry, sir. So that would be 19441?

25 CHAIRPERSON HILL: Yeah.

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1 MR. MOY: Okay. Good. All right. So the first
2 case before the Board in meeting session is 19441 of
3 Richardson Place Neighborhood Association.

4 This is, as the Board will recall, a motion for
5 reconsideration of the BZA's decision in Case Number 19441
6 to grant the appeal of decisions made on September 27, 2016
7 and October 20, 2016 by the Zoning Administrator, DCRA, to
8 issue building permits number B1611469 and B1611470 to permit
9 the construction of two adjacent flats in the RF-4 district.
10 This is at 410 and 412 Richardson Place, N.W., Square 507,
11 Lots 101 and Lot 102.

12 Participating is Chairman Hill, Vice Chair Hart,
13 Ms. White, and Mr. Anthony Hood.

14 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
15 Moy. So I see actually that the counselor is here for this
16 particular application. And so, just to let people know,
17 again, for the meeting cases we basically just deliberate.
18 And so we don't take any testimony. We don't do anything for
19 anybody. But if people are here for the case, they're more
20 than welcome to be.

21 In this particular instance, unfortunately, we are
22 going to end up postponing. Chairman Hood, who is also on
23 this case, is interested in participating in the
24 deliberation. And so he's not with us again until April
25 10th. He was unable to come today. And so, Mr. Moy, we'll

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1 go ahead and postpone this again until April 10th.

2 MR. MOY: Thank you, sir.

3 CHAIRPERSON HILL: Okay.

4 MR. MOY: Okay. Okay. Sorry for the pause, Mr.
5 Chairman. All right. Next for a decision is Case
6 Application Number 19937 of Martin, and I'm going to spell
7 this, S-V-E-T-O-S-L-A-V-O-V.

8 This is a request for a special exception under
9 Subtitle E, Section 5201 from the lot occupancy requirements
10 of Subtitle E, Section 304.1, rear yard requirements,
11 Subtitle E, Section 306.1, and the nonconforming structural
12 requirements of Subtitle C, Section 202.2.

13 This would expand an existing two-story rear
14 addition and construct a new rear deck addition to an
15 existing semi-detached principal dwelling unit, RF-1 zone,
16 at 3664 Park Place, N.W., Square 3034, Lot 197. And there
17 was a file in by the applicant in the case folder last night,
18 Mr. Chairman.

19 CHAIRPERSON HILL: Okay. Great. Thank you. Is
20 the Board ready to deliberate? Okay.

21 There was some clarification that I think we were
22 trying to figure out actually as we were reviewing the record
23 in terms of what was actually being requested. And there is
24 an exhibit in Exhibit 40, a letter from the applicant that
25 I believe clarifies the discrepancies. And so I'm

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1 comfortable with the exhibit that was submitted.

2 The Office of Planning also filed a report, which
3 I believe provided the proper analysis to be in support of
4 this application.

5 DDOT had no objection with the condition, however,
6 that the Board needed to decide whether or not closing the
7 existing curb cut and restoring the tree box would actually
8 mitigate adverse impact. I'm going to leave that up for us
9 to discuss. The ANC 1A was in support 12 to 0 unanimous in
10 terms of their analysis. I also would be in agreement with
11 that.

12 Let's see. And so I believe that the applicant
13 has met their burden of proof for this application. And I
14 will be voting in favor. But I would like to hear if anyone
15 has any thoughts concerning the curb cut. And I'll let my
16 other colleagues add whatever they would like to.

17 VICE CHAIRPERSON HART: Thank you, Mr. Chairman.
18 Yeah, I would also be in favor of the application because I
19 also agree with the Office of Planning recommendation. It
20 makes it at 36.

21 I understood that some of the dimensions were,
22 there was some confusion over some of that. But as you
23 noted, the applicant submitted a note, Exhibit 40, that
24 clarifies that issue. So I don't think that's much of a
25 concern.

