

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 13TH, 2019

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:50 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARLTON HART, Vice-Chairperson (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

The transcript constitutes the minutes from the Public Hearing held on November 13th, 2019.

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

9:50 a.m.

CHAIRPERSON HILL: Mr. Moy, you can call our first hearing case.

SECRETARY MOY: Thank you, Mr. Chairman. If we can have parties to the table? This is to Case Application No. 20134 of TPWR Developer, LLC, this is captioned and advertised for a special exception under Subtitle K, § 921.1 from the maximum linear ground floor building frontage restriction under Subtitle K, § 902.7(e), this would develop a mixed-use project with ground floor retail in the WR-2 Zone at 7100 Georgia Avenue, N.W., (Square 2950, Lot 846).

CHAIRPERSON HILL: Good morning.

MS. GIORDANO: Good morning.

CHAIRPERSON HILL: If you can, please, introduce yourself for the record?

MS. GIORDANO: Certainly. Cynthia Giordano with Saul Ewing Law Firm.

MS. WIACEK: Good morning, Katie Wiacek with Hines Development Firm.

CHAIRPERSON HILL: Great. Could you spell your last name for me? I'm sorry.

MS. WIACEK: Wiacek, W-I-A-C-E-K.

CHAIRPERSON HILL: Great. Thank you. And if you could both have just one microphone on at a time down there,

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1 otherwise it feeds back.

2 MS. GIORDANO: Yes.

3 CHAIRPERSON HILL: Thank you. All right. Ms.
4 Giordano, are you going to be presenting to us?

5 MS. GIORDANO: Yes.

6 CHAIRPERSON HILL: Okay. I guess if you could go
7 ahead and kind of walk us through the project and how you
8 believe you are meeting the standard for us to grant the
9 relief requested. I do see that the Office of Planning has
10 some conditions, I guess, that you guys will kind of work
11 through, and so I guess you will kind of speak to that.

12 Also, there was a little bit of confusion in terms
13 of the final size of the frontage, in terms of it looks like
14 the Office of Planning has 92.9 and your exhibit has 91.4,
15 so we can work that out with the Office of Planning, but just
16 as you are kind of going through that, you might want to
17 speak to that or you can speak to it now.

18 I'm going to put 15 minutes on the clock, Mr. Moy,
19 so I know where I am. And you can begin whenever you like.

20 MS. GIORDANO: Okay. I think the frontage was
21 clarified with a subsequent exhibit, but I'll ask Katie to
22 go into that, but just as a brief introduction, the special
23 exception is supported by the Office of Planning and the ANC
24 as well.

25 But we do have some issues with the conditions,

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1 so we can sort of skip to that pretty quickly, but Katie will
2 also provide an overview and the reason for the exception for
3 the larger frontage, linear frontage. But just --

4 CHAIRPERSON HILL: Okay. If you want to go ahead
5 and give your argument then, I guess, for how you are meeting
6 the standards for us to grant the application?

7 MS. GIORDANO: Sure, um-hum.

8 CHAIRPERSON HILL: And then we can work through
9 the conditions with the Office of Planning afterwards.

10 MS. GIORDANO: Okay. All right. Katie, do you
11 want to walk through?

12 MS. WIACEK: Sure. I was going to -- hi, my name
13 is Katie Wiacek. I'm the managing director at Hines. Hines
14 is part of the development team of Hines, Urban Atlantic and
15 Triden Development Group. And we are responsible for the
16 redevelopment of the former Walter Reed Army Medical Center
17 Campus, which we have named The Parks at Walter Reed. And
18 it will be a combination of adoptive reuse and new
19 construction totaling approximately 3.1 million square feet
20 over 66 acres.

21 So the particular parcel for this case is Labeled
22 IJ on the master plan. I have just given you three pages
23 that are, I think, helpful for this presentation. And Parcel
24 IJ is down by the future roads, Elder Street and they are a
25 continuation of the street grid per the Small Area Plan.

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1 Elder Street to the north, Dahlia Street to the
2 south an alley to the west and 12th Street to the east. It
3 is part of the campus that will be all new construction and
4 has been referred to as the town center and the heart of the
5 site as described in the District Small Area Plan with the
6 highest density of retail development.

7 Building IJ will contain approximately 323-units
8 and 58,000 rentable square feet of retail. We are in for our
9 building permit currently and look forward to commencing
10 construction on this important phase of the project.

11 So the other two pages within that three page
12 packet are the ground floor plan, which was in the
13 application, as well as the Retail Merchandising Plan from
14 our retail brochure that shows the envision demising of the
15 retail in the three town center buildings, IJ, O and P.

16 So for some background, we developed the master
17 plan for the site based on the guiding documents that have
18 been prepared by the District, including the Re-Use Plan and
19 the Small Area Plan.

20 The Small Area Plan was established -- it
21 established recommended land use designations in underlying
22 principles that informed the zoning for the site and provided
23 a roadmap for our development of the master plan, including
24 the highly activated town center with mixed-use residential
25 and retail buildings and a public plaza that we will be

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1 building including hardscape, landscape, fountain, heard a
2 lot of -- all sorts of activating factors with retail
3 frontage.

4 And within the town center, we have approximately
5 100,000 square feet of retail anchored by a grocery store.
6 So the base plans for the town center were designed by our
7 architect, Torti Gallas Urban, who is an experienced retail
8 and residential architect, having designed projects like
9 Bethesda Row and we also did a peer review by Streetsense.
10 And Streetsense is both our leasing agent or they have a
11 section of their firm that is leasing, combined with CBRE,
12 who developed our merchandising strategy, and they also have
13 an architectural arm that has done projects like all the
14 restaurants in Blagden Alley for example.

15 So together they helped develop a retail based
16 plan that would accomplish our desire for neighborhood-
17 serving retail and provide for the depths needed to lease the
18 space and accommodate typical retail spaces.

19 And our objective, of course, is to have a fully
20 leased project with great retail tenants, including food and
21 beverage, neighborhood-serving like fitness, salon and spa
22 and things of that nature.

23 So design-wise, if you are reviewing the ground
24 floor plan, the depth of Building IJ was largely driven by
25 accommodating a mid-size grocery store on the south portion

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1 of the building, which had -- and loading off of a shared
2 alley.

3 We have introduced townhouse-style residential
4 apartments flanking along both Dahlia Street and Elder Street
5 to further activate the frontages of those blocks and would
6 note that Elder Street is actually entirely residential on
7 the north side of the -- starting at Georgia Avenue.

8 So any retail along Elder Street is actually
9 single-sided retail and so it is the less desirable frontage
10 within the project.

11 The corner, however, is a great corner because
12 12th Street is our central main block and pedestrian-oriented
13 street within the project, so we have oriented the space at
14 the corner of 12th Street and Elder Street to be -- it's
15 really oriented towards 12th Street and towards the corner
16 and Elder Street is effectively the side street.

17 So our request is to -- is for relief from the 50
18 foot limitation, which we understand, you know, there is a
19 desire for small retail frontage and introduction of small
20 tenants, but really that works when it is the front and not
21 the side. So with a corner condition, our space requires a
22 greater depth than 50 feet. If we were to limit it to 50
23 feet, then we would be introducing another division within
24 the space that would be difficult to lease and kind of a
25 stand-alone space with no adjacent retail along Elder Street.

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1 VICE CHAIRPERSON HART: Can you stop for a second?

2 MS. WIACEK: Sure.

3 VICE CHAIRPERSON HART: And the question I had was
4 kind of what you just brought up. So you are looking for
5 something that is almost twice the size of what the frontage
6 that is allowed, you know, in the zoning. And I'm almost
7 sure that the folks that developed the Retail Base Plan, they
8 knew what the underlying zoning was, so it -- and I
9 understand this is a special exception, but I'm trying to
10 kind of gauge why the, what do you call it, junior anchor has
11 to be on that side as opposed to being on either O or P or
12 L.

