

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 29, 2020

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via video conference, pursuant to notice at 9:46 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chair
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

ALEXANDRA CAIN, Assistant Attorney General

The transcript constitutes the minutes from the Regular Public Meeting held on July 29, 2020.

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

2 9:46 a.m.

3 BZA CHAIR HILL: Good morning, ladies and
4 gentlemen. We are convened and broadcasting this decision
5 meeting by video conference. This is the July 29, 2020,
6 public meeting session, Board of Zoning Adjustment of the
7 District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chair, and Lorna John, Board
10 Member. And representing the Zoning Commission is Rob Miller
11 -- I'm sorry, is Michael Turnbull, as well as Anthony Hood,
12 for the meeting session. And then we are going to have, I
13 believe, maybe Mr. Miller as well for the main session, and
14 then also Mr. Miller, as well as Chairman Hood, for the
15 hearing session.

16 Today's meeting agenda is available here on the
17 Office of Zoning website. Please be advised that this
18 proceeding is being recorded by a court reporter, and is also
19 webcast live. Accordingly, everyone who is listening on
20 Webex or by telephone will be muted during the meeting. We
21 do not take any public testimony at our decision meeting,
22 unless the Board asks someone to come forward.

23 If you are experiencing difficulty using Webex or
24 your telephone call in, please call our OZ hotline number,
25 and I'll repeat the number twice, 202-727-5471, once again,

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1 202-727-5471, to receive Webex login or call in instructions.

2 At the conclusion of this meeting session, I, in
3 consultation with the Office of Zoning, will determine
4 whether a full or summary order may be issued. A full order
5 is required when the decision it contains is adverse to a
6 party, including an affected ANC. A full order may also be
7 needed if the Board's decision differs from the Office of
8 Planning's recommendation. Although the Board favors the use
9 of summary orders whenever possible, an Applicant may not
10 request the Board's use of such order.

11 Preliminary matters are those which relate to
12 other cases we should be hearing today, such as requests for
13 postponement, continuance, or withdrawal, or whether proper
14 and adequate notice has been given.

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

16 MR. MOY: We do not have any preliminary matters
17 for the decision cases, Mr. Chairman.

18 BZA CHAIR HILL: Okay, great. All right.

19 Well, before we start, and I know that I've
20 already kind of mentioned this, I should say Mr. Turnbull
21 kind of brought this up, also, Vice Chair Hart, this is his
22 second to last day, and, you know, I've been working with you
23 now for, I guess, three years, or something thereabouts, and
24 I'm really -- and I will get to say this again on your last
25 day, which is next week, but I've really enjoyed working with

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1 you and, you know, really, I'm sure that, you know, the
2 Mayor, as well as all the people that are involved with the
3 City, would thank you for your service, and you will be
4 definitely missed. And so, thank you very much.

5 I don't know if Mr. Turnbull or Ms. John, if you'd
6 like to add anything.

7 COMMISSIONER TURNBULL: No, I would just agree
8 with you. I think Carlton has been a pleasure to work with,
9 even-tempered, and just very calm, relaxed, and just very
10 thoughtful and insightful on all the things we go through.
11 So, it's -- I've been inspired by his thoughts on what we do,
12 and so he will be missed.

13 BZA CHAIR HILL: Ms. John? We can hear you now.

14 MEMBER JOHN: You can hear me now? I'm not having
15 a good day so far.

16 So, I just wanted to say how much I will miss
17 Carlton and how I enjoyed working with him and sitting next
18 to him, and asking for those clarifications on the
19 architectural drawings. And so, I will really miss having --
20 to be able to manage without you, it's going to be really,
21 really very hard. So, I will miss you, Carlton.

22 VICE CHAIRPERSON HART: Well, thank you all. This
23 is, as the Chairman said, this is not my last day. My last
24 day is next Wednesday. But, I really don't think you guys
25 know how much I have enjoyed doing this, and I think that

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1 part of that has been because of you all, the Board, as well
2 as the Zoning Commission Members that have helped, and that
3 I've been able to, you know, know a bit better and to work
4 with has really been special.

5 And I'll also note that the Office of Zoning
6 staff, the Office of Planning staff, have also been top notch
7 in helping us be able to do the work that we do, which I
8 think is an important, you know, part of, you know, living
9 in a City, an urban environment. And I just try to bring as
10 much of my experience that I've had over the years, almost,
11 wow, 25 years, about 25 years in Planning.

12 So, I just really do appreciate it, and we've got
13 a long day, so I'll stop it there, and I will turn it back
14 over to you, Mr. Chairman.

15 So, thank you very much, and I definitely will
16 miss all of this. And, I'd also say, having to do this
17 virtually is really a disappointment, because I like being,
18 you know, around you all, and, you know, kind of talking and
19 joking about, you know, everything that's going on. So, that
20 part of the day I will most definitely miss.

21 And, you know, it's kind of our reality right now,
22 and, hopefully, in the future we will be able to at least get
23 together and, you know, maybe have a meal together. That
24 would be great.

25 So anyhow, thank you.

1 BZA CHAIR HILL: Okay, great. All right, well as
2 you know, we are going to do this one more time again, Mr.
3 Hart, next week.

4 I want everybody to get a chance, I mean, if
5 people aren't going -- who knows, who knows what we've
6 already missed, right?

7 VICE CHAIRPERSON HART: Yes.

8 BZA CHAIR HILL: All right. Mr. Moy, you may go
9 ahead and call our first meeting case.

10 MR. MOY: Excuse me. All right, good morning, Mr.
11 Chairman and Members of the Board.

12 The first case application for a decision is
13 Application No. 20257, of NCRC Erie Street LLC, and this is
14 captioned and advertised for a special exception under the
15 Voluntary Inclusionary Zoning modifications, Subtitle C,
16 Section 1001.2(b)(3) and Subtitle D, Section 5206.2, to
17 subdivide the vacant property into eight lots and construct
18 eight single-family row homes in the R-3 zone at premises of
19 the 1500 block of Erie Street, Southeast, Square 5828, Lots
20 20-24. Participating on the discussion is the Chairman, the
21 Vice Chair, Ms. John, and Zoning Commission Michael Turnbull.

