

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

APRIL 6, 2022

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:37 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Vice Chairperson  
CARL BLAKE, Board Member  
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson  
JOE IMAMURA, 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 April 6, 2022.

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

2 (9:37 a.m.)

3 CHAIR HILL: Good morning, ladies and gentlemen,  
4 the Board of Zoning and Adjustment. Today's date is 4-6-  
5 2022, this public hearing will please come to order.

6 My name is Fred Hill. I'm the Chairperson of the  
7 District of Columbia Board of Zoning and Adjustment. Joining  
8 me today is Lorna John, Vice Chair, and Board Members Carl  
9 Blake and Chrishaun Smith, and Zoning Commissioners Dr.  
10 Imamura and Chairman Anthony Hood.

11 Today's meeting and hearing agenda are available  
12 on the Office of Zoning's website. Please be advised that  
13 this proceeding is being recorded by a Court Reporter, and  
14 is also webcast live via WebEx on YouTube Live.

15 The video of the webcast will be available on the  
16 Office of Zoning's website after today's hearing.  
17 Accordingly, everyone who is listening on WebEx or by  
18 telephone, will be muted during the hearing. Also, please  
19 be advised, that we do not take any public testimony at our  
20 decision-meeting session.

21 If you're experiencing difficulty accessing WebEx,  
22 or with your telephone call-in, then please call our OZ  
23 hotline number at 202-727-5471, to receive WebEx call-in, I'm  
24 sorry, WebEx log-in or call-in instructions.

25 At the conclusion of a decision-meeting session,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

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

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

19           Once again, if you're experiencing difficulty  
20 accessing WebEx or with your telephone call-in, please call  
21 202-727-5471.

22           All persons planning to testify, either in favor  
23 or in opposition, should have signed up in advance. They'll  
24 be called by name to testify. If it's an appeal, only  
25 parties are allowed to testify. By signing up to testify,

1 all participants completed the oath, or affirmation as  
2 required by Subtitle Y 408.7.

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

15           The order of procedures for special exception and  
16 variances are pursuant to Y 409 -- see --

17           At the conclusion of each case, an individual who  
18 was unable to testify because of technical issues, may file  
19 a request for leave to file a written version of the planned  
20 testimony to the record within 24 hours, following the  
21 conclusion of public testimony in the hearing. If additional  
22 written testimony is accepted, then parties will be allowed  
23 a reasonable time to respond, as determined by the Board.

24           The Board will then make its decision at its next  
25 meeting session, but no earlier than 48 hours after the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 hearing. Moreover, the Board may request additional specific  
2 information to complete the record. The Board and the staff  
3 will specify at the end of the hearing, exactly what is  
4 expected, and the dates when persons must submit the evidence  
5 to the Office of Zoning. No other information shall be  
6 accepted by the Board.

7           Finally, the District of Columbia Administrative  
8 Procedures Act requires that the public hearing on each case  
9 be held in the open, before the public. However, pursuant  
10 to Section 405(b) and 406 of that act, the Board may,  
11 consistent with its rules of procedures in the act, enter  
12 into a closed meeting on a case for purposes of seeking legal  
13 counsel on a case.

14           Pursuant to D.C. Official Code Section  
15 2-575(b)(4), and or deliberating on a case pursuant to D.C.  
16 Official Code Section 2-575(b)(13). But only after providing  
17 the necessary public notice, and in the case of an emergency  
18 closed meeting, after taking a roll call vote.

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

20           MR. MOY: Members of the Board, I do have a brief  
21 announcement before you continue with today's hearing.  
22 First, with regards to today's hearing packet. We have two  
23 applications that were, that the Board had granted a  
24 continuance.

25           The first is Application Number 20554 of Sasha

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Bruce Youthwork, Inc. And this application has been  
2 rescheduled to July 27, 2022. Also Appeal Number 20549 of  
3 ANC 6B, has been rescheduled to October 26, 2022. Other than  
4 that, Mr. Chairman, there are some slight preliminary  
5 matters, but for the Board's efficiency, I can tee those up  
6 for the Board when I call the case. That's it for me, sir.

7 CHAIR HILL: Okay. That sounds perfect. All  
8 right, Mr. Moy, I know that Vice Chair John is not on our  
9 first decision case. So, Vice Chair John, we will excuse you  
10 and see you back after that. And Dr. Imamura, also we will  
11 see you after our decision cases. And Mr. Moy, if you could  
12 call our first one, please.

13 MR. MOY: Yes, sir. So, this would be case,  
14 Application Number 20643 of the Maret School. This is an  
15 application that self-certified for special exceptions from  
16 the matter-of-right uses of Subtitle U Section 201. Pursuant  
17 to Subtitle U Section 203.1(m), Subtitle X Section 104, and  
18 Subtitle X Section 901.2.

19 And also, from the parking location restrictions  
20 of Subtitle C Section 710.2. Pursuant to Subtitle C Section  
21 710.3, and Subtitle X Section 901.2. This would permit a  
22 private school use in the R-1-B Zone. The property is  
23 located at part of 5901 Utah Avenue, NW, Square 2319, Lot  
24 832.

25 And as the Board will recall, this was last heard

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 at the Board's decision-meeting session on March the 30th.  
2 And it was deferred to today's hearing. And that's it for  
3 me, Mr. Chairman.

4 CHAIR HILL: Okay. Thank you, just let me get to  
5 the end of the record here. Okay, there was preliminary  
6 matters with this. Is that correct, Mr. Moy?

7 MR. MOY: Yes, I believe unless someone corrects  
8 me, that the Board continued this to today's date because you  
9 were going to allow the ANC, the opportunity to respond to  
10 the Friends of the Field submission. And I believe there  
11 were no responses from the ANC.

12 CHAIR HILL: Okay. Mr. Nicholas or Ms. Nagelhout,  
13 I thought there was also something before the Board, a  
14 preliminary matter, about motions to strike. Is that correct  
15 or am I thinking about a different case?

16 MS. NAGELHOUT: No, that's this one. The Board  
17 reopened the record to allow in the ANC's submission. The  
18 ANC submission said in part, you should disregard certain  
19 pages in the Friends post-hearing submission. And then, the  
20 Friends and the Applicant both responded to the ANC. The  
21 Applicant made a motion to strike those certain pages.

22 CHAIR HILL: No, I appreciate it. I appreciate  
23 it, Ms. Nagelhout. I mean for the record, I have reviewed  
24 those exhibits. I just wanted to make sure I had the right  
25 case. And I do. And so, there was motions about striking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 certain sections of the record. And I know that the Board  
2 has had an opportunity to review these exhibits.

3 I mean, I think that, you know, to begin with I  
4 think that the items that are discussed in the motions, are  
5 things that are really outside of the Board's purview. They  
6 don't pertain to zoning. It's really, you know, things that  
7 are not, again, things that are pertaining to zoning, and are  
8 not things that are things that the Board should necessarily  
9 decide on.

10 So, what I would propose is to go ahead and deny  
11 the motions to strike. And the Board itself can determine  
12 what is or shouldn't be concerned -- or I'm sorry, considered  
13 concerning what is in or within our purview. So, unless the  
14 Board has any issues, I'm going to go ahead and strike those  
15 -- I'm sorry. I'm going to go ahead and deny those motions  
16 to strike and ask for a second. Mr. Blake.

17 (No audible response.)

18 CHAIR HILL: Mr. Moy, the motion has been made and  
19 seconded, if you could take a roll call?

20 MR. MOY: When I call your names, if you would  
21 please respond with a yes, no, or abstain to the motion made  
22 by Chairman Hill to deny the motions to strike. And this  
23 motion was seconded by Mr. Blake.

24 (Roll call vote)

25 MR. MOY: Zoning Commissioner Anthony Hood?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 (No audible response.)

2 MR. MOY: Mr. Smith

3 MEMBER SMITH: Yes.

4 MR. MOY: Mr. Blake.

5 MEMBER BLAKE: Choose to strike.

6 MR. MOY: Chairman Hill.

7 CHAIR HILL: Yes, to deny the motion to strike.

8 MR. MOY: And we have one Board Member not  
9 participating on this case. Staff would record the vote as  
10 4-0-1. And this is on the motion made by Chairman Hill. The  
11 motion was seconded by Mr. Blake. Also in support of the  
12 motion is Zoning Commission Chair, Anthony Hood, Mr. Blake,  
13 of course, Mr. Smith and Chairman Hill. Motion carries on  
14 a vote of 4-0-1.