13 I mean, you are saying that it has to be at that
14 location and I'm not exactly sure why, because I don't know
15 what is in the other blocks. And if that is necessary for
16 that particular location, you know, when you are looking for
17 the special exception, I'm just trying to get to a --

18 MS. WIACEK: Sure.

19 VICE CHAIRPERSON HART: -- this is why this is
20 kind of necessary --

21 MS. WIACEK: Why this particular --

22 VICE CHAIRPERSON HART: -- for this particular
23 location or else you could do -- I mean, you know, looking
24 at the -- what you have provided, the third page of what you
25 handed out to us has, you know, the other types of uses, the

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1 retail that you are looking at, for the ground floor in
2 Buildings O and P, but I am just kind of trying to -- I'm
3 grappling with -- or understand why that is on there.

4 MS. WIACEK: Okay. So because Building IJ is the
5 largest floor plate designed to accommodate the grocery
6 anchor, which was envisioned in the Small Area Plan and has
7 been a strong push by the District, we have a deeper floor
8 plate where we need to fill that space with retail.

9 Whereas, Buildings O and P each only have 20 to
10 24,000 square feet total. So if we were to put a junior
11 anchor in one of those buildings, we would be basically
12 fronting all of -- most of three sides of the highly
13 activated plaza at 12th Street with a junior anchor use,
14 which we don't think achieves the goal of the pedestrian-
15 oriented environment in the same way as wrapping those
16 buildings with smaller tenant uses and things that have
17 things -- you know, outdoor seating and really trying to draw
18 people and pedestrians into the site.

19 So Georgia Avenue is the eastern border to put the
20 buildings in context. And we are trying to -- by placing the
21 anchor at this corner, this is the inner side of the retail
22 within the project, we are drawing visitors into/towards 12th
23 Street that will help to activate the retail that is along
24 Elder within Building O.

25 So those smaller tenants are supported by the

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1 junior anchor and the grocer and then drawing the vehicles
2 and pedestrians into the site by placing those anchor tenants
3 within Building IJ, as opposed to Buildings O and P. Does
4 that help?

5 VICE CHAIRPERSON HART: And you couldn't have 203
6 be -- where it says 203 on that third page, where it says 203
7 retail, that couldn't shift to Elder to be able to provide
8 for the -- you know, because it seems like 12th Street you
9 can -- you might be able to have that, you know, longer
10 street frontage. You have a shorter street frontage along
11 12th Street not along -- I'm sorry.

12 You could have your -- I'm sorry. You have your
13 shorter street frontage for that junior anchor along 12th
14 Street currently. And I'm just trying to figure out why that
15 has to be that way and --

16 MS. WIACEK: Because 12th Street is the most
17 desirable street frontage where you will have your pedestrian
18 environment. So a small tenant is much more likely to be
19 successful facing 12th Street than facing Elder Street.

20 If we put a small tenant on the side of Elder
21 Street surrounded by residential across and next to it and
22 then further into the site is all residential, that tenant
23 is going to have a hard time being successful because retail
24 does rely on adjacency and co-tenancy.

25 So it will have a lack of visibility and a lack

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1 of co-tenancy that drives pedestrians to that location. So
2 we --

3 VICE CHAIRPERSON HART: So you're saying it's
4 going to be isolated?

5 MS. WIACEK: It will be isolated.

6 VICE CHAIRPERSON HART: Okay.

7 MS. WIACEK: Whereas, how we have designed it is
8 to try and bring the traffic into the site, into the
9 activated plaza and attract people to shop at these smaller
10 and dine at these smaller tenant spaces by anchoring this
11 larger building with an anchor and a junior anchor that draw
12 those perspective shoppers and diners into the site.

13 VICE CHAIRPERSON HART: So you are having
14 entrances along both 12th and Dahlia for the grocery?

15 MS. WIACEK: The 12th Street will be the main
16 grocer entrance, but there will be a garage and trends off
17 of the alley.

18 VICE CHAIRPERSON HART: Yeah, no, I don't mean the
19 alley. I mean off of Dahlia. So is there an entrance, a
20 pedestrian entrance for both Dahlia and 12th Street for the
21 main grocer?

22 MS. WIACEK: I think it depends on what the grocer
23 will ultimately design. Their focus right now --

24 VICE CHAIRPERSON HART: Well, I mean, it looks --

25 MS. WIACEK: -- is to have a central entrance

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1 oriented towards the plaza. They may have a secondary
2 entrance along Dahlia, but that's not the --

3 VICE CHAIRPERSON HART: So you are thinking that
4 Dahlia as not being a main access?

5 MS. WIACEK: It is a main access and there is --
6 there are buildings. Future Building Q will have retail and
7 future building -- the buildings to the south of the grocer
8 and the Building P are planned to have retail. They are
9 future phase. Dahlia Street will be a main connection
10 through the site.

11 VICE CHAIRPERSON HART: Yes.

12 MS. WIACEK: So they will have -- it will have
13 more vehicular traffic than Elder, which dead ends. Dahlia
14 Street goes through to Alaska.

15 VICE CHAIRPERSON HART: Yes.

16 MS. WIACEK: And okay. So --

17 VICE CHAIRPERSON HART: I mean, I know it goes to
18 the Foreign Mission Center, which is --

19 MS. WIACEK: Correct.

20 VICE CHAIRPERSON HART: -- to the --

21 MS. WIACEK: And Children's National --

22 VICE CHAIRPERSON HART: -- yes, yes.

23 MS. WIACEK: -- Medical Center.

24 VICE CHAIRPERSON HART: Which is to the west of
25 this. So what I'm trying to get to is you have retail on the

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1 Building P. You have what might be a blank wall along the
2 IJ and then I'm not sure what is going on in L. So it's --

3 MS. WIACEK: L is a residential building.

4 VICE CHAIRPERSON HART: So it's entirely
5 residential?

6 MS. WIACEK: Yeah.

7 VICE CHAIRPERSON HART: There is no retail in it
8 at all?

9 MS. WIACEK: There is no retail planned in that
10 building, no.

11 VICE CHAIRPERSON HART: So --

12 MS. WIACEK: So this is 100,000 square feet, which
13 is a significant retail for a neighborhood center. So this
14 is really the -- this is the primary location of the retail
15 in the project.

16 VICE CHAIRPERSON HART: What I'm also trying to
17 gauge and I appreciate the answers for this. I'm only
18 probing it because I want to make sure that this is -- we
19 understand this.

20 MS. WIACEK: I understand.

21 VICE CHAIRPERSON HART: It's not that I'm against
22 it.

23 MS. WIACEK: Okay.

24 VICE CHAIRPERSON HART: I'm just trying to
25 understand it further.

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1 So if the grocer is not going to be entered off
2 of Dahlia and it is primarily going to be entered off of 12th
3 Street, then is it possible to have -- is there an issue with
4 rotating how the grocer is -- where it is and have it
5 actually be along Elder Street, since it's not going to be
6 an entrance there at all? And then have the junior anchor
7 on Dahlia Street at a corner that might be more amenable to
8 having. I mean, just literally trying to flip this.

9 And the only reason I'm bringing it up is because
10 it seems as though the grocer is -- it would be helpful to
11 have something along Dahlia Street in that location, because
12 it kind of like dies off. And so you won't have -- you know,
13 just as you said that the retail on Elder Street might, you
14 know, be somewhat of a lost cause, that switching the junior
15 anchor might be helpful.

16 I do understand that this would have impacts on
17 the floor plate. I do get that. I do understand that there
18 is a loading area that, you know, is located here, but what
19 I'm trying to understand is the necessity for the junior
20 anchor on that side, on Elder Street, which is causing this
21 90 foot --

22 MS. WIACEK: Yes.

23 VICE CHAIRPERSON HART: -- you know, the 50 foot,
24 you know, maximum question to be raised.

25 MS. WIACEK: Sure.

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1 VICE CHAIRPERSON HART: And so I'm just trying to
2 gauge if there is a possibility of it not actually being up
3 there so that it is not -- or is there a similar issue on
4 Dahlia?