22 BZA CHAIR HILL: Okay, are you all ready to
23 deliberate? Okay. All right.

24 Let's see, so we did deliberate, or we did
25 preliminary deliberations last week. We had this case, we

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1 heard it last week, and I don't have anything new to add from
2 my deliberation from last week. And so, I'm still going to
3 be, and there's nothing new into the record, so I'm still
4 going to be -- I will be voting in favor.

5 Is there anything anyone would like to add?

6 MEMBER JOHN: No.

7 BZA CHAIR HILL: Okay. I'm going to make a motion
8 to approve Application No. 20257, as captioned and read by
9 the Secretary, and ask for a second, Ms. John.

10 MEMBER JOHN: Second.

11 BZA CHAIR HILL: The motion has been made and
12 seconded. Mr. Moy, will you please take a roll call vote?

13 MR. MOY: All right. When I call your name if you
14 would please respond with a yes, no, or abstain, on the
15 motion moved by Chairman Hill, to approve the application.
16 The request was seconded by Ms. John.

17 So, Zoning Commission, Michael Turnbull?

18 COMMISSIONER TURNBULL: Yes.

19 MR. MOY: Vice Chair Hart?

20 VICE CHAIR HART: Yes.

21 MR. MOY: Ms. John?

22 MEMBER JOHN: Yes.

23 MR. MOY: Chairman Hill?

24 BZA CHAIR HILL: Yes.

25 MR. MOY: Staff would record the vote as 4-0-1,

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1 and this is on the motion of Chairman Hill to approve the
2 application, seconded by Ms. John, also in support, Mr.
3 Michael Turnbull and Vice Chair Hart. The motion carries,
4 sir.

5 BZA CHAIR HILL: Okay, thank you, Mr. Moy. You
6 can call our next one when you have an opportunity.

7 MR. MOY: Okay, that would be Case Application No.
8 20259, of Federal Realty, it's captioned for a special
9 exception under Subtitle H, Section 1200 from the designated
10 use requirements of subtitle H Section 1101.3(a). This would
11 permit excess GFA for a financial services use in the NC-3
12 Zone at premises 3501-3527 Connecticut Avenue, Northwest,
13 Square 2222, Lot 15. Participating is the Chairman, the Vice
14 Chair, Ms. John, and Zoning Commission, Michael Turnbull.

15 BZA CHAIR HILL: Okay. Are you all ready to
16 deliberate? Okay.

17 We did preliminary deliberations last week when
18 we heard this case, and we don't have anything new into the
19 record. I don't have anything to add from the deliberation
20 that I said last week, and I'm going to be voting to approve.

21 Is there anything anyone would like to add?

22 MEMBER JOHN: No.

23 COMMISSIONER TURNBULL: No.

24 BZA CHAIR HILL: Okay. I'm going to make a motion
25 to approve Application No. 20259 as captioned and read by the

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1 Secretary and ask for a second, Ms. John.

2 MEMBER JOHN: Second.

3 BZA CHAIR HILL: The motion has been made and
4 seconded.

5 Mr. Moy, can you please take a roll call vote?

6 MR. MOY: When I call your name if you would
7 please respond with a yes, no, or abstain, on the motion made
8 by the Chairman to approve the application for the relief
9 being requested, seconded by Ms. John.

10 Zoning Commission, Michael Turnbull.

11 COMMISSIONER TURNBULL: Yes.

12 MR. MOY: Vice Chair Hart?

13 VICE CHAIR HART: Yes.

14 MR. MOY: Ms. John?

15 MEMBER JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 BZA CHAIR HILL: Yes.

18 MR. MOY: Staff would record the vote as 4-0-1 for
19 the motion of Chairman Hill to approve, seconded by Ms. John,
20 also in support, Zoning Commission, Mr. Turnbull, Vice Chair
21 Hart. The motion carries, sir.

22 BZA CHAIR HILL: Okay. Mr. Turnbull, I don't know
23 if you have a fan, or Ms. John, if you don't mind going on
24 mute. Thank you. And then, I'll unmute you again.

25 Is Mr. Turnbull on 17996 C, Mr. Moy?

1 MR. MOY: No, that is 20053.

2 BZA CHAIR HILL: And then, who is on 20258?

3 MR. MOY: That would be -- that would be Mr. Hood.

4 BZA CHAIR HILL: Got it, okay.

5 Now, let's go ahead and do 20053 now with Mr.
6 Turnbull.

7 MR. MOY: Okay, thank you, Mr. Chairman. So, Case
8 Application No. 20053 of District Properties.com Inc., as
9 amended for area variances from the side yard requirements
10 of Subtitle D Section 206.2, and from the lot dimension
11 requirements of Subtitle D Section 302.1, to construct a new
12 detached, principal dwelling unit in the R-1-B Zone at
13 premises 2433 Girard, G-I-R-A-R-D, Place, Northeast, Parcel
14 155/7. And participating is the Chairman, the Vice Chair,
15 Ms. John, and Zoning Commission, Michael Turnbull.

16 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.

17 Are you guys ready to deliberate, because we did
18 not do this last time.

19 Mr. Hart, we will start with you, if that's
20 alright.

21 VICE CHAIR HART: Sure. So, we had a lot of --
22 this project application has taken quite a while to,
23 actually, get to us, and then finally after hearing it and
24 going through the actual hearing last week.

25 So, I have to say I struggled with some of this,

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1 and I'll kind of talk about that. So, the issue here is, in
2 my estimation is, does the Board think that the Applicant has
3 provided sufficient information to demonstrate how the
4 Applicant is meeting the three prongs of the variance test.