15 CHAIR HILL: Okay. Thanks, Mr. Moy.

16 Okay, in terms of deliberation of the case, what  
17 I was planning on doing was just kind speak, kind of on a  
18 high level as to what I kind of thought in general. And then  
19 have an opportunity to hear from my fellow colleagues. Going  
20 around the table, I'll probably start with Mr. Smith, Mr.  
21 Blake, and then Chairman Hood.

22 This was a very long hearing. And considering  
23 that this is a special exception, I do think we heard as much  
24 as we could from all of the different parties that we are to  
25 give great weight to. We heard from the Applicant obviously,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 the ANC, and then parties in opposition. And I think that  
2 what -- and I'll kind of just look at some of my notes here.

3           You know, I do think that this is a private school  
4 use. I mean there has been some, there have been discussion  
5 as to whether it is or isn't a private school use. I think  
6 it is a private school use. I think that the athletics are  
7 something that go to the education of the children. And  
8 also, go to the use of the school and their mission itself.  
9 And so, I do think it's a private school use.

10           I don't think that it is, I mean, a facility that  
11 they're putting forward to make money. Like, I don't think  
12 it's a commercial soccer stadium or anything like that. I  
13 mean, they're not, the Maret School is not in the business  
14 of that type of business, right. They're mission is to  
15 educate children. And they're providing an athletic facility  
16 in order to, again, educate the children and create a whole  
17 experience, I believe. So, I do believe that they are, it  
18 is a private school use.

19           In terms of the parking, I also, didn't really  
20 have a problem with the parking in the front yard, as  
21 proposed. And part of the reason why that is, is that I  
22 think that they have an extensive MOU in place with the, that  
23 they've negotiated through with the ANC and the community.  
24 And that, I think that it's beyond even what we normally get  
25 with the BZA type MOUs.

1 I mean it's extremely extensive. I mean it's  
2 almost to the point where, we're at a Zoning Commission  
3 hearing. Chairman Hood is here with us today, and he knows  
4 just how extensive this MOU actually is, concerning that's  
5 it's a, you know, it's a BZA special exception.

6 And so, I think that they, the Applicant has  
7 worked extensively with the community to try to put together  
8 something that can work for all of people, in terms of -- I  
9 understand that there are members of the community that  
10 obviously are opposed. They went ahead and put together  
11 their opposition, and hired a competent counsel to move  
12 forward with this. But I do believe that the MOU pretty much  
13 takes care of any issues that I had, in terms of concerns  
14 about how it might affect the community and the immediate  
15 area there.

16 I think that I would just be in favor of just  
17 referring to the conditions rather than parsing them out, in  
18 terms of our order. Because some of them are really things  
19 that are just not really, again, within our purview. There  
20 are things that, are things again, that are more like things  
21 that they would do in an MOU. It's again, outside the  
22 purview of the Board.

23 And so, I would just kind of refer that MOU, which  
24 is in Exhibit 282E, in the order that we actually write. And  
25 again, I believe that the Maret School will honor their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 agreement. I would also agree with the recommendations that  
2 the Office of Planning had put forward, including their  
3 conditions. Number 1, Installation and maintenance of  
4 evergreen shrubbery along the outer perimeter of the parking  
5 lot to minimize the lot's visual impact to abutting neighbors  
6 fronting 28th Street and across Nebraska Avenue.

7           And sound amplification devices, music and other  
8 sound instruments shall not be permitted at the facility, to  
9 mitigate noise impacts to the neighborhood in excess of the  
10 maximum allowed by district regulations.

11           So, those would be the conditions that I would put  
12 in there. I would also note that the ANC, again, was in  
13 favor of this application and the commissioner came and spoke  
14 with us. I believe that, you know, that they, or I'm sorry  
15 that the commissioner has represented their ANC well, and  
16 this has gone on for quite some time, in terms of the  
17 negotiations with the community.

18           And again, I'm sorry that everyone is not in favor  
19 of this. However, I do think that the conditions that have  
20 been put forth, should mitigate all of the adverse impact  
21 that I think might happen from this particular facility. I  
22 mean, it's not -- it's private property. It's not a public  
23 park, right. I mean this is where it's always a change that  
24 needs to take place, but this is private property.

25           That means, that can be developed with something

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 within the regulations. And this is a special exception.  
2 This isn't a variance. This is something that is, you know,  
3 within the regulations, as long as it fits within those  
4 standards. We as a Board are supposed to, you know, try to  
5 mitigate any adverse impacts that we can. And also, approve  
6 it, if it fits within those standards. I believe that it  
7 fits within the standards.

8 I believe that the Office of Planning's report,  
9 which I will even kind of just refer to, states all of the  
10 reasons again as to why it's meeting those criteria. And  
11 again, I'm comfortable with, as I said, the Memorandum of  
12 Understanding that has been put forward.

13 With regard to the OAG letter, I was a little bit  
14 confused by it, in that I disagree with it. And then, there  
15 was also, it seemed as though the OAG letter, it seemed as  
16 though, it, you know, they were in opposition. But then they  
17 said, if we were in favor, we could give some conditions.  
18 So, it seemed to me, to be conflicting, even in their -- you  
19 know, necessarily their opinion. I mean I respect OAG. I  
20 haven't had a letter from OAG, yet, in my tenure here.

21 And so, you know, what we have before us again,  
22 is what we the Board are supposed to be giving great weight  
23 to, which is the Office of Planning's recommendation, the  
24 ANC's recommendation, and then our opinion as to whether or  
25 not they're meeting the standards for us to grant the relief

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 requested, which I do. My vote, do believe that are meeting  
2 those criteria.

3 I'm going to kind of stop there, and then ask for  
4 my fellow Board Members to help me, if they would, please.  
5 Either please repeat anything I said, and also, give me your  
6 opinions. Mr. Smith, may I start with you?

7 MEMBER SMITH: Sure. Sorry, I guess I woke up  
8 with a cold, this weather.

9 CHAIR HILL: I'm glad you're over there, Mr.  
10 Smith.

11 (Laughter.)

12 MEMBER SMITH: I don't want it, God, I don't want  
13 it.

14 So, kind of touching on some of the things that  
15 you talked about, Chairman Hill -- and really before going  
16 into the merits of the special exception request -- I think  
17 it's important given that, you know, this was raised by the  
18 ANC, not by the ANC, but kind of by OAG, and definitely by  
19 other parties in opposition, for instance, Field, I think  
20 it's important to discuss the use itself, and whether it's  
21 allowed at the site?

22 So, I agree with you. I believe that the proposed  
23 use would be constructively maintained by the Maret School,  
24 and an operation that would be defined as, in the zoning  
25 regulations, as education, private -- an education, private

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 use. Under the definition it states, that such a use may  
2 include, but is not limited to, sports facilities for such  
3 a use.

4 I believe that the athletic field for a private  
5 school can be considered an integral function of a private  
6 school use. And therefore, part of the principal use.  
7 Therefore, there isn't a requirement that a private school  
8 must locate all of its facilities on a single property. And  
9 I believe the Board has historically made this  
10 interpretation, going back to an approval that we granted a  
11 couple months ago.

12 And a couple that we granted over the past couple  
13 of years. Going back to the, you know, mid to early, the  
14 mid-last decade, of other athletic facilities that may not  
15 be located on the same lot, as other buildings of the private  
16 school. But nonetheless, it's integral to the functions of  
17 the private school. So therefore, I believe that the special  
18 exception approach is applicable to Maret in this particular  
19 case, and they can proceed with their special exception  
20 request.

21 So, after reviewing the full and extensive record,  
22 and hearing the testimony at the public hearing last month,  
23 I do believe that the Applicants met the burden of proof for  
24 us to be able to grant the special exception. So, and so far  
25 as the special exception per Section 17.3, I agree with OP's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 analysis on how the topography of the site necessitates this  
2 special exception, to place parking to the front of the  
3 fields.

4           And it is substantially more convenient to place  
5 it there, as opposed to interior to the site. And I believe  
6 that placing it along the front property line, does mitigate  
7 some of these traffic and light impacts that may occur for  
8 having a parking lot adjacent to single family houses.