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1 I felt that the applicant supplied information
2 that showed how they were meeting Subtitle E 5201, and E
3 304.1. The proposal is for a building expansion in the same
4 exact footprint. And then they're also adding the deck. The
5 deck is only one floor. The building expansion is a three-
6 floor addition, three-story addition.

7 I did not think that they would be impacting the
8 light and air of any adjoining properties. While it would
9 be visible along Quebec Street, the other, some of the other
10 rear additions were also visible. So that really wasn't an
11 issue for me as well.

12 With regard to the curb cut, I just didn't think
13 that it was a relevant, it was not relevant to the relief
14 that's being requested. So I would not be in support of that
15 particular recommendation that DDOT had made.

16 I also thought that they were, that the applicant
17 showed how they were meeting Subtitle C 202.1 regarding the
18 rear yard because of the irregularly-shaped lot that's also
19 fairly shallow.

20 And I would be in support of the application
21 because of the information that has been submitted by the
22 applicant. Thanks.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
24 concur, and I would agree that the, with Vice Chair Hart that
25 the curb cut feels like it's not appropriate for it to be a

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1 condition. But I concur, and I'm in support of this.

2 MEMBER WHITE: Mr. Chair, I'm in support as well.
3 After reviewing the record, I believe that they have met the,
4 the special exception criteria for this particular
5 application.

6 And with respect to the condition that DDOT was
7 trying to impose to close the existing curb cut and restore
8 the curb and tree box on Quebec Place, I did not see that to
9 be necessary in order to mitigate any type of adverse impacts
10 of the proposed rear addition.

11 So I would be in support of this expedited review
12 application.

13 MEMBER JOHN: Mr. Chairman, I have nothing to add
14 because I believe everyone's made a fairly good analysis of
15 the application. So I will support the application also
16 based on the analysis of the Office of Planning, which was
17 quite thorough.

18 I would not support the curb cut also including
19 it as a condition because it's not, as Vice Chair Hart said,
20 related to the relief requested. And the ANC is also in
21 support. So I would agree.

22 CHAIRPERSON HILL: Okay. I'm going to make a
23 motion to approve Application Number 19937 as captioned and
24 read by the Secretary and ask for a second.

25 VICE CHAIRPERSON HART: Second.

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1 CHAIRPERSON HILL: Motion made and seconded. All
2 those in favor say aye.

3 (Chorus of aye.)

4 CHAIRPERSON HILL: All those opposed? The motion
5 passes, Mr. Moy.

6 MR. MOY: Staff would record the vote as 5 to 0
7 to 0. This is on the motion of Chairman Hill to approve the
8 application for the relief being requested, seconded the
9 motion Vice Chair Hart, also in support Ms. John, Ms. White,
10 and Mr. Peter Shapiro. The motion carries, sir.

11 The next case application for a decision is
12 Application Number 18723B. This is of 2101 Morning Bright
13 LLC.

14 This is a request for a two-year time extension
15 of BZA Order Number 18723A approving Application Number 18723
16 of 2101 Morning Bright LLC. This is pursuant to 11 DCMR,
17 Section 3103.2 and 3104.14, variances from the lot occupancy
18 under Section 772, and rear yard under Section 774, and off-
19 street parking location under Section 2116.12, requirements
20 and a special exception from the rooftop structure
21 requirements under Section 770.6(b).

22 This would allow the construction of a mixed-use
23 residential building with ground floor retail in the ARTS/C-
24 2-B district. This is at 2105 10th Street, N.W., Square 358,
25 Lots 5, 6, and 802.

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1 CHAIRPERSON HILL: Okay. Great. Thank you. Is
2 the Board ready to deliberate? Okay. I can start.

3 I guess this is a request for a second, oh, I'm
4 sorry. This is a request for a second two-year time
5 extension until June 2, 2020 to apply for a building permit
6 because the Board has not yet issued an order for the first
7 two-year time extension it granted on June 7, 2016 extending
8 the validity of this order until June 2, 2018.

