

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY
SEPTEMBER 16, 2020

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chair
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson
ROBERT MILLER, Vice Chair
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from the Regular Public Hearing held on September 16, 2020.

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

(9:37 a.m.)

1
2
3 BZA CHAIR HILL: The meeting will
4 please come to order. Good morning, ladies and
5 gentlemen. We're convened and broadcasting this
6 decision meeting by video conference. This is the
7 September 16th, 2020 public meeting session of the
8 Board of Zoning Adjustment District of Columbia.

9 My name is Fred Hill, chairperson. And joining
10 me today is Lorna John, vice chair, and Chrishaun
11 Smith, board member. And representing the Zoning
12 Commission throughout the day will be a variety
13 of people, but Peter Shapiro, Rob Miller, and
14 Anthony Hood from the Zoning Commission.

15 Today's meeting agenda is available to
16 you on the Office of Zoning's website. Please be
17 advised that this proceeding is being recorded by
18 a court reporter, and is also webcast live via WebEx
19 and YouTube live. The video of the webcast will
20 be available on the Office of Zoning website after
21 today's meeting session. Accordingly, everyone
22 who is listening on WebEx or by telephone will be
23 muted during the meeting. We do not take any public
24 testimony at our decision meetings.

25 If you're experiencing difficulty

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1 accessing WebEx or your telephone call-in, then
2 please call our OZ hotline number. The number's
3 actually listed on the screen, but I'm going to
4 repeat it twice. At 202-727-5471. Once again,
5 that's 202-727-5471 to receive WebEx log-in or
6 call-in instructions.

7 At the conclusion of this meeting
8 session, I shall, in consultation with the Office
9 of Zoning, determine whether a full or summary order
10 may be issued. A full order is required when the
11 decision it contains is adverse to a party,
12 including an affected ANC. A full order may also
13 be needed if the Board's decision differs from the
14 Office of Planning's recommendation. Although the
15 Board favors the use of summary orders whenever
16 possible, an applicant may not request the Board
17 to issue such an order.

18 Preliminary matters are those which
19 relate to whether a case will or should be heard
20 today such as a request for a postponement,
21 continuance or withdrawal, or whether proper and
22 adequate notice of the meeting had been given.
23 Mr. Secretary, do you have any preliminary matters
24 today? You're on mute, Mr. Moy.

25 SECRETARY MOY: That's my first strike

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1 for the day. Okay, so we do have preliminary
2 matters for the day, but I think it's more efficient
3 for the Board if I call those matters when I call
4 the specific case, Mr. Chair.

5 BZA CHAIR HILL: Okay, great. Thank
6 you. Get organized here. Mr. Moy, again, if you
7 can remind me, sometimes I forget to read us into
8 the hearing, and so we'll try to do that when the
9 appropriate times comes. I would like to official
10 welcome Chrishaun Smith to be with us from NCP.

11 And, you know, welcome Chrishaun, and thank you
12 for helping us with these important matters for
13 the city, and we hope you enjoy your time with us.

14 MEMBER SMITH: Thank you, Mr.
15 Chairman. It's great to be here.

16 BZA CHAIR HILL: All right. So, Mr.
17 Moy, if you want to read our first -- or read into
18 our first decision meeting?

19 SECRETARY MOY: Yes. So thank you,
20 Mr. Chairman. So that would be -- oh, before I
21 get to that, I do want to say for the record that
22 case application 20278 of Dylan Hanson has been
23 removed from the expedited review calendar, and
24 that has been rescheduled to October 7th, 2020.

25 So with that, the first decision case

1 for the Board is application No. 20204 of 1001
2 Bryant Street, LLC. Caption advertised for
3 special exception under the new residential
4 development provisions, Subtitle U, Section 421.1
5 to combine the two lots into one record lot, and
6 construct a new 16 unit apartment house, RA-1 Zone
7 at 1001 through 1003 Bryant Street Northeast,
8 Square 3869, Lots 25 and 26. The Board last heard
9 this at its public hearing on July the 29th.

10 BZA CHAIR HILL: Okay, great. Is the
11 Board ready to deliberate, Mr. Miller,
12 commissioner? I lost you, Commissioner.

13 ZC VICE CHAIR MILLER: Can you hear me?

14 BZA CHAIR HILL: I can hear you. Yeah,
15 now I can see you.

16 ZC VICE CHAIR MILLER: I might have
17 missed it, did we establish a quorum for the
18 meeting? I'm here.

19 BZA CHAIR HILL: I believe so, yeah.

20 ZC VICE CHAIR MILLER: Okay. All
21 right, that's all.

22 BZA CHAIR HILL: Okay. And, Mr.
23 Smith, you've reviewed the records, is that
24 correct? You're on mute, Mr. Smith.

25 MEMBER SMITH: Sorry. For the record,

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1 yes, I have read into the case and have been
2 thoroughly briefed.

3 BZA CHAIR HILL: Okay, great. All
4 right, I can kind of begin this a little bit. I
5 mean there was a lot of testimony that we took during
6 this hearing, or during this case. And we were
7 also waiting to see what the ANC had to say about
8 their position. I was, you know, disappointed to
9 see that the ANC could not get on board with this
10 particular project.

11 I did think, however, that after, you
12 know, reviewing the record and taking a look at
13 the Office of Planning's report again, I do think
14 that they, the applicant, has made a case for me
15 to be able to vote in favor of this. I think that
16 they've met the criteria in order for us to -- again,
17 in order for me to vote in favor.

18 Some of the issues that the ANC brought
19 up, I think one of them, I guess, was the building
20 orientation was actually something that the Office
21 of Planning had recommended to the applicant. I
22 also thought, as Mr. Miller had pointed out I think
23 during the hearing that, you know, it being kind
24 of a corner lot there, has the ability to kind of
25 handle a little bit more density. And I think that,

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1 you know, the 16 units including the one IZ unit
2 is something that I could get behind.

3 And again, basically I just thought
4 that they are meeting the criteria for us to --
5 for me to grant the application. So I'm going to
6 be voting in favor. I'm going to go around the
7 table if I could and just hear what my other Board
8 members have to say. I'm going to start with the
9 Zoning Commissioner if that's all right, Mr.
10 Miller.