5 And, in my mind, first we have to look at the
6 exceptional condition prong of the test. The Applicant and
7 OP believe that the size dimensions of the lot is sufficient
8 to say that this is an exceptional condition. And OP also
9 raises the issue of this being a parcel, and they raised that
10 both in the testimony as well as in the OP report itself.

11 OP also suggested during the hearing last week
12 that any small parcel or a tax lot that is not a record lot
13 would have an exceptional condition, as an individual could
14 not build on it without being -- without it being a record
15 lot.

16 Unfortunately, I just didn't think that this was
17 relevant in this case, because the existence of so many
18 parcels in this neighborhood, as, actually, evidenced by the
19 OP report, and they have a map that shows where all the
20 parcels are. They are the purple areas in the map that's in
21 their report, in Exhibit 31.

22 I didn't believe that being a parcel is a
23 justification for exceptional condition in this instance,
24 since there were so many parcels in this immediate
25 neighborhood.

1 In addition, the OP report and testimony stated
2 that the construction of this development would be in keeping
3 with the overall development pattern of the neighborhood,
4 and, unfortunately, I did not agree with this either, since
5 it seems that there is really an eclectic development pattern
6 in this neighborhood, and there aren't any, you know, kind
7 of odd vacant lands, or, you know, they were, actually,
8 calling it I think either gap tooth or an admission
9 development.

10 In my view, this parcel appears to be a side yard
11 for the house next to it. This also appears to be a
12 development pattern for this, at least along this portion of
13 the street, with a house and a side yard next to it.

14 I'll note that Commissioner Montague also
15 testified, who is the ANC Commissioner, also testified that
16 this was an historic development pattern for this part of the
17 neighborhood, at least this part of the neighborhood. And
18 he seemed to know a great deal about the neighborhood
19 history, and I would take him at his word for that.

20 So, what else is exceptional? The Applicant notes
21 the small parcel size and width in comparison to what the
22 Zoning requirements are for the R-1-B Zone, it makes it an
23 exceptional condition. And I would just kind of note that
24 there appear to be quite a number of other parcels along
25 Girard, which is the street that this is on, Belair, which

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1 is one of the streets that terminates at Girard, and Hamlin
2 Streets, which is within close proximity to the street as
3 well. They all appear to have very either the same or very
4 similar lot dimensions, which again would not make it
5 exceptional.

6 So, I just couldn't get past the exceptional
7 condition aspect of it, but I understand that this is -- that
8 the applicant has had -- they believe that this is a --
9 there will be a difficulty in developing this site without
10 having the relief. I just couldn't get past the exceptional
11 condition prong, so I would be not in support of this
12 application. I would vote to deny the application.

13 I know that this is probably not a view that you
14 all hold as well, but I just wanted you to know where I kind
15 of stood on it and, you know, I'll listen to what else, what
16 my other Board members have to say.

17 Thank you.

18 BZA CHAIR HILL: Okay. Mr. Turnbull.

19 COMMISSIONER TURNBULL: Thank you, Mr. Chair.

20 Mr. Hart has, basically, said exactly how I feel.
21 I think the cases, the one he's pointed out from the OP
22 report, and the exceptional conditions of the site, and how
23 it doesn't meet that criteria as an exceptional condition,
24 I think is totally where I feel, is where I'm coming from.
25 I think he's totally correct, and I would also be in the

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1 position of denying this application.

2 BZA CHAIR HILL: Okay. Ms. John?

3 You are on mute, Ms. John.

4 MR. MOY: Mr. Young, could you help unmute her,
5 please?

6 MEMBER JOHN: Yes, thank you.

7 Mr. Chairman, I was going to ask you to go ahead
8 and give your thoughts before I give mine, because I'm still
9 deciding.

10 BZA CHAIR HILL: Okay.

11 MEMBER JOHN: And I have a few thoughts, but I'm
12 not sure exactly where I will end up.

13 BZA CHAIR HILL: Okay. And we'll just leave you
14 unmute, Ms. John.

15 I've got to say, I'm kind of torn on this. I
16 mean, I think that the Office of Planning, I can understand
17 their argument. And, you know, I think that -- I don't know
18 what you do with that lot, right? And I know that that might
19 not be exactly what -- well, I shouldn't say that -- I think
20 that they, you know, are making good argument for the
21 variance. And I still think that, you know, and I'm kind of
22 just going over the Office of Planning's report here again,
23 and having the questions that they have, that I guess the
24 part that I kind of struggled with I suppose was that they
25 were saying that if they had to turn it into a record, the

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1 fact that it wasn't a record lot, was somehow part of their
2 analysis. And I didn't necessarily agree with that side of
3 it, but, I guess we are still having the discussion. I don't
4 know. I mean, Ms. John, I don't know if that helped you at
5 all, you know.

6 MEMBER JOHN: No.

7 BZA CHAIR HILL: But, I just don't know where I'm
8 landing on this either. I've got to be honest.

9 MEMBER JOHN: Yes and no.

10 So, I have struggled with this case, because I
11 agree with Mr. Hart and Mr. Turnbull that, number one, there
12 are other parcels in the square, and the fact that it's a
13 parcel doesn't make it an exceptional condition. So, I
14 disagree with OP in that regard.

15 What's leading me towards saying that there's an
16 exceptional condition is the fact that this is really at the
17 end of the street. The Applicant is not able to increase the
18 size of the property, and that it borders, while one side
19 borders on a developed lot, the other side is, I believe,
20 partly on a public street, and abuts the property of one of
21 the witnesses who testified.

22 So, I think that is a little distinct, and so I'm
23 leaning towards saying that those things together create an
24 exceptional condition.

25 And so, if it is an exceptional condition, then

1 I can make the argument that it would prevent compliance with
2 the Regulations.

3 I am mindful of the testimony of the ANC and the
4 discussion of the history of the development. But, at the
5 same time we need to look at the property as it is now, and
6 the street as it is now. And what we have here are tax lots.