5 MS. WIACEK: There is. The same condition applies
6 to Dahlia Street with frontage, except with the exception for
7 a grocer.

8 VICE CHAIRPERSON HART: Okay.

9 MS. WIACEK: Which has an exception. And the
10 other, there is a rather large grade change from north to
11 south and so we achieved the greater ceiling height needed
12 for the grocery store by putting them on the south end of the
13 building. And they also really -- even if they don't have
14 their main entrance at the corner, they really want that
15 corner visibility.

16 VICE CHAIRPERSON HART: And that's fine. And I
17 appreciate all of that explanation.

18 MS. WIACEK: So that's why.

19 VICE CHAIRPERSON HART: That helps to --

20 MS. WIACEK: Okay.

21 VICE CHAIRPERSON HART: -- cement having the
22 grocer at Dahlia and 12th. It also understands that because
23 of where you have things, like the loading and the parking
24 ramp, that you then have what is left over and you have to
25 then adjust the buildings and adjust the retail to match

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1 that.

2 I understand why the footprint in Buildings O and
3 P would be problematic because they are smaller footprints
4 in general. And so when you have things like where the core,
5 you know, building core aspects like the elevators and ramps
6 and hallways, all that kind of cuts into the, you know,
7 space.

8 MS. WIACEK: Um-hum.

9 VICE CHAIRPERSON HART: So it makes it even harder
10 to have, you know, something like a 12,000 square foot
11 building without having some, you know, kind of strange
12 orientation for it. So I appreciate all that information.
13 I just was trying to understand why that --

14 MS. WIACEK: Yeah.

15 VICE CHAIRPERSON HART: -- junior anchor was
16 there. And you provided that. Thank you.

17 MS. WIACEK: Thank you.

18 CHAIRPERSON HILL: Okay. In terms of the
19 conditions, well, yeah, the Office of Planning had, what are
20 the ones that you were having issues with?

21 MS. WIACEK: So we agree with the intent of the
22 Office of Planning to sort of promote visibility into the
23 junior anchor store. We would just prefer that the amount
24 of window covering be slightly modified, such that it is 25
25 percent of the window as opposed to 25 percent --

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1 CHAIRPERSON HILL: Can you refer exactly to the
2 condition?

3 MS. WIACEK: Sure.

4 CHAIRPERSON HILL: Are you talking about (b)?

5 MS. WIACEK: Well, I am looking at the revision
6 which is paragraph -- of the revised version, it is paragraph
7 -- or bullet point --

8 MS. GIORDANO: This is the November 8th
9 memorandum.

10 MS. WIACEK: Yeah.

11 CHAIRPERSON HILL: Yeah.

12 MS. WIACEK: So Bullet Point 2 effectively, which
13 says that make -- where it says may cumulatively occupy up
14 to 25 percent of the total horizontal width. And then the
15 second bullet has a similar reference to the window coverings
16 being 25 percent of the total horizontal width of any
17 individual window.

18 And our preference would be that it is more like
19 25 percent of the total window area, which is what our
20 signage guidelines would have for any of the other tenants
21 in the project. And that gives the tenants a little bit more
22 flexibility as to how they layout and merchandize their
23 store. And the perspective tenants for this type of junior
24 anchor don't -- whether it is hardware or child care or
25 pharmacy, professional services, entertainment, do not always

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1 have the most attractive merchandise.

2 And so in some cases we think that a vibrant store
3 front will be better served by some graphics or digital
4 signage than full visibility into the store, so we only asked
5 for a little bit of a change there. We understand where the
6 Office of Planning is coming from.

7 And then secondly, our preference for allowing for
8 future releasing of the space down the road, so we cannot
9 predict the viability of retail for this long-term project.
10 Our plan is to lease it to a typical retail or service
11 tenant, but down the road a more office-based use may be the
12 type of tenant that is available in the market, like say a
13 medical office, given the neighborhood-serving location.

14 CHAIRPERSON HILL: Okay. And just so I'm -- are
15 you guys talking about the one in the Office of Planning's
16 report at Exhibit 31 or you don't know?

17 MS. WIACEK: Do you have that?

18 CHAIRPERSON HILL: I know that's -- the supplement
19 is in 40. Okay. Wait a minute.

20 MS. GIORDANO: Yes, the November 8th supplemental.

21 CHAIRPERSON HILL: Okay. I got it.

22 MS. GIORDANO: It's a one pager.

23 CHAIRPERSON HILL: Okay, yep. Okay.

24 MS. GIORDANO: So the -- with regard to the --

25 CHAIRPERSON HILL: Both your microphones are on.

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1 If you wouldn't mind turning --

2 MS. GIORDANO: Oh, sorry.

3 CHAIRPERSON HILL: -- one of them off? That's all
4 right.

5 MS. GIORDANO: With regard to the office space
6 prohibition, we are not asking for a wholesale deletion of
7 that, but just a modifier that coworking or medical office
8 space would be permitted as a matter-of-right. And right now
9 under the regulations, any office space is permitted as a
10 matter-of-right.

11 So I think that basically, in summary, the
12 applicant just felt like the exception that they are asking
13 for is relatively minor in the whole scope of this project.
14 I understand it is twice what is permitted, but given the
15 fact that I don't think the space when it was the text of the
16 WR Zone was contemplated was anticipating a sub-anchor.

17 So basically, the special exception relief that
18 the applicant is asking for is fairly minor in nature and the
19 conditions are a pretty stringent response, so we are asking
20 for a little flexibility as indicated by the applicant there.

21 ZC CHAIR HOOD: Ms. Giordano, why not go back and
22 ask for an amendment to the WR Zone? I'm just curious.

23 MS. GIORDANO: We did approach the Office of
24 Planning with that request initially.

25 ZC CHAIR HOOD: And they advised you to do it this

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1 way?

2 MS. GIORDANO: And they said that the purpose, you
3 know, of this special exception provision was exactly, you
4 know, the reason we are here. And that that was their
5 preference to handle it that way. And when we met with them,
6 the conditions really weren't discussed initially.

7 ZC CHAIR HOOD: So you didn't go -- so you have
8 not been back to them to tell them your issue, your concerns
9 with the conditions that are proposed?

10 MS. GIORDANO: We have and the -- we asked for a
11 postponement last time, because the conditions were sort of
12 dropped into the record a little bit late and we didn't have
13 time. The applicant wanted to consult with their leasing
14 experts, which took a little time and so we went back to them
15 and they did make some adjustments in the supplemental
16 report, but not to the extent that the applicant would
17 prefer.

18 ZC CHAIR HOOD: So what was the reason why they
19 advised you this way as opposed to the amendment to the zone?
20 I'm just curious. I can ask them, but if you could just tell
21 me what you thought?

22 MS. GIORDANO: Okay. Well, I think that the
23 amendment, for one, would affect more than just Elder Street.
24 It would also affect Dahlia as the applicant indicated. So
25 maybe it was, you know, a sledgehammer for --

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1 ZC CHAIR HOOD: To keep it specific.

2 MS. GIORDANO: -- you know, yeah.

3 ZC CHAIR HOOD: Okay. I got it. Thank you.

4 CHAIRPERSON HILL: Okay. All right. I'm going
5 to go ahead and turn to the Office of Planning.

6 MR. JESICK: Thank you, Mr. Chairman and Members
7 of the Board. My name is Matt Jesick. The Office of
8 Planning supports the location of the proposed junior anchor.
9 We feel that it is an appropriate use as the applicant noted
10 to draw people into the site. We just wanted to ensure as
11 the special exception criteria say that the purposes of the
12 WR Zone are met. In order to grant the special exception,
13 the applicant must show that the purposes are -- of the zone
14 would still be met regardless of the length of the frontage.