11 ZC VICE CHAIR MILLER: Thank you --
12 yes, thank you, Chairman. Yes, I would agree with
13 your analysis and I guess disappointment that the
14 ANC could not come on board. I think, you know,
15 I think they've met the -- I think the applicant
16 has met the criteria as they've established in their
17 case.

18 This is an RA-1 zone which -- and I think
19 the development meets all of the development
20 parameters for -- that in the RA-1 zone which is
21 the zone -- I think it's the least dense apartment
22 zone that we have in the city. But it does require,
23 just as a matter of the zoning regulations, that
24 it go through a special exception review process.

25 It seems just from my impression of the

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1 ANC and the neighbors comments is that they don't
2 really like being a RA-1 zone, and maybe they need
3 to petition zone for -- not that I agree with this
4 -- a down-zoning to the RF zone or something less
5 dense, or explore that with the Office of Planning
6 because that's -- it is permitted with special
7 exception if they meet the development parameters,
8 and if the adverse impacts aren't there or can be
9 mitigated. So, anyway, I share your comments, Mr.
10 Chairman, and prepared to support the application.

11 BZA CHAIR HILL: Thank you. Vice
12 Chair John? Ms. John, you're on mute. Okay.
13 You're good now.

14 VICE CHAIR JOHN: So this is a request
15 as you and Commissioner Miller noted for a special
16 exception under Subtitle U 421 to build a new
17 residential development consisting of 16 two and
18 three bedroom apartments in the RA-1 zone, and
19 having one IZ unit.

20 As you've noted there's been strong
21 neighborhood opposition as shown in Exhibits 30,
22 33, 34, and 42. And the ANC finally submitted a
23 report, and the ANC's comments were similar or
24 consistent with the neighbor's opposition
25 concerning density, parking, traffic impacts, loss

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1 of single family housing, and changes in the
2 streetscape.

3 So the project meets all of the
4 development criteria for an apartment building in
5 that zone. I thought that OP had a good analysis
6 of how the project meets the criteria for relief
7 under U-421, and I give great weight to that
8 analysis. I thought that OP's recommendations
9 regarding the orientation of the building and
10 improvements to the entrance were good
11 improvements.

12 So because the buildings meets the
13 development standards of the zone, I can support
14 the application, and regret that I cannot give great
15 weight to the ANC's concerns concerning density
16 and the building mass. And regarding the traffic,
17 the application -- the applicant has provided five
18 parking spaces which is more than required for the
19 project. DDOT also supports the application.

20 Now one of the commissioners, Ms.
21 Owens, submitted an email which was attached to
22 the ANC report, and it included a list of items
23 that the ANC wanted to see happen during
24 construction. And that is outside the scope of
25 the Board's jurisdiction, but I would just

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1 encourage the parties to continue talking about
2 how to make those things happen. So I think I can
3 -- well, no, not think. I can support this
4 application.

5 BZA CHAIR HILL: Great. Thank you,
6 Ms. John. Mr. Smith?

7 MEMBER SMITH: Yes, I would agree with
8 the analysis of the Chairman and Vice Chairman.
9 The applicant's met the criteria for a special
10 exception, and meets the development criteria for
11 the RA-1 zone for this size of an apartment building.

12 I understand the ANC had concerns
13 regarding traffic impacts, parking impacts within
14 the neighborhood, but upon evaluation of the DDOT
15 report, the property meets the DDOT standards for
16 traffic impacts and loading spaces for this size
17 of a building. And the applicant, as the Vice
18 Chairman stated, is providing five parking spaces
19 which is more than what is required per the code
20 and regulations. So I believe the applicant has
21 met the criteria for a special exception, and I
22 believe I can support this request.

23 BZA CHAIR HILL: Okay, great. Thank
24 you. All right. And, Ms. John, thank you for
25 pointing that out in terms of the builder working

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1 with the community in terms of construction. That
2 would be helpful if the builder would, again,
3 continue to try to work with the community and do
4 some of those things that they have been asked to
5 do. I'm going to make a motion to approve
6 application number 20204 as captioned and read by
7 the Secretary, and ask for a second, Ms. John?

8 VICE CHAIR JOHN: Second.

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

12 SECRETARY MOY: Yes. Thank you, Mr.
13 Chairman. When I call your name, if you will please
14 respond with a yes or no. So this is on the motion
15 made by Chairman Hill to approve the application
16 for the relief being requested. Seconded by Vice
17 Chair John. So let's see, Zoning Commissioner Rob
18 Miller?

19 ZC VICE CHAIR MILLER: Yes.

20 SECRETARY MOY: Chrishaun Smith?

21 MEMBER SMITH: Yes.

22 SECRETARY MOY: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 SECRETARY MOY: And Chairman Hill?

25 BZA CHAIR HILL: Yes.

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1 VICE CHAIR JOHN: Staff would record
2 the vote the four to zero to one. And this is on
3 the motion of Chairman Hill to approve the
4 application for the relief requested, seconded by
5 Vice Chair John. Also in support, Mr. Smith and
6 Zoning Commissioner Rob Miller. And we have a
7 board seat that's vacant. Motion carries four to
8 zero to one, Mr. Chairman.

9 BZA CHAIR HILL: Okay, great. Thank
10 you, Mr. Moy. Is that it for you, Mr. Miller, or
11 -- okay. All right, you enjoy your day, Mr. Miller.

12 SECRETARY MOY: Yeah, we need Mr.
13 Shapiro for the next case, Mr. Chairman.

14 BZA CHAIR HILL: There we go. Hello,
15 Commissioner.

16 COMMISSIONER SHAPIRO: Good morning.

17 BZA CHAIR HILL: I'm always jealous of
18 Commissioner Miller's background. The light looks
19 so nice and the, you know, Mr. Shapiro, I'm not
20 as excited by your background, I got to say you
21 look great.

22 COMMISSIONER SHAPIRO: I won't take it
23 personally, Mr. Chair.

24 BZA CHAIR HILL: I'm sure you have a
25 lovely yard as well. I do not. I live in a condo.

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1 All right, okay. Mr. Moy, if you could go ahead
2 and call our next decision case.