9           As to the special exception criteria as detailed  
10 in Section X in 901, I believe that the proposed use is in  
11 harmony with the general purpose and intent of the zoning  
12 regulations, in that educational uses, that includes  
13 educational uses that -- I believe athletic fields includes  
14 the definition of educational use, would be compatible with  
15 residential uses within the R-1-B Zone.

16           The Applicant has sufficiently mitigated adverse  
17 impacts such as noise, traffic and other impacts in the  
18 design of, the placement of those fields, and in the  
19 operation, as shown in the site plan, and as conditioned  
20 within the MOU, between ANC and the Applicant.

21           I also believe that the incorporation of retaining  
22 walls, extensive landscaping, and site grading, would reduce  
23 the athletic facilities impact on the adjacent neighborhood.  
24 So, just as a, you know -- so, I support the special  
25 exceptions. I would note, I do not support many of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 extensive conditions, as you have stated, Chairman Hill,  
2 extensive conditions that were outlined as part of the  
3 agreement between the Maret School and the ANC as being  
4 incorporated as conditions within the order.

5           For the exact same reasons that you stated,  
6 Chairman Hill. I do believe that many of those conditions  
7 are beyond the bounds of what we, as a zoning body, can  
8 enforce. And I believe it may be difficult for even the  
9 District of Columbia's various enforcement agents to enforce  
10 it in any capacity.

11           I also believe that many of the conditions may not  
12 be imposed by this body, because they seek to regulate  
13 performance or -- such as construction periods that are  
14 typically handled through DCRA's administrative process when  
15 a building permit is approved, or would impose fines for non-  
16 compliance with conditions. And I believe that's beyond the  
17 scope of what we can legally do.

18           The only ones, if I were to state, the only ones  
19 that I think are applicable conditions that we can condition  
20 explicitly in the order, are conditions 1(a)(c)(f) and (k),  
21 conditions 2(a)(c)(d) and (e), and condition 3(a). That's  
22 it.

23           I believe the way the hours of operation are  
24 structured and stratified, across selective types of uses,  
25 are difficult to enforce by anyone. And that includes --

1 yes, I think it's completely difficult to enforce. And I  
2 don't believe there is a fundamental difference in impacts  
3 between the Maret School's athletic functions and any other  
4 youth sports organization that may use the site. It's the  
5 youth, it's youth sports organizations using the same site.  
6 So, I believe it's completely difficult to enforce.

7 I believe in order to craft them into, set our  
8 regulatory policies, they can be incorporated as a formal  
9 condition, approved by the BZA, we need to be substantially  
10 simplified and I'm not recommending that. However, I do  
11 understand that this is a set of conditions that have been  
12 agreed to by the Applicant and ANC in the form of an MOU.  
13 And will recommend not incorporating any of the conditions  
14 into the order. And only make a reference to it within the  
15 order, make a reference to the MOU within the order.

16 Therefore, the conditions are enforced only as a  
17 private and civil matter between the two parties involved,  
18 as shown in Exhibit 282E. If we wanted to incorporate any  
19 condition into the order, I would only recommend the  
20 conditions outlined by the Office of Planning, and also one  
21 additional condition.

22 I would recommend, that wasn't outlined in the MOU  
23 or by the Office of Planning, would be a condition requiring  
24 the Maret School to have a designated representative that  
25 will regularly interface with the ANC and mitigate any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 conflicts that may arise between the Maret School's  
2 operations at site, and the ANC.

3           So with that, I would recommend adding that  
4 condition, and the Office of Planning's condition. So with  
5 that, I do give great weight to the Office of Planning's  
6 report and give kudos the ANC and the Maret School for coming  
7 together to draft, probably the most extensive -- and I've  
8 been working planning for, you know, over a decade -- the  
9 most extensive list of conditions I've ever seen, to try to  
10 mitigate impacts that the development may have on the  
11 adjacent neighborhood. So, with that I support the  
12 application.

13           CHAIR HILL: Thank you, Board Member Smith. Mr.  
14 Blake.

15           MEMBER BLAKE: Yes, thank you, Mr. Chairman.

16           I want to first say I agree with the statement  
17 that you made with regard to the larger issues, and your  
18 interpretation of the rules and regulations. And I also want  
19 to thank Board Member Smith for very well articulating how  
20 the conditions for the special exceptions have been met as  
21 well as the appropriateness for the various conditions in the  
22 Memorandum of Understanding with the ANC.

23           I personally just say that, I believe that it  
24 would be appropriate to consider the special exception  
25 application. I looked at a couple factors in considering

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 this. First, is the fact that the, this is a self-certified  
2 application. And the Board's precedent is to consider the  
3 relief requested in a self-certified application unless there  
4 is no plausible basis to consider that relief.

5 My second, I look at precedent. The Board has  
6 consistently considered athletic facilities of private  
7 schools, as an aspect of a principal private use, not an  
8 accessory use. This interpretation as Board Member Smith  
9 pointed out, was stated in BZA Case 1643, the National  
10 Cathedral School in 1999. The interpretation in that case  
11 was that athletics is a form of education, and thus athletic  
12 facilities are educational facilities.

13 It's important to note that, and this  
14 interpretation was not disturbed on the appeal. I would also  
15 note that the Board has applied that interpretation  
16 consistently since then, and most recently, in BZA Case 2593  
17 in January of this year, Blessed Sacrament case.

18 The Applicant testified that the physical  
19 education is an integral part of its mission. And that  
20 participation in athletics is a requirement for graduation.  
21 As such, I believe the proposed athletic facility will be  
22 operated by a private school and is appropriately considered  
23 a principal private school use. Because it is not an  
24 accessory use, and it's not required to be located on the  
25 same lot as the rest of the Applicant's facility. This is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 the interpretation that was affirmed in an email from the  
2 Applicant, from the Zoning Administrator. This  
3 interpretation was also affirmed in the Office of Planning's  
4 written report.

5           They're also some questions about intensity of  
6 use. Obviously, a private school use is permitted in R-1-B,  
7 subject to special exception approval, to ensure it does not  
8 cause adverse effects. The intensity of use does not change  
9 a private school use into something else, but requires that  
10 the Board assess all of the potential impacts.

11           For context, for example R Zones permit some non-  
12 residential uses such as institutions, religious based uses,  
13 and public institutions such as schools, recreation, and  
14 community centers and libraries. In this case, the Applicant  
15 is proposing to allow some use of an athletic facility, but  
16 only on a limited basis.

17           The additional use would not convert the private  
18 school facility to a commercial sport's facility. The  
19 Applicant proposed to charge only a reasonable fee for use,  
20 and not a profit generating business use, like Audi Field.  
21 In fact, the athletic facilities proposed by a third-party  
22 use, would be consistent with how the field owned by other  
23 independent schools in the district are used by third  
24 parties.

25           So, considering these factors, I do believe it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 appropriate to consider the special exemption for the  
2 application. That said, I'm going to -- as Board Member  
3 Smith pointed out, I do agree that the parking element has  
4 been -- I'm going to skip to that and come back -- that there  
5 are to be 20 -- that the relief for the parking location  
6 requirements have been met.

7           That based on the information in the record, the  
8 Applicant has demonstrated it is not practical and less  
9 efficient to locate the spaces in accordance with the  
10 regulations, due to the shape of the property, and its  
11 variable topography. As a lot, it's 35 feet higher in the  
12 rear. The impact on the heritage trees and the undesirable  
13 impact having an entrance from the alley, would have on  
14 neighboring properties.

15           In addition to that, the Applicant has  
16 demonstrated that locating the spaces in the front yard,  
17 would be safer and more convenient than providing access off  
18 the rear, of the alley in the rear.

19           When we turn back to the special exception  
20 requirements, I want to point out that I agree wholeheartedly  
21 that there are a number of issues that come up in this. And  
22 as the requirement is for the -- the application is that the  
23 Applicant should not -- the elements of proof of what are  
24 required to consider approval of the application are similar  
25 to U 203.1 and X 104.1. They are simply this, they must not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 be likely to become objectionable to adjoining and nearby  
2 property because of noise, traffic, the number of students,  
3 or objectionable conditions.

4           And also, that there is ample parking to  
5 accommodate the students, teachers, and visitors likely to  
6 come to the site. In this case, the requirement would be for  
7 23 spaces, and the Applicant will be providing 48 spaces,  
8 assuming they have the locational requirement allowed. So,  
9 in that case, that part of it is met.