7 At the same time, I looked at the property on
8 Google after reviewing ANC's presentation, and, really, the
9 houses are sort of, you know, eclectic in a way. It's not
10 a cookie cutter pattern where this one house would stand out.
11 So, I agree with -- it would be different, but I agree with
12 OP that the changes that the Applicant made would more --
13 would sort of bring the house more into, I don't want to say
14 compliance, but more like some of the other houses that are
15 there. It would, of course, be smaller.

16 But, in terms of not being in keeping with the
17 character of the neighborhood I would agree with OP on that
18 score.

19 So, because in the past the Board has applied the
20 principle that the inability to increase the size of the lot
21 is a factor that can be considered as an exceptional
22 condition, I would lean towards calling it an exceptional
23 condition.

24 There was one thing else I wanted to add, but it
25 is escaping me at the moment. And while we are having a

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1 discussion, I will, perhaps, remember it.

2 BZA CHAIR HILL: Okay. Mr. Hart?

3 VICE CHAIR HART: Yes.

4 BZA CHAIR HILL: You don't think they are meeting
5 the first prong, you don't think there's anything
6 exceptional, right?

7 VICE CHAIR HART: No, it's a rectangular lot.
8 There are other lots to it that are within 200 feet of the
9 site that are vacant and it looks -- and I said vacant, they
10 are just not built upon, and it looks as though there was a
11 -- if you look along the southern portion of Girard Street,
12 that are the house -- that are the lots that are -- that are
13 just to the west of it, it looks -- the pattern to me looks
14 like house and then open space on the one side or the other
15 of that house.

16 There's one parcel that seems as though there was
17 a duplex put on it, but that seems to be the exception versus
18 the rule. Every other house has an open space either on one
19 side or the other of it, and this would be, adding this
20 building would be kind of contrary to that.

21 And I still am wondering if the -- you know, they
22 said that the -- at the hearing they said that they couldn't
23 sell that middle house -- excuse me, they couldn't sell the
24 property that was to the west of it, if you are looking at
25 the property to the right of it, which is the existing house.

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1 So, remember there were three properties, this is the
2 eastern-most of the three properties that were at one point
3 up for sale, I guess it was last year. And the house in the
4 middle, and then there were two single properties on either
5 side of that house.

6 And it is interesting that that existing house,
7 that is, you know, not the Applicant's application before us,
8 but the property just to the west, was not -- and it's still
9 vacant. And the neighbors are making a guess as to why they
10 think that's the case, and they are just saying that it has
11 to do with the uncertainty around the properties that are on
12 either side of it, because those properties don't have a
13 house on it, and they've probably been told, the prospective
14 owner, buyers, have probably been told that that is going to
15 be -- there might be a house next to it. And people are just
16 kind of like I'm not sure if I want to do that.

17 So, I know those things are kind of extraneous to
18 all of this, but I think that the context is just interesting
19 for this. In my estimation, you know, while the owner -- I
20 understand that I am saying that the owner of the property,
21 I don't believe that they have an exceptional condition, I
22 think that, you know, the possible option could be something
23 like they sell it to the property, the house that's right
24 next door to it. Or, they can split it and have the person
25 that is to the east or west, you know, have ownership of it.

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1 But, it just seems as though there is an
2 alternative that's out there that may not be a house, but it
3 may be a sale. And there may be some other, you know, avenue
4 that they go down that I'm just not thinking of, but I just
5 -- if this were in an area that had -- this was the only
6 parcel that was like this, then I might be thinking
7 differently about it. But, I mean, just looking at the OP
8 report and the map that they had, they have all these purple,
9 you know, shaded areas. All of those purple shaded areas are
10 parcels in the immediate vicinity. There are probably
11 within, you know, an 1/8 of a mile of this site.

12 And some of them are larger, but some of them look
13 they are almost the exact same size as this, and it just
14 becomes -- it begs the question to me that this doesn't seem
15 to be a unique condition or an exceptional condition in my
16 estimation.

17 And, you know, I just -- I can't get past that
18 part of it, and so it makes it hard for me to be able to
19 support the application as -- that is before us right now.

20 BZA CHAIR HILL: Okay. And then also, you don't
21 agree with substantial detriment to the public good, meaning
22 that you don't -- you think that the character of the rhythm,
23 there's nothing, you know, unique about that either.

24 VICE CHAIR HART: Well, I just think that once
25 you can't get past the exceptional condition aspect of it,

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1 everything else is kind of, if you can't get past that part
2 of it, then you can't get to the rest of the argument, and
3 I just can't get past that aspect of it.

4 BZA CHAIR HILL: Okay. Mr. Turnbull, do you have
5 anything to add?

6 COMMISSIONER TURNBULL: Yes. I would just
7 reiterate what the Vice Chair has said. If you want to talk
8 about -- I mean, this is a unique area in the sense of the
9 part of the City that these are all parcels. But that does
10 not elevate it to a unique condition. The fact that you have
11 all these parcels in this part of the City is just the way
12 the City developed.

13 And I think that as the Vice Chair said, this is
14 not really a unique condition, these are all parcels. This
15 is what the nature of the neighborhood is.

16 So, I think it's a double-edged sword, and I think
17 as Ms. John was talking about, how she could see that this,
18 the site can't grow, and so that makes it an exceptional
19 condition. Well, none of these sites can grow. So, in one
20 way it's -- I'm not making a case for approving this, I'm
21 just saying it's a unique situation with the City that you
22 have these parcels.

23 How that gets addressed in the future, I'm not
24 sure. Maybe something has to be done zoning-wise to elevate
25 this, but I think as of right now, looking at the strict

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1 interpretation of the Zoning Regs, I think the Vice Chair is
2 correct. This is not really an exceptional condition.