3 SECRETARY MOY: Yes, thank you. This
4 would be appeal number 20191 of DC for Reasonable
5 Development. This appeal is captioned as the
6 decision made on the appeal of the decision made
7 on August 16th, 2019 by the Zoning Administrator,
8 Department of Consumer and Regulatory Affairs to
9 issue demolition permit number D, as in delta,
10 1600814 to permit a demolition of several aspects
11 of the McMillan Sand Filtration Site, and for the
12 decision made on August 27th, 2019 by the Zoning
13 Administrator, Department of Consumer of
14 Regulatory Affairs to issue foundation permit
15 number FD, as in foxtrot delta, 1800040 to permit
16 the foundation of a new community center in the
17 RA-2 zone at premises 2940 North Capital Street
18 Northwest, Square 3128, Lot 800.

19 And let's see, as you recall, Mr.
20 Chairman, there is a preliminary matter here where
21 yesterday there was a filing from the appellant
22 for a motion to -- for the Board to postpone or
23 delay its decision today. That's under Exhibit
24 72.

25 BZA CHAIR HILL: Okay. Is the Board

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1 ready to deliberate? Mr. Smith? You're on muted,
2 Mr. Smith.

3 MEMBER SMITH: Oh, okay, sorry. Let's
4 see, can we start with the Vice Chair?

5 BZA CHAIR HILL: No, no, no, no, I'm
6 not asking for -- I'm sorry. What I meant is that
7 -- and I understand this, you know, you have
8 reviewed this record and you're prepared to --

9 MEMBER SMITH: Oh, yes, I'm sorry.
10 Yes. I have reviewed this record, read into this
11 case and I've been thoroughly briefed.

12 BZA CHAIR HILL: Okay, great. Thank
13 you. We're not going to roll you under the bus
14 the first day. All right, okay. Let's see. So
15 there is a couple of preliminary matters, and one
16 of it is this emergency motion that came in. I
17 think that the relevant rule about the emergency
18 motion is under Y602.6, and I'm actually going to
19 read the regulation which is that any supplemental
20 material received by the Board after the close of
21 the record that bears upon the substance of the
22 application or appeal shall be returned by the
23 director not accepted into the files of the Board.

24 However, if the materials are
25 accompanied by a separate request to reopen the

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1 record, the request shall be accepted and presented
2 to the Board for consideration. The request must
3 demonstrate good cause and lack of prejudice to
4 any parties. Such request may be granted by the
5 presiding officer, and if granted, the supplemental
6 materials shall be entered into the record.

7 In this particular case, I think the
8 motion alleges the record is not complete because
9 of pending C of A review, and issues related to
10 the demolition permit. These issues do not involve
11 enforcing the zoning regulations, so these are
12 outside the Board's jurisdiction as the Board, kind
13 of, we talked about during the hearing, whenever
14 that was, I guess before the summer recess.

15 The motion also alleges that further
16 PUD review is required for the master plan. We
17 heard extensive testimony about that issue at the
18 hearing, and I think that I'm prepared to rule.
19 And so, therefore, I would go ahead and deny the
20 motion to postpone the decision because I think
21 the delay will most certainly prejudice the other
22 parties as, you know, it says in 602.6, it can't
23 prejudice the other parties. Does anyone have
24 anything they'd like to add to that?

25 COMMISSIONER SHAPIRO: I concur, Mr.

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1 Chair, nothing to add.

2 BZA CHAIR HILL: All right. Okay.

3 VICE CHAIR JOHN: I have nothing to
4 add, Mr. Chair. And I agree with your analysis,
5 in particular the issues that were fully discussed
6 during the hearing. And I agree that there would
7 be prejudice to the other party by granting this
8 motion.

9 BZA CHAIR HILL: Okay. Mr. Smith?

10 MEMBER SMITH: I have nothing else add,
11 Mr. Chairman. And I concur with your opinion.

12 BZA CHAIR HILL: Okay. So, Mr. Moy,
13 I guess we'll go ahead and take a roll call, and
14 Ms. John, I guess I'll ask, but I'm going to go
15 ahead and make a motion to deny the motion to
16 postpone the hearing, and ask for a second, Ms.
17 John.

18 VICE CHAIR JOHN: Second.

19 BZA CHAIR HILL: All right, Mr. Moy,
20 you want to do a roll call?

21 COMMISSIONER SHAPIRO: You're on mute,
22 Mr. Moy.

23 SECRETARY MOY: Strike two. Okay.

24 BZA CHAIR HILL: That's all right.
25 It's better to be on mute, Mr. Moy.

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1 SECRETARY MOY: All right. So when I
2 call your names, if you would please respond with
3 a yes or no to the motion made by Chairman Hill
4 to deny the motion made by the appellant and
5 seconded by Ms. John. Let's see. Zoning
6 Commissioner Peter Shapiro?

7 COMMISSIONER SHAPIRO: Yes.

8 SECRETARY MOY: Mr. Smith?

9 COMMISSIONER SHAPIRO: Yes.

10 SECRETARY MOY: Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 SECRETARY MOY: Chairman Hill?

13 BZA CHAIR HILL: Yes.

14 SECRETARY MOY: Staff will record the
15 vote as four to zero to one. This is on the motion
16 made by Chairman Hill to deny the motion. Seconded
17 by Vice Chair John. In support of the motion, Mr.
18 Smith, Zoning Commissioner Peter Shapiro. We have
19 a board seat vacant. Motion carries, sir.

20 BZA CHAIR HILL: Okay, great. Thanks,
21 Mr. Moy. All right, so that moves us into the
22 deliberation -- oh, no, there's one more issue.
23 So we, at the hearing, had asked the appellant to
24 put in their slide deck, right, because that hadn't
25 been included. And then we asked if anybody had

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1 any -- well, it was really actually the other
2 parties that might have any comments about the slide
3 deck. That's what we were supposed to -- or we
4 were asking about.

5 And what ended up happening is people
6 ended up -- or information was put into the record
7 that we did not ask for. However, rather than
8 kicking it out of the record, I would just go ahead
9 and say we'll go ahead and leave it in the record.

