

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JANUARY 12, 2022

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:37 a.m. EST, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROB MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on January 12, 2022.

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

2 9:36 a.m.

3 VICE CHAIR JOHN: Good morning, ladies and
4 gentlemen. The Board of Zoning Adjustment's January 2021
5 public hearing will please come to order. My name is Lorna
6 John. I'm the Vice Chairperson of the District of Columbia
7 Board of Zoning Adjustment. Joining me today are Board
8 members Carl Blake, Chrishaun Smith, and Zoning Commissioner
9 Rob Miller.

10 Today's meeting and hearing agendas are available
11 on the Office of Zoning website. Please be advised that this
12 proceeding is being recorded by a court reporter and is also
13 webcast live via Webex and YouTube Live. The video of the
14 webcast will be available on the Office of Zoning's website
15 after today's hearing. Accordingly, everyone who is
16 listening on Webex or by telephone will be muted during the
17 hearing. Also, please be advised that we do not take any
18 public testimony at our decision-making sessions.

19 If you experience difficulty accessing Webex or
20 with your telephone call-in, then please call our OZ hotline
21 number at 202-727-5471, again, 202-727-5471, to receive a
22 Webex log-in or call-in instructions.

23 At the conclusion of the decision meeting, I
24 shall, in consultation with the Office of Zoning, determine
25 whether a full or summary order may issue. A full order is

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

7 In today's hearing session, everyone who is
8 listening on Webex or by telephone will be muted during the
9 hearing and only persons who have signed up to participate
10 or testify will be unmuted at the appropriate time. Please
11 state your name and home address before providing oral
12 testimony or your presentation. Oral presentations should
13 be limited to a summary of your most important points. When
14 you're finished speaking, please mute your audio so that your
15 microphone is no longer picking up sound or background noise.

16 Once again, if you experience difficulty accessing
17 Webex or with your telephone call-in or if you've forgotten
18 to sign up 24 hours prior to this hearing, then please call
19 our OZ hotline number at 202-727-5471 to sign up to testify
20 and to receive Webex log-in or call-in instructions.

21 All persons planning to testify, either in favor
22 or in opposition, should have signed up in advance. They
23 will be called by name to testify. If this is an appeal,
24 only parties are allowed to testify. By signing up to
25 testify, all participants completed the oath or affirmation,

1 as required by Subtitle Y, Section 408.7.

2 Request to enter evidence at the time of an online
3 virtual hearing, such as written testimony or additional
4 supporting documents, other than live video which may not be
5 presented as part of the testimony, may be allowed through
6 Subtitle Y, Section 103.13, provided that the person making
7 the request to enter an exhibit explains how the proposed
8 exhibit is relevant, the good cause that justifies allowing
9 the exhibit into the record, including an explanation of why
10 the requester did not file the exhibit prior to the hearing,
11 pursuant to Subtitle Y 206, and how the proposed exhibit
12 would not unreasonably prejudice any party.

13 The order of procedures with special exceptions
14 and variances, pursuant to Subtitle X 49 will be as follows:
15 preliminary and procedural matters, statement of the
16 applicant and the applicant's witnesses, reports and
17 recommendations from D.C. Office of Planning, reports and
18 recommendations from other public agencies, reports and
19 recommendations from the affected Advisory Neighborhood
20 Commission, and the ANC's witnesses, if any, for the area
21 within which the property is located, individuals and
22 organization representatives in support of the application,
23 parties in opposition to the application, individuals and
24 organization representatives that take no position to the
25 application, individuals and organization representatives who

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1 are undeclared with respect to the application, rebuttal and
2 closing statements by the applicant.

3 Pursuant to Subsections Y, 408.2, the following
4 time constraints shall be maintained: the applicant,
5 appellant, and all parties, except an affected ANC, in
6 support, including witnesses, exclusion of cross-examination,
7 maximum of 60 minutes collectively; the appellee persons and
8 parties, except an affected ANC, in opposition, including
9 witnesses collectively, of an amount of time equal to that
10 of the applicant and parties in support, but in no case more
11 than 60 minutes collectively; individuals, max of 3 minutes;
12 organization representatives, maximum of 5 minutes. These
13 time constraints do not include cross-examination or
14 questions from the Board. Cross-examination of witnesses by
15 the applicant or parties, including the ANC, are permitted.

