

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 18, 2022

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:38 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, ZC Chairperson
ROB MILLER, ZC Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
SARAH BAJAJ, Attorney Advisor
RYAN NICHOLAS, Attorney Advisor
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on May 18, 2022.

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

9:38 a.m.

1
2
3 CHAIRPERSON HILL: Good morning, ladies and
4 gentlemen of the Board of Zoning Adjustment. Today's date
5 is 5/18/2022. The 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 Adjustment.

8 Joining me today is Board Members Carl Blake and
9 Chrishaun Smith, Zoning Commissioners Chairman Anthony Hood
10 and Rob Miller.

11 Today's meeting and hearing agenda are available
12 on the Office of Zoning's website.

13 Please be advised that this proceeding is being
14 recorded -- and it's Vice Chair Rob Miller. That's right.
15 Please be advised this proceeding is being recorded by a
16 court reporter and is also webcast live via WebEx and YouTube
17 Live. The video of the webcast will be available on the
18 Office of Zoning's website after today's hearing.

19 Accordingly, everyone who is listening on WebEx
20 or live telephone will be muted during the hearing. Also,
21 please be advised that we do not take any public testimony
22 at our decision meeting sessions.

23 If you're experiencing difficulty accessing WebEx
24 or with your telephone log-in call, please call our OZ
25 hotline number at 202-727-5471 to receive WebEx log-in or

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1 call-in instructions.

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

11 In today's hearing session, everyone who is
12 listening on WebEx or by telephone will be muted during the
13 hearing. Only participants who have signed up to participate
14 or testify will be unmuted at the appropriate time.

15 Please state your name and home address before
16 providing oral testimony or your presentation. Oral
17 presentations should be limited to a summary of your most
18 important points. When you're finished speaking, please mute
19 your audio so that your microphone is no longer picking up
20 sound or background noise.

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

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1 by Subtitle Y § 408.7.

2 Requests to enter evidence at the time of an
3 online virtual hearing, such as written testimony or
4 additional supporting documents other than live video, which
5 may not be presented as part of the testimony, may be allowed
6 pursuant to Subtitle Y § 103.13, provided that the persons
7 making the request to enter an exhibit explain:

8 A, how the proposed exhibit is relevant; B, the
9 good cause that justifies allowing the exhibit into the
10 record, including an explanation of why the requester did not
11 file the exhibit prior to the hearing, pursuant to Subtitle
12 Y § 206; and C, how the proposed exhibit would not
13 unreasonably prejudice any parties.

14 The order of procedures for special exceptions and
15 variances are pursuant to Y 409.

16 At the conclusion of each case, an individual who
17 is unable to testify because of technical issues may file a
18 request for leave to file a written version of the planned
19 testimony to the record within 24 hours following the
20 conclusion of public testimony in the hearing.

21 If additional written testimony is accepted, then
22 parties will be allowed a reasonable time to respond, as
23 determined by the Board. The Board will then make its
24 decision at its next meeting session, but no earlier than 48
25 hours after the hearing.

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1 Moreover, the Board may request additional
2 specific information to complete the record. The Board and
3 staff will specify at the end of the hearing exactly what is
4 expected and the date 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.

10 However, pursuant to Section 405(b) and 406 of
11 that act, the Board may, consistent with its rules and
12 procedures and the act, enter into closed meeting on a case
13 for purposes of seeking legal counsel on a case, pursuant to
14 DC Official Code § 2-575(b)(4), and/or deliberate on a case
15 pursuant to DC Official Code § 2-575(b)(13), but only after
16 providing necessary public notice in the case of an emergency
17 closed meeting after taking a roll call vote.

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

19 MR. MOY: Good morning, Mr. Chairman and members
20 of the Board. This is weird. I'm hearing an echo.

21 CHAIRPERSON HILL: Yes. You have an echo going
22 on.

23 MR. MOY: If you don't mind, I'm going to log out
24 and log back in.

25 CHAIRPERSON HILL: Sure.

1 (Pause.)

2 MR. MOY: All right. Is this better?

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: Okay. All right. Sorry, sir. That was
5 freaking me out.

6 CHAIRPERSON HILL: Okay.

7 MR. MOY: All right. It happens to me too.

8 To restart then, good morning, Mr. Chairman and
9 members of the Board. I do have a few announcements
10 regarding today's docket. There are four case applications
11 that have been postponed and rescheduled.

12 The first is Application No. 20410. This is the
13 application of Mamma Lucia of Chevy Chase, LLC, rescheduled
14 to June 29, 2022.

15 Case No. 20524 of Gregory Potts, rescheduled to
16 June 29, 2022.

17 Case No. 20234 of Kuumba Learning Center, Inc,
18 postponed to September 28, 2022.

19 And finally, Case Application No. 20636 of
20 Penguin, LLC. It was granted postponement and continuance
21 to June 15, 2022. Attendant to this continuance, the Board
22 has scheduled a meeting session to address all the
23 outstanding requests for party status in this case. And that
24 is scheduled for the morning of May 25, 2022.