9 Pursuant to Y705.5, no application for a building
10 permit can be filed pursuant to an order unless and until a
11 decision granting the request becomes final and effective.
12 Since the first time extension is not final and effective,
13 because there is no written decision order, the applicant was
14 unable to file for a building permit based on the first time
15 extension.

16 Also, while awaiting the Board's written decision
17 on the first time extension request, the applicant has
18 suffered setbacks impacting its ability to secure financing
19 and other governmental approvals for the project.

20 The Office of Planning has provided their analysis
21 in support. DDOT had no report. ANC 1B actually took no
22 action on this.

23 I would agree with the need for the time extension
24 and be voting in approval. Does anyone have anything they'd
25 like to add?

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1 MEMBER WHITE: I'll add some brief comments.

2 CHAIRPERSON HILL: Sure.

3 MEMBER WHITE: Well, essentially I agree with you,
4 Mr. Chair. I think we should approve this application. You
5 know, the applicant has already requested a time extension
6 as you noted previously in the case. But the order hasn't
7 been issued. So, you know, that means the applicant hasn't
8 been able to get a building permit yet. And the applicant
9 is asking for another extension on this particular
10 application till June 2, 2020.

11 So, as you noted, provision Y705.5 indicates that
12 a building permit can be issued once an order becomes final
13 and effective. So the applicant has suffered, as you noted,
14 a lot of setbacks impacting its ability to secure financing
15 and other government approvals for the property.

16 The ANC did make a recommendation that an
17 extension concur with the previous orders. So I also wanted
18 to note that the applicant is not proposing any exterior
19 changes to the building in the original, that were approved
20 in the original order. And they're not asking for any new
21 areas of relief.

22 So I'd like to also note that originally this site
23 was being proposed as a Ward 1 shelter site. But the Council
24 changed the location. So the applicant had to kind of
25 redirect its efforts to secure financing in an instance where

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1 they weren't going to be getting, having the D.C. government
2 involved in this, the use of this particular site.

3 So, in this instance, I think their request for
4 a two-year time extension is justified. So I would be in
5 support.

6 CHAIRPERSON HILL: Okay. I'm going to go ahead
7 and make a motion then to approve Application Number 18723B
8 as captioned and read by the Secretary and ask for a second.

9 MEMBER WHITE: Second.

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

12 (Chorus of aye.)

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

15 MR. MOY: The staff would record the vote as 5 to
16 0 to 0. This is on the motion of Chairman Hill to grant a
17 request for a two-year time extension. Seconding the motion
18 is Ms. White, also in support, Ms. John, Vice Chair Hart, and
19 Mr. Peter Shapiro. The motion carries.

20 CHAIRPERSON HILL: Thank you, Mr. Moy.

21 MR. MOY: Now, I just want to add, Mr. Chairman,
22 I was reminded that the two-year time extension takes this
23 order out to June 2, 2020 for the record. If that's fine
24 with the --

25 CHAIRPERSON HILL: Yes, I think we've mentioned

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1 that. But, I don't -- yes

2 MR. MOY: I don't recall, but --

3 CHAIRPERSON HILL: Yeah, we said it. But that's
4 okay.

5 MR. MOY: -- repeat that. Thank you.

6 CHAIRPERSON HILL: 2020.

7 MR. MOY: Okay. Moving right along, so the next
8 case application for decision making is Application Number
9 19910. I take that back, Application Number 19883A of 845
10 Upshur LLC.

11 Mr. Chairman, this is a request for a minor
12 modification to the plans approved in BZA Order Number 19883
13 to add a penthouse common area to an existing mixed-use
14 building, MU-4 zone. This is at premises 845 Upshur Street,
15 N.W., Square 3024, Lot 56.