16 The ANC within which the property is located is
17 automatically a party in a special exception or variance
18 case. Nothing prohibits the Board from facing reasonable
19 restrictions on cross-examination, including time limits and
20 limitations on the scope of cross-examination, pursuant to
21 Subtitle Y, Section 408.5.

22 At the conclusion of each case, an individual who
23 was unable to testify because of technical issues may file
24 a request for leave to file a written version of the planned
25 testimony to the record within 24 hours following the

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1 conclusion of public testimony in the hearing. If additional
2 written testimony is accepted, then parties will be allowed
3 a reasonable time to respond, as determined by the Board.
4 The Board will then make its decision at its next meeting
5 session but not earlier than 48 hours after the hearing.

6 Moreover, the Board may request additional
7 specific information to complete the record. The Board and
8 the staff will specify at the end of the hearing exactly what
9 is expected and the date when persons must submit the
10 evidence to the Office of Planning. No other information
11 shall be accepted by the Board.

12 Once again, after the Board adjourns the hearing,
13 the Office of Zoning, in consultation with me, will determine
14 whether full or summary order may issue. A full order is
15 required when the decision it contains is adverse to a party,
16 including an affected ANC. A full order may also be needed
17 if the Board's decision differs from the Office of Planning's
18 recommendation. Although the Board favors the use of summary
19 orders whenever possible, an applicant cannot request the
20 Board to issue such an order.

21 Finally, the District of Columbia Administrative
22 Procedure Act requires that the public hearing on each case
23 be held pursuant to Section 405(b) and 406 of that act. The
24 Board may, consistent with its rules of procedure in the Act,
25 enter into a closed meeting on a case for purposes of seeking

1 legal counsel on a case, pursuant to D.C. Official Code
2 Section 2-575(b)(4), and/or deliberating on a case, pursuant
3 to D.C. Official Code Section 2-575(b)(13), but only after
4 providing the necessary public notice and in the case of an
5 emergency closed meeting after taking a roll call.

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

7 Mr. Secretary, are you here?

8 MR. MOY: Yes, I am. Good morning, Madam Vice
9 Chair, members of the Board. It's January, so the Board is
10 back after a holiday recess, and I imagine the Board is ready
11 to go.

12 Very briefly, since I have the table, two really
13 quick items, Madam Vice Chair. The first is Case Application
14 Number 20599 of Stephanie Glier and Brandon Woodward Glier,
15 trustees, has been postponed, this application has been
16 postponed and continued to March 23rd, 2022.

17 My only other item, Madam Vice Chair, is that the
18 public notice for closed meetings for the next six months is
19 for Board action. I'm going to tee that up for you at the
20 end of today's docket.

21 Other than that, that's all I have.

22 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy. Can
23 you call the first case, please?

24 MR. MOY: Okay. On the Board's docket today are
25 four items on its Public Meeting session. The first is a

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1 request for advanced party status in opposition from the
2 Friends of the Field, and this is Application Number 20643
3 of The Maret School.

4 This application, Madam Vice Chair, is captioned
5 and advertised for special exceptions from the matter-of-
6 right uses, Subtitle U, Section 201, pursuant to Subtitle U,
7 Section 203.1(m), and Subtitle X, Section 901.2, and the
8 parking location restriction, Subtitle C, Section 710.2,
9 pursuant to Subtitle C, Section 710.3, and Subtitle X,
10 Section 901.2. This would permit a private school use in a
11 R-1-B zone. The property is located at part of 5901 Utah
12 Avenue, N.W., Square 2319, Lot 832.

13 I believe that's all I have for now.

14 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young,
15 would you let the parties in, please?

16 MR. DONOHUE: Good morning, Madam Chair. Ed
17 Donohue on behalf of the respective party.

18 VICE CHAIR JOHN: Good morning again. So before
19 we get started, I need to state that I will not be
20 participating in this case because I have a family member who
21 is a student at Maret. And so this proceeding will be
22 conducted by Board Member Blake, and I will rejoin the
23 hearing for the next case.

24 So I'll be turning my video off to signal I'm not
25 participating, and I'll see you all in a few minutes.

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1 MEMBER BLAKE: Okay. Thank you very much, Vice
2 Chair John. Good morning, everyone. Let's see. Is the
3 applicant here? Mr. Tummonds, I believe. Okay. And is
4 there an ANC representative? Is there an ANC representative?
5 You're on mute.