10           The bigger issue though in the case would be the  
11 special exception. The Board has heard a lot of testimony  
12 alleging that the Applicant's proposal would result in  
13 adverse impacts. But the party and persons in opposition did  
14 not demonstrate that objectionable conditions would not  
15 result from the approval.

16           I mean, clearly there will noise, there will be  
17 increased traffic, there will more intense use of the space.  
18 There may be some environmental issues that are objectionable  
19 conditions that arise. But it is important that we consider  
20 the mitigating factors here. I've looked at the noise, and  
21 clearly there's something that for example, there would be  
22 no lights, so there will be no use after dark. There will  
23 be no amplified sound, or noise makers, noise makers  
24 permitted.

25           If you look at traffic, you see the Applicant has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 closed the existing current curb cut on Nebraska Avenue and  
2 created a wider curb cut. The site will accommodate bus pick  
3 up and drop off. And the Applicant proposed a detailed and  
4 extensive Transportation Demand Management, Operations  
5 Management Plan, which DDOT supports. These plans call for  
6 the implementation of policy that will reduce vehicle traffic  
7 and enhance the pedestrian and bicycle safety.

8           And for the intensity of use, clearly for the  
9 entirety of the athletic field, will be open less than 70  
10 percent of the daylight hours. The maximum number of Maret  
11 students dispatched on the field at any one time will not  
12 exceed 50 or 60 players. And third-party public use of the  
13 fields will be subject to limits.

14           In addition to this, the Applicant proposed  
15 several design modifications to address other potentially  
16 objectionable conditions, such as the environmental concerns,  
17 visual intrusion, and maintenance of green space, with  
18 protection of heritage trees.

19           So, while it's clear that some will be  
20 disappointed by the outcome of these proceedings, I believe  
21 the issues and concerns identified by the opposition and ANC,  
22 mainly noise, traffic, parking, visual intrusion, and  
23 intensity of use, have been addressed and largely mitigated  
24 by the conditions the Applicant has agreed to in its MOU with  
25 the ANC.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1           And I also believe, that conditions of the  
2 Transportation Demand Management and Operations Management  
3 Plan have largely mitigated potential safety and capacity  
4 impacts of the proposed facility on surrounding community.

5           All that said, I think from the general standards,  
6 considering both requests for relief, rose to the general  
7 standards of X 901.2. I believe that the granting of relief  
8 is in harmony with the zoning regulations. And that the  
9 design considerations combined with the conditions of the MOU  
10 and with the ANC, and the provisions of the TDM and OM plans,  
11 along with the various individual agreements with the  
12 immediate neighbors, substantially mitigate the potential  
13 adverse effects. Such that the granting of relief will not  
14 tend to affect adversely, the use of neighboring properties.

15           I give great weight to the Office of Planning's  
16 recommendation for approval. I also give weight to the  
17 written report of ANC 3/4G, as I do not believe the  
18 allegations made by the Friends and Family of the Field,  
19 provide a pervasive basis for the Board to disregard the ANC  
20 report. I believe that the Applicant has met the burden of  
21 proof and should be granted the relief requested.

22           So, for these reasons I'll be voting in favor of  
23 the requested relief. I do agree with you, Mr. Chair, that  
24 we should refer to the conditions, that they don't  
25 necessarily fall fully within the purview of the Board. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 would also give accolades to the ANC for the work that they  
2 did to address these issues, and come up with such an  
3 extensive MOU. I'll be voting in favor of the requested  
4 relief. Thank you, Mr. Chair.

5 CHAIR HILL: Thank you, Board Member Blake.  
6 Chairman Hood.

7 ZC CHAIR HOOD: Mr. Chairman, I don't know how  
8 much more left, you all left me to comment on there. All  
9 that was very well done. I will say, I'm not going to repeat  
10 anything that I've heard, because I agree with everything  
11 I've heard. I was just trying to find a niche where I could  
12 maybe say something a little different.

13 I do know the PFAS has come up in this particular  
14 proceeding. PFAS is very important to the residents of this  
15 country. But I believe that there are other jurisdictions  
16 who will handle that. The Board of Zoning Adjustment is not  
17 the experts. I believe the Friends, they brought it up. And  
18 I think it's noteworthy.

19 But also, the conditions, again, because the Board  
20 has to stay within their confinements of what they have to  
21 do to the letter of the law, I still want to employ the  
22 community. I always call it a, Good Neighbor Policy.

23 Regardless, of what we end up with today, there's  
24 still going to be the -- whatever's in place is still going  
25 to be fluid. There are going to be changes that the school

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 can make with the community. And that dialog and community,  
2 with the ANC, and the community as well as the school, should  
3 be fluid. It should continue to work and see how we can,  
4 they can continue to make lesser impacts, regardless of what  
5 BZA does here today. Because at the end of the day, BZA, I  
6 don't think anyone lives in that neighborhood. We're not the  
7 ones who are going to be impacted.

8           So, I think it's incumbent upon the community to  
9 work together, as you all have done. You may have some  
10 disagreement. We have allegations. I have allegations  
11 thrown at me all the time. But the end of the day, it's  
12 about the love of the city and making it work for the  
13 neighborhoods.

14           So, I'm going to leave it at that. I'm not going  
15 to even get into the merits. I think the merits were very  
16 well spoken, very well done. And at the end of the day, it's  
17 about getting activity, physical activity to the kids.

18           Now, I know people will say, well Hood, didn't  
19 talk about the regulations. No, the regulations and merits  
20 of this record for exception, and the written request speaks  
21 for itself. I think the record is full. But to the Friends,  
22 I would encourage the Friends, the ANC and Maret to continue  
23 to work together. Thank you, Mr. Chair.

24           CHAIR HILL: Thank you, Chairman Hood. Okay, and  
25 thank you everyone for your thoughts. There wasn't anything

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 that -- I really appreciate all the time that everyone took  
2 for this. It was mentioned again, right, the conditions that  
3 were in the DDOT report, and I would also agree with those  
4 conditions, in terms of them being in, added to the order.

5           Also, then -- I think that was the only thing that  
6 I heard that was additional to what I had kind of stated.  
7 So again, I appreciate everybody's input and efforts in the  
8 deliberation of this particular case. I think we, it was  
9 well thought out.

10           I'm going to make a motion to approve Application  
11 Number 20643 as captioned and read by the Secretary,  
12 including the conditions that are in the DDOT report, as well  
13 as the conditions that are in the Office of Planning, adding  
14 one that has a designated rep from the Maret School to work  
15 with the ANC on any adverse impacts which may result from the  
16 use of the field. And ask for a second. Mr. Blake.

17           MEMBER BLAKE: Second.

18           CHAIR HILL: The motion being made and seconded --  
19 and before I say that -- also again, we will refer in the  
20 order to the MOU, which is in Exhibit 282E, as in Edward.  
21 I believe that the school will honor what they have said,  
22 rather than us parsing out the things that are within our  
23 purview, and those that are not.

24           And I will also add that there was neighbor I  
25 recall, that there was a door that was affected from one of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 the, I think it was the locker room. And I was comforted by  
2 what I had seen added into the record. And I believe the  
3 school will do what they can within reason, within reason  
4 again, to be able to use that building the way need be.

5 And again, as Chairman Hood said, the Good  
6 Neighbor Policy, to keep the community abreast of every,  
7 issues that might happen. And then the representative from  
8 the Maret School might also be able to help with the ANC on  
9 that issue as well.

10 And all I've added here said, ask for a second.  
11 Mr. Blake.

12 MEMBER BLAKE: Second.

13 CHAIR HILL: Did I do that already? The motion's  
14 been made and seconded. Mr. Moy, if you could go ahead and  
15 take a roll call?

16 MR. MOY: When I call each of your names, if you  
17 would please respond with a yes, no, or abstain to the motion  
18 made by the Chairman, the Chairman Hill, to approve the  
19 relief requested by the Applicant, including conditions  
20 that's cited in the DDOT report, the OP report, plus adding  
21 a condition where there's a designated representative from  
22 the Maret School to coordinate with the community. This  
23 motion was seconded by Mr. Blake.

24 (Roll call vote)

25 MR. MOY: Zoning Commission Chair Anthony Hood.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 ZC CHAIR HOOD: Yes.

2 MR. MOY: Mr. Smith.

3 (No audible response.)

4 MEMBER BLAKE: Mr. Blake.

5 (No audible response.)