3 I think the house, the way it is situated, with
4 three-foot-nine side yards doesn't help the situation on the
5 impact on the house that's next door to it. But, you have
6 to get by the first prong to be able to get to that condition
7 and analyze that. If we ever got by that, then I would have
8 a situation that I don't think that if this was an
9 exceptional condition, this is not an exceptional design that
10 mitigates that condition also going forward.

11 So, I'm still stuck on the first prong, before I
12 even get to the second prong. If I get to the second prong,
13 I have issues with that, but I'm stuck on the first prong
14 myself right now.

15 BZA CHAIR HILL: Okay. All right. Well, I don't
16 know, and Mr. Hart, this is kind of just go back and Ms.
17 John, I'll circle back to you as well.

18 Again, you know, part of what I understood the
19 variance is, you know, you can't -- it's outside of the
20 Regulations, right? And, you know, this lot now, and this
21 is where I'm kind of -- and maybe we can put this off for
22 another week, you know, and just see, you know, look at it
23 a little bit more and then come back around by next week.

24 I mean, you know, what is it that they are
25 supposed to do with that lot, Mr. Hart, as you just said,

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1 like they are supposed to then, you know, the Regulations are
2 -- the variance is here to provide relief, right, if they can
3 meet the criteria. And I'm just kind of talking out loud.

4 VICE CHAIR HART: I understand.

5 BZA CHAIR HILL: You don't think they meet the
6 first prong. And so, then, you know, they now -- you now
7 have a piece of property that they have to, it just lies
8 dormant, right?

9 VICE CHAIR HART: Well, but this is the hard part
10 that I have with the argument that you are making, is we are
11 tasked with looking at whether or not someone meets a test,
12 not whether or not it is developable.

13 So, if we believe that there is a test, if we
14 believe that they pass the test, then they can develop it.
15 But, the Applicant went into this knowing that they had a
16 property that had -- that was less than the developed ones.
17 This is a developer, it's not a property owner that has no
18 idea about any of this. They went in, you know, with eyes
19 open, understanding that this is not a given, and so we have
20 to look at the case, at each case, and I'm looking at this
21 case and saying, well, this is, actually, not -- I don't see
22 this as being, you know, an exceptional condition in this
23 case.

24 BZA CHAIR HILL: I just want to interrupt, because
25 I want to be clear. I wasn't saying that since it's not

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1 developable that's something that goes beyond the variance
2 criteria, right? I was just kind of having a little bit more
3 of a discussion I suppose. But, right, you are still not
4 getting that first prong.

5 Ms. John, is there anything else you'd like to
6 add? Otherwise, I just think we table this for a week.

7 MEMBER JOHN: No, I could benefit from having to,
8 you know, think about it, you know, again.

9 The thing I wanted to add earlier was that there
10 is no evidence that this owner contrived to have -- to
11 purchase this lot. There was some discussion that the owner,
12 you know, was part of the whole process of cutting up the
13 record lot into these three pieces.

14 And so, I have to discount that information,
15 because the Applicant denied it. I think if this is a case
16 where there was an Applicant who had a lot that, you know,
17 could be developed without relief, but then contradicted it
18 in a way of a variance. But, that's not the situation here.

19 So, that's what I wanted to add. So, I'm not
20 opposed to putting this off for another week.

21 BZA CHAIR HILL: Okay. Mr. Hart?

22 VICE CHAIR HART: Yes, one more thought. So, one
23 of the other things that I was thinking about in terms of,
24 you know, the parcel issue, is that there are a number of
25 parcels in this area that are about this size. And it begins

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1 to -- it dawned on me that any Applicant could come in say
2 that, well, this is a parcel and it's less than what's, you
3 know, allowed in Zoning. So, we would be giving -- allowing
4 the variance for all of the parcels, and there are a number
5 of them.

6 And I just had a hard time seeing how that was,
7 you know, an acceptable condition for each of these, these
8 would be very similar, it would be very difficult to parse
9 out how this one was different than the others that are in
10 this immediate vicinity.

11 So, it became, and maybe this is a zoning issue,
12 Mr. Turnbull, Commissioner Turnbull, that needs to be looked
13 at, you know, and I don't know exactly how to deal with that
14 as a zoning issue, but that may be the direction to start
15 trying to kind of deal with this. And maybe this is not just
16 the only neighborhood that this is an issue in. So that, you
17 know, there is some criteria that you could use outside of
18 it being an acceptable condition to have to address this sort
19 of larger scale concern. And I say larger in that it's a
20 neighbor -- there seem to be more things in the neighborhood
21 than other parts of the City, where development has maybe
22 been going on, or they have the actual record lots
23 established for a longer period of time.

24 But, you know, those are my end thoughts.

25 BZA CHAIR HILL: I appreciate that. Actually,

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1 Mr. Hart, that kind of leans me a little bit more in your
2 direction, I suppose, to be quite honest. But, we'll see --
3 so, everybody okay, we'll put this off until next week?

4 MEMBER JOHN: Yes.

5 BZA CHAIR HILL: All right. Mr. Moy, can you put
6 this back on the meeting calendar for next week?

7 MR. MOY: Yes, sir, so that would be rescheduled
8 or continued discussion to August the 5th, which is next
9 Wednesday.

10 BZA CHAIR HILL: Okay. Mr. Turnbull, you get to
11 say goodbye to Mr. Hart again one more time.

12 COMMISSIONER TURNBULL: Okay, all right. I'll see
13 you all next week.

14 BZA CHAIR HILL: Okay, great, thank you.

15 I guess we want to bring in --

16 MR. MOY: Mr. Hood?

17 BZA CHAIR HILL: Yes, well, there's still the
18 meeting for the school.

19 MR. MOY: We could do that, too.

20 BZA CHAIR HILL: Yes, is Mr. Miller around?

21 MR. MOY: Mr. Young, do you have Mr. Miller out
22 there somewhere?

23 BZA CHAIR HILL: Do you have Mr. Miller?

24 MR. MOY: There we go.

25 MR. MILLER: I'm here.

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1 BZA CHAIR HILL: Okay, Mr. Miller, I'm just going
2 to pop you in real quick for this one. Mr. Moy, could you
3 please read in the application?