15 In this case, the applicable purpose is to provide
16 an engaging streetscape. So while we didn't have a problem
17 with the overall length, we wanted to ensure that any use
18 that goes in there would provide that engaging streetscape.
19 And that's why we proposed the conditions.

20 I think we would be open to, you know, discussing
21 amending the conditions, at least the -- we can tweak the
22 percentage of the window covering. We did feel strongly
23 about the office use not going in the ground floor. The
24 revised condition in Exhibit 40 specified the definition of
25 office as defined in Subtitle B, § 202.2(x) and that is your

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1 traditional office.

2 I'm open to being corrected, but I believe medical
3 uses could still be placed in that retail space, because
4 that's an entirely separate use category. So we feel that
5 there is still a great deal of flexibility in the types of
6 uses that could go in there, medical, dental, veterinary,
7 obviously, traditional service and retail as well. So I
8 think there is a great deal of flexibility there.

9 CHAIRPERSON HILL: Okay. Mr. Jesick, I don't
10 necessarily disagree with you. I'm just curious. What about
11 the coworking thing?

12 MR. JESICK: That would -- I don't know if the
13 Zoning Administrator has defined that exactly, but I believe
14 that would probably fall under traditional office space.

15 CHAIRPERSON HILL: So you would be opposed to the
16 coworking?

17 MR. JESICK: Right.

18 CHAIRPERSON HILL: Okay. Let's see, does the
19 Board have any questions for the Office of Planning?

20 VICE CHAIRPERSON HART: So, Mr. Jesick, you heard
21 the questions that I was posing to the applicant. And did
22 you have a similar thinking on that as well, on kind of the
23 location of the sub-anchor being at that northern location,
24 didn't -- wasn't -- it seemed like an appropriate location
25 for it?

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1 MR. JESICK: Yes. Yeah, we don't have an issue
2 with the location. It seems logical, especially given the
3 presence of the loading facilities right there, conserve both
4 the grocer and the junior anchor which kind of anticipated
5 will be, you know, CVS or something along those lines. So
6 a use that does require a significant amount of loading. So
7 for us, the location did make some sense.

8 VICE CHAIRPERSON HART: And with regard to the
9 issue around the 25 percent, the applicant is looking at it
10 as kind of the entire kind of the frontage, 93 feet frontage,
11 25 percent of that being -- could be blocked as opposed to
12 each individual bay or window area. It seemed like that's
13 what they were moving towards.

14 MS. WIACEK: Or even we are open to on an
15 individual window basis, I think it is just that sort of
16 horizontal versus overall and signage graphics tend to look
17 at the window overall.

18 MR. JESICK: Well, like I said, I think we would
19 be open to giving that a second look. I hesitate to, you
20 know, make any decision here on the spot.

21 CHAIRPERSON HILL: Okay. Okay. So we might take
22 a break and you all can kind of talk or, you know, if we end
23 up with this percentage thing being kind of a discussion.

24 In terms of the -- okay. Does the Board -- who
25 all didn't talk yet? Does the Board have any questions for

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1 the Office of Planning? Okay. Does the applicant have any
2 questions for the Office of Planning?

3 MS. GIORDANO: No, but we would like to have a
4 response if possible, if that's appropriate, at this time.

5 CHAIRPERSON HILL: About the -- I don't know
6 whether you are getting a -- about the 25 percent thing,
7 that's what you are talking about, the response?

8 MS. GIORDANO: The coworking in the office.

9 CHAIRPERSON HILL: You would like a response from
10 the Zoning Administrator?

11 MS. GIORDANO: No. We would like to respond --

12 CHAIRPERSON HILL: Oh, sure.

13 MS. GIORDANO: -- to the Office of Planning.

14 CHAIRPERSON HILL: Sure.

15 MS. GIORDANO: If that's appropriate?

16 CHAIRPERSON HILL: Yes, sure, you can go ahead.

17 MS. GIORDANO: Okay. All right. So I just wanted
18 to ask Katie in a moment to talk about coworking. Her sense
19 of it in terms of the purpose, which is activation of the
20 street, and as far as the office definition goes. We would
21 prefer to carve out medical office, because, you know, these
22 definitions can change in the future and we would like to
23 make clear that that is permitted since the Office of
24 Planning does support it.

25 CHAIRPERSON HILL: Okay.

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1 MS. WIACEK: Right. Coworking is just one
2 potential use that we envision for it, but we do think that
3 as a -- if it falls under the traditional office definition,
4 it would also -- it also is somewhat of a retail blend of use
5 from an activation standpoint, because it -- there are a lot
6 of people coming in and out and it is typically designed in
7 a more active way than in a traditional way.

8 CHAIRPERSON HILL: Okay.

9 MS. WIACEK: So that's all.

10 CHAIRPERSON HILL: All right. Okay. Okay. Go
11 ahead.

12 VICE CHAIRPERSON HART: Would you want a separate
13 -- I mean, it almost seems like that might be another
14 condition like, you know, we have if it's retail, then it is
15 this. If it is, you know, medical office, then it is, you
16 know, another condition. And if it is this type of office,
17 it would be -- because I think there might be an ability to,
18 you know, say that you wouldn't want to have like, you know,
19 the entire window kind of closed up.

20 There may be some other conditions that you, you
21 know, want to be able to see through the window to see
22 whatever the, you know, coworking, you know, facility might
23 be, because I'm not -- I mean, I think there could be quite
24 a few things that people may want to do and I would want to
25 be able to at least give some guidance on that. I'm not

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1 exactly sure if the use would be allowed.

2 MS. WIACEK: So I think that -- I guess where we
3 are coming from is that an office is a permitted use
4 currently in the zoning. And so we were trying, as we think
5 about the retail-type of office uses, we were -- are fine
6 with the same signage requirement applying to any use that
7 goes into that space, if that helps clarify.

8 And as far as what the zoning language defines and
9 allows under the office use just would rely on our zoning
10 counsel for that.

11 CHAIRPERSON HILL: Okay. I understand. I mean,
12 I understand the arguments you are making in terms of the --
13 and it makes sense. I mean, the coworking use in terms of
14 like activating that area. Again, the Office of Planning,
15 whether or not that then would concern the Office of Planning
16 in terms of it being more of an office use, right? Just even
17 though it's a coworking use.

18 And then the medical -- and I understand your
19 argument in terms of like carving out the medical office
20 space. Let me just keep working through this. Is there
21 anybody here who wishes to speak in support? Is there
22 anybody here who wishes to speak in opposition?

23 Okay. Then before we get to any kind of a -- I
24 mean, I think, by the way, it's a lovely project. I mean,
25 when are you guys going to be finished?

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1 MS. WIACEK: Well, we are hoping to break ground
2 in January on this, so by 2020, the end of 2021, you will
3 start to see topped out, finished buildings.

4 CHAIRPERSON HILL: The end of 2021?

5 MS. WIACEK: Yeah.

6 CHAIRPERSON HILL: When do you think the whole
7 thing is supposed to be finished?

8 MS. WIACEK: Well, it's -- the last phase is
9 supposed to start in 2026, so 2028. It is over the 66 acres
10 it's a 10-year phased project. The bulk of the project will
11 be complete by 2023.

12 CHAIRPERSON HILL: Okay. So I don't know what the
13 Board -- like what I would like to do is just give them a
14 couple of minutes, like take a break. Let you have a little
15 time to talk with the Office of Planning. The Zoning
16 Administrator happens to be here and so, you know, if you
17 need to clarify that with the -- and he is very difficult to
18 find. If you have ever tried to get him behind the walls,
19 you know, it's like a maze back there, you know. And so,
20 yeah, you know, you can maybe get a chance to talk to the
21 Zoning Administrator and we will come back.