10 But I would ask the Board not to credit any
11 additional arguments that were put into that filing
12 as well as any of the repetitive -- like a lot of
13 the things that were in that filing were things
14 that we had already discussed and already had walked
15 through in terms of whether we thought we were
16 agreeing with the allegations that the zoning
17 administrator had aired.

18 And so I would go ahead and just let
19 that into the record. However, again, ask the
20 board to not credit any additional arguments or
21 information that we had already gone over. Would
22 that be agreeable? And I guess I could just say
23 I see -- and this is where I, again, in the virtual
24 world, Mr. Moy, I don't know if consensus -- I guess
25 for the record, go ahead, Mr. Moy, and take a vote

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1 saying that, you know, we'll go ahead and let that
2 into the record, but not credit any additional
3 information or repetitive information that was put
4 forward.

5 SECRETARY MOY: Yes, thank you, Mr.
6 Chairman. So the motion by Chairman Hill is to
7 allow that exhibit into the record.

8 BZA CHAIR HILL: And just to be
9 technical again -- just to be technical again.
10 So this is where -- and now I'm just asking OAG
11 because this is kind of down to them. So we used
12 to have consensus, right, which you could look
13 around on the dais and people would nod yes or no.
14 We don't really have consensus now necessarily
15 because of this virtual world, or I just say
16 everybody raise your hand, don't raise your hand,
17 nod in agreement.

18 In this case, I will go ahead and make
19 a motion ask and for a second, and then there can
20 be a vote. But I'm just kind of asking you, and
21 I don't necessarily want an answer now. Later you
22 can tell me what you think about this whole
23 consensus thing, okay? So, again, Mr. Moy, Ms.
24 John, I'm going to ask you then since -- if you
25 could help me with this -- I'm going to go ahead

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1 and make a motion to allow into the record the
2 information that I spoke about, but not credit the
3 additional arguments or repetitive arguments that
4 we have already heard and ask for a second, Ms.
5 John.

6 VICE CHAIR JOHN: Second.

7 BZA CHAIR HILL: All right, the motion
8 was made and second. Mr. Moy, you can now take
9 a vote.

10 SECRETARY MOY: All right, so when I
11 call your name if you would please respond with
12 a yes or a no to the motion made by Chairman Hill.
13 Mr. Smith?

14 MEMBER SMITH: Yes.

15 SECRETARY MOY: Zoning Commissioner
16 Peter Shapiro?

17 COMMISSIONER SHAPIRO: Yes.

18 SECRETARY MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 SECRETARY MOY: Chairman Hill?

21 BZA CHAIR HILL: Yes.

22 SECRETARY MOY: Staff will record the
23 vote as four to zero to one, this on the motion
24 to allow into the record made by Chairman Hill,
25 seconded by Ms. John. Also support Mr. Smith and

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1 Zoning Commissioner Peter Shapiro. We have a Board
2 seat vacant. Motion carries four to zero to one.

3 BZA CHAIR HILL: Okay. So now we're
4 actually at the point to discuss the appeal, and
5 I'm going to kind of start a little bit here, and
6 then I'm going to go around again if I'll start
7 with Mr. Shapiro, Ms. John, and then Mr. Smith.
8 So there was a lot of information that we were given
9 in terms of the last hearing. And I think that
10 at the beginning of the hearing, I walked through
11 each of the appellant's arguments, and I did not
12 agree with a variety of claims, or a number of the
13 alleged errors that the appellant had given
14 concerning how the ZA had made an error except for
15 one I guess that I did want to talk about more,
16 702.8.

17 So to go back, again, what we had spoken
18 through was that the Board dismissed the Historic
19 Preservation Act part of the appeal. The Board
20 also dismissed the zoning regulations error from
21 X309.2. We also dismissed the error in X311.1,
22 as well as 311.3. And then what was left with us
23 was the alleged error in 702.7, I'm sorry. Oh,
24 no, 702.8. We did also dismiss the error in 702.7.

25 So what remained was whether or not the

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1 plans conformed or not to what the Zoning
2 Administrator had approved. And, you know, after
3 we heard all of the testimony and looked through
4 everything, I didn't see anything that the
5 appellant had put forward that showed that the plans
6 actually did not conform. And so I don't see how
7 that, you know, the plans do conform, and that the
8 Zoning Administrator didn't make an error.

9 I mean that was the last thing that we
10 had to look at and work through, and I do not believe
11 that the appellant made that argument clear that
12 the plans do not conform. And so I'm going to vote
13 to deny the appeal. And so, Mr. Shapiro, I'm going
14 to start with you if I could.

15 COMMISSIONER SHAPIRO: Thank you, Mr.
16 Chair. I'm going to agree with your analysis.
17 We have come down to just that one issue around
18 do the plans conform under 702.8. There is no
19 evidence that was presented to us that shows any
20 error, any lack of conformity. And I agree with
21 your analysis, and I, too, will be following your
22 lead on this. That's all I have, Mr. Chair.

23 BZA CHAIR HILL: Ms. John?

24 VICE CHAIR JOHN: So, Mr. Chairman, I
25 agree with your analysis and the description of

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1 the claims of error that were dismissed in 09.2,
2 311.1, 311.3, and 702.7, and that the Board consider
3 only 702.8 as really stating the claim. And so
4 I think the section states in part that the ZA shall
5 not approve a permit application unless the plans
6 conform in all respects to the plans approved by
7 the Commission because those plans may have been
8 modified by any guidelines, conditions, or
9 standards that the Commission may have applied.

10 And although, the appellant's initial
11 submissions were deficient, the Board offered the
12 appellant the opportunity to supplement its appeal
13 by identifying the specific error of the ZA. Prior
14 to the hearing on August 5th, the Board again asked
15 the appellant to submit proof that the permit did
16 not conform to plans approved by the Zoning
17 Commission. And although the regulations place
18 the burden of proof on the appellant, the Board
19 requested similar information from DCRA and the
20 property owner.

21 At the hearing, the appellant claimed
22 that the Zoning Administrator erred in issuing
23 the permits because doing so was premature for two
24 reasons. Number one, the approved PUD for the site
25 requires second stage approval of the master plan

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1 by the Zoning Commission before the Zoning
2 Administrator could issue the permits.