6 MR. MOY: Chairman Hill.

7 CHAIR HILL: Yes.

8 MR. MOY: We have a Board Member not  
9 participating. Staff would record the vote at 4-0-1. And  
10 this is on the motion led by Chairman Hill to approve with  
11 conditions as just cited in his motion. The motion was  
12 seconded by Mr. Blake. In support, also in support of the  
13 motion, Zoning Commission Chair Anthony Hood, Mr. Smith and  
14 of course, Mr. Blake and Chairman Hill. Motion carries on  
15 vote of 4-0-1.

16 CHAIR HILL: Okay, great. Thank you. Thank you,  
17 Mr. Moy. If you could bring back in Vice Chair John.

18 VICE CHAIR JOHN: Thank you, Mr. Chairman.

19 CHAIR HILL: Okay. Let's see. I have a beautiful  
20 view of a cherry tree right outside this window, and I just  
21 got to tell you. I just had to share. It's just lovely.

22 All right, Mr. Moy, if you would like to call our  
23 next decision case, please?

24 MEMBER BLAKE: Mr. Chair, I will not be  
25 participating in this case. I'll just disappear.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 CHAIR HILL: Okay. Thank you, Board Member Blake.  
2 I mean that's right. You weren't here for the case.

3 MR. MOY: So, the next and last decision-making  
4 case for the Board is Application Number 20505 of Michael  
5 Farquhar. This is an amended self-certified application for  
6 Special Exception from the matter-of-right accessory uses,  
7 Subtitle U Section 250. Pursuant to Subtitle U Section  
8 253.4, and Subtitle X Section 901.2. This would construct  
9 a detached, two-story, accessory apartment in the rear of an  
10 attached, two-story principal dwelling unit in the R-20 Zone.  
11 The property is located at 1963 39th Street NW, Square 1310,  
12 Lot 808.

13 As the Board will recall, you just -- or rather,  
14 you last heard this case at your public hearing on March the  
15 29th. And I think, yes, I think that's it.

16 CHAIR HILL: Okay. Thanks.

17 Okay. This one, I actually don't know what to do,  
18 right. So, when I say, I don't know what to do, like there's  
19 a lot of things that I -- there's a lot of thoughts I have  
20 on this. And there's a lot of opinions I have on this. But  
21 I'm going to let my fellow Board Members stick their neck out  
22 first. And then I'll figure out which part of it, I'm going  
23 to say. Chairman Hood.

24 ZC CHAIR HOOD: I'll tell you what I'm thinking,  
25 and I will yield to somebody else. As I've said during the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 hearing, Mr. Chairman, I know I don't usually like to go  
2 first, but this one, I'm having problems with. I don't know  
3 where I am. But I don't think this is properly before us.  
4 Especially, when it comes to the covenant. I think a  
5 covenant overrides everything. And I'll leave it at that for  
6 any other discussion. So, I really don't know, to me, that's  
7 a showstopper. So, I'll leave it at that. Thank you, Mr.  
8 Chairman. I stuck my neck out, as you asked.

9 CHAIR HILL: That's okay. So, we'll see where  
10 this all goes. I unfortunately have an even number of  
11 people. So, I don't know, but I'm going -- Vice Chair John,  
12 I apologize, you're going to go first, because like, you're  
13 the Vice Chair. And so, you can give it a shot. Or I can  
14 go first, if everybody wants to not go first. Do you want  
15 to go first, Vice Chair John?

16 VICE CHAIR JOHN: So, I will, I will go first.  
17 Whether or not I end up in the position I start, you know,  
18 I can be convinced another way, because it is that kind of  
19 case. So, let me just read a couple thoughts.

20 So, this is a special exception for an accessory  
21 dwelling unit on the second floor of a new accessory  
22 structure in the R-20 Zone. And the Applicant states that  
23 he intends to occupy the ADU as required by the regulations.  
24 And this condition cannot be waived.

25 I believe the application meets the criteria for



1 zoning relief under Subtitle U 253 as described on Slide 21  
2 of the Applicant's presentation at the hearing.  
3 Additionally, the structure meets all of the development  
4 standards in the R-20 Zone. The issue relating to side yard  
5 setback was resolved by the ZA's, Zoning Administrator's  
6 letter. And because the structure is not on an alley lot as  
7 a result of the subdivision, the regulations governing alley  
8 dwellings do not apply.

9           The Applicant submitted information from its  
10 contractor stating that the utilities can be connected to the  
11 ADU, which resolves that issue. And we see ADUs all the  
12 time, and they're connected on the -- the utilities are  
13 connected on the property. So, that's no longer an issue for  
14 me.

15           Matters relating to construction, tree removal,  
16 building code issues, property proximity to the Park Service  
17 land, are not within this Board's jurisdiction. And  
18 furthermore, the Applicant is, if the application is  
19 approved, and gets through all of the hurdles, the Applicant  
20 and the Park Service would have to work out any issues  
21 between them.

22           And whether the owner will not in fact live in the  
23 dwelling, or will use the first floor for purposes other than  
24 storage, or the permitted use, would require the Board to  
25 speculate on the Applicant's intent and future actions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Actually, it's also up to the DCRA to enforce the  
2 regulations. And if the application is removed and the  
3 structure built, DCRA would have to make sure that there is  
4 compliance.

5 I give great weight to OP's analysis. And because  
6 this is a self-certified application, if the Applicant needs  
7 further relief from the regulations, the Applicant would need  
8 to return to the BZA. I also, give great weight to the ANC's  
9 issues and concerns that are zoning related. And I believe  
10 I have addressed those as well.

11 And like, Commissioner Hood, the restrictive  
12 covenant is a very difficult question for me. And ordinarily  
13 the Board reviews easements in so far as they affect  
14 compliance with zoning regulations. For example, does the  
15 easement affect lot area, or lot width, or are they  
16 compliance of the rear yard? The Board would seek clarity  
17 on these issues. Now, the covenant and, you know, it's well  
18 understood that covenants run with the land. If this were --  
19 and must be consistent with public policy. So, that's not  
20 an issue for me.

21 As presented, however, as presented to the Board,  
22 and this is -- I had a little difficulty with this. The  
23 subdivision would remove the condition in the covenant. So,  
24 in this case, the property would be, would have frontage on  
25 39th Street, and the covenant would not apply. What's also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 leading me to that decision is that the regulations governing  
2 ADUs, now encourage ADUs. And so, the law has changed and  
3 does this covenant, which prohibits any residential use trump  
4 the laws and the regulations that now exist?

5 So, I have decided to split -- well, I'm going to  
6 say it a different way. So, for me, the subdivision would  
7 create a lot, which has no frontage on 39th Street, and it  
8 is not an alley lot. And as presented, it would comply with  
9 the zoning regulations.

10 Now, I understand that this matter could be  
11 resolved by a court at a later date. And I believe that's  
12 where the issue belongs. Because this Board does not have  
13 the expertise to delve into all the nuances of covenants.  
14 So, I think that I can decide the zoning issue. And the  
15 zoning issue is that the Board is presented with a lot that  
16 meets the development standards. And that has frontage on  
17 39th Street.

18 And so, I can approve the application on that  
19 basis. And if the covenant is later determined by a court  
20 to be valid, then the Applicant can return to the BZA for  
21 further relief, if that is necessary. And that's how I've  
22 looked at this, after much deliberation. So, thank you, Mr.  
23 Chairman.

24 CHAIR HILL: That's great. That's really actually  
25 pretty helpful. I still have a lot of fun things to say, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 that's pretty helpful, thanks. Mr. Smith.

2 MEMBER SMITH: So, like the Vice Chair, and  
3 Chairman Hood, I was torn on this particular case, in so far  
4 as that the covenant regulation. The lots as platted  
5 originally, were lots 79 and 80 early. But what has occurred  
6 since then is the Applicant has consolidated those two lots.  
7 Lot 79 does front on 39th Street. And the ball of the alley  
8 does not completely sever Lot 79. So, Lot 79 was always  
9 fronting on 39th Street. It's a question of Lot 80, which  
10 is also owned by the Applicant, who has consolidated those  
11 two lots.

12 I, like Ms. John, do agree that it seems to me  
13 that the consolidation did negate that condition of the  
14 covenant, that states that any lot not fronting on 39th  
15 Street can't be used for residential purposes. Because of  
16 that consolidation, both of these lots now front on 39th  
17 Street. So, it seems to me that negates the covenant.