22 Okay. All right. So we are going to take a
23 break. Mr. Moy --

24 MS. WIACEK: Thank you.

25 CHAIRPERSON HILL: -- you can --

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1 ZC CHAIR HOOD: Mr. Chairman, I'm curious, is all
2 that doable today, Mr. Jesick? Can you call do that today?
3 Is all of that doable?

4 MR. JESICK: We will give it our best shot.

5 ZC CHAIR HOOD: Okay. That's all I wanted.

6 CHAIRPERSON HILL: Thank you. All right. We will
7 see what happens. All right. Mr. Moy, you can call our next
8 one when you get a chance.

9 SECRETARY MOY: All right. Thank you, Mr.
10 Chairman. So if we can have parties to the table to Case
11 Application No. 20078 of Sig, S-I-G, LLC. This application
12 is captioned and advertised for special exception under the
13 theoretical lot subdivision requirements of Subtitle C, § 305
14 and under the Inclusionary Zoning minimum lot width
15 requirements Subtitle C, § 1002.2, and pursuant to Subtitle
16 X, Chapter 10 for area variances from the front setback
17 requirement Subtitle B, § 315.1(c) and Subtitle E, § 305.1
18 in the height and story requirements Subtitle E, § 303.2, to
19 raise an existing detached principal dwelling unit to create
20 six new theoretical lots, and to construct six new flats, RF-
21 1 Zone, at 1256 through 1258 Talbert Street, S.E., (Square
22 5805, Lot 824).

23 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
24 Moy. If you could, please, introduce yourself for the record
25 from my right to left?

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1 MR. SULLIVAN: Good morning, Mr. Chair and Members
2 of the Board. My name is Marty Sullivan with Sullivan &
3 Barros on behalf of the applicant.

4 MR. JONES: Good morning. My name is Ty'on Jones,
5 Commissioner for 8A06.

6 CHAIRPERSON HILL: Yeah, great, Mr. Commissioner,
7 how are you doing? I thought you were the applicant there
8 for a second. All right. Okay. Let's see, so Mr. Sullivan,
9 there were a couple of things. Obviously, there is the
10 preliminary matter in which ANC-8C has asked for a
11 postponement. It's 8C, correct? Oh, 8A?

12 MR. JONES: 8A.

13 CHAIRPERSON HILL: I'm sorry. I apologize. And
14 that they are wanting a postponement. And I suppose we can
15 hear since the commissioner is here what they hope to achieve
16 from that postponement request and if, in fact, they still
17 are asking for a postponement.

18 There was, Mr. Sullivan, I suppose some other
19 questions about the -- whether or not you needed to update
20 the relief to include the text amendment. The Office of
21 Planning had requested additional plans and whether or not
22 you had -- it just seemed as though there were still some
23 other things that maybe we still needed from you.

24 And so I don't know whether or not the
25 postponement would help actually the applicant as well. If

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1 I could first go ahead and hear from the commissioner? Okay.
2 Or Mr. Sullivan?

3 MR. SULLIVAN: Yes, thanks, Mr. Chair. We talked
4 outside and agreed to the postponement.

5 CHAIRPERSON HILL: Oh, okay.

6 MR. SULLIVAN: So and we do need additional
7 things. I think on the text amendment we have to change some
8 code sections on that and the Office of Planning has asked
9 for some things. So we would like to request January 15th,
10 because that gives us the timing that we think is sufficient
11 to continue to work with the community and the ANC.

12 CHAIRPERSON HILL: Okay. Mr. Moy, while you are
13 looking at that date to see if it works for us, Mr. Hart, you
14 had a question?

15 VICE CHAIRPERSON HART: Yeah. Mr. Sullivan, thank
16 you for that. I had a question around the height relief.
17 I understand that you are looking for a variance, you know,
18 in that, but it doesn't -- it's pretty light on what is --
19 how you are meeting that variance and I think that there
20 needs to be additional information to supplement what we
21 already have to really describe the -- how you are meeting
22 the height variance.

23 I mean I understand that you are providing -- you
24 know, that this is what you are looking to do, but it should
25 be something about either topography makes that or something

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1 that causes that, because currently I don't quite understand
2 how the variance is -- the height for the variance is -- I
3 understand why it's necessary, I don't understand how it is
4 affected by the lot or, you know, some of the other stuff I
5 can kind of understand because of the lot configuration and
6 some of the topography, but that particular part of it it
7 just seemed a little bit curious to me. And I needed some
8 more information as to how you were thinking about that.

9 MR. SULLIVAN: Okay. Thank you.

10 ZC CHAIR HOOD: Mr. Chairman? I also want to
11 bring this to Mr. Sullivan and I'm sure you have read the ANC
12 letter. What really -- I want to make sure that you really
13 look at through this postponement time is the last paragraph
14 of Chairman Presswood and Mr. Jones' letter from ANC. I
15 think it's very important to how you proceed going forward.
16 So I just wanted to make that note and that observation.

17 VICE CHAIRPERSON HART: And also, Mr. Sullivan,
18 around the -- one of the drawings that you have provided 38A,
19 page 2, which is the drawing set, the most recent of the
20 updated drawings, they don't have any sidewalks on them. And
21 I was just trying to understand what the -- you know, where
22 the public, kind of, realm ends and the project begins.

23 I understand that there is the highway plan road
24 that is -- or some sort of right-of-way that is in the
25 project as well on the north side. I don't know -- I can't

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1 remember which street it is, that's not Talbot or Talbert,
2 it's the other street. What is the other street that this
3 is on? Morris. Thank you.

4 The ANC chairman -- the ANC Commissioner is very
5 helpful. Thank you very much, sir.

6 Yes, just to understand what that is and the
7 particular way I was curious about, some of the patios and
8 some of the elements that are along Talbert Street look like
9 they were in public space. And I was just trying to figure
10 out how that -- you know, so that's what I was trying to
11 understand where the sidewalk was, because you get the
12 progression from the sidewalk to the front yard patio to the
13 actual building, you know, and so forth. And I think that
14 would just be helpful on the drawings in addition to what the
15 Office of Planning was looking for, which were -- seemed like
16 more existing conditions. So topography where landscaping
17 is, the trees, the existing trees and such are located on the
18 site.

19 VICE CHAIRPERSON HART: Okay, thank you.

20 CHAIRPERSON HILL: Mr. Moy, how does the January
21 15th date look?

22 SECRETARY MOY: Mr. Chairman, this case will be
23 the 12th case on the 15th of January. Right? It's an even
24 number.

25 CHAIRPERSON HILL: We have 11 cases on the 15th

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1 of January for us?

2 SECRETARY MOY: At the moment, sir, unless they
3 fall off between now and then, which happens sometimes, but
4 I can't --

5 CHAIRPERSON HILL: Okay.

6 SECRETARY MOY: -- speculate now.

7 CHAIRPERSON HILL: What's the next week look like?

8 SECRETARY MOY: There is nothing the follow -- the
9 next hearing would be January 29th.

10 CHAIRPERSON HILL: Okay. I mean, I don't -- I
11 mean we will add another one. We will go ahead and add
12 another one. It will be after the holidays, we will be all
13 refreshed. So keep the Chairman on the 15th, you know, we
14 don't want to mess his good graces. All right. Well, then
15 we will put you on the 15th, Mr. Sullivan.

16 MR. SULLIVAN: Thank you.

17 CHAIRPERSON HILL: Mr. Commissioner, you have a
18 nice Christmas or holiday, New Year's.

19 Do you have anything to add?

20 VICE CHAIRPERSON HART: No.

21 MR. JONES: Just really as he said, I think the
22 paragraph that I will read from my testimony just said why
23 the letter opposing the project is currently proposed, it's
24 my belief that with additional time and continued engagement
25 with the developer, the community and 8A we will be able to

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1 support a project that we all can be proud of.

2 CHAIRPERSON HILL: Okay. Commissioner, thanks for
3 taking time to come down here. It is always helpful to hear
4 from the ANC and hopefully that's the case. And you guys are
5 able to come to an agreement.