3 And also, there is a review of the
4 project pending before the Commission of Fine Arts
5 that the appellant asserts will result in the CFA
6 approving a design that is different from what was
7 approved by the Zoning Commission in the PUD. DCRA
8 and the property owner dispute that appeal was
9 issued prematurely. (Audio interference) -- in
10 Zoning Commission order 13-146

11 BZA CHAIR HILL: Ms. John? Ms. John?

12 I'm sorry to interrupt you. Could you repeat the
13 last like 15 seconds? You kind of jumped out there
14 a second.

15 VICE CHAIR JOHN: Oh. I didn't notice
16 that. So I was reading the two claims that were
17 made at the hearing.

18 BZA CHAIR HILL: No, no, that was
19 perfect.

20 VICE CHAIR JOHN: You heard that?
21 Okay.

22 BZA CHAIR HILL: No, no, please start
23 from there.

24 VICE CHAIR JOHN: Okay. So the
25 allegation was that the approved planned unit

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1 design for the site -- the planned unit development
2 for the site requires second stage approval of the
3 master plan by the Zoning Commission before the
4 Zoning Administrator could issue the permits. And
5 the allegation was also made that there is a review
6 of the project pending before the Commission of
7 Fine Arts that the appellant asserts will result
8 in the Commission of Fine Arts approving a design
9 that is different from what was approved by the
10 Zoning Commission in the PUD.

11 DCRA and the property owner dispute
12 that the permit was issued prematurely. DCRA
13 points to language in Zoning Commission order
14 13-146 at Exhibit 44 which reviewed the McMillan
15 Reservoir PUD site. The order approved
16 consolidated PUD approval parameters including
17 parcel six. It states that the south one-third
18 of the PUD site known as parcel six is to be
19 developed as a park including a 6.2 acre open space
20 with a community center. The order describes the
21 height, GFA density and the amenities of the
22 community center. Therefore, the Zoning
23 Commission approved both the buildings general
24 location on the site, building envelope and more
25 specific design elements.

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1 DCRA also submitted exhibits and
2 testimony showing that the foundation permit the
3 community -- that the foundation permit for
4 community complies with the plans approved by the
5 Zoning Commission for parcel six. And so based
6 on all of that evidence, I don't believe that the
7 foundation permit was issued in error.

8 With respect to the Commission on Fine
9 Arts and any potential changes that could be
10 required by the CFA, those issues are not before
11 the Board. And if at some point there are changes
12 that are within the BZA's jurisdiction, the
13 appellant may raise those issues at that time.

14 And finally, the appellant's claims
15 relating to the demolition permit are beyond the
16 Board's scope because the decision to issue a
17 demolition permit does not involve a decision in
18 carrying out or enforcing zoning regulations. So
19 based on the full record, Mr. Chairman, I would
20 dismiss the appeal.

21 BZA CHAIR HILL: Thank you, Ms. John.
22 Mr. Smith?

23 MEMBER SMITH: After reading through
24 the case, I did not see anything presented by the
25 appellant that the claimant did not conform with

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1 the approved plans and design for the site. I would
2 agree with the analysis of my colleagues from the
3 Board that the Zoning Administrator did not err
4 in his determinations, and I will follow the lead
5 of my colleagues to deny this appeal.

6 BZA CHAIR HILL: Okay. All right.
7 I'm going to make a motion then to deny appeal number
8 20191 as captioned and read by the secretary, and
9 ask for a second, Ms. John.

10 VICE CHAIR JOHN: Second.

11 BZA CHAIR HILL: The motion been made
12 and seconded, Mr. Moy, if you could please take
13 a roll call vote.

14 SECRETARY MOY: Yes, thank you, Mr.
15 Chairman. When I call your name, if you would
16 please respond with a yes or a no to the motion
17 made by the Chairman to deny the appeal. Zoning
18 Commissioner Peter Shapiro?

19 COMMISSIONER SHAPIRO: I vote yes to
20 deny the appeal.

21 SECRETARY MOY: Mr. Smith?

22 MEMBER SMITH: Yes to deny.

23 SECRETARY MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes to deny.

25 SECRETARY MOY: Chairman Hill?

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1 BZA CHAIR HILL: Yes to deny.

2 SECRETARY MOY: The staff will record
3 the vote as four to zero to one, and this is on
4 the motion of Chairman Hill to deny the appeal.
5 Second the motion is Vice Chair John. Also in
6 support Mr. Smith and Zoning Commissioner Peter
7 Shapiro. The motion carries, and we have a board
8 seat vacant, so that's four to zero to one to deny.

9 BZA CHAIR HILL: Okay, thank you, Mr.
10 Moy. Mr. Shapiro, are you with us for the next
11 one? Yeah? Okay, great. Mr. Moy, whenever you
12 ready -- whenever you are ready, you can please
13 read in who our next meeting case.

14 SECRETARY MOY: Yeah. Thank you, Mr.
15 Chairman. Before the Board for a decision is
16 application number 200014-A of Addisleigh Park,
17 Washington Properties, LLC. Mr. Chairman, this
18 is a request for a modification of consequence to
19 the conditions of BZA order number 200014 to allow
20 a redesign and a change in uses in the approved
21 building at premises in -- rather strike that.
22 In the approved building at premises 1803 Rhode
23 Island Avenue Northeast. This is in the MU-4 zone,
24 Square 4209, Lot 5.

25 BZA CHAIR HILL: Okay. Are we all

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1 ready? Okay? All right, so this is, again, a
2 modification of consequence, and it is basically
3 to eliminate the first and second floor mezzanines
4 and penthouse, provide the option for office use
5 on the second floor, eliminate the penthouse bar,
6 and introduce two residential uses. Basically,
7 they seem to be, you know, they're reducing the
8 massing and they're reducing the scale and scope
9 of the building, so therefore also reducing the
10 relief I think that is being requested.