25 I believe that's it for me, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

2 All right. Good morning, everybody. I know
3 Chairman Hood is on a limited-time basis with us, so we're
4 going to go ahead and try to get him finished as quickly as
5 possible.

6 I did want to make an announcement that I was
7 unaware -- it was brought to my attention again that
8 Application No. 20645 of Equity Trust Company, it was an
9 application that we had had on the docket at a previous day.
10 And due to the fact that we had three cases that were going
11 very long, and I think the day ended at 7:30 or something
12 like that, rather than try to do that case on that same day,
13 we tried to move the case to a different day.

14 There was a lot of different parties on that case,
15 so the day that we were all able to settle on was today. And
16 I had put them at the end of the docket because -- oh.

17 Mr. Moy?

18 MR. MOY: Yes. I believe, Chair Hill, your
19 reference, you meant the --

20 CHAIRPERSON HILL: Sorry.

21 MR. MOY: -- Case 20538 --

22 CHAIRPERSON HILL: I meant 20538. Sorry, sorry.
23 Thanks. My apologies.

24 So once again, I'll say it's 20538 of TG
25 Management. That's the case that we had -- it was scheduled

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1 on a previous day. There was a lot of participants and so
2 the day that they were all able to agree on was this day.

3 I had put it at the end of the day because I
4 thought that it was going to take some time. And so I
5 thought that it would be good to have it at the end of the
6 day, but it was brought to my attention again that we had
7 said that we would put them at the beginning of the day.

8 So I'm going to bring everybody up at the
9 beginning of the day here, after we get through some cases
10 that we need to get through in terms of our own scheduling,
11 and see where we are and whether everybody is available at
12 the beginning. Because we had this scheduled at the end of
13 the day, I want to make sure everybody is here at the right
14 time.

15 So that's a long way of saying that if you're
16 listening and it's 20538 of TG Management, we're going to try
17 to pull you up at the beginning of the day. So there you go
18 with that.

19 All right. Mr. Moy, I guess if you could go ahead
20 and call our first decision meeting case, which I think is
21 the one that Chairman Hood is on?

22 MR. MOY: Yes, sir. I believe this would be --
23 and the Board is in its public meeting session. This is
24 Application No. 20680 of DMV Realty Investments, LLC. For
25 the record, this is a self-certified application for a

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1 special exception from the rear addition requirements of
2 Subtitle E § 205.4, pursuant to Subtitle E § 205.5, Subtitle
3 E § 5201, and Subtitle X § 901.2. This project is in the RF-
4 4 zone, property located at 801 20th Street Northeast, Square
5 4495, Lot 20.

6 The last time the Board heard this case was May
7 the 4th, and set for a decision to today, May 18th. And
8 participating is the Chairman, the Vice Chair -- whom I have
9 an absentee ballot, Mr. Chairman -- Mr. Blake, Mr. Smith, and
10 of course Zoning Commission Chair Anthony Hood.

11 I think that's all I need to say. Thank you, sir.

12 CHAIRPERSON HILL: Okay. I'm going to start off
13 by saying I don't know where I am with this and kind of talk
14 it through with a little bit with you. I kind of know where
15 I am but I still want to talk it through with everybody.
16 Where I'm somewhat conflicted with it is, again, the adverse
17 impacts on the extension of the six feet and the ten-foot
18 rule.

19 So the ten-foot rule, what we the Board have been
20 doing is that it's ten feet from the furthest wall, which in
21 this case is -- I'm sorry -- the closest wall, which in this
22 case is the first story. So if they were to go back ten feet
23 from that first story, then they could go by right ten feet
24 straight -- I'm sorry -- ten feet back from that first story,
25 straight up three stories.

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1 And I think the diagrams -- I've thanked the
2 architect. I thought the architect was very professional in
3 the way that he's approached this project and also the
4 application. And then the ANC, I appreciate the way they
5 have testified as to what they believe are the adverse
6 impacts to the SMD and their ANC.

7 So we had been going back ten feet from the first
8 story and then going up. And that was supposedly the by-
9 right. The thing that this case has brought more
10 specifically to our attention is that, is it ten feet from
11 then the second story or the third story, which would kind
12 of create this wedding cake, tiered effect.

13 I mean, way back when, I remember when we first
14 started doing these. When this came through from the Zoning
15 Commission, sometimes we were doing the wedding cake and
16 other times we weren't. And then we kind of got, I think,
17 consistent to where it was just ten feet and then they went
18 straight up.

19 Now, the problem was, I don't remember any case
20 where the second story was necessarily that much different
21 than the first story. So there really wasn't an issue with
22 going ten feet back from the second or third story.

23 But I think we need to start to become consistent
24 and decide what we think the Zoning Commission intended,
25 which we've got the Chairman here. But also what we think

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1 we've been doing and how we've been treating things in the
2 past for this type of special exception, which is a special
3 exception. It's not a variance. And so the criteria is much
4 less than if it were a variance.