6 MR. TUMMONDS: Paul Tummonds on behalf of the
7 applicant, The Maret School.

8 MEMBER BLAKE: Okay. Is the ANC present? Okay.
9 I'll assume not.

10 Mr. Donohue, in reviewing the application, I had
11 some questions regarding the nature, forming, and composition
12 of the organization. It's a fairly large group. We have a
13 signed letter by Nancy Oisen, I believe, on behalf of the
14 Friends of the Field. However, other than the statement in
15 Exhibit 25 that the Friends of the Field represents nearly
16 200 neighbors, the Board doesn't have any indication of who
17 the members of this party are and whether they authorized the
18 request.

19 Could you please provide some specifics on the
20 membership and its scale relative to the community? For
21 example, the request states that around 46 houses surround
22 the ECC grounds on these four streets. How many of those
23 households are members of the Friends of the Field? Would
24 you address this question and then clarify why you believe
25 the Board should grant your client party status?

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1 MR. DONOHUE: Thank you, Mr. Blake. Page two of
2 our request for party status, we attempted to address the
3 size of the group and also the proximity to the project.
4 This is a large area, it's a large parcel; it's over five
5 acres. So as identified, there are over 200 members of
6 Friends of the Field who have been participating in its
7 application since its filing, and they are located on 28th
8 Street, on Utah, specifically on Nebraska right across from
9 the post parking location, across the alley on Rittenhouse
10 Street, and interspersed throughout the neighborhood.

11 We've had a series of meetings with the ANC.
12 Maret, as an applicant, has hosted a number of calls, and our
13 group has been participating throughout. We did not want to
14 identify by name, but we can certainly provide a list of
15 representative neighbors if you'd like.

16 With respect to authorization, Ms. Oisen signed
17 the application, co-signed it with me, and she's a duly
18 authorized officer of Friends of the Field. So we feel like
19 we've met the regulations; but, if you'd like, we can
20 supplement and provide some of the names, we're not going to
21 provide all 200, but we can certainly do that. We can
22 provide the officers if you'd like.

23 MEMBER BLAKE: Okay. Do any other Board members
24 have questions about this particular issue?

25 MEMBER SMITH: Mr. Donohue, you stated that

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1 Friends of the Field have been participating in discussions.
2 Could you elaborate on what participating means? Can you
3 elaborate on that a little bit more?

4 MR. DONOHUE: Sure. And I know Paul Tummonds is
5 on the call on behalf of Maret, but the school has hosted a
6 number of online sessions, as recently as this week. They
7 hosted a call with a councilwoman from Ward 4. They've done
8 a number of what they're calling office hours in order to try
9 to share information, and our group has participated
10 throughout. There was a meeting of the ANC that went a
11 couple of hours on Monday night, and our group was part of
12 the resources that the ANC used as speakers to ANC.

13 Finally, the ANC has convened a working group, I
14 guess, and there are approximately six people from the
15 community identified as part of this working group, and I
16 think the Friends are three of the six. So we are deeply
17 involved in this case and have been from its inception.

18 MEMBER SMITH: The three members that you state
19 that are part of Friends of the Field, are they participating
20 in their capacity as members of Friends of the Field or they
21 were selected because they are members of the larger
22 community?

23 MR. DONOHUE: Well, I believe they were selected
24 as part of their role in Friends of the Field, but I guess
25 you'd have to ask the chair of the ANC.

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1 MEMBER SMITH: Okay. Thank you, Mr. Blake.

2 MEMBER BLAKE: Okay. Commissioner.

3 COMMISSIONER MILLER: Thank you, Mr. Blake. I
4 think you said, Mr. Donohue, that you could provide a
5 representative sample of names of adjacent neighbors. I
6 think that would be helpful, names and addresses. Other than
7 that, I have no concerns with, I don't think I have any
8 concerns with this request.

9 I would ask, Mr. Tummonds, does the applicant have
10 any -- well, I guess that's really, I don't mean to step on
11 the Chair's role here, but does the applicant have any
12 opposition or concern about the party status request?

13 MR. TUMMONDS: Mr. Blake, Chairman Blake, would
14 you like me to answer that question?

15 MEMBER BLAKE: I would. I do have one comment,
16 but, please, go ahead. Why don't you answer the question?

17 MR. TUMMONDS: Yes, the applicant -- thank you
18 very much for the time. Mr. Donohue is correct. Maret's
19 representatives have had significant dialogue with numerous
20 members of the community, including members of his group.
21 The applicant has no objection to Mr. Donohue's group being
22 granted party status in this case, and we will continue to
23 reach out to work with them, hopefully come to resolution on
24 a number of the issues well in advance of March 9th.