16 This is to add a matter-of-right penthouse, 222
17 square feet, that will serve as a common area for the four
18 residential units in the building.

19 CHAIRPERSON HILL: Okay. Is the Board ready to
20 deliberate? Okay. I can start.

21 So, after reviewing the record, I would agree with
22 the analysis of the Office of Planning, as well as the --
23 well, basically it was just the Office of Planning. I mean,
24 this was, again, something they're coming back to us because
25 they had to change their plans. And even though they're

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1 adding something that is a matter-of-right, since they had
2 to change their plans they had to come back to us.

3 So, I mean, I don't have an issue with the
4 application. Does anybody have anything they'd like to add?

5 COMMISSIONER SHAPIRO: No.

6 MEMBER JOHN: Only that this is a by-right
7 penthouse that they're adding.

8 CHAIRPERSON HILL: Okay. Great. Then I will go
9 ahead and make a motion to approve Application Number 19883A
10 as captioned and read by the Secretary and ask for a second.

11 VICE CHAIRPERSON HART: Second.

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

14 (Chorus of aye.)

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

17 MR. MOY: The staff would record the vote as 5 to
18 0 to 0. This is on the motion of Chairman Hill to grant the
19 request for a minor modification. Seconding the motion is
20 Vice Chair Hart, also in support, Ms. John, Ms. White, and
21 Mr. Peter Shapiro. Motion carries, sir.

22 CHAIRPERSON HILL: Thank you, Mr. Moy.

23 MR. MOY: All right. The last case application
24 for a decision is 19910 of 5935 Colorado Avenue Associates
25 LLC.

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1 This application was amended for special
2 exceptions under the new residential development requirements
3 of Subtitle U, Section 421.1 and under Subtitle C, Section
4 1001.2(e)(3) for the inclusionary zoning bonus density
5 adjustments of Subtitle C, Section 1002.2 and pursuant to 11
6 DCMR, Subtitle X, Chapter 10 for area variances from the lot
7 occupancy requirements of Subtitle F, Section 304.1, from the
8 side yard requirements of Subtitle F, Section 306.1, and from
9 the inclusionary zoning requirements of Subtitle C, Section
10 1005.1.

11 This would raze, R-A-Z-E, raze the existing
12 building and construct a new five-unit apartment house, RA-1
13 zone at premises 5835 Colorado Avenue, N.W., Square 2937, Lot
14 832.

15 Participating on the decision is, yes, Chairman
16 Hill, Vice Chair Hart, Ms. White, Ms. John, and Mr. Peter
17 May.

18 CHAIRPERSON HILL: Not Ms. John. Ms. John is not
19 on this one.

20 MR. MOY: All right. Thank you.

21 CHAIRPERSON HILL: Let's see. So is the Board
22 ready to deliberate? Okay. Sure.

23 VICE CHAIRPERSON HART: Yeah, I think that we had
24 quite a full discussion or public hearing the last time on
25 this case. And, you know, in general, I think that there was

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1 a lot of positive things for the project. I thought it was
2 the right amount of density for the site. This is kind of
3 an area that could use that kind of transition into a little
4 bit more of a, or from a residential to more of a mixed-use
5 area.

6 It did include affordable housing unit. There was
7 some discussion about the layout of the affordable housing
8 unit. And it was, I think Commissioner May raised the issue
9 about the bathroom that was kind of on a different floor than
10 where the bedroom was, because this was a two-floor unit.

11 Since that time, the applicant has changed the
12 design so that we have the, a more kind of typical-looking
13 unit with some kind of public areas, the kitchen and the
14 living room of that unit on one level and then the bedroom
15 and the associated bathroom on the, on another unit, another
16 floor, second floor.

17 I actually thought that the project was, that the
18 applicant has provided information for us to show how they
19 are meeting the criteria for the various relief. And they
20 were looking for quite a bit of relief. But I felt that they
21 actually met that.