5 So to me, it kind of -- and this is where I'll
6 stop in a minute and just see what others think -- to me,
7 it's what I think of this wedding cake effect, and whether
8 or not the ten feet -- the by-right versus the sixteen feet
9 -- the six feet is much of a difference in the adverse
10 impact, the six feet.

11 And the applicant did -- we had some issues with
12 the application, I did also, about the door and how I thought
13 it changed the character of that block. And they put the
14 door on the front, and then they pulled back the massing a
15 little bit. So now they're six feet back, and I think they
16 were 18 feet or something like that originally.

17 So they did make some adjustments, and this then
18 does allow for there to be four bedroom units. Which again,
19 whether that makes them more family size, I don't know, but
20 that is something that we discuss often.

21 So that all being said, I'm just a little bit
22 unsure as to where I am. And that the ANC is concerned about
23 this kind of setting a precedent, which I also kind of think
24 that somebody has to go first and all these may change
25 anyway. Even if it were the ten feet by right, that would

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1 change the block anyway. I don't know if I'm being terribly
2 clear, but that's kind of the way I'm thinking about things.

3 I just think I lost Mr. Smith there. So I'm going
4 to go with -- who would like to raise their hand?

5 Okay. Mr. Blake?

6 MEMBER BLAKE: Sure. Thank you, Mr. Chairman.
7 I have reviewed the case record including supplemental
8 information from the Office of Planning, the ANC's recent
9 report, and the applicant's information.

10 I have to say I'm a bit disappointed that the ANC
11 remains in opposition. As you point out, they were pretty
12 clear about the issues and concerns. And I can appreciate
13 the ANC's desires and concerns. The issue of the rear yard
14 creep is a concern that has come up before, especially in the
15 Capitol Hill area.

16 That said, the proposed building and relief
17 requested does not appear to be inconsistent with the intent
18 of the RF-4 zone or ZC 19-30. And I can certainly let the
19 Chair of the Commission talk about that. But the RF-4 zone
20 aims to preserve the appearance of rowhouses and maintain
21 residential use in areas abutting higher-density zones. The
22 proposed building would not be inconsistent with that intent.
23 The relief is also anticipated in the zone, as it is a
24 special exception and not a variance.

25 I do appreciate the clarification of the ten-foot

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1 rule. There is no mention of additions not being allowed to
2 exceed the ten-foot rule within the ZC's 19-30 or RF-4 zone.
3 Rather, the phrase is "diminution of rear yard."

4 This project requesting an additional six and a
5 half feet past the ten-foot rule, which provides for a rear
6 yard of 20 feet, three and three-quarter inches, exceeds the
7 20-foot rear yard setback minimum. This special exception
8 request will not negatively impact the size of the rear yard.

9 The project meets the development standards for
10 the zone. The analysis was based on the proposed total mass
11 in the building, which includes three proposed floors, and
12 the impacts to light, air, privacy, and vision intrusion on
13 abutting and adjacent properties.

14 I believe the applicant has demonstrated that the
15 impacts to light and air flow would not rise to a level of
16 concern, and that the project as currently designed would not
17 be visually intrusive. I consider the rear yard setback, the
18 front yard setbacks necessitated by the building restriction
19 line, and the collective design of the neighboring properties
20 in drawing that conclusion.

21 The applicant meets the burden of proof to be
22 granted special exception relief for rear yard addition,
23 pursuant to 5201 and X 901.2. Again, we've looked at the
24 shadow studies versus the matter of right. It isn't undue.

25 The privacy is not impacted as the windows are to

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1 the north. And again, the visual intrusion, it's a more
2 modern building, but when you look at in the context of what
3 has taken place not too far down across the alley, and it is
4 a corner unit, it's not out of character with the
5 neighborhood.

6 I think the current design does preserve the
7 appearance of rowhouses and maintains the residential use.
8 And its massing is consistent with the requirements of the
9 zone, the rear yard setback, the front yard setbacks, et
10 cetera.

11 So again, I did understand very clearly the
12 concerns of the ANC. And I think this is a little bit of a
13 unique case because of its setback, its positioning relative,
14 and the fact it's a corner unit.

15 I give great weight to the Office of Planning's
16 recommendation for approval. I note that DDOT has no
17 objections. And I do give great weight to the ANC 5D's
18 concerns. However, as I said earlier, I think there's some
19 issues that we are not necessarily consistent with the rules
20 provided in that zone. And I do appreciate Commissioner
21 Moore's passionate testimony. I think it was very, very
22 helpful in helping to understand this.

23 The one other thing I would say about that too is
24 the fact that this is the first development that's taken
25 place since that has happened does suggest to me that the

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1 rule may be affected because it is definitely not encouraging
2 aggressive development in the area. It's actually taking a
3 very measured approach since it's one of the first that's
4 ever come up since that regulation was passed.