25 MEMBER BLAKE: Thank you, Mr. Tummonds. Mr.

1 Donohue, I've looked over the filings, and it provides the
2 Board with little specific information about the membership
3 of the group, and you have indicated your willingness to
4 provide samples of that. Obviously, this is a dynamic
5 situation. You're in dialogue with the ANC and with Maret,
6 the applicant, about the project.

7 Obviously, such a large group of 200 people, over
8 time, as the people become more familiar with it, they may
9 change their minds and become, you know, actually supportive
10 of it, so I can understand that it would be difficult to do
11 at this point. But Subtitle Y 404.1(g) specifies that when
12 a party status request is made by an association or similar
13 entity, the request must include proof that the entity
14 authorized the person filing the request to do so. And
15 Subtitle Y 200 states that any person or party may be
16 represented by any other person duly authorized in writing
17 to do so.

18 So in the context of that, it would be beneficial,
19 recognizing it's a dynamic situation, that at the beginning
20 of the public hearing on March 9th I'd like to see an update
21 of a map or illustration of location of where the friends and
22 family people live in relation to the proposed athletic
23 grounds, as well as some more specific information about the
24 membership, especially relating to the number of people that
25 remain in opposition at that time. It's important for us to

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1 be able to understand the magnitude of opposition. If it's
2 5 people, if it's 50 people, if it's 200 people, it matters.
3 So I would ask that you provide that at the time, recognizing
4 it's a dynamic situation and it would be difficult to do that
5 today.

6 Would you be -- and also would the Board members
7 have any issues with that stipulation?

8 MR. TUMMONDS: I wholeheartedly agree to that
9 position.

10 MEMBER BLAKE: Commissioner.

11 COMMISSIONER MILLER: I'm good, I'm good.

12 MEMBER BLAKE: Would the ANC be comfortable with
13 that approach? The ANC is not here. The applicant. Okay.
14 Mr. Drummond, do you understand what I just said there?

15 MR. DONOHUE: Mr. Blake, it's Donohue, but that's
16 fine. I'd just call your attention to the fact that Nancy
17 Oisen signed the form and also signed the letter of
18 authorization that's dated December 15, 2021, and it clearly
19 authorizes this room to act on behalf of Friends of the
20 Field. You've asked for greater specificity prior to March
21 9th, and that's fine; but authorization is documented.

22 MEMBER BLAKE: That's fine. I was mentioning it
23 in two parts. But the bigger issue to me is the actual
24 membership because we, again, would like to be able to gauge
25 who is, in fact, in opposition with the magnitude of the

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1 group at that time. And I can understand today we've got
2 200-plus or more people, and I'm not sure if it's people,
3 homes, neighbors, what have you. But the fact is you do
4 need, at some point we need to be able to identify who is
5 being represented by this group. If it were the ANC, we'd
6 know it was an established community group. This is an ad
7 hoc group, I believe. So if it was established community
8 group, we'd pretty much know what the representation was.
9 But in this case, you have made clear statements about the
10 location of the members of the group, and those locations do
11 definitely justify, an argument can be made for party status
12 based on those locations. But at the end of the day, we need
13 to have an idea who is being represented and the magnitude
14 of that representation.

15 MR. DONOHUE: We'll provide it. We'll provide it
16 well in advance of the hearing in March.

17 MEMBER BLAKE: Thank you very much. So that being
18 said, does anyone else have any other questions on the Board?
19 Okay.

20 So I would be actually in support, based on the
21 information that we've received here today, and my reasoning
22 is as follows: the requester has complied with the procedural
23 requirements of Subtitle Y, 404.1, and the specific
24 information represented qualifies that he's a party. All of
25 the filings have been timely. The close proximity of its

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1 members to the field, many of whom are located within 200
2 feet of the subject property and include residents of
3 adjacent and abutting properties, and the potential
4 environmental, economic, social impacts raised which include
5 environmental effects, noise, increased traffic volumes,
6 safety concerns, parking, and the aesthetic impact on
7 neighborhood character, I believe the person of this group
8 and, therefore, the group requesting a party status has
9 clearly demonstrated that its interest would be likely more
10 significantly, distinctively, or uniquely affected in
11 character or kind by the proposed zoning action than those
12 other persons in the general public.