18 But I do agree with Vice Chair John, that I think  
19 the final matter for that, for these types of covenants is  
20 the DC District Court. So, I understand that this may be,  
21 this, you know, this may be elevated beyond this Board to  
22 that matter. I mean to that, to the court system. But I do,  
23 like Ms. John stated, believe that I can make a reasonable  
24 evaluation of this application, in so far as the zoning.

25 And I do believe that the Applicant has met the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 burden of proof for us to be able to grant the special  
2 exception in accordance with U 253.4 and X 901.2. And, you  
3 know, just as Ms. John stated, some of these conditions,  
4 these criteria that we have to evaluate, I do believe that  
5 they have met.

6           One of the criteria is to show that utilities can  
7 access the site, and I believe that the Applicant has  
8 demonstrated that he can. And most of those concerns will  
9 be dealt with at the building permit level anyway. So as,  
10 that is a fairly interesting set of criteria I believe to  
11 include into the zoning regulations. But nonetheless, they  
12 do, I do believe that the Applicant has shown that they can  
13 meet that criteria.

14           So, I do believe that the Applicant has met the  
15 general special exception criteria. I do believe that this  
16 ADU, the size of the ADU is fairly comparable to other  
17 accessory buildings. The size of the building is less than  
18 what -- I believe it's 40 percent the size of the principal  
19 building. So, it can be considered an accessory, ancillary,  
20 accessory building to the primary building, given the size  
21 of the building.

22           The building doesn't have balconies facing any  
23 adjacent residential property. The design of this building  
24 is in keeping with what the regulations state this type of  
25 building has to be. Now, so far as the, what would be used

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 on the ground floor, I do, I agree with Ms. John. I believe  
2 that the Board would have to get into the intent of the  
3 Applicant in his usage of the ground floor. And I believe  
4 it's best left up to DCRA to enforce the regulations of the  
5 Zoning Ordinance that the Applicant shall not live on the  
6 ground floor.

7           But in stating that, being that we have Chairman  
8 Hood here, I do believe that the regulations as written would  
9 force any Applicant for an accessory building, or accessory  
10 dwelling unit within these two zones, to build bigger than  
11 they would otherwise -- build a building bigger than they  
12 would otherwise need in the zone. Because you would have to  
13 put an ADU above a use that is allowed on the ground floor.

14           So, maybe we didn't have that regulation -- I get  
15 the intent of that regulation, but I think it's probably a  
16 fairly large loophole that creates a bigger issue than what  
17 was really intended. So, you know, I would welcome the  
18 Zoning Commissioner taking a look at the ADU regulations in  
19 these two zones, to see if we can tweak it or tighten it up  
20 a little bit to meet the -- or what I would think would be  
21 the intent of the way that this is crafted in these two  
22 zones.

23           So, with that, I give great weight to OP's staff  
24 report and I'll support their recommendations, and will  
25 support the special exception.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 CHAIR HILL: Okay. Chairman Hood, you want me to  
2 go, you want to go. I don't really care.

3 ZC CHAIR HOOD: I will go, because I'm going to  
4 be very brief.

5 CHAIR HILL: Okay.

6 ZC CHAIR HOOD: Let me just finish speaking about  
7 ADU since 2016, and I mentioned this in another setting. Our  
8 ADUs have, in this city, have increased 255 percent. We've  
9 now gone from nine to 32. I really hate to deprive this  
10 Applicant of what he's trying to do. I really understand it,  
11 but let me back up to Board Member Smith's opine about the  
12 Zoning Commissioner re-looking at the ground floor area.

13 This actually was brought to us by the residents,  
14 so instead of the Zoning Commission looking at it, I would  
15 like for the residents who brought -- and I think this came  
16 up at the hearing -- the residents who brought this to us and  
17 asked us to codify and put this into regulations, to revisit  
18 that, if they choose to.

19 But I was informed, I did some research from the  
20 Office of Planning. I was wondering how we got there. And  
21 that was actually brought to us by the community. So, we  
22 did, this was so nobody could never say we don't do what the  
23 community asked us to do. This is the time, another one of  
24 those times, many times that we've done what the community  
25 asked us to do.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           But going back to the original, and if we go to  
2 the zoning part of this equation, I could support it. But  
3 again, when I look at restriction -- covenants, and I look  
4 at what I believe, generally speaking, a restrictive covenant  
5 that is less restrictive than the zoning regulations, the  
6 zoning regulations prevail.

7           But in this case, the most restrictive of the two,  
8 is the covenant in this case. And a restriction such as  
9 these usually relate to building types and everything. But  
10 the most restrictive in this case is the covenant. I don't  
11 know how we get around the covenant. I don't know how, I  
12 don't even know how we even started talking about the zoning.  
13 Because when both are in conflict, the covenant, the most  
14 restrictive takes precedent. And I think in this case, it's  
15 the covenant.

16           I stand to be corrected. But I just don't see how  
17 we just forget about a covenant, and move on. I understand  
18 about the turnaround, and the squares. And I understand all  
19 that, the dynamics. But at the end of the day, there's a  
20 covenant in place, and I really don't know what to do with  
21 that. But maybe, the Chairman, can -- and I hear what the  
22 Vice Chair said. But I think, I think for me it's still  
23 there. The covenant, regardless of how you make it or you  
24 chop it up, the covenant is still there. So, I maybe rambled  
25 and jumbled, but that's where I am. Thank you, Mr. Chair.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 CHAIR HILL: Okay. No, I mean this is an  
2 interesting thing. I don't know either. And so, I think I  
3 kind of know what I'm going to do, which is somewhat kick it  
4 to the courts. I think that, let me go kind of backwards on  
5 stuff, and I'm going to end with the covenant, right. Like  
6 I think in terms of the zoning -- what's before us, in terms  
7 of the zoning criteria, I believe that the Applicant meets  
8 the standards for us to grant the application.

9 I don't particularly like it. But that's not up  
10 to me, right. Like, I understand the community. I  
11 understand what is trying to be done. But -- and I'm going  
12 to just talk about it a little bit more. I mean I think that  
13 what, everything that Vice Chair John said, about the zoning  
14 requirements, I agree with. In terms of, you know, the side  
15 yard setback has been satisfied. The utility connections has  
16 been satisfied. The tree removal and the Park Service stuff  
17 is not really within our purview. It's not an alley  
18 dwelling, right, it's an ADU because it's now connected and  
19 fronted on 39th Street.

20 And again, now this is where I just find the  
21 regulations also sometimes, I mean nothing's perfect, right,  
22 but interesting. In that, you got this regulation that says  
23 you have to live on the first floor, so there's a kitchen --  
24 I'm sorry on the second floor. So, there's a kitchen and  
25 bathroom on the second floor. On the first floor, you have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 a deck, right, not a balcony, a deck and bay window, you  
2 know, bay windows, a nice window, right. That seems like why  
3 would you have that on the first floor, if it's storage?

4           However, in the regulations you can have an artist  
5 studio, right. So, what is an artist studio? I looked,  
6 there's no technical definition for an artist studio, right.  
7 You could throw an easel up in the corner, and some canvas  
8 and now it's an artist studio. I don't know. You could be  
9 a poet. And I am a poet. I'm an artist. And I need some  
10 quiet space to sit and contemplate my poetry. And therefore,  
11 I'm an artist and that's an artist's studio.

12           Does it fit within the regulations? It seems to  
13 be. So, therefore, it's appropriate. Whether or not I think  
14 it is, you know, honoring the meaning of the law, I don't  
15 know. I mean it is -- I'm sorry, it seems to be within the  
16 regulations that we're supposed to comply with. Meaning  
17 that, there is storage/artist studio, right. So, you could  
18 say it's an artist studio. So, that's how I can understand  
19 the argument, right.

20           Do I think it's necessarily, do I think it's kind  
21 of getting around what maybe was intended? Perhaps. But it  
22 is within the regulations. And so, I think the courts would  
23 agree, that it's in the regulations. And it is an artist  
24 studio. If they want to have it an artist studio, it's an  
25 artist studio. So, we can't argue with that. And the person

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 is going occupy and live on the second floor, which is again,  
2 within the regulations. So, if the person does that, they  
3 can rent out their front building, right.

4 So, and since they connected the lots, this is  
5 unique in that it's not separated by that paper alley. So,  
6 it does front on 39th Street. Now, again, and do I think  
7 that that's fair? You know, it's not about fair, right.  
8 It's about what's within the regulations. And they're  
9 fronting on 39th Street. I don't think it's necessarily  
10 fair, but it's, you know, it is again, what is in the  
11 regulations.