5 I noticed a number of people that are also in
6 support. And with that, I will be voting in favor.

7 CHAIRPERSON HILL: Okay. Thanks, Mr. Blake. I
8 thought that was very well thought out, and I appreciate the
9 input.

10 Mr. Smith?

11 MEMBER SMITH: I thank Mr. Blake for providing a
12 very thorough explanation of this particular case. I mostly
13 agree with what he's saying on this particular case.

14 I was torn. I did take a look at this case. And
15 considering the impacts that the project to the east has had
16 on -- I think given the scale of that particular building and
17 the impact that that has had on the neighbors -- and I think
18 the ANC out there did focus on the 152 home. Based on what
19 was presented within the record, I am fairly comfortable with
20 the project as presented, that it does meet the special
21 exception standards for us to be able to grant special
22 exception.

23 I did have some reservations about how we're
24 applying that ten-foot rule, given that this one isn't so
25 much of a wedding cake. The adjacent property to the north

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1 extends out ten feet on the first floor, but the second and
2 third floor is not extended out as much. So the building
3 won't have any clearance in projecting out further, given
4 that this would be a three-story building.

5 In my evaluation I did go back and look at the
6 special exception criteria and the intent for the RF-4 zone.
7 The intent of the RF-4 zone is exactly what Mr. Blake stated
8 it is. The purpose of the RF-4 zone is to protect the
9 character of the existing rowhome neighborhood.

10 I think given the size of this, I do believe that,
11 yes, this building is larger. And that is because it would
12 be the first development of its type along that block or in
13 the area, but I do not believe that it is so large that it's
14 incongruent with the intent for the RF-4 zone.

15 I understand where the ANC 5D is -- where they're
16 concerned with the mass. And they stated in their letter
17 that they believe that this particular development would be
18 out of character for the RF-4 zone.

19 I would state that this development is a special
20 exception, so it's being developed in the context of what is
21 allowed within the RF-4 zone. If we had variance, if they
22 were requesting variance from the RF-4 zone regulations, then
23 that's more of a strong argument that they are attempting to
24 develop out of character or not in compliance with what they
25 can develop as a matter of right or by special exception in

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1 the RF-4 zone.

2 It's a request for a special exception. So what
3 we're looking at is developing within the box of what you're
4 allowed to do within the RF-4 zone, but there's height and
5 impacts we need to consider. And I believe what we should
6 be considering is would the property be in harmony with the
7 general purpose and intent and zoning regulations.

8 I do believe, given the size and scale of this
9 building -- it is smaller than what's to the east. So I do
10 believe that what the neighborhood wanted to see occur is
11 occurring with this development. It is a smaller scale
12 involved than what we see to the east. So I do believe that
13 it does meet the general purpose and intent of the zoning
14 regulations.

15 I do not believe that it would greatly adversely
16 affect the adjacent properties. There has been some study
17 to show how the property would impact the adjacent neighbors
18 to the north. Given what was shown, it was fairly minuscule
19 in a sense from what could occur as a matter of right.

20 So I believe it meets the intent of X 101.2(b).
21 With that, I would support the application.

22 CHAIRPERSON HILL: Okay. Thanks, Mr. Smith.

23 Chairman Hood?

24 ZC CHAIR HOOD: Thank you, Mr. Chairman. I
25 appreciate all the comments of my colleagues. I come from

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1 a different view, especially after the community-initiative-
2 led petition to the Zoning Commission. Sometimes it's
3 difficult when you have to wear both hats and you're looking
4 at one view.

5 First of all, if this was such an excellent
6 project without any relief needed, why not do it as a matter
7 of right? Then you wouldn't have to come to us.

8 I was very confused by Commissioner Moore's letter
9 but I understood it. She was basically saying to the Zoning
10 Commission, I hope you would uphold the ruling and the
11 unanimous support for Zoning Commission Order 19-30. But in
12 turn, it's sometimes related to the BZA. It was almost like
13 the Zoning Commission was making the decision, but no.

14 This special exception and variance is coming from
15 the Board of Zoning Adjustment, which is their job. We went
16 from an RA to MU-4 to an RF-4 zone, which was to preserve the
17 appearance of rowhouses and maintain residential use in areas
18 abutting higher-density zones.

19 One thing I do agree with Board Member Blake is
20 the new materials. One thing I disagree with, not disagree
21 fundamentally with, is how we are handling the ten-foot rule.
22 I've asked the Office of Planning to relook at that. I'm not
23 sure where -- it is in the pipeline, but I've asked them to
24 relook at that. I understand the Board is working with what
25 they have at this time.

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1 I still see adverse impacts. One of the problems
2 is, yes, somebody has to start -- I think this is what you
3 said, Mr. Chairman -- somebody has to start. But for me,
4 from what I've read in the ANC letter, ANC 5D, there's no
5 support, no support for moving forward. And if we want to
6 move forward, we need to move forward, I believe, correctly.

7 The rear wall I have some issues with. The
8 existing rear wall does not extend beyond the rear wall of
9 the adjoined building. I have some issues with it. And even
10 beyond all that, I think the adverse impacts are still there.
11 Even though the envelope allows you to do it -- I've said
12 this previously in other cases -- sometimes you can minimize
13 the envelope.