11 The Office of Planning has provided
12 their report and analysis in support. DDOT had
13 provided a report and asked for a condition against
14 the applicant shall implement the transportation
15 damage management and loading management plans
16 approved by the original order. However, I believe
17 that that's actually already in the original order
18 so we don't have to now add that as a condition
19 to this modification, although I guess we could
20 just cite the original conditions from DDOT. And
21 I guess I will actually cite the original conditions
22 from DDOT unless OAG has some issue with that.
23 And then, also, the ANC has filed a report in support
24 of the modification.

25 So, again, since they're decreasing the

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1 relief for this modification, I don't really
2 particularly have a whole lot of issues with it.

3 Also, actually since I was on the original case,
4 I remember the case itself. So I'm going to be
5 voting in favor of the modification. Mr. Shapiro,
6 could I start with you?

7 COMMISSIONER SHAPIRO: Yes, you can,
8 Mr. Chair. I really don't have anything further
9 to add. The ANC has no concerns. OP's in support.
10 The DDOT condition, as you said, is already in
11 the original order. I have no concerns with this
12 at all. And that's all I have, Mr. Chair.

13 BZA CHAIR HILL: Ms. John?

14 VICE CHAIR JOHN: I have no issues with
15 this request, Mr. Chairman, so I would be able to
16 support the application.

17 BZA CHAIR HILL: Mr. Smith?

18 MEMBER SMITH: I have no issues with
19 this request. The ANC is in support, and the
20 project will have less of an impact on the
21 surrounding neighborhood, so I would support.

22 BZA CHAIR HILL: Okay. And, Ms. Cain,
23 I mean I don't even -- it doesn't matter whether
24 I mentioned the OAG, I mean the DDOT conditions
25 or not?

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1 MS. CAIN: I think you would be okay
2 saying that the project will remain subject to the
3 conditions of the original order, and that will
4 encompass any DDOT conditions and any other
5 conditions as well.

6 BZA CHAIR HILL: Okay. All right.
7 I'm going to make a motion then to approve
8 application number 20014-A as captioned and read
9 by the Secretary including as mentioned the
10 original conditions from DDOT concerning the
11 transportation demand management plan and
12 transportation loading -- or unloading management
13 plan, and ask for a second, Ms. John.

14 VICE CHAIR JOHN: Second.

15 BZA CHAIR HILL: The motion been made
16 and seconded. Mr. Moy, could you please take a
17 roll call vote? You're on mute, Mr. Moy.

18 SECRETARY MOY: Sorry, I apologize.

19 BZA CHAIR HILL: That's all right.

20 SECRETARY MOY: Let's see, where was
21 i? When I call your names if you would each respond
22 with a yes or no to the motion made by Chairman
23 Hill to approve the request for a modification of
24 consequence. And for clarity in case I misread
25 the caption, this is in the MU-4 zone at premises

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1 1803 Rhode Island Avenue Northeast, Square 4209,
2 Lot 5. So Zoning Commissioner Peter Shapiro?

3 COMMISSIONER SHAPIRO: Vote yes.

4 SECRETARY MOY: Mr. Smith?

5 MEMBER SMITH: Yes.

6 SECRETARY MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 SECRETARY MOY: Chairman Hill?

9 BZA CHAIR HILL: Yes.

10 SECRETARY MOY: Staff would record the
11 vote as four to zero to one, and this is to the
12 motion made by the chairman to grant the request
13 for a modification of consequence, seconded by Vice
14 Chair John. Also in support, Mr. Smith and Zoning
15 Commissioner Peter Shapiro. We have a board seat
16 vacant. The vote count is four to zero to one.

17 BZA CHAIR HILL: All right, great.
18 Thank you, Mr. Moy. I lost Ms. John it looks like.

19 VICE CHAIR JOHN: Oh, I'm sorry, I was
20 reading.

21 BZA CHAIR HILL: No, that's fine. I
22 don't even see the square.

23 VICE CHAIR JOHN: Oh, okay. Let's try
24 again.

25 BZA CHAIR HILL: I can hear you.

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1 VICE CHAIR JOHN: Oh, I was let back
2 in. That's fine.

3 BZA CHAIR HILL: Okay. Well, I can
4 still hear you, but I can't see you. There we go.

5 VICE CHAIR JOHN: Thank you.

6 BZA CHAIR HILL: Thank you. We're
7 pretending we're being together. This is like,
8 you know, this is all pretend. All right, Mr. Moy
9 can read in for our next one.

10 SECRETARY MOY: Yes. Thank you, Mr.
11 Chairman. So before the Board for decision is
12 application number 14096-C, the Wilson NPB LLC.
13 This is the applicant's request for a two-year time
14 extension for BZA order number 14096-B approving
15 a special exception under the zoning regulations
16 of 1958 from the unused bonus density requirements
17 under Section 768 which would permit the interior
18 renovation of an existing building in the D-7 zone
19 district which was formerly DD/C-5 zone district.

20 This is at premises 529 14th Street Northwest,
21 Square 254, Lot 53.

22 BZA CHAIR HILL: Okay, Are we all
23 ready?

24 VICE CHAIR JOHN: Yes.

25 BZA CHAIR HILL: Okay. All right, I

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1 can start. So this is, again, for a time extension,
2 a two-year time extension, and the argument the
3 applicant had given was that due to vacancy rates
4 and the Covid pandemic they're in a need of a time
5 extension. I mean after reviewing the record and
6 also the analysis that was provided by the Office
7 of Planning I didn't really have an issue with the
8 time extension.

9 The ANC was served and they didn't
10 respond to anything in terms of the time extension,
11 and so they've had time to respond. I assume since
12 they didn't respond, they didn't have an issue with
13 it. But I do believe that, again, they have been
14 served and they have had time to respond. However,
15 again, I think that the applicant is making a good,
16 valid reasoning for the time extension. So I'm
17 going to vote to approve. Mr. Shapiro? Oh, Mr.
18 Moy?

19 SECRETARY MOY: Thank you, Mr.
20 Chairman. I forgot to add that, as you recall,
21 the applicant actually filed I believe yesterday
22 within that 24 hour period a supplemental
23 statement. But also attached to that supplemental
24 statement is a waiver request. Yeah.