13 I also note that the applicant has not objected
14 to, no one has objected, actually, to the request for party
15 status, either the ANC or the applicant. And, therefore, I
16 would be comfortable supporting the request.

17 Would I like to have any other comments from our
18 Board members, any other things you'd like to add?

19 COMMISSIONER MILLER: I would concur with you,
20 Board Member Blake, with granting the party status and
21 encourage the parties to continue to talk and work together
22 and hopefully reach a resolution prior to the BZA hearing,
23 which I may not be the participating member that day. I'm
24 not sure that I am. But, anyway, I concur with the request.

25 MEMBER BLAKE: Thank you. Mr. Smith.

1 MEMBER SMITH: With that, I would support it. And
2 I will also state that I, too, would like to see the list of
3 members of the Friends of the Field so that we can understand
4 the scope of participation in the organization in opposition.

5 MEMBER BLAKE: With that, I would like to make a
6 motion to grant the advanced party status request as read by
7 the Secretary and ask for a second. Mr. Smith.

8 MEMBER SMITH: Second.

9 MEMBER BLAKE: Mr. Moy, would you please take a
10 roll call?

11 MR. MOY: With that, when I call each of your
12 names, if you would please respond with a yes, no, or abstain
13 to the motion made by Mr. Blake to grant the request for
14 advanced party status to the Friends of the Field. This
15 motion was seconded by Mr. Smith and, along with the motion
16 to grant, it also included, I believe, the requirements as
17 stated by Mr. Blake to be filed into the record prior to the
18 March 9th hearing.

19 Zoning Commissioner Rob Miller.

20 COMMISSIONER MILLER: Yes.

21 MR. MOY: Mr. Smith.

22 MEMBER SMITH: Yes.

23 MR. MOY: Mr. Blake.

24 MEMBER BLAKE: Yes.

25 MR. MOY: We have one Board member not present,

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1 not participating, and another Board member who is not
2 participating on this vote. Staff will record the vote as
3 3 to 0 to 2, and this is on the motion made by Mr. Blake to
4 grant the request for advanced party status, seconded by Mr.
5 Smith. Also in support of the motion to grant is Zoning
6 Commissioner Rob Miller. The motion carries on a vote of 3
7 to 0 to 2.

8 MEMBER BLAKE: Thank you, Mr. Donohue.

9 MR. DONOHUE: Thank you.

10 VICE CHAIR JOHN: Thank you, Board Member Blake.

11 And, Mr. Moy, would you please call the next case?

12 MR. MOY: The next case is also a request for
13 advanced party status in opposition, but, from a Michael and
14 Catherine Hein, H-E-I-N, H-E-I-N. And this is to Application
15 Number 20599 of Stephanie Ann Glier and Brandon Woodward
16 Glier, trustees. The application is captioned advertise for
17 special exception from the rear yard requirements of Subtitle
18 D, Section 5004.1(a), pursuant to Subtitle D, Section 5201,
19 and Subtitle X, Section 901.2. This would construct a rare
20 two-story with cellar accessory apartment to an existing
21 detached two-story with cellar principal dwelling unit in R-
22 1-A zone. The property is located at 3200 Ellicott Street,
23 N.W., Square 2035, Lot 812.

24 VICE CHAIR JOHN: Thank you, Mr. Moy. I'm going
25 to need a couple of minutes. I have too many papers in front

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1 of me.

2 So can you let the parties in, please? Okay. I
3 see that Mr. Hein is present, and so we can proceed. I have
4 reviewed the record, and this is a fairly straightforward
5 application for advanced party status and I will not be
6 taking any testimony.

7 Mr. Hein and Ms. Catherine Hein are adjacent
8 property owners located at 4812 32nd Street, N.W., which is
9 an adjacent property. And there is a presumption that an
10 adjacent neighbor would be more -- let me find the exact
11 words. Just give me one second. So the language is that you
12 would be more significantly, distinctively, or uniquely
13 affected in character or kind by the proposed zoning action
14 than that of other persons in the general public.