14 So I will not be voting in support of this. I
15 think we need to get it right. This is a community-led
16 initiative petitioned to the Zoning Commission. And I do
17 understand the way you all look at it, but I'm bringing into
18 this 19-30, which we've dealt with when we have a community-
19 led initiative.

20 So I think the adverse impacts are still there.
21 I don't think the applicant has done his due diligence. And
22 even though it's allowable, I still think that the character
23 of the community is changing, and that's one of the things
24 they want to preserve.

25 Those are my comments for now, Mr. Chairman.

1 Thank you.

2 CHAIRPERSON HILL: Okay. I don't know. I guess
3 I don't mean to be unclear, but I know that we have gone
4 beyond that ten-foot rule. And this is something that has
5 been with us now many times in terms of this special
6 exception.

7 And again, that the Zoning Commission made this
8 a -- I mean, just because you're the Chairman, Chairman Hood,
9 it doesn't mean you're the Zoning Commission so I'm not
10 blaming you on this one. This is a special exception, not
11 a variance, so that's why it kind of confuses me also in
12 terms of going beyond the ten feet, and that we have gone
13 beyond the ten feet in terms of looking at the adverse impact
14 for the additional shadowing or the additional impact of the
15 square footage beyond the ten feet. So this is now six feet
16 more than it would have been.

17 I wish that it was, to be quite honest, just a by-
18 right project and it wasn't even going to be here. That
19 again confused me a little bit because then that means that
20 there wouldn't have been a wedding cake thing. It just would
21 have gone straight up ten feet.

22 I'm just a little torn. I don't know where I am
23 because the community, I think, took a lot of time in terms
24 of -- and I wasn't around for 19-30 and what their
25 discussions were with that. Yes, okay.

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1 I guess what I can do is I can make a motion. I
2 don't know. We don't have Vice Chair John here so I'm not
3 able to see -- and then, Mr. Moy, how does that work
4 actually? Because I don't know how the voting works. And
5 I don't really want to know. It's not traditional to -- yes,
6 that wouldn't work, never mind. I was going to try to find
7 out what her vote is beforehand because she's not here to
8 deliberate.

9 MR. MOY: The other option is, if you feel
10 strongly that you want her to deliberate, you and the Board
11 have the option to move to another date when the Vice Chair
12 would be present. That's another option if you decide you
13 want to use that.

14 ZC CHAIR HOOD: Mr. Chairman, can I --

15 CHAIRPERSON HILL: Sure. Go ahead, Chairman Hood.

16 ZC CHAIR HOOD: She's already given a proxy. The
17 staff can tell you even in deliberations on where she is.
18 So I don't see us putting this off, kicking it down the road
19 when the staff can just tell you. You're the Chairman. They
20 can tell you and everyone listening where she is, whether
21 she's in support, in opposition, or if she has some comments.
22 I mean, it's no reason to kick that down the road.

23 CHAIRPERSON HILL: Okay. All right. Well, then
24 I am going to -- yes. I guess I don't like it. I guess I'll
25 vote in favor.

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1 I mean, for me it's the six feet that is the
2 additional -- I mean, I'm listening to my Board members. I
3 know what we've done before in the past. I don't think that
4 the fact that what we usually look at is the additional feet
5 of the -- the difference between the by-right and the -- and
6 I'm mentioning it again -- the additional six feet. That's
7 what I'm kind of looking at and that's what I'm struggling
8 with.

9 The thing that I don't like about this is, again,
10 the fact that the community has taken time to really voice
11 their opinions. And I guess that's where I'm stuck, that the
12 regulations state that we're supposed to look at it a certain
13 way. And even if the community is opposed, we're supposed
14 to look at the regulations a certain way. So that's where
15 I'm stuck.

16 I would rather vote against it, to be quite
17 honest, if it were just kind of a community -- if I could do
18 it just because I thought the community didn't want to do it,
19 I'd like to vote against it. But bound by what I'm supposed
20 to do and given that the Board, I think, has kind of given
21 their well thought out approach to this, I guess I'll vote
22 in favor.

23 ZC CHAIR HOOD: Mr. Chairman?

24 CHAIRPERSON HILL: Sure. Go ahead, Chairman Hood.

25 ZC CHAIR HOOD: I believe, and I know our lawyers

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1 don't necessarily tell us, I believe we all should look at
2 the legislative history. That's why five of us normally
3 participate because we all bring different views and
4 different aspects, and we're looking at the level of law, but
5 also look at the level of legislative history.

6 And if you look at the legislative history, ANC
7 5D is exactly correct. And as you know, I think we owe them
8 some time. And I know the Office of Planning has a lot of
9 work going on so I won't press, but I've been asking for us
10 to revisit the ten-foot rule. I've been asking for a while
11 but we've got a whole laundry list for the Office of
12 Planning. We give them work daily, consistently. Every time
13 we leave we give them additional work. So it's always a
14 fluid thing which we're looking at, fluid regulations that
15 we're looking at.