6 All right. Then we are going to take a quick five
7 minute break before we get to our appeal. Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 10:33 a.m. and resumed at 10:46 a.m.)

10 CHAIRPERSON HILL: Okay. Apparently, Mr. Moy, I
11 am not in charge, so you can go ahead and recall whatever we
12 had before.

13 SECRETARY MOY: All right. Thank you, Mr.
14 Chairman. The Board is back in session. And it's about
15 10:45 in the morning and we are, as the Chair said, recalling
16 to the table Case Application No. 20134 of TPWR Developer,
17 LLC.

18 CHAIRPERSON HILL: Okay. Great. Thank you.
19 Could you, please, reintroduce yourselves for the record?

20 MS. GIORDANO: Cynthia Giordano, Saul Ewing Law
21 Firm, representing the applicant. We had occasion --

22 CHAIRPERSON HILL: No, Ms. Giordano, I'm sorry.
23 Can I just get the introduction over there as well?

24 MS. WIACEK: Katie Wiacek with Hines part of TPWR
25 Developer.

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1 CHAIRPERSON HILL: Okay. Great. Thank you. Ms.
2 Giordano, so go ahead please.

3 MS. GIORDANO: I was basically going to ask Mr.
4 Jesick to weigh in on this. We did agree with a revision to
5 the condition regarding the windowed space.

6 CHAIRPERSON HILL: But then also the whole thing
7 about the coworking and the medical?

8 MS. GIORDANO: We will drop that.

9 CHAIRPERSON HILL: Okay. All right. Mr. Jesick?

10 MR. JESICK: Thank you, Mr. Chairman. Yes, we
11 were happy to arrive at a solution with the applicant and we
12 would change the language in the first condition so that it
13 reads that the signs may cumulatively occupy up to 25 percent
14 of the total horizontal width of all windows on Elder Street.
15 That would be the same language in the first sub-bullet and
16 the second sub-bullet.

17 CHAIRPERSON HILL: Could you repeat that, Mr.
18 Jesick?

19 MR. JESICK: Sure. Right now, we are limiting it
20 by window. We would now limit it by the whole window
21 frontage, so it would read tenant signs or displays apply to
22 the window and digital displays mounted immediately behind
23 a window may cumulatively occupy up to 25 percent of the
24 total horizontal width of all windows on Elder Street.

25 And again, that would be the same exact language

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1 in both of those subparagraphs.

2 CHAIRPERSON HILL: Is that clear enough for the
3 OAG?

4 MS. CAIN: Yeah, that will work.

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

7 VICE CHAIRPERSON HART: Just one question. So
8 along 12th Street then, what applies?

9 MR. JESICK: I believe they are meeting the zoning
10 requirements for 12th Street, so we don't have a condition
11 for that frontage.

12 VICE CHAIRPERSON HART: Okay. Okay. I
13 understand.

14 CHAIRPERSON HILL: Okay. Does the Board have any
15 other questions about the conditions for the Office of
16 Planning which is in Exhibit 40?

17 (No audible answer.)

18 CHAIRPERSON HILL: Okay. Does the applicant have
19 any final questions?

20 MS. GIORDANO: We do not.

21 CHAIRPERSON HILL: Okay. I'm going to go ahead
22 and close the hearing. Is the Board ready to deliberate?
23 Okay. I am in agreement with the analysis that has been
24 provided by the Office of Planning as to how the special
25 exception is being met. And I also am happy to see that ANC-

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1 4A was in support with no issues or concerns, as well as DDOT
2 have no objections.

3 I am comfortable approving this application. Are
4 we voting to approve with the conditions that were in Exhibit
5 40 as well as the change to the one specific condition
6 concerning the store frontage, I'm sorry, the windows. Does
7 anyone have anything else they would like to add?

8 VICE CHAIRPERSON HART: Only that I would agree
9 with you, Mr. Chairman. I do feel that the applicant has
10 provided sufficient information for me to be able to approve
11 the application. I do appreciate the added description and
12 understanding as to why this is necessary along Elder Street.
13 And I do also appreciate the Office of Planning working with
14 the applicant to get to some language that they both can
15 agree to regarding the percentage of, I guess, signs or
16 signage along that frontage on Elder Street. And I didn't
17 have anything else other than that to add.

18 ZC CHAIR HOOD: I don't have anything to add,
19 other than to say I agree with the comments that I have heard
20 this far.

21 CHAIRPERSON HILL: Okay. I am going to make a
22 motion to approve Application No. 20134, as captioned and
23 read by the Secretary, and as I mentioned, including the
24 conditions in Exhibit 40 with the revision that was cited on
25 the record by the Office of Planning and ask for a second?

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1 ZC CHAIR HOOD: Second.

2 VICE CHAIRPERSON HART: Second.

3 CHAIRPERSON HILL: Motion made and seconded.

4 All those in favor say aye.

5 ALL: Aye.

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

8 SECRETARY MOY: Staff would record the vote as 3-
9 0-2. And this is on the motion of Chairman Hill to approve
10 the application for the relief requested along with the
11 conditions as revised. Seconding the motion is Zoning
12 Commission Chair Anthony Hood.

13 ZC CHAIR HOOD: I'm going to yield my second to
14 the Vice Chair of BZA.

15 SECRETARY MOY: Okay.

16 ZC CHAIR HOOD: Yeah. I don't want them to think
17 I'm taking over.

18 SECRETARY MOY: Okay. Seconding the motion is
19 Vice Chair Hart. Also in support would be Zoning Commission
20 Chair Anthony Hood. No other Members present. Motion
21 carries, sir.

22 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
23 Thank you very much. All right. Mr. Moy, you can call our
24 last one when you get a chance.

25 SECRETARY MOY: All right. If we could, please,

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1 have parties to the table to Appeal No. 20132 of Concerned
2 Citizens of Woodridge, captioned and advertised as the appeal
3 from the decision made on June 4, 2019 by the Zoning
4 Administrator, Department of Consumer and Regulatory Affairs
5 to issue Building Permit No. B1900996 permitting the
6 installation of a ground mounted, grid-tied solar array
7 consisting of 5,072 solar modules in the R-1-B Zone at 2800
8 Otis Street, N.E., (Square 4302, Lot 828).

9 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
10 Moy. If you would, please, introduce yourselves for the
11 record from my right to left?

12 MR. GREEN: Good morning, Chairman. My name is
13 Hugh Green, G-R-E-E-N, attorney for the D.C. Department of
14 Consumer and Regulatory Affairs.

15 MR. LeGRANT: Good morning. Matthew LeGrant,
16 Zoning Administrator, DCRA.

17 MS. BATTIES: Good morning. Leila Batties with
18 the Law Firm of Holland & Knight representing Catholic
19 Charities of the Archdiocese of Washington.

20 MS. CHANDLER: Joyce Chandler representing the
21 Concerned Citizens of Woodridge.

22 CHAIRPERSON HILL: Okay. Great. Thank you. All
23 right. Welcome back, everybody. So Ms. Chandler, there were
24 some things that we had asked of you on the last time you
25 were here and, first of all, you have a request for a

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1 postponement, okay, in the record now. And so I have read
2 through the request and I'm going to let my Board Members --
3 well, first of all, welcome back.

4 I'm going to let my Board Members let us know if
5 they have any thoughts on that, but unfortunately, I don't
6 think I would be able to be in favor of the postponement.
7 The plans that you have are public record and then the
8 Determination Letter, I don't think it's necessarily the
9 issue. I think it's more that, you know, the permit is the
10 determination.

11 So I think that I'm going to have to vote to deny
12 your postponement request. Does the Board have anything they
13 would like to add about that issue?

14 VICE CHAIRPERSON HART: No. I think that I would
15 agree with you, Mr. Chairman. This is the -- the permits
16 themselves are what we typically hear as being an appealable
17 item. And in this case, there is a permit that has been
18 issued for that and I just didn't think that the -- that
19 having some sort of other letter would be actually even
20 helpful, because we do have a permit, which by in its essence
21 is an approval of the project that is -- that the appellant
22 has some issue with.