15 There's also no objection from the applicant, so
16 I'm inclined to grant your party status unless any Board
17 member objects. Hearing none, so noted. You've been granted
18 party status. You will be allowed at the hearing the same
19 amount of time as the applicant to present your testimony,
20 and you will also be able to cross-examine other parties and
21 witnesses.

22 So you've been granted party status. Mr. Hein,
23 do you have any questions?

24 MR. HEIN: No, Madam Chairperson. Thank you very
25 much.

1 VICE CHAIR JOHN: Okay. Thank you. Have a good
2 day.

3 MR. HEIN: You, too.

4 VICE CHAIR JOHN: Oh, I'm sorry. I forgot to ask
5 if anybody objected. No. Okay, thank you.

6 MR. HEIN: Thank you.

7 VICE CHAIR JOHN: Bye-bye. Please call the next
8 case, Mr. Moy.

9 MR. MOY: For clarification, Madam Vice Chair, was
10 that a consensus to grant --

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: Okay.

13 VICE CHAIR JOHN: Thank you.

14 MR. MOY: All right. Okay. Where are we? Oh,
15 okay. Case Application Number 20501 of Milken Center for
16 Advancing the American Dream, LLC. This is set for decision-
17 making. The request, as amended, is for special exceptions
18 under the penthouse regulations of Subtitle C and 1501.1(d)
19 and (e) and pursuant to Subtitle X, Section 901.2, which
20 would construct a penthouse and establish a nightclub and
21 restaurant use to two existing 10- and 12-story buildings in
22 the D-6 zone. And the property is located at 730 and 734
23 15th Street, N.W., Square 221, Lot 40 and Lot 818.

24 The board heard it at its public hearing on
25 November 10th, 2021.

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1 VICE CHAIR JOHN: Thank you, Mr. Moy. Are we
2 ready to deliberate? Are you on this case, Mr. Miller?

3 COMMISSIONER MILLER: No, I am not.

4 VICE CHAIR JOHN: All right, thank you, thank you.
5 So I'll go ahead and start. This is an application to
6 combine Lots 40 and 818 in the D-6 zone at 730 and 734 15th
7 Street, N.W., to create a single-record lot and establish a
8 single building. The building at 730 15th Street previously
9 received BZA approval for habitable penthouse use and
10 subsequent approval for a nightclub, bar, cocktail lounge,
11 or restaurant use. The project would expand that use into
12 the combined building.

13 The applicant originally sought variance relief
14 but amended its application to see special exception relief
15 under the newly-passed amendments to the penthouse
16 regulations of Subtitle C, Sections 1501(d) and (e). The
17 Board conducted a full hearing on November 10th and scheduled
18 the decision for today to allow time for the revised
19 regulations to go into effect.

20 In its burden of proof submissions and testimony
21 at the hearing, the applicant described how it met the
22 criteria for relief under the general special exception
23 requirements of Subtitle X, Chapter 9. I give great weight
24 to OP's analysis and recommendations that the project will
25 be in harmony with the general purpose and intent of the

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1 zoning regulations and zoning maps and that there is no
2 potential adverse impact on the use of neighboring
3 properties.

4 Notably, the residential uses are not in the
5 immediate area and the project is surrounding nine museums.
6 As required by the regulations, the U.S. Secret Service
7 assessed the potential security risks of the project, and the
8 applicant submitted an email at Exhibit 8, Tab A, stating
9 that the Secret Service has no objection to the proposed
10 habitable penthouse space.

11 The applicant also indicated that it received
12 concept approval from the Commission of Fine Arts and the
13 HPRB. The applicant is also seeking flexibility to make
14 changes to the plans based on those recommendations.

15 So if the Board approves the project, I would
16 limit, I would be inclined to limit the changes to those
17 requested by the Commission on Fine Arts and the HPRB that
18 do not require any additional zoning relief from the BZA.
19 ANC 2B supports the project and requests that the applicant
20 continue to work with the ANC on construction-related issues
21 that are beyond the scope of the BZA for design issues
22 related to the penthouse, which are also not before the BZA.

23 So I'd like to hear from other Board members on
24 their evaluation of this application.

25 MEMBER SMITH: I completely agree with your

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1 assessment of this application, and I'm inclined to support.
2 You know, as you stated, from my standpoint, I'm concerned
3 with the federal interest and, based on what was presented
4 in record, the applicant has reached out to the Secret
5 Service and Secret Service has no major concerns with the
6 penthouse located within proximity to the White House and
7 also the proposed penthouse is surrounded by other museums.
8 So there isn't a major concern from a federal interest
9 standpoint.