16 As you all know, I am not very happy and others
17 on how we have achieved the ten-foot rule. I think there
18 needs to be some more considerations put into that, but the
19 Zoning Commission is working on that. I may be one
20 commissioner to be leaning that way. And I can tell you it
21 was a concession because all of us didn't agree on how we
22 should proceed forward.

23 So I wanted to put that out there. I know you all
24 have been grappling with the ten-foot rule. The goal is to
25 try to give you more guidance, but until that part, just keep

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1 doing the work you're doing. But I think that's why there's
2 five of us. And for me, the legislative history in this case
3 and the ANC 5D, the work that they put into it takes serious
4 weight with me. And especially the character, which is in
5 the zoning regs.

6 So I'll leave it at that. Thank you, Mr.
7 Chairman.

8 CHAIRPERSON HILL: That's right, Chairman Hood.
9 I know we're struggling with this, and you and I are just
10 having a little bit of a discussion here.

11 Where we get things down from above and we look
12 at the regulations a certain way, I just want to make sure
13 that we're consistent. And that's where I'm getting stuck.
14 The additional six feet is what I'm looking at because that's
15 the way we've always looked at it. So I don't want to change
16 the way that we've been looking at things.

17 Okay. But I agree with you, Chairman, and I don't
18 like it either. I don't like it, but I'm going to make a
19 motion because this is what I'm supposed to do.

20 I'm going to make a motion to approve Application
21 No. 20680 and ask for a second.

22 Mr. Blake?

23 Motion made and second.

24 Mr. Moy, would you take the roll call?

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

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1 please respond with a yes, no, or abstain to the motion made
2 by Chairman Hill to approve the application for the relief
3 requested. The motion to approve was second by Mr. Blake.

4 Mr. Smith?

5 Mr. Blake?

6 MEMBER BLAKE: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: Zoning Commission Chair Anthony Hood?

10 We have an absentee ballot from Vice Chair John,
11 and her absentee ballot vote is to approve the application.

12 Staff would record the vote as 4-1-0. This is on
13 the motion made by Chairman Hill to approve. The motion to
14 approve was second by Mr. Blake. Also in support of motion
15 to approve is Mr. Smith, Vice Chair John by absentee ballot,
16 of course Mr. Blake, Chairman Hill. Zoning Commission Chair
17 Anthony Hood votes no, to deny the application. The motion
18 carries on a vote of 4-1-0.

19 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

20 Chairman Hood, is that the last thing for you
21 today?

22 ZC CHAIR HOOD: That's it for me. You all have
23 a great day.

24 CHAIRPERSON HILL: You have a good day too, sir.

25 Okay. Commissioner Miller, welcome.

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1 Mr. Moy, you can call our next decision case.

2 MR. MOY: The next decision case is Application
3 No. 20500-A of 2525 Penn, LLC. This is a request for a
4 modification of consequence to Order No. 20500. That was
5 dated October 1, 2021. This is pursuant to Subtitle Y § 703.
6 The property is located in the MU-6 zone at 2519 and 2525
7 Pennsylvania Avenue Northwest, Square 14, Lots 28 and 29.

8 And I believe that's all I have for you, Mr.
9 Chairman.

10 CHAIRPERSON HILL: Okay. Thanks.

11 All right. Again, I remember this case. This is
12 a modification of the order concerning, basically, those bay
13 windows and adding them to the lot occupancy.

14 I didn't really have an issue with the
15 application. The Office of Planning in their analysis
16 supports it. DDOT was in support and the ANC was also in
17 support. Again, I think it's just something they're trying
18 to correct. So I would be voting in favor of this.

19 Mr. Smith?

20 MEMBER SMITH: I agree with your interpretation.
21 I did take a look at the case file and I didn't have any
22 major issues with the request for modification. So I will
23 be voting in support.

24 CHAIRPERSON HILL: Okay, great. Mr. Smith, at the
25 first break or something, you might want to log off and log

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1 back on. You're kind of breaking up just a little bit but
2 not bad. I'm sorry, Mr. Smith.

3 Mr. Blake, your opinion?

4 MEMBER BLAKE: I will also be voting in support
5 of the request.

6 CHAIRPERSON HILL: Commissioner Miller?

7 ZC VICE CHAIR MILLER: I concur with my
8 colleagues. Thank you.

9 CHAIRPERSON HILL: Okay. I'm going to make a
10 motion to approve Application No. 20500-A as in apple, and
11 ask for a second.

12 Mr. Blake?

13 MEMBER BLAKE: Second.

14 CHAIRPERSON HILL: Motion made and seconded.

15 Mr. Moy, could you take the roll call?

16 MR. MOY: If you would please respond with a yes,
17 no, or abstain to the motion made by Chairman Hill to approve
18 the application for the request for modification of
19 consequence. The motion was second by Mr. Blake.