12 Therefore, I believe the courts would uphold.  
13 That's what I believe. The courts would uphold. Because I  
14 think that if we're doing our job, it's within the  
15 regulations.

16 So now, just to speak to the community, because  
17 I know some of them are probably listening. Those other lots  
18 that are on the other end, that actually go all the way  
19 through. I think yes, they could do this exact same thing.  
20 Because they're fronting on 39th Street, and they're going  
21 to be before us. And they you're going to basically have  
22 this covenant issue which is what's going to get kicked to  
23 the courts, right, perhaps, right.

24 Are we supposed to rule on this covenant thing?  
25 I guess in the past, the BZA has been asked to take that into

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 consideration. Now, what Vice Chair John said, was that like  
2 easements, usually go into like side yards. Where, you know,  
3 it kind of ties into a zoning criteria that we're possibly  
4 supposed to look at, which I can then understand how the  
5 Board is supposed to give an opinion, or opine on that,  
6 right.

7 I mean, the covenant issue, again like I'm not an  
8 expert on covenants, right. And so, I say that, in that we  
9 as a Board, and I've been here for a little while again, we  
10 as a Board have support for zoning issues. And we have  
11 support from the Office of Zoning, from legal, from Office  
12 of Planning, from ANCs. However, on covenants we don't  
13 necessarily have technical support to refer to. It is  
14 basically, it seems to be what we as individuals think  
15 applies.

16 And so, this is the catch that I don't understand,  
17 exactly. So, the covenant to me seems like you're not  
18 supposed to have residential uses in the back. Now, what  
19 Vice Chair John puts forward is that the law now says that  
20 you can have accessory dwelling units, right. And that's  
21 something that the law now allows. So, does the covenant  
22 trump the law? I would think not. But I don't know, right.

23 And so, but to me, the covenant says there's no  
24 residential units that are supposed to be back there. So,  
25 you're probably breaking the covenant by having residential

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 uses back there. I will speak to the question that was  
2 brought up. Now, whether any of this is racially motivated  
3 or whatever it was back in 1938, I don't know. Whether it  
4 was socioeconomic motivated in 1938, whether tenement housing  
5 was something people worried about in alley dwellings?  
6 Perhaps. You know, it was 1938. I wasn't there in 1938, you  
7 know.

8           And whether those things are something that the  
9 courts would look at now, as to why that covenant was put  
10 forward? You know, to me maybe it's just because they didn't  
11 want people living in those back, in their back yards. Now,  
12 whether or not that was socioeconomically motivated? I don't  
13 know. You know, and again, that's not really within my area.

14           So, all that being said, I think that I will  
15 thankfully have other people here, that Vice Chair John, and  
16 Mr. Smith kind of spoke to, which I think they're meeting the  
17 zoning regulations. Whether I necessarily agree with the way  
18 that we got to those zoning regulations, doesn't matter.  
19 Because I can't -- that's not up to me. I have to just  
20 decide whether I think they meet the zoning regulations.

21           It's fronting on 39th Street. It's not fronting  
22 on the alley. They're going to use it as an artist's studio  
23 in the basement -- I'm sorry, on the first floor. The person  
24 is living on the second floor. It meets the zoning criteria.  
25 It meets the size for the ADU. You know, so, it seems like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 I have to vote for it, even though I'm confused. So, I guess  
2 I'm going to vote for it.

3 And if there is a covenant issue, as Vice Chair  
4 John, said, that may or may not get resolved at a different  
5 level within the courts. And then if it comes back to us  
6 again for something else, I don't know. But, I think I've  
7 spoken everything I had to say about it. But I do think that  
8 it's interesting. And so, I guess I'm going to vote for it.

9 Do you want to make a motion Vice Chair John, or  
10 do you want me to make a motion, you don't care?

11 VICE CHAIR JOHN: You're fine with making a  
12 motion, Mr. Chair.

13 CHAIR HILL: All right. Okay, fine. All right.

14 ZC CHAIR HOOD: So, can I ask -- can I ask a  
15 question, Mr. Chairman?

16 CHAIR HILL: Yes. Go on, Chairman Hood.

17 ZC CHAIR HOOD: So, what I'm hearing from the  
18 Board, from my three colleagues -- and this may help me,  
19 because I plan on voting against it due to the covenant.  
20 What I'm hearing is, it sounds like we found -- and I'm going  
21 to use some words that you all disagree with, and just go  
22 ahead and disagree with me.

23 It sounds like we figured out a way through the  
24 zoning process, we went past the covenant, and we figured out  
25 a way through the -- which I could agree on the zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 process. I would agree to approve it on the zoning issues.  
2 But I don't see how we go past the covenant, to go to the  
3 zoning. Because when they're in conflict, and I think that's  
4 there's case law out there. And I'm not an expert, I'm sure  
5 our legal counsel, as you've stated, approves of that.

6 But, and I'm not necessarily one to kick it to the  
7 court. Because I think there's enough case law, at least the  
8 way I've read and looked around, and googled, about what's  
9 most restrictive in other jurisdictions. The covenant  
10 prevails. It's the most restrictive. So, in this case, what  
11 we're saying as a BZA, is that we found a way to basically  
12 push aside the covenant, and go straight to the zoning. Is  
13 that what I'm hearing? Or did I mischaracterize that?

14 VICE CHAIR JOHN: So, Mr. Chairman.

15 CHAIR HILL: Go on.

16 VICE CHAIR JOHN: Since you invoked my name. So,  
17 I believe, I don't remember the case that was cited involving  
18 the Zoning Commission, where it was a recent case where the  
19 Zoning Commission did not consider the covenant. And this  
20 was looked at from the perspective of the Commission's  
21 functions. The two parties had agreed to provide a benefit  
22 as part of the Zoning Commission process. And the Zoning  
23 Commission did not considerate it.

24 And I believe that the court said that the Zoning  
25 Commission should have considered it, as part of its review

1 of the case. The BZA is a little different, because we're  
2 not looking at, we're not legislating anything. We're simply  
3 interpreting regulations. And I agree with you that the  
4 covenant is problematic. And I don't believe that the issue  
5 of the covenant belongs before a body such as the BZA.

6 And I think it should ultimately be resolved by  
7 a court. So, I think we can, in this case, because it's  
8 different from the function of the Commission -- the  
9 Commission is a legislative body. And we, I see our role as  
10 different, and I would distinguish that case that has been  
11 cited. So, that would be my response.

12 And I realize that the covenant, if valid, would  
13 restrict the rights of the parties, the rights of the  
14 Applicant to develop his property. But I don't know if the  
15 covenant is valid today. And as presented to us, that would  
16 be something for a court to decide. I don't believe, I don't  
17 have the expertise to go into all of the intricacies of the  
18 validity of a covenant.

19 I'm not entirely convinced that there were issues,  
20 that they were impermissible policy issues, that apply to  
21 this covenant. It is fairly well-known, and the record shows  
22 that many of these -- that places like Burleith, had racially  
23 restrictive covenants. And I don't know if, although this  
24 provision on its face, is not explicitly racial. I don't  
25 know that. A court could decide that. But that did not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 enter into how I looked at this case.

2           And I'm not punting, but I really don't think that  
3 this Board has the expertise to decide whether covenants are  
4 effective or not. So, we could do one of two things. We  
5 could dismiss the case because there is no clear title.  
6 Although facially, the Applicant has stated that he is the  
7 owner. Or we could decide the zoning issue, and the facts  
8 as presented to us. And leave it to a competent body to  
9 decide the issue of the covenant.

10           I don't believe I'm competent to have an  
11 evidentially -- evidential hearing on the effectiveness of  
12 a covenant that existed back in 1938, and has so many, so  
13 many questions. So, that's kind of where I am. I'm sorry  
14 to, you know, talk so much. But I struggled with it. And  
15 I'm at the point where I think we can decide the zoning  
16 issues subject to resolution of the covenant, and leave it  
17 at that. And so that's it.

18           ZC CHAIR HOOD: So, Mr. Chairman, if I could, to  
19 the Vice Chair -- I have a lot of respect for the Vice Chair  
20 analyses. I've always said that. And I still respect it.  
21 I'm trying to, what I'm trying to do is get their order but  
22 I can't because, and the case she was talking about was the  
23 Capital Hill Restoration Society v. Zoning Commission, which  
24 was back in 1977.