23 CHAIRPERSON HILL: Okay. Mr. Hood?

24 (No audible answer.)

25 CHAIRPERSON HILL: Okay. All right. So based on

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1 the record then and the submission, I'm going to go ahead and
2 deny the postponement request.

3 So now we are back to the appeal. And I suppose
4 I was a little confused about what the appellant had put into
5 the record in terms of your submission. It seems as though
6 you were trying to introduce new things that you thought
7 maybe were at issue, rather than still the original issue
8 that was raised.

9 And as I understand it from reading the
10 regulations as well as advice from or, you know, referring
11 to OAG in understanding this, that that is a violation of why
12 302.13 in terms of you can't add or, you know, change your
13 appeal during this supplemental area. So I didn't understand
14 exactly why the appellant would have done that.

15 And also that the appellant didn't necessarily
16 seem to come back -- they seemed to be bringing new things
17 to light. Wait, I'm sorry, changing the appeal rather than
18 arguing what we had asked for from the appellant.

19 And so I'm going to let the appellant have an
20 opportunity to respond to that and go ahead and let's respond
21 to that, Ms. Chandler. Thank you.

22 MS. CHANDLER: We believe that our original appeal
23 was broad enough that it was covering the other issues that
24 we raised.

25 CHAIRPERSON HILL: Okay.

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1 VICE CHAIRPERSON HART: But you didn't explain why
2 you thought that U203.1(p) was in effect as opposed to
3 U201.1(c) and that was the reason that we wanted to have this
4 additional time was to have a response on that particular
5 issue. Because you cite U203.1(p) and you haven't described
6 as to why you believe that should be in effect as opposed to
7 the -- what was actually in effect.

8 MS. CHANDLER: Okay. Can I read a statement to
9 provide some of the background on why we think that the
10 appeal that the Emergency Amendment -- the Emergency Text
11 Amendments were not appropriate for Catholic Charities?

12 VICE CHAIRPERSON HART: Did you -- was that in
13 what you submitted to us? Because I didn't see anything.

14 MS. CHANDLER: No.

15 VICE CHAIRPERSON HART: That was specifically what
16 we asked to receive from you on -- when we heard this a
17 couple weeks ago. That was one of the things that we
18 specifically asked, so that we could actually read that and
19 understand what that point is. But now you are saying that
20 you are going to read something that we asked for several
21 weeks ago?

22 MS. CHANDLER: Um, it will --

23 VICE CHAIRPERSON HART: That's what I don't
24 understand. Why was this not in any of the information that
25 you provided to us? You provided us information on other

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1 things in the record, but this was not specifically included
2 in that and I'm not sure why.

3 CHAIRPERSON HILL: So, Ms. Chandler, did you see--
4 so you saw that -- or I should say I saw that your exhibit
5 was Exhibit 27 where you had reintro -- where you had
6 introduced the information that was in violation of Y302.13.

7 Then the property owner submitted their Exhibit
8 29 and DCRA's response in Exhibit 28. Do you have any
9 comments on their response to your submittal? Meaning, you
10 know, Exhibit 29 and Exhibit 28, I'm assuming you read them.

11 MS. CHANDLER: Yes.

12 CHAIRPERSON HILL: Okay. So and you understand
13 why there -- you understand what they wrote?

14 MS. CHANDLER: Yes.

15 CHAIRPERSON HILL: Okay. So do you have any
16 response to what they wrote?

17 MS. CHANDLER: Yes, that's what I would like to
18 read.

19 CHAIRPERSON HILL: Well, if you are reading now
20 what things -- I'm just asking you to respond to what their
21 response -- okay.

22 Okay. All right. Ms. Chandler, I'm going to go
23 ahead and let you read whatever it was you were planning on
24 reading.

25 MS. CHANDLER: Okay.

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1 CHAIRPERSON HILL: But I've got to let you know,
2 it puts us at a disservice to have asked for information and
3 you didn't give us the information that we had asked for.
4 And you introduce new information and so then we have to
5 understand is that now your argument and where are you with
6 that, right?

7 So that is what everybody responded to and that
8 is what the attorneys are getting paid for. By the way,
9 attorneys cost money. And so their -- this appellant now is
10 getting just additional cost, right?

11 And so go ahead and read what it was that you --
12 go ahead. I'm going to let you read whatever it was that you
13 had intended to read.

14 MS. CHANDLER: Okay. Concerned Citizens of
15 Woodridge are before the BZA now because on December 8, 2018
16 and on January 2019, Catholic Charities came before our
17 Woodridge community seeking a BZA special exception to build
18 a 4,800 solar panel on a 5 acre hillside next to a national
19 park in a single-family home community.

20 The Catholic Charities and their partners told us
21 the solar energy was for their use and not the community.
22 The community and the ANC repeatedly sought to answer
23 questions working within the BZA process.

24 On separate occasions, Catholic Charities
25 requested a postponement of the BZA hearings.

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1 On March 15th, the ANC voted not to support the
2 construction of the solar project a week before the BZA
3 Hearing on May 22nd.

4 At the hearing, Catholic Charities stated that
5 they wanted to postpone the BZA Hearing again to allow more
6 time to obtain ANC support. In less than two weeks, Catholic
7 Charities was issued a permit through the Emergency Text
8 Amendment.

9 While the Catholic Charities asked for time to
10 work with the ANC and the community, it does not appear that
11 was their intent.

12 In June we called Holland & Knight, their
13 attorneys. We were told that the BZA Hearing was still being
14 held in September.

15 As a community with our ANC, we sought a platform
16 for our voices about this major construction and possible
17 potential environmental health and safety implications. We
18 were led to believe that Catholic Charities and their
19 partners that our BZA Hearing would occur until Catholic
20 Charities withdrew the BZA Hearing months later.

21 Our belief that the Zoning Commission voted for
22 the Emergency Text, because these solar facilities would
23 provide an electrical discount to low-income households
24 through the Department of Energy funding that was expiring
25 on September 30, 2019.

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1 We are perplexed and disappointed that it appears
2 that Catholic Charities was given this emergency order, but
3 not providing the intended benefit for low-income housing
4 electricity while avoiding the BZA special exception process.

5 From the hearings for the Zoning Commission 1904
6 that we attended, the Zoning Commission expressed their
7 urgency for the Emergency Text Amendments was grounded in
8 providing financial benefit to low income households that
9 were contingent on the September 30th deadline for the
10 District funding.

11 Catholic Charities has obtained a multi-million
12 dollar solar utility on-site at no cost to -- the low-income
13 households are not receiving their electricity discount from
14 this project. The Woodridge community and the Anacostia
15 Watershed are receiving flooding of our streets and erosion
16 and sediment and unannounced mass springs of chemicals.

17 We do not believe that the intent of the emergency
18 content -- the Emergency Text Amendments for the community
19 solar facilities was met by Catholic Charities when the
20 Zoning Commission voted.

21 CHAIRPERSON HILL: Okay. So, Ms. Chandler, I
22 mean, I guess what I get confused about is you are here for
23 an appeal, right?

24 MS. CHANDLER: Um-hum.

25 CHAIRPERSON HILL: As to how the Zoning

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1 Administrator made an error to issue the building permit,
2 right? You basically just told me all the little -- all the
3 different things that don't apply to whether or how the
4 Zoning Administrator made an error, right?

5 And so you are not arguing anything. You are not
6 arguing as to how the -- you are not arguing. This is a --
7 this format and it takes a lot of time, right, to come here
8 and understand everything and read through everything, it
9 takes a lot of our time to understand everything that comes
10 through here and read everything.

11 What I'm just trying to get at is like, you know,
12 I'm sorry if it seems -- I'm not trying -- I'm just saying
13 like you are not arguing what you are supposed to argue. And
14 so I just don't know what to say. Do you have anything to
15 add?