4 MR. MOY: Yes, sir, with pleasure.

5 This would be Case Application No. 17996-C, The
6 Beauvoir, B-E-A-U-V-O-I-R, School, the National Cathedral
7 Elementary School. This is a request for a modification of
8 consequence to the conditions of BZA Order No. 17996-B, to
9 decrease the minimum parking requirements and to permit the
10 installation of temporary classroom space on the school's
11 property in the R-1-B Zone at 3500 Woodley Road, Northwest,
12 Square 1944, Lot 25. And participating is the Chairman, the
13 Vice Chair, Ms. John, and Zoning Commission Robert Miller.

14 BZA CHAIR HILL: Okay, thank you.

15 Okay. So, I looked over this, and again, so this
16 is for temporary facilities during the pandemic. And I looked
17 in the Office of Planning's report, and they are in approval.

18 I didn't see -- I saw there was conditions that
19 the ANC had, and those conditions I guess were in terms of,
20 you know, the generator will operate only during the school
21 day until the weather necessitates otherwise, meaning I guess
22 they can use the generator if -- at night, if there needs to
23 be some kind of weather-related issue.

24 There shall be no safety lighting or lighting from
25 the trailers at night. A traffic facilitator shall manage

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1 drop off and pick up operations during the hours specified
2 for those operations, and will be where the drivers with
3 destinations other than Beauvoir are using Woodley Road and
4 31st Street, 35th Street.

5 Beauvoir shall require parents or anyone that
6 ordinarily drives to the school to pick up or drop off a
7 student to park on the closed and not on neighborhood streets
8 during the specified pick up and drop off hours.

9 Well, first of all, I'll ask my fellow Board
10 members, I don't really have any issues. I wish we had the
11 Applicant here, I suppose, actually, to just kind of talk
12 about these conditions or anything. And I'm going to look
13 up the ANC report.

14 Mr. Hart, would you like to go next?

15 VICE CHAIR HART: Yes, sure. I didn't have a
16 whole lot of, you know, thoughts on this application. It
17 seems as though this is, you know, it's interesting I guess
18 this is one of the first cases that we are really listening
19 to that has -- that is directly related to COVID, because
20 they are trying to accommodate, you know, or deal with how
21 to have school, you know, in the midst of a pandemic.

22 And, you know, they are noting that this is a
23 temporary aspect of this as well. So, I didn't really have
24 a lot of comments on it.

25 BZA CHAIR HILL: Okay.

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1 VICE CHAIR HART: All right.

2 BZA CHAIR HILL: I'm just going to interrupt and
3 clarify my other statement, which there is something now from
4 the Applicant that says that they are in agreement with the
5 conditions put forth by the ANC.

6 Mr. Miller?

7 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.

8 Yes, I support this application for the temporary
9 classroom trailers so that the Beauvoir School can attempt
10 to do appropriate social distancing, you know, less kids in
11 the classroom, I guess, than the regular classrooms as part
12 of their reopening plan.

13 I'm curious whether -- well, the Zoning Commission
14 is about to take up a rulemaking on, emergency rulemaking
15 tomorrow, to give flexibility to colleges and universities
16 to temporarily, due to the pandemic, veer from their
17 flexibility from their campus plans, which have certain use,
18 on campus housing requirements for example, for at least
19 three universities where many of the kids have to be on
20 campus, live on campus, and then use restrictions on some of
21 the facilities.

22 So, that just made me think about whether Beauvoir
23 needed a campus plan modification for it's -- or National
24 Cathedral School, Beauvoir component of the National
25 Cathedral School. But, we don't have the Applicant here.

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1 Is OP here, or does OAG have an opinion on whether or not --
2 has the issue -- it doesn't seem to have come up in the
3 exhibits we have whether there needs -- well, I guess it
4 would be the Zoning Commission that would do the --

5 MS. CAIN: There is, I don't believe the National
6 Cathedral School and Beauvoir are subject to a campus plan,
7 you know, insofar as that text amendment that the Zoning
8 Commission, I believe they took action on Monday. I don't
9 believe it's subject to that; private schools, I believe, are
10 sort of their own thing within the zoning regulations.

11 ZC VICE CHAIR MILLER: Right, correct. They have
12 their own campus plan.

13 MS. CAIN: So, I think in this case doing it as
14 a modification is the most appropriate way to move forward
15 with it.

16 ZC VICE CHAIR MILLER: Yes, it would, essentially,
17 be a temporary modification.

18 MS. CAIN: I think that's what the Board needs to
19 keep in mind, is the Applicant and OP have highlighted this
20 is temporary, this is only for the 2020-2021 school year, so
21 that is something that the Board should verify. This is very
22 limited in scope, just to the next academic year.

23 ZC VICE CHAIR MILLER: Okay. And because the
24 Applicant, as Chairman Hill has said, has, apparently, agreed
25 to the four conditions that the ANC included as part of its

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1 conditional approval, I have no problem with that. So, I'm
2 ready to move forward.

3 BZA CHAIR HILL: Okay, and just to clarify also,
4 so in Exhibit 7, the Applicant is modifying, or trying to
5 modify condition number three, or to add a condition it looks
6 like, that is speaking more, specifically, to the parking
7 spaces. And then, they again repeat all of the issues that
8 the ANC had put forward in terms of conditions.

9 I do think that, you know, they are -- you know,
10 we can parse out whether or not they are completely going to
11 adverse impact, but it seems like to me like, you know, the
12 generator, the lighting, you know, some traffic management,
13 since the Applicant and ANC are in agreement on this, and I
14 think that the Applicant is further specifying the conditions
15 on, the modifying condition number three in their exhibit.