20 Zoning Commissioner Rob Miller?

21 ZC VICE CHAIR MILLER: Yes.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MEMBER BLAKE: Yes.

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1 MR. MOY: Chairman Hill?

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: We have one Board member not present,
4 not participating.

5 Staff would record the vote as 4-0-1. This is on
6 the motion made by Chairman Hill to approve. The motion to
7 approve was second by Mr. Blake. Also in support of the
8 motion to approve: Zoning Commissioner Rob Miller, Mr. Smith,
9 of course Mr. Blake, and Chairman Hill. Board member not
10 present. The motion carries on a vote of 4-0-1.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy,
12 you can call our next decision case when you get a chance.

13 MR. MOY: This would be Application No. 20607-A
14 of Max Pappas and Adel Pappas. This is a request for a minor
15 modification pursuant to Subtitle Y § 703.3 to amend approved
16 plans to replace a rooftop hatch structure with a stairway
17 penthouse. The property is located in the RF-1 zone at 327
18 Tennessee Avenue Northeast, Square 1032, Lot 53.

19 That's it, Mr. Chairman.

20 CHAIRPERSON HILL: Thanks.

21 Ms. Nagelhout, can you hear me? Okay. Let's see.

22 Mr. Moy, is the Office of Planning here?

23 MR. MOY: Let me check with Mr. Young.

24 CHAIRPERSON HILL: Yes, okay. I forget whether
25 that person is around, whoever did this report.

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1 MS. NAGELHOUT: What was the question?

2 CHAIRPERSON HILL: Ms. Nagelhout, thanks. That
3 previous decision that we were discussing so much, it was
4 Application 20680. I wanted to refer in the order to the
5 construction maintenance letter that was in Exhibit 46, and
6 so I just wanted to make sure I mentioned that to you. I
7 don't know how to clean this up in terms of mentioning it
8 now, but I just wanted to mention it to you. I don't know
9 if you know a way to clear it up.

10 MS. NAGELHOUT: Yes, we can take of that. No
11 problem.

12 CHAIRPERSON HILL: Okay. All right, great.
13 Thanks. If not, that's okay.

14 So what I had wanted to ask the Office of Planning
15 about real quickly, and maybe you guys can tell me whether
16 or not you had any concerns about it, they're changing that
17 roof hatch to the penthouse. I had wanted to ask the Office
18 of Planning just in terms about sight lines and everything,
19 but I think that the Office of Planning has approved this.
20 I'm looking at their report here just to see. I wanted to
21 ask them had they considered that when they were doing their
22 analysis, and I assume they had.

23 The fact that we don't have anything directly from
24 the ANC is something that also makes me a little bit
25 hesitant, but I want to know what you all think.

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1 I'm going to go to Mr. Smith for a second.

2 MEMBER SMITH: Okay. Maybe I'm missing something.
3 Did they file a supplemental report? I didn't see one. It
4 says there is one in this case.

5 CHAIRPERSON HILL: Yes. I think it's Exhibit 9.

6 MEMBER SMITH: Okay. I can see it now. I share
7 the same concerns you have, Chairman Hill. When we last
8 heard this case, I believe it was me and Commissioner Moore
9 that had similar concerns about bulk and mass along the
10 block.

11 So for me to approve this sight unseen on what a
12 standard penthouse would look like -- I understand the Office
13 of Planning is supporting they believe that it wouldn't be
14 adverse, but I do want to hear from the Office of Planning
15 on did they consider that and what does this look like. I'm
16 not comfortable approving this sight unseen.

17 CHAIRPERSON HILL: Okay. That's all I need. I'll
18 go around the table also.

19 The proposed penthouse would meet the requirements
20 of Subtitle C, Chapter 15, Penthouses and Rooftop Structures.
21 That's what the Office of Planning's report says. And I
22 guess the Office of Planning is here, but that might not
23 necessarily work for us in general.

24 Again, we're going from the rooftop hatch to now
25 something that we used to have to deliberate a lot about.

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1 And so that's why I'm kind of a little bit hesitant. I'm
2 having a lot of hesitancy today.

3 Mr. Moy, you said the Office of Planning is here?

4 MR. MOY: Yes. I asked Mr. Young to bring her
5 into the panel.

6 CHAIRPERSON HILL: Okay, great. And then it just
7 makes me wonder whether this might be something we want to
8 look at anyway. We don't want people to necessarily do this
9 after the fact.

10 Ms. Vitale, are you there?

11 MS. VITALE: Mr. Chair and members of the Board,
12 Elisa Vitale with the Office of Planning. In this instance,
13 the original application that was before the Board required
14 relief to add an additional story. So they needed relief
15 from the rooftop architectural elements. In that
16 application, the applicant had proposed a roof hatch for
17 access to a roof deck.

18 The Office of Planning introduced and the
19 Commission approved revisions to the penthouse regulations
20 in Case 14-13E, and in those revisions we modified the
21 regulations that related to roof structures in the RF zone.
22 So based on those changes to the Zoning regulations, that
23 roof access stair could be done as a matter of right.