22 I would agree with the Office of Planning report
23 and the recommendation that the BZA should approve the
24 application that was in Exhibit 40. And I would be in
25 support of the application. I thought, as I said, that they

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1 have proved their case and would be amenable to voting for
2 that, to approve that. So I can --

3 MEMBER WHITE: Okay.

4 VICE CHAIRPERSON HART: -- listen to my fellow
5 Board members on --

6 MEMBER WHITE: Okay. So, again, this, you know,
7 this is a request for a very impressive new residential
8 development project. It's new construction.

9 And as Mr. Vice Chair Hart said, they're
10 requesting a number of items of relief, including a number
11 of special exceptions and a variance, in order to construct
12 this new residential development in an area or in a spot that
13 has been kind of dilapidated with a vacant house for years.

14 However, there is a next-door neighbor that's
15 going to be directly next door to this, you know, very large
16 project. As you indicated, they were very amenable to making
17 some changes regarding the layout of that IZ unit to make
18 sure that the bedroom and the bathroom were on the same
19 floor, which made a lot of sense. So it sounds as though
20 they were very good in terms of working with the community.

21 So I won't add more than that, other than the fact
22 that during the hearing we did have someone come in, Ms.
23 Jimenez, that testified, who expressed, you know, concern in
24 terms of potential damage that could possibly result from
25 that massive type of, you know, real estate project that's

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1 going to be constructed directly next door to her. So she
2 expressed some concerns about potential damage.

3 There were some questions that were raised to the
4 applicant about whether or not they'd be willing to provide
5 some kind of protection or insurance to make sure that if
6 damage did occur that she would be, that it would be fixed
7 and, or she'd be compensated in order to fix it.

8 So there was a letter that came in from the
9 applicant on the 15th basically saying that they were writing
10 to inform us that this property is insured under the vacant
11 policy insurance, but it doesn't allow adding a party that
12 doesn't have an interest in the property to the insurance.
13 However, 3835 Colorado Avenue Associates obtains full
14 permitting documents from DCRA. The general contractor would
15 be instructed and required to add Ms. Jimenez, the property
16 owner of the adjacent lot, as an additional insured party per
17 BZA condition.

18 So I agree that, I think the application should
19 be approved. But I would like to have some type of condition
20 in place to indicate that during the construction process
21 that there would be insurance to make sure that she was
22 covered in case of any damage to her property.

23 CHAIRPERSON HILL: Okay. All right. So I agree
24 with everything that my colleagues just said.

25 And I guess one of the things, I guess the

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1 condition that the -- and I'm sorry. Vice Chair Hart, I
2 wasn't sure whether or not you mentioned this or not, but
3 that there was a condition in terms of the applicant shall
4 achieve the inclusionary set-aside required for the penthouse
5 habitable space by providing a contribution to a housing
6 trust fund consistent with all requirements of Subtitle C
7 1006.10.

8 And that was in the discussion in terms of the
9 whole, with the, you know, the 50 percent MFI unit versus
10 putting money towards the HPTF. And so I would be in support
11 of that particular condition.

12 The condition that you're speaking of, Ms. White,
13 I'm not clear on I guess a little bit. And the only reason
14 why I'm kind of confused about it, and I'm just kind of
15 looking to OAG, is have we ever made or is there a problem
16 with asking for a condition that, as you're suggesting I
17 think, Ms. White, that the applicant in the, that the
18 applicant, as stated in their letter, adds the next-door
19 neighbor to their insurance policy.

20 MS. LOVICK: I mean, it's not something that you
21 typically would do. Typically, you've asked for the
22 construction management agreement to be worked out between
23 the parties. And you've had that submitted into the record.
24 But I've never seen you actually --

25 CHAIRPERSON HILL: Okay, okay.

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1 MS. LOVICK: -- do a condition --

2 CHAIRPERSON HILL: All right. So, Board Member
3 White, if it would be amenable to you, I would rather not
4 necessarily put it as a condition only because it would then
5 be setting precedent to where we might be trying to do this
6 again with other people as opposed to I'm comfortable with
7 what the applicant has submitted into the record stating that
8 they will include them in the insurance policy. Are you
9 comfortable with that?