16 I would be fine with all of the conditions that
17 are in Exhibit No. 7, putting that in the order. And so,
18 that's what I would ask OAG when they are writing the order,
19 to put that in there.

20 And, Ms. John, do you have anything else to add?

21 MEMBER JOHN: No, I don't have anything else to
22 add. I support the request for modification, and I think the
23 conditions are related to mitigate any potential impacts.
24 So, I would support the application.

25 BZA CHAIR HILL: Okay. Then I'm going to make a

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1 motion --- oh, no, I can't -- can I make it, oh, yes, it's
2 a meeting. So, this is a meeting. So I'm going to make a
3 motion to approve Application No. 17996-C, as in Charlie,
4 including the conditions that are in Exhibit No. 7, and ask
5 for a second, Ms. John?

6 MEMBER JOHN: Second.

7 BZA CHAIR HILL: The motion has been made and
8 seconded. Mr. Moy, can you please take a roll call vote?

9 MR. MOY: -- to approve the application --

10 MR. YOUNG: You were on mute, if you could start
11 back over, sorry.

12 MR. MOY: Okay. Can you hear me?

13 BZA CHAIR HILL: Yes.

14 MR. MOY: Okay. So, where was I, if you would each
15 respond with a yes, no, or abstain to the motion made by --

16 BZA CHAIR HILL: Mr. Moy, could you -- I'm sorry,
17 maybe I'm interrupting, you were cut off saying that I made
18 a motion, seconded by whoever, and now I cut you off again,
19 so just start again. I'm sorry.

20 MR. MOY: No, that's okay. So, when I call your
21 name if you would please respond with a yes, no, or abstain,
22 to the motion made by Chairman Hill to approve the
23 application along with the four conditions that I believe the
24 specified as listed in their Exhibit 7, yes?

25 BZA CHAIR HILL: Yes.

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1 MR. MOY: Seconding the motion is Ms. John.
2 Zoning Commission Robert Miller?

3 ZC VICE CHAIR MILLER: Yes.

4 MR. MOY: Vice Chair Hart?

5 VICE CHAIR HART: Yes.

6 MR. MOY: Ms. John?

7 MEMBER JOHN: Yes.

8 MR. MOY: Chairman Hill?

9 BZA CHAIR HILL: Yes.

10 MR. MOY: Staff would record the vote as 4-0-1,
11 this on the motion made by the Chairman to approve the
12 application with four conditions. The motion was seconded by
13 Ms. John, also in support Zoning Commission Rob Miller, Vice
14 Chair Hart, we have a board seat vacant, and the motion
15 carries 4-0-1.

16 BZA CHAIR HILL: Okay, thank you, Mr. Moy.

17 Mr. Miller, we'll see you in a while, actually.
18 I think the first hearing is going to take a little bit.

19 ZC VICE CHAIR MILLER: Thank you, see you later.

20 BZA CHAIR HILL: Bye-bye.

21 Now, we need, I guess, Chairman Hood, Mr. Young.

22 ZC CHAIRMAN HOOD: Good morning, everyone.

23 MEMBER JOHN: Good morning.

24 BZA CHAIR HILL: Good morning, Chairman Hood.

25 ZC CHAIRMAN HOOD: So, I heard you all giving the

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1 accolades and comments to Vice Chair Hart. So, what I've
2 decided to do, since I was looking for my way to try to get
3 into the hearing so I could speak, I had already invited
4 myself back next week. So, I will be back next week, and I
5 want Mr. Moy and Mr. Young to know I need access, because I
6 would like to talk about Mr. Hart's balance, his stick-to-
7 itiveness, his even keel, his, I like to call him a magician,
8 the way that he comes up with stuff that I hadn't even
9 thought of. I may have read all night, but he comes up with
10 something that really adds to the case. But, I'll talk about
11 that next week. I just need to make sure I have access, and
12 it's been a pleasure to serve with him, but I have more to
13 say next week, and, basically, I'm inviting myself.

14 BZA CHAIR HILL: All right, Chairman, we'll make
15 sure you get in there for your due time.

16 Mr. Moy, if you could call this decision case, or
17 meeting case.

18 MR. MOY: Yes, thank you, Mr. Chairman. This is
19 the last of the decision cases for the meeting session this
20 morning.

21 Case Application No. 20258 of William G. Springer
22 and Forrest Kettler. It's captioned for special exception
23 under Subtitle F Section 5201, for the maximum lot occupancy
24 requirements Subtitle F Section 604.1, to construct a two-
25 story rear addition to an existing attached principal

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1 dwelling in the RA-8 Zone at premises 1416 15th Street,
2 Northwest, Square 195, Lot 104.

3 Participating is the Chairman, the Vice Chair, Ms.
4 John, and Zoning Commission Chair Anthony Hood.

5 BZA CHAIR HILL: Okay. Are we all ready to talk
6 about this a little bit? Okay, I can start.

7 So, I went to -- we had kept this open until
8 today, because we had gotten some additional information into
9 the record, and we wanted people to have an opportunity to
10 look at that information, and then also have time for the
11 parties to respond. That time has passed. And I went back
12 over the Office of Planning's report, as well as the record,
13 and I think that the 2 percent increase proposed from the
14 existing seems somewhat, you know, de minimis to me. I went
15 back over again the OP report and would agree with them about
16 light, and air, and privacy not being unduly affected. I did
17 note that HPO had also signed off on this.

18 The people -- some of the people in opposition to
19 this have mentioned the windows in the back of the property,
20 and the light and air being affected. I didn't think that
21 the light and air was going to be unduly affected, as also
22 gone over by the Office of Planning's report. In terms of
23 the windows in the back, I looked into the record, and also
24 even some of the things that the opposition had put forth,
25 and, you know, there's windows all over, like it's a normal

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1 backyard in the City, where everybody's backyard looks into
2 everybody's backyard.