16 VICE CHAIRPERSON HART: Well, I think that there
17 are ways to bring an appeal and you could have said that you
18 believe that the Zoning Administrator didn't apply -- applied
19 -- should be applying U203.1(p) because of whatever the date
20 was that the permit was issued. That is the -- the Emergency
21 Legislation -- not legislation.

22 The Emergency Rulemaking for this text amendment,
23 it setup a particular process. And it said from this date
24 forward, that these rules would apply. And that when you
25 bring an appeal, you are stating that you believe that the

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1 Zoning Administrator did not use the correct zoning in making
2 that determination. Making the determination that it did.

3 But you are not saying that. What you are saying
4 is you believe that there are issues with the particular
5 project, but you are not saying that -- you are saying that
6 there are environmental impacts with the project and I
7 understand that. I understand what you are saying about
8 that. It's not that I don't get that.

9 MS. CHANDLER: Um-hum.

10 VICE CHAIRPERSON HART: The problem that we are
11 running into is that you are bringing an appeal and the
12 appeal should be on something that the Zoning Administrator
13 made an error on. And you have not stated that. All you
14 have said is that there are things that you disagree with the
15 project. That's it.

16 And that is -- while you may disagree with the
17 project, there has to be something that you are stating that
18 the Zoning Administrator made an error in for us to be able
19 to then deliberate, understand and either vote yes or no.
20 Either vote to approve the appeal or to deny the appeal.

21 And right now, we don't have that information.
22 And the information that we were requesting was for us to
23 understand, okay, she is -- the Woodridge community
24 organization, whom she is representing, is stating that this
25 error has occurred.

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1 And right now, we don't have that information.
2 And it is extremely difficult for us to -- actually, it's not
3 possible for us to be able to approve an appeal if we don't
4 have what the -- where we think that the Zoning Administrator
5 made an error.

6 And we have been trying to pull that information
7 together to understand your viewpoint with regard to the
8 error. And that is the part that is -- that we are -- have
9 had a difficulty with trying to get that information. And
10 as I said, it is not for lack of trying. I think we have
11 sought this information, so that we could better understand
12 that.

13 But and again, I do understand that there may be
14 some issues that the community has with the project itself,
15 but with -- we are not looking at -- this is not a project
16 that is before the -- before our Board. It is an appeal that
17 is before the Board and that appeal is brought by your
18 organization and you are the representative of.

19 And again, we haven't understood. There has been
20 no error that the Zoning Administrator has set forth or that
21 has made that we can kind of hang on and say okay, this is
22 where we are with this project. So it makes it extremely
23 difficult for us to move forward with that.

24 So I -- that's all I have to say.

25 ZC CHAIR HOOD: Mr. Chairman, I don't want to put

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1 myself in the position of defending any actions of the Zoning
2 Commission, but I will say one thing. I will say one thing.
3 I agree with my colleagues. We need to be looking at what
4 the ZA had -- whether the ZA has erred and I don't see the
5 evidence of it in the record.

6 But I will say that we want to make sure we get
7 all the information and, Ms. Chandler, I would suggest that
8 -- I heard you mention how things, residuals would come back
9 to help. I would suggest that you do a Fact-Finding on that,
10 because that's not necessarily germane to this proceeding,
11 but I think it's very important to understand how that works.
12 How the residuals of the income that comes back from solar
13 will go back to help people who are less fortunate.

14 And I would encourage you to do a little more
15 research on that and that's all I'm going to say on that.
16 Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: Okay. Well, I think that,
18 again, I just don't see what there is that we are necessarily
19 deliberating upon. I don't think that the applicant -- the
20 appellant has brought anything forward that is again clear
21 how the ZA has erred.

22 I mean, the only issue on appeal per the original
23 statement again was whether the applicant -- I'm sorry, the
24 applicant of the basic utility definition requirements of
25 U203.1(p) to the project. And the appellant didn't address

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1 these despite the additional direction and clarification
2 provided by us from the 10:30 hearing.

3 The appellant's supplemental statement also
4 violates the express direction of the Board in Y302.13 by
5 raising claims not contained in its initial appeal statement.

6 The Board specifically is -- sorry. The appellant
7 is specifically prohibited from amending its appeal by
8 Y302.13 and has not provided any evidence that either DCRA
9 or the property owner impeded its ability to identify the new
10 issues that the Board will -- and we just can't consider
11 those, because of that regulation.

12 And as I said before, the applicant should have
13 just been focusing on U203.2 as to how the Zoning
14 Administrator erred in that regard. The Text Amendment 1904
15 including the revised U201.1(c) governs CREF was in effect
16 at the time of the permit issuance and, therefore, is the
17 governing law per A301.4.

18 So I'm going to make a motion to deny Appeal No.
19 20132, as captioned and ready by the Secretary, and ask for
20 a second.

21 VICE CHAIRPERSON HART: Second.

22 CHAIRPERSON HILL: Motion made and seconded.

23 All those in favor say aye.

24 ALL: Aye.

25 CHAIRPERSON HILL: All those opposed? The motion

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1 passes. Mr. Moy?

2 SECRETARY MOY: Staff would record the vote as 3-
3 0-2. This is on the motion of Chairman Hill to deny the
4 appeal. Seconding the motion is Vice Chair Hart. Also in
5 support is Zoning Commission Chair Anthony Hood. No other
6 Members present today.

7 CHAIRPERSON HILL: Okay. Thank you. Thank you
8 all very much.

9 MS. CHANDLER: Thank you.

10 CHAIRPERSON HILL: Mr. Moy, do we have more stuff
11 before the Board today?

12 SECRETARY MOY: There is one other matter, Mr.
13 Chair, which is about the Board moving into an emergency
14 closed meeting. I have the statement for you to read.

15 CHAIRPERSON HILL: As Chair of the Board of Zoning
16 Adjustment of the District of Columbia in accordance with the
17 § 407 of the District of Columbia Administrative Procedure
18 Act, I move that the Board of Zoning Adjustment hold a closed
19 emergency meeting on November 13th for the purposes of a
20 remand for -- for the purposes of seeking legal counsel on
21 the remanded BZA Appeal 19027, which is, I guess, Caldeen and
22 Sawicki, if I'm mispronouncing that I apologize, and/or
23 deliberate on, but not -- no, I'm sorry. Not -- just for
24 seeking legal counsel on the case on that.

25 Is there a second?

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1 VICE CHAIRPERSON HART: Second.

2 CHAIRPERSON HILL: Since the motion has been made
3 and seconded, Mr. Moy, if you could please take a roll call
4 vote?

5 SECRETARY MOY: Thank you, Mr. Chairman. When I
6 call your name, if you would, please, reply with a yes or no.

7 Zoning Commissioner Anthony Hood?

8 ZC CHAIR HOOD: Yes.

9 SECRETARY MOY: Vice Chair Hart?

10 VICE CHAIRPERSON HART: Yes.

11 SECRETARY MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 SECRETARY MOY: I believe the motion carries, sir.

14 CHAIRPERSON HILL: All right. Mr. Moy, we will
15 go ahead and adjourn for that meeting then. Thank you. And
16 then we will come back in order to see if there is anything
17 else we need to do.

18 (Whereupon, the above-entitled matter went off the
19 record at 11:13 a.m. and resumed at 12:14 p.m.)

20 CHAIRPERSON HILL: All right. Mr. Moy, we are
21 finished with our emergency meeting. Is there anything else
22 that is before the Board?

23 SECRETARY MOY: Not from the staff, sir.

24 CHAIRPERSON HILL: Okay. Then we stand adjourned.

25 Thank you.

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1 (Whereupon, the above-entitled matter went off the
2 record at 12:14 p.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 Hearing

Before: Board of Zoning Adjustment

Date: 11-13-19

Place: Washington, D.C.

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



Court Reporter

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