25 BZA CHAIR HILL: Okay, hold on.

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1 SECRETARY MOY: This is that 24 hour
2 period that this was filed. But the applicant did
3 file a request for a waiver of that time limit.

4 BZA CHAIR HILL: Okay. Hold on one
5 second.

6 SECRETARY MOY: OAG is on the lines of
7 that he can waive and --

8 BZA CHAIR HILL: No, that's all right.

9 I'm just quickly -- I mean it might have been about
10 to get approved, so that's why I'm just trying to
11 look at this real quick. I don't have any issues
12 with allowing it into the record, and the way we're,
13 you know, I mean allowing it into the record. So
14 unless my colleagues do, and you can tell me as
15 you're kind of going around, whether or not you
16 have any issues allowing it into the record. Mr.
17 Shapiro, you want to speak to the case?

18 COMMISSIONER SHAPIRO: Sure, Mr.
19 Chair. I have no concerns with allowing it into
20 the record, and I agree with your analysis on this.

21 The agency would serve the, you know, the rationale
22 for the relief sought is clear. And so I will be
23 supporting their request for the time extension.

24 BZA CHAIR HILL: Okay, Ms. John?

25 VICE CHAIR JOHN: I concur. I don't

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1 have any concerns.

2 BZA CHAIR HILL: Okay. Mr. Smith?

3 MEMBER SMITH: I concur. I don't have
4 any concerns, the ANC was served. I will also say
5 that the ANC also supported the original approval
6 for this exact same request. So I have no concerns.

7 BZA CHAIR HILL: Okay. Great. Thank
8 you for pointing that out, Mr. Smith. So I'm going
9 to make a motion to approve application number
10 14096-C as Charlie as captioned and read by the
11 Secretary and ask for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 BZA CHAIR HILL: The motion been made
14 --

15 (Simultaneous Speaking)

16 COMMISSIONER SHAPIRO: Mr. Chair, a
17 discussion?

18 BZA CHAIR HILL: Sure, Mr. Shapiro.

19 COMMISSIONER SHAPIRO: Are we allowing
20 the additional filing into the record, and do we
21 need to do something formal to make sure that
22 happens?

23 BZA CHAIR HILL: I think we can just
24 allow it in to the record.

25 COMMISSIONER SHAPIRO: Okay.

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1 BZA CHAIR HILL: And so we'll go ahead
2 and allow it into the record, and then the approving
3 the waiver unless OAG is going to raise their hand.

4 And so I'm going to go ahead and make a motion
5 again to approve application number 14096-C as in
6 Charlie, and again, ask for a second, Ms. John?

7 VICE CHAIR JOHN: Second.

8 BZA CHAIR HILL: The motion been made
9 and seconded. All those in favor -- oh, Mr. Moy,
10 could you please take a roll call vote? Thank you.

11 SECRETARY MOY: Yes, thank you, Mr.
12 Chairman. So when I call your names if you would
13 please respond with a yes or no to the motion made
14 by Chairman Hill to grant the request for a two-year
15 time extension. Zoning Commissioner Peter
16 Shapiro?

17 COMMISSIONER SHAPIRO: Yes.

18 SECRETARY MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 SECRETARY MOY: Vice Chair John?

21 VICE CHAIR JOHN: Yes.

22 SECRETARY MOY: Chairman Hill?

23 BZA CHAIR HILL: Yes.

24 SECRETARY MOY: Staff would record the
25 vote as four to zero to one, and this is on the

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1 motion of Chairman Hill to, again, grant the request
2 for a two-year time extension to BZA order number
3 14096-B. Second the motion is Vice Chair John.
4 Also in support Mr. Smith and Zoning Commissioner
5 Peter Shapiro. Motion carries, sir. We have a
6 board seat vacant, but the vote count is four to
7 zero to one.

8 BZA CHAIR HILL: Okay. All right,
9 great. Mr. Shapiro, is that it for you?

10 COMMISSIONER SHAPIRO: I think I'm
11 back later. I think Commissioner Hood is on for
12 two cases, and then I'm back.

13 BZA CHAIR HILL: Okay.

14 COMMISSIONER SHAPIRO: Is that right,
15 Mr. Moy?

16 BZA CHAIR HILL: Okay. And then we'll
17 see you when we see you.

18 ZC CHAIR HOOD: Good morning,
19 everyone.

20 BZA CHAIR HILL: Morning, Chairman
21 Hood.

22 VICE CHAIR JOHN: Chairman Hood.

23 ZC CHAIR HOOD: Let me say this, Mr.
24 Chairman, if you would indulge me. I'm having some
25 connectivity issues. I think I'm okay now, but

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1 if I drop off, I'll be coming back shortly. Also,
2 I want to -- if you all don't mind, I want to also
3 welcome Board Member Smith. He brings a wealth
4 of knowledge, and looking forward to working with
5 him and learning from him at the same time. So
6 welcome. Thank you, Mr. Chairman.

7 BZA CHAIR HILL: Thank you.

8 MEMBER SMITH: Thank you, Chairman
9 Hood, for those kind words.

10 ZC CHAIR HOOD: And that was on behalf
11 of the Zoning Commission, so I wanted to make sure
12 that's noted. I'm sure all of my colleagues
13 concur. Okay.

14 BZA CHAIR HILL: All right. Mr. Moy,
15 if you want to read in our next one?

16 SECRETARY MOY: Thank you, Mr.
17 Chairman. Yes. So the next in -- yeah, it's the
18 last case for decision is application number 20184
19 of Fort Lincoln-Eastern Avenue, LLC. This
20 application is as amended for special exceptions
21 under the theoretical lot subdivision requirements
22 of Subtitle C, Section 305.1, and under the new
23 residential development requirements, Subtitle U,
24 Section 421 to allow a new residential development
25 project with 51 townhouses in the RA-1 and RA-4

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1 at premises bounded between Eastern Avenue
2 Northeast, Bladensburg Road Northeast, and Fort
3 Lincoln Drive Northeast, Square 4325, Lots 802 and
4 44, and Parcel 0174/15. This was last heard at
5 the Board's public hearing on July the 1st.

6 BZA CHAIR HILL: Okay, great. Thank
7 you. All right, so are we already to deliberate
8 unless you raise your hand no, I'll say yes. Okay.