10 I concur with your analysis (audio interference)
11 for us to be able to grant this request, and I will be in
12 support, as well.

13 VICE CHAIR JOHN: Thank you, Board Member Smith.
14 Board Member Blake.

15 MEMBER BLAKE: Sure. Having reviewed the record
16 and heard the testimony from November 10th, I, too, believe
17 the applicant has met the burden of proof and should be
18 granted the requested relief. I credit the Secret Service
19 assessment of the project, give great weight to the
20 recommendation of the Office of Planning, and would be
21 prepared to support.

22 VICE CHAIR JOHN: Thank you. So hearing that, I
23 will make a motion to approve Application 20501, as read and
24 captioned by the Secretary, and ask for a second. Mr. Blake.

25 MEMBER BLAKE: Second.

1 VICE CHAIR JOHN: Mr. Moy, will you please take
2 the roll call? Mr. Moy.

3 MR. MOY: I'm pulling up my notes.

4 VICE CHAIR JOHN: Thank you.

5 MR. MOY: Okay. When I call each of your names,
6 if you would please respond with a yes or no to the motion
7 made by Vice Chair John to approve the application, a request
8 for special exceptions. This motion was seconded by Mr.
9 Blake.

10 Zoning Commissioner Rob Miller. Strike that. Mr.
11 Smith.

12 MEMBER SMITH: Yes.

13 MR. MOY: Mr. Blake.

14 MEMBER BLAKE: Yes.

15 MR. MOY: Vice Chair John.

16 VICE CHAIR JOHN: Yes.

17 MR. MOY: We have an absentee ballot from Zoning
18 Commissioner Peter May who participated on the application,
19 and his absentee vote is to approve with such conditions as
20 the Board may impose. And we have a Board member not present
21 today who participated. Staff would record the vote as 4 to
22 0 to 1, and this is on the motion to approve made by Vice
23 Chair John. The motion to approve was seconded by Mr. Blake.
24 Also in support of the motion, Mr. Smith and Zoning
25 Commissioner Peter May. Staff would record the vote as 4 to

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1 0 to 1, and the motion carries, Madam Vice Chair.

2 VICE CHAIR JOHN: Thank you, Mr. Moy. And I need
3 to clarify the motion that was just approved because I should
4 have also included that the Board is also granting the
5 applicant the flexibility to make changes to the plans based
6 on the recommendations of the Commission of Fine Arts and the
7 HPRB, provided that those changes do not require any
8 additional zoning relief from the BZA. So I would restate
9 the motion that way. I don't know if we need to take another
10 vote.

11 MR. MOY: I can do that if you wish.

12 VICE CHAIR JOHN: Well, I think it's clear from
13 the deliberations. I'm not sure we need to -- well, let's
14 do it the correct way.

15 MEMBER BLAKE: I'll second the motion as restated.

16 VICE CHAIR JOHN: Thank you, Mr. Blake.

17 MR. MOY: Okay. So with that, when I call each
18 of your names, if you would please respond with a yes, no,
19 abstain, to the amended motion made by Vice Chair John.

20 Mr. Smith.

21 MEMBER SMITH: Yes.

22 MR. MOY: Mr. Blake.

23 MEMBER BLAKE: Yes.

24 MR. MOY: Vice Chair John.

25 VICE CHAIR JOHN: Yes.

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1 VICE CHAIR JOHN: And as I stated earlier, there
2 is an absentee vote to approve, which includes conditions as
3 may be imposed by the Board. And that is from Zoning
4 Commissioner Peter May. Staff would record the vote as 4 to
5 0 to 1. The 1 is for a Board member not present, not voting.

6 The motion carries, Madam Vice Chair.

7 VICE CHAIR JOHN: Thank you, Mr. Moy. And can you
8 call the next case?

9 MR. MOY: This would be, and it's the last
10 decision-making case for the Board, Application Number 20541
11 of 1899 Penn Property, LLC. This application is as amended
12 for special exception under the penthouse use requirements,
13 Subtitle C, Section 1501.1(e). This would construct a new
14 penthouse addition to an existing semi-detached commercial
15 use building in the D-6 zone. The property is located at
16 1899 Pennsylvania Avenue, N.W., Square 105, Block 843.