25           But the thing about it is, is that we are --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Zoning Commission Members are here on the Board, not  
2 necessarily, our role on the BZA is not here, I believe,  
3 because the BZA just want to see us every week. Our role is  
4 to make sure that the zoning code is intact. We are the  
5 stewards of the, as the Vice Chair mentioned. We write, we  
6 legislate, we do our best to legislate so we don't have these  
7 kind of problems. But often times, as you can see, the  
8 Board. But you all do the exceptions, and the variances, we  
9 can do those as well.

10 But, as you all already know, my bigger point is,  
11 I'm trying to get, I'm having a problem, and I'm going to go  
12 with my gut in this case. I'm having a problem getting to  
13 the zoning issues because I still believe, in my little  
14 research -- and you're right Vice Chair, I'm not an expert,  
15 but there's something in my gut that does not let me go to  
16 the zoning issues, because I have a covenant.

17 And I do, I want, maybe in other ways they can do  
18 it besides come to the BZA, and get that straightened out and  
19 then come back for the ADU issues. But I just have a problem  
20 fundamentally is -- I'm not going to -- I don't like to use  
21 the word circumvent, but that's what I feel like we're doing.  
22 And that's coming from my gut. So, I'll leave it at that.  
23 I know I'm out voted, Mr. Chairman, but I wanted to make sure  
24 I put my position on the record. And I'm not, the zoning  
25 issues I'm fine with, it's getting there. So, thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 CHAIR HILL: That's okay. I know whether you're  
2 out voted or not, Chairman Hood. I don't think that like,  
3 you know, I think that you, you know. point wasn't made. I  
4 think that it's an extremely fascinating. I think all of us  
5 would agree that this is a very interesting position we seem  
6 to be in, which is, and I'm putting this on the record again.

7 We think all of the zoning criteria has been met,  
8 right. And so now, we're completely just talking about the  
9 covenant and whether or not we think the covenant is  
10 something that we have to, you know -- I'm going to use a  
11 legal term that I've learned just from being here -- a  
12 threshold issue? You know, is this actually something that  
13 we have to kind of, first get over, to get to the zoning?  
14 And you all can talk -- just give me one second.

15 And so, like the, and so then that takes you to  
16 the whole covenant thing, right. Like to begin with, and  
17 I've said it now, and I'm really saying it over and over  
18 again, because I think it's very interesting, again this case  
19 -- that again, the lots have been combined. They're fronting  
20 on 39th Street. That's fact, right. Do I think that it's  
21 fantastic that this happened that way? I don't know.

22 I shouldn't say it that way. That's a fact. It  
23 is now fronting on 39th Street. The covenant speaks to lots  
24 that don't front on 39th Street. This lot fronts on 39th  
25 Street. So, you could easily argue that the covenant doesn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 even apply, right.

2           From a -- what's the word, I wish, there's a word  
3 in there. I know the lawyers know it, like -- the intent of  
4 the law, right. That the covenant seems to keep, it seems,  
5 if I were just reading it and I bought property there and all  
6 that stuff today in 2017. But no, shoot 2021, sorry. Didn't  
7 even know what year we're in, 2022, 2022? That -- man, COVID  
8 has really messed with me.

9           So, 2022, that just basically says there's not  
10 going to be residential housing behind my house, right. Now,  
11 and this is the part where I think the courts really get to  
12 decide a little bit more. What was the intent of that  
13 covenant in 1938, right? What can you argue was or wasn't --  
14 I mean I'm not saying that anybody on that block right now  
15 is racist, or you know, has any intent about socioeconomics,  
16 whatever. They just don't want something in their back yard  
17 perhaps, right.

18           But if the covenant in 1938 was written to  
19 preclude people from living back there, that were not of the  
20 right kind of people, then the courts might be able to decide  
21 that covenant doesn't ever apply anymore, right. So, I don't  
22 know. And that's where I guess Vice Chair John and also, I  
23 guess Mr. Smith is saying. So, that's why it kicks -- that's  
24 why I feel comfortable enough I suppose to vote on the zoning  
25 regulations because this lot fronts on 39th Street.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           So, and I think that, correct, this might go to  
2 the courts for the covenant issue. And then if it comes back  
3 to us, it comes back to us. But I don't think we're, I don't  
4 think we're not all kind of talking about the same thing.  
5 But in somewhat different ways, right.

6           So, I'm going to make a motion, Chairman Hood do  
7 you want to say anything else?

8           ZC CHAIR HOOD: You want me to make the motion,  
9 or you want to make it? No, I'm not --

10           (Laughter.)

11           CHAIR HILL: No, no, I don't know, if you're going  
12 to -- I mean I'm not necessarily happy about the motion.  
13 I've already said that, right. I mean I'm not necessarily  
14 happy about the motion. I'm not necessarily -- and I want  
15 to go on the record again, I'm not necessarily happy about  
16 how we got here. I think that it meets, I think it meets the  
17 standard of the regulations that we're supposed to look at,  
18 right, for the zoning regulations.

19           And I think that ADUs are something that is now  
20 being, you know, encouraged in the city for affordable  
21 housing, whatever, you know, type of things like that. And  
22 are now in the law. And so, that is now things the law has  
23 changed since 1938.

24           So, but yes, Chairman Hood, go ahead and make a  
25 motion if you like? Which motion are you going to make?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           ZC CHAIR HOOD:  Actually, I was just having fun,  
2 because I could do it in two parts, but that doesn't, still  
3 doesn't -- I was just thinking that defeats what I'm saying.  
4 I could vote in favor of the zoning issues, but the covenant  
5 -- but anyway.  That defeats what I'm saying, so, I will let  
6 you make your motion.

7           CHAIR HILL:  All right.  I'll make a motion to  
8 approve Application Number 20505, as captioned and read by  
9 the Secretary.  I don't think there are any conditions that  
10 I'm missing.  And ask for a second.  Ms. John.

11           VICE CHAIR JOHN:  Second.

12           CHAIR HILL:  Motion made and seconded, Mr. Moy,  
13 want to take a roll call?

14           MR. MOY:  Names, if you would please respond with  
15 a yes, no, or abstain to the motion made by Chairman Hill to  
16 approve the application for the relief that's being  
17 requested.  The motion to approve was seconded by Vice Chair  
18 John.

19           MR. MOY:  Mr. Smith.

20           MEMBER SMITH:  Yes.

21           MR. MOY:  Vice Chair John.

22           VICE CHAIR JOHN:  Yes.

23           MR. MOY:  Chairman Hill.

24           CHAIR HILL:  Yes.

25           MR. MOY:  Zoning Commission Chair Anthony Hood.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           ZC CHAIR HOOD: No, as stated in my comments.  
2 Thank you.

3           MR. MOY: Staff would record the vote as 3-1-1 and  
4 this is on the motion made by Chairman Hill to approve. The  
5 motion to approve was seconded by Vice Chair John. Also, in  
6 support of the motion to approve is Mr. Smith, and of course  
7 Vice Chair John and Chairman Hill. Opposed to the motion is  
8 Zoning Commission Chair Anthony Hood. We have a Board Member  
9 not participating. The motion carries on a vote of 3-1-1.

10           CHAIR HILL: Okay. All right, Chairman Hood.  
11 We'll see you later.

12           ZC CHAIR HOOD: You all, have a good day. Take  
13 care.

14           VICE CHAIR JOHN: So, Mr. Hood, this is one case  
15 I know we will hear more about.

16           (Laughter.)

17           ZC CHAIR HOOD: Okay, well let's look --

18           (Simultaneous speaking.)

19           VICE CHAIR JOHN: Just so we didn't know. And  
20 maybe that's a good thing. Maybe the Board will have clearer  
21 guidance.

22           ZC CHAIR HOOD: I agree Vice Chair. Thank you,  
23 thank you all for all the work that you all do. Thanks, take  
24 care.

25           VICE CHAIR JOHN: Thank you, though, bye.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           CHAIR HILL: All right, you guys. Let's take a  
2 quick break actually, huh? It's 11 and then we'll come back  
3 with Dr. Imamura and the rest of the team. I don't know,  
4 let's say 10 minutes. We'll come back in 10 minutes. Thank  
5 you.

6           (Whereupon, the above-entitled matter went off the  
7 record at 10:56 a.m.)

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



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: 04-06-22

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

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701