3 So, I didn't think that that was anything new that
4 would change my opinion as to what I think they are meeting
5 the standard for us to grant the application. So, I'm going
6 to be voting in favor, but I'm going to let my fellow Board
7 Members give me their opinion.

8 I'll start with you, Mr. Hart, if that's all
9 right.

10 VICE CHAIR HART: Sure, thank you. And thank you
11 Zoning Commission Chair Hood for your kind words, and I look
12 forward to our discussion tomorrow, or next week.

13 So, Chairman Hill, so after reviewing the record
14 and listening to the Applicant, as well as the testimony that
15 we heard, I believe that I would be in support of the
16 proposal to construct a two-story rear addition to the
17 existing attached principal dwelling.

18 I believe that the Applicant has provided
19 sufficient information for me to be able to support it. And
20 I'll note that -- and I'll note that, like you, Mr. Chairman,
21 I think that the Office of Planning report was one that
22 described what the impacts were. And I am -- I don't think
23 anybody is doubting that there's going to be an impact. The
24 question that we have to really deal with is whether or not
25 we believe that's an undue impact.

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1 So, there was some testimony in opposition to the
2 application, noting that this project would restrict air,
3 light, and privacy of the residents and complexes of homes
4 on the alley. And that was kind of taken from the -- one of
5 the letters that had come in, testimony that had come in.

6 And I understand that their opposition -- that
7 they have opposition to this application, but again, I get
8 to the aspect of this being undue impacts. So, the two
9 letters that we received that were in opposition, that were
10 received after the hearing, that were in opposition, they
11 raised issues of light and air, impacts on light and air.
12 And I'll note that they described where they lived with
13 relationship to the Applicant, and they are, actually, along
14 -- they are south of where the Applicant is located. They
15 live in, I guess, in condos. They said units, so I'm assuming
16 those were something like a condo or an apartment, I'm not
17 exactly sure. One was an owner, so I am assuming that they
18 are both, I don't know that. I don't recall that.

19 But regardless of that, they are -- they live
20 south of the Applicant. And what that means to me is that
21 any shadow from the project that is being proposed shadows,
22 because of the sun angle, the shadows would be north of the
23 Applicant, and not south.

24 So, while there may be some impacts to the air,
25 the light aspect of it I think is -- there really isn't a

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1 shadow issue that we are talking about.

2 Now, and I think Chairman Hill you talked about
3 the issue of privacy, and I would agree that this is a kind
4 of a regular backyard environment in an urban environment,
5 that has, you know, windows kind of, you know, really around
6 this particular area.

7 And so, for all of this I would say that there
8 wouldn't be, in my estimation, any undue impacts on light,
9 air, or privacy, as this is located in an urban area, and as
10 this property is located south of the Applicant that is
11 before us. So, I would be in support of the application.

12 Thank you.

13 BZA CHAIR HILL: Chairman Hood?

14 ZC CHAIRMAN HOOD: I would agree with everything
15 I heard so far. And I really appreciate the ANC when they
16 talk about minimal. I think that was very key for me in this
17 whole process, and I agree with all the comments that I've
18 heard.

19 One of the things I will note is that, as you
20 mentioned, this is going on in urban areas anyway, as far as
21 the back yard goes, but I was trying to read, there are some
22 impacts when I was analyzing this. But, for me I recognize
23 the impacts, as the Vice Chair has already mentioned, but the
24 impacts to me are minimal and I think they different, and I
25 think that's what the opposition is.

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1 And I know the Supreme Court talks about views,
2 so we already know what the issue is there with views.

3 So, Mr. Chairman, I'll be supporting this
4 application.

5 BZA CHAIR HILL: Ms. John?

6 MEMBER JOHN: I agree with everything that's been
7 said, and, especially, Chairman Hood's comment that views are
8 not protected. I agree, generally, that the backyard looks
9 like any urban -- well, it looks like a D.C. backyard, and
10 that I struggle to see how privacy and air would be affected.

11 I looked again at the testimony from one of the
12 witnesses, and I could not see where there would be any
13 privacy impact, as I believe Mr. Hart said, there are a lot
14 of windows on the houses, a lot of rear windows on the
15 houses, you know, in that area.

16 And so, I agree that the application meets the
17 criteria of the regulations, and that there is no undue
18 impact in this case on privacy and air.

19 BZA CHAIR HILL: Okay. I'm going to make a motion
20 then to approve Application No. 20258, as captioned and read
21 by the Secretary, and ask for a second, Ms. John?

22 MEMBER JOHN: Second.

23 BZA CHAIR HILL: Motion made and seconded.

24 Mr. Moy, could you please take a roll call vote?

25 MR. MOY: Yes. When I call your name, if you

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1 would please respond with a yes, no, or abstain, to the
2 motion made by Chairman Hill to approve the application for
3 the relief requested, seconded by Ms. John.

4 Zoning Commission Chair Anthony Hood?

5 ZC CHAIRMAN HOOD: Yes.

6 MR. MOY: Vice Chair Hart?

7 VICE CHAIR HART: Yes.

8 MR. MOY: Ms. John?

9 MEMBER JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 BZA CHAIR HILL: Yes.

12 MR. MOY: Staff would record the vote as 4-0-1 to
13 approve the application on the motion of Chairman Hill,
14 seconded by Ms. John, also in support of the motion is Zoning
15 Commission Chair Anthony Hood, Vice Chair Hart. We have a
16 board seat vacant, and the motion carries, sir.

17 BZA CHAIR HILL: Okay, great, thank you, Mr. Moy.

18 So, we have -- our hearings are starting, and
19 maybe we'll take a quick break before the hearings begin.

20 But, can I just read into the hearing session, Mr.
21 Moy, before he takes a break.

22 MR. MOY: Yes, please.

23 BZA CHAIR HILL: Okay.

24 (Whereupon, the above-entitled matter was
25 concluded at 10:46 a.m.)

NEAL R. GROSS

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 07-29-20

Place: teleconference

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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