17 Again, this application was last heard at the
18 Board's hearing on November 10th, 2021.

19 VICE CHAIR JOHN: Thank you, Mr. Moy. Are we
20 ready to deliberate? Okay. So I'll go ahead and start.
21 This application requests special exception to expand a
22 habitable penthouse within the restricted zone surrounding
23 the White House at 1899 Pennsylvania Avenue under the revised
24 penthouse regulations of Subtitle C 1501(e).

25 The Board conducted a full hearing on November

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1 10th and scheduled the decision for today to allow for the
2 revised regulations to go into effect.

3 The penthouse meets the development standards for
4 height, bulk, and setback. Based on the new regulations,
5 habitable penthouse space is allowed within the restricted
6 zone surrounding the White House by special exception if it
7 meets the general special exception requirements of Subtitle
8 X, Chapter 9, and obtains U.S. Secret Service approval.

9 This request is straightforward, and there's
10 similar commercial office buildings with habitable penthouses
11 in the vicinity.

12 I give great weight to OP's analysis and
13 recommendations that the project will be in harmony with the
14 general purpose and intent of the zoning regulations and
15 zoning maps, and there is no potential adverse impact on the
16 use of neighboring properties.

17 As required by the regulations, the U.S. Secret
18 Service assessed the potential security risks of the project
19 and the applicant submitted information stating that the U.S.
20 Secret Service has no objection to the proposed habitable
21 penthouse.

22 ANC 2B supports the application, and DDOT has no
23 objection.

24 So I'd like to hear from my fellow Board members.

25 MEMBER BLAKE: Okay. I'll just say something real

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1 quick. I agree that the -- well, we'd like to support this
2 application. I believe the applicant has met the burden of
3 proof and should be granted the requested relief. As you
4 pointed out, it does meet the general standards of X 901.2,
5 conforms to the D-6 use provision providing exception space
6 for commercial office uses. It conforms to the development
7 standards, as you pointed out. And the area is characterized
8 by similar commercial office buildings with usable rooftop
9 space, just as that, so it would not be necessarily
10 inconsistent and adversely impact the neighborhood
11 properties.

12 And, again, it has been supported by the Secret
13 Service. DDOT has no objection. So I would be prepared to
14 support.

15 VICE CHAIR JOHN: Thank you, Board Member Blake.
16 Board Member Smith.

17 MEMBER SMITH: I fully concur with the opinion of
18 fellow Board member Mr. Blake and Madam Vice Chair, and I
19 will also support the request before us today.

20 VICE CHAIR JOHN: Okay. Thank you. So in that
21 case, I will make a motion to approve Application 20541, as
22 captioned and read by the Secretary, and ask for a second.
23 Mr. Blake.

24 MEMBER BLAKE: Second.

25 VICE CHAIR JOHN: Mr. Moy, will you please take

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1 the roll call?

2 MR. MOY: Yes. Okay. When I call each of your
3 names, if you would please respond with a yes, no, or abstain
4 to the motion made by Vice Chair John to approve the
5 application for the relief requested.

6 Mr. Smith.

7 MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake.

9 MEMBER BLAKE: Yes.

10 MR. MOY: Vice Chair John.

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: We have an absentee vote from Zoning
13 Commissioner Peter May who participated on this application,
14 Madam Vice Chair. And his absentee vote is to approve with
15 such conditions as the Board may impose. And we also have
16 a Board member not present and not voting. Let me see. So
17 staff would record the vote as 4 to 0 to 1, and this is to
18 the motion made by Vice Chair John to approve, motion to
19 approve was seconded by Mr. Blake, also in support of the
20 motion Mr. Smith and Zoning Commissioner Peter May by
21 absentee vote. Staff would record the vote again as 4 to 0
22 to 1, and the motion carries.

23 VICE CHAIR JOHN: Thank you, Mr. Moy. So I think
24 I'd like to have a brief recess and maybe reconvene in 10
25 minutes. Is that okay for everyone? Yes or no? Okay.

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1 Mr. Moy, I think I should also advise everyone
2 we'll be following the schedule as it appears, and I don't
3 know if we'll be taking a break. I guess we'll have to see
4 how it goes and make an announcement later on. I'm sorry.
5 A lunch break.

6 Okay. Thank you. So let's reconvene in 10
7 minutes.

8 (Whereupon, the above-entitled matter went off the
9 record at 10:24 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 01-12-22

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



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