9 So I can begin. I mean this was a pretty long
10 hearing that we had, and there was both support
11 and opposition for the project. The Office of
12 Planning has filed their record in support. The
13 ANC has voted seven to zero in support of the project
14 as well as the Pine View Association voted in
15 support. DDOT didn't have any objection. There
16 was a party status for a FLCA that had issues and
17 concerns about the project.

18 When I went back over the record to
19 review the case, I went back and looked at the Office
20 of Planning's report, and that some of the
21 highlights were that the project would provide a
22 substantial amount of defensible open space.
23 There were no district agencies that found that
24 the project would have an unacceptable impact on
25 District services. And the applicant provided all

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1 of the required plans and information, and was in
2 compliance with all other applicable zoning
3 regulations which then did lead them, the Office
4 of Planning, to vote in support of the project.

5 With the DDOT report, DDOT did not think
6 that it triggered for a comprehensive
7 transportation review, or a traffic impact
8 analysis. They did state that the project would
9 require a slight distance analysis for the new curb
10 cut to Eastern Avenue, and that will be at the time
11 of the public space permitting. We, the Board,
12 did ask for more information about the traffic
13 study, and we did get that information and I had
14 an opportunity to review that as well.

15 The ANC, as I mentioned, some of their
16 highlights in the report was that the ANC considered
17 the changes to the plans to be minor, and does not
18 believe that the project will result in any undo
19 impact to the neighborhood. And then they were
20 also hoping that the applicant will need to continue
21 to have public meetings during the construction
22 period to continue to have community involvement.

23 And I would encourage the applicant if this were
24 to pass to continue to reach out to the community
25 to try to alleviate any concerns the community might

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1 have during construction, and they could do that,
2 I guess, through the ANC.

3 So again, after reviewing the record
4 as well as all of the information that was provided,
5 I do believe that the applicant has presented their
6 case in a way that I could support it, and that
7 they have met the criteria for us to grant the
8 application. So I am going to be voting in favor
9 of the application. I'm going to go around the
10 table if I could and start with you, Chairman Hood,
11 as far as your analysis.

12 ZC CHAIR HOOD: Thank you, Mr.
13 Chairman. I would agree. Exhibit 44 was the party
14 status application which brought up the adverse
15 impacts and the concerns about traffic which was
16 one of the things that I mentioned which was brought
17 out into the record. I would just say that I think
18 that everything could be mitigated with the
19 restriping, with the lane changes, with the signals
20 of changing. So I am very satisfied with the
21 mitigation methods that have been put in place.
22 Also, under Exhibit 80 the applicant's response,
23 I think all those responses can be mitigated. So
24 I'm satisfied and will be voting in support of this
25 application.

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1 BZA CHAIR HILL: Okay, great. Thank
2 you, Mr. Hood. Ms. John?

3 VICE CHAIR JOHN: So I agree with all
4 of the comments so far. I agree that the most
5 significant issue was the traffic impacts. And
6 I believe that the Board was well within its
7 jurisdiction to request additional information
8 when the FLCA and its members brought up those
9 concerns at the hearing. And so I thought the
10 responses from DDOT, those responses were very
11 helpful in helping me to resolve that issue.

12 There is also the question of whether
13 or not the FLCA should have been allowed to
14 cross-examine the written rebuttal. And I don't
15 believe that the regulations provide the right to
16 cross-examine rebuttal arguments which seems to
17 be what FLCA was putting forward. So I thought
18 that it was significant that the Pine View
19 Association was in support, and that they had come
20 to an agreement in terms of things like adding a
21 gate to prevent authorized parking and other
22 potential impacts. So based on the full record,
23 I agree with the comments so far, and I can support
24 the application.

25 BZA CHAIR HILL: Thank you, Ms. John.

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1 Mr. Smith?

2 MEMBER SMITH: I will note for the
3 record that I've read into this case and have been
4 thoroughly briefed on this matter. In reading into
5 the case I believe the proposal does comply with
6 the intent of the special exception criteria, and
7 the applicant has demonstrated sufficient
8 mitigation of adverse impacts on the surrounding
9 neighborhoods and development. The Pine View
10 Civic Association has voted in support of this
11 requested proposal, and I concur with my
12 colleagues. I would vote to support this approval.

13 BZA CHAIR HILL: Okay, thank you, Mr.
14 Smith. I'm going to go ahead and make a motion
15 then to approve application number 20184 as
16 captioned and read by the Secretary, and ask for
17 a second, Ms. John?

18 VICE CHAIR JOHN: Second.

19 BZA CHAIR HILL: Mr. Moy, the motion
20 been made and seconded, could you please take a
21 roll call vote?

22 SECRETARY MOY: Yes, thank you, Mr.
23 Chair. So when I call your name, if you would
24 please respond with a yes or no to the motion made
25 by Chairman Hill to approve the application which

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1 was seconded by Vice Chair John. Zoning Commission
2 Chair Anthony Hood?

3 ZC CHAIR HOOD: Yes.

4 SECRETARY MOY: Mr. Smith?

5 MEMBER SMITH: Yes.

6 SECRETARY MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 SECRETARY MOY: Chairman Hill?

9 BZA CHAIR HILL: Yes.

10 SECRETARY MOY: Staff will record the
11 vote as four to zero to one. And, again, this is
12 to the motion made by Chairman Hill to approve the
13 application for the relief being requested,
14 seconded by Vice Chair John. Also in support,
15 Zoning Commission Chair Anthony Hood and Mr. Smith.

16 We have a board seat vacant. The vote count is
17 four to zero to one. The motion carried, sir.

18 BZA CHAIR HILL: Okay, great. Thank
19 you, Mr. Moy. If it's all right with the Board,
20 what I would suggest is I'm going to go ahead and
21 read into the hearing the materials that I need
22 to read into the hearing, and then we'll just take
23 a quick break because it's kind of a nice spot to
24 break here. And then we'll come back for our
25 hearing cases. So I'm going to go ahead and read

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1 into the hearing session.

2 (Whereupon, the above-entitled matter
3 was concluded at 10:35 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 09-16-20

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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