10 MEMBER WHITE: With OAG's feedback, yes, I am.
11 And because that letter is in the record, I think that is
12 sufficient to provide her with some comfort and protection
13 in case something bad happens.

14 CHAIRPERSON HILL: Okay, okay. Great.

15 VICE CHAIRPERSON HART: Yeah, just one, just to
16 chime in, is it possible to, as it sounds like we're going
17 to be voting in support of the application, is it possible
18 in the order to have kind of a mention of this issue so that
19 it's at least raised the insurance issue or just providing
20 some --

21 MS. LOVICK: Well, there's already a condition
22 that was proposed by the applicant that has to do with fixing
23 the property in the event that there's damage to the
24 property. So, if you wanted to -- I mean, this was an issue.
25 So it will be raised in the order. It will be addressed in

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1 the order. But if you want to tweak the language --

2 VICE CHAIRPERSON HART: Okay, I see it now.

3 MS. LOVICK: -- you could do that, yeah.

4 (Off microphone comments.)

5 VICE CHAIRPERSON HART: Hold on a second. Okay.

6 So it's Exhibit 48, fix any damage caused to the neighbor's
7 property by the construction crew at the developer's expense.

8 Is that the one you're talking about?

9 MS. LOVICK: Yes, that's the language which I'm
10 talking about.

11 VICE CHAIRPERSON HART: Okay. And --

12 CHAIRPERSON HILL: Okay. I mean, you're looking
13 at that condition, then. So, right. So, I mean, I -- and
14 I'm totally fine with whatever you all think in terms of
15 adding it as a condition in some capacity.

16 I mean, my, again, hesitancy is just that I know
17 we haven't made it a condition that somebody add them to
18 insurance policies, right? We've asked them to do so.
19 They've now agreed that they would do it. And we've just
20 never, I mean, I've just never made it a condition before.

21 And so that's what I'm just, because then it's an
22 enforceable thing that we're -- I mean, the only reason why
23 I'm hesitating is that now it's something that we're going
24 to end up talking about more again in the future as opposed
25 to the applicant has agreed. It's in the record that they've

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1 agreed. And I'm comfortable that they will say what, you
2 know, will do what they said, because they're just adding
3 somebody to their policy.

4 And so, you know, is that -- unless you guys have
5 some other thoughts, then I'd just stick with the condition
6 that I read in terms of the habitable space contribution to
7 the housing trust fund.

8 MEMBER WHITE: I'm more in support of at least
9 having some reference to the letter that was submitted in the
10 record by the applicant regarding covering the next-door
11 neighbor in the event of damage to her property, not
12 necessarily listing it as a condition, but at least
13 referencing it in the order.

14 CHAIRPERSON HILL: Okay. So, OAG, when you're
15 writing the order, can you reference that letter in the
16 order?

17 MS. LOVICK: Well, now that I'm looking at this,
18 so it's saying that it would, that they would commit to it
19 per BZA condition. So, if you don't want to make adding Ms.
20 Jimenez to the policy a condition of the order, it probably
21 makes sense not to reference, make a cross-reference to this
22 letter. You would just use the condition as proposed by the
23 applicant.

24 VICE CHAIRPERSON HART: And that condition would
25 be fixing any damage caused to the neighbor's property by the

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1 construction crew at the developer's expense.

2 MS. LOVICK: Correct. Otherwise, if you make a
3 reference to this letter --

4 VICE CHAIRPERSON HART: That's fine.

5 MS. LOVICK: -- you're adopting a condition that
6 would --

7 CHAIRPERSON HILL: Okay. That's fine. That's
8 fine. So, since you just said it out loud, Vice Chair Hart,
9 would you please go ahead and make a motion and then reread
10 your condition?

11 (Off microphone comments.)

12 CHAIRPERSON HILL: All right. This new format is
13 messing me up.

14 So, right, then there's the ANC's conditions,
15 right. And so the ANC conditions that they, when we talked
16 through this with the, at the hearing, the reserve one unit
17 in the building as an affordable unit for purchase or rent
18 by a household making 80 percent or less of the AMI for at
19 least 10 years, install permeable pavers for any
20 driveway/parking pad, walkway, or patio surface to be
21 installed, replace lead service line to property if
22 applicable, and then finally, during building construction
23 developer has agreed not to block the public alley at any
24 time to perform construction only during permitted hours, to
25 promptly fix any damage caused to neighbor's property caused

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1 by construction crew. So that's the same thing that we were
2 just talking about, right, property by the construction crew
3 at the developer's expense and to be available by phone and
4 email to answer questions from neighbors.

5 MEMBER WHITE: Mr. Chair, if that specifically
6 indicates that they would be, that they would promptly fix
7 any damage caused to the neighbor's property, I think that's
8 sufficient.

9 CHAIRPERSON HILL: Okay. So you all are
10 comfortable with those conditions in terms of mitigating the
11 adverse impact. Okay. And then --

12 MEMBER WHITE: Yeah, I think that would protect
13 Ms. Jimenez in case there was a problem.

14 CHAIRPERSON HILL: Okay. And then as well as the
15 one concerning the contribution to the HTFC.

16 VICE CHAIRPERSON HART: Yes.

17 CHAIRPERSON HILL: Okay. HPTF, HPTF. Okay. All
18 right. I'm going to make a motion. I going to make a motion
19 to approve Application Number 19910 with those conditions
20 that I read. I don't have to reread them, right, OAG?
21 You've got it. Okay. From ANC 4C, as well as the applicant
22 shall achieve the inclusionary set-aside required for
23 penthouse habitable space by providing a contribution to a
24 housing trust fund consistent with all requirements of
25 Subtitle C 1006.10 as captioned and read by the Secretary.

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1 I vote to approve. Can I get a second?

2 MEMBER WHITE: Second.

3 CHAIRPERSON HILL: Motion made and seconded. All
4 those in favor say aye.

5 (Chorus of aye.)

6 CHAIRPERSON HILL: All those opposed? The motion
7 passes, Mr. Moy.

8 MR. MOY: Thank you, Mr. Chairman. Before I give
9 the final vote, we do have an absentee ballot vote from Mr.
10 Peter May. And his vote is to approve the application with
11 such conditions as the Board may impose. He provides a brief
12 comment. If I may, I'd like to read it into the record.

13 CHAIRPERSON HILL: Please do. Please do.

14 MR. MOY: Quote, in favor of the requested relief
15 with whatever conditions that the Board may choose to impose.
16 No objection to granting the appellant or rather the
17 applicant's flexibility to provide the IZ unit at 50 percent
18 AMI or providing the unit at 80 percent and making a
19 contribution to the HPTF. No comment or concern about the
20 issue of insuring the neighbor's property. It is not
21 relevant to the requested relief. Therefore, it is not a
22 zoning issue, end quote.

23 So I would give a final vote count of 4 to 0 to
24 1. This is on the motion of Chairman Hill to approve the
25 relief requested along with the conditions as cited,

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1 seconding the motion, Ms. White, also in support, Mr. Peter
2 May and Vice Chair Hart and no other participating. So the
3 motion carries.

4 CHAIRPERSON HILL: Okay. Great. Thank you.
5 Great. Thank you. So the new OAG report is just messing me
6 up. Okay. I'm just letting you know.

7 MS. LOVICK: Noted.

8 (Whereupon, the above-entitled matter went off the
9 record at 10:29 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: Board of Zoning Adjustment

Date: 03-20-19

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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