24 So the applicant's modification that's before you
25 today is essentially construction that is matter of right,

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1 that would not require review by the Board. They're before
2 you because they have BZA-approved plans and are proposing
3 a change to those BZA-approved plans.

4 So basically, had this not been a prior BZA case,
5 the applicant could proceed to pull permits and proceed with
6 construction of the roof access stair. The only reason
7 they're here before you is because of that existing BZA
8 approval with BZA-approved plans that are now changing, but
9 the work that's being proposed under the modification is a
10 matter of right.

11 CHAIRPERSON HILL: Okay. I love it. This is
12 always why I just have to believe the Office of Planning.
13 Right. So you're saying because it was a BZA order, they
14 have to come before us to modify the BZA order to do
15 something that's a matter of right?

16 MS. VITALE: That's correct.

17 CHAIRPERSON HILL: Okay. All right. Well, if
18 that works for you guys, I guess that works for me. I have
19 to trust the Office of Planning. They're saying it's matter
20 of right; the fact that they're changing the BZA order is why
21 they're here.

22 I'll let Mr. Smith chew on that a second.

23 Mr. Blake?

24 MEMBER BLAKE: Yes. I'm comfortable with the
25 request. Obviously, using a staircase is a safer means to

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1 reach the rooftop. I think that accounts for the fact that
2 it meets the requirements of the zone and it is a matter of
3 right. I see no reason why we would not supportive of that.
4 I am certainly supportive of it.

5 CHAIRPERSON HILL: Ms. Vitale, how did it change?
6 Because we used to always have to struggle with this thing.

7 MS. VITALE: The prior regulations had -- there's
8 certainly still a height limit in terms of the maximum
9 overall height for that roof structure. There were setback
10 requirements before.

11 And I apologize. I am not as familiar with the
12 penthouse --

13 CHAIRPERSON HILL: The setback requirements
14 changed, you think?

15 MS. VITALE: I believe so, yes. So that freed up
16 the ability to do the access, the roof access stair.

17 CHAIRPERSON HILL: Okay. Commissioner Miller?

18 ZC VICE CHAIR MILLER: Yes, Mr. Chairman. Since
19 I wasn't the commissioner on the February -- I think it was
20 February -- hearing and decision, I went back and listened
21 to that among other cases yesterday. I saw the dialogue
22 that, I guess, Board Member Smith -- and now I forget who
23 else -- and Commissioner Imamura had about whether that
24 rooftop addition, which is what the order was about, was in
25 character with the neighborhood.

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1 And I too would have liked to have seen, as Mr.
2 Smith said here today, seen it. I looked for it, the stair.
3 I thought it might have missed it and somebody was going to
4 point it out today, but I guess I couldn't find it because
5 it wasn't visually apparent as to what that would look like,
6 particularly from the neighbors'.

7 I think given the Office of Planning's report,
8 both the written report, Exhibit 9, and today's comments by
9 Ms. Vitale, and that that type of access is a matter of
10 right, and given Board Member Blake's comment about this is
11 probably a safer way to get to the roof than a roof hatch or
12 certainly a more convenient way -- plus, the Office of Zoning
13 staff under Cliff Moy's direction, I think, reached out to
14 the ANC per our request to see if they had any problem with
15 the change.

16 And there is an exhibit, I think Exhibit 11 that
17 was just filed yesterday, that shows email correspondence
18 between the commissioners. The bottom line is they appear,
19 even though this isn't a formal resolution so we can't give
20 it great weight -- I give it some weight. We reached out to
21 the ANC. Based on this email dialogue, they are aware of the
22 change. They have no concerns with it. They think it's
23 minor.

24 So I'm prepared to go forward, if the majority of
25 the Board is.

1 CHAIRPERSON HILL: Okay. Mr. Smith, I'll come
2 back to you.

3 MEMBER SMITH: Sure. I'm fairly comfortable with
4 the explanation that Ms. Vitale gave.

5 Also, looking at Exhibit 2, while it would have
6 been great to see some type of rendering from the ground for
7 us to be able to see this, just judging by what they're
8 proposing, the stair penthouse would begin to appear above
9 the new faux mansard roof that we approved about eight feet,
10 two inches or so from that mansard roof, from the setback
11 from the front building facade.

12 So it may not be able to be seen all that well
13 from the street. And even if it does, it has to be about
14 five or six feet above that faux mansard roof. So I don't
15 believe it would be much more intrusive. While it would have
16 been great to have that perspective, I think that is now a
17 matter of right now. So I'm fairly comfortable with the
18 proposal.

19 Thank you, Ms. Vitale.

20 CHAIRPERSON HILL: Okay, yes. Now hearing Ms.
21 Vitale, I don't think that this is something that somebody
22 is necessarily trying to do an end-around on, or something
23 that would be more consistent. Okay.

24 I'm going to make a motion to approve Application
25 No. 20 -- thanks, Ms. Vitale -- approve Application No.

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1 20607-A as in apple, and ask for a second.

2 Mr. Blake?

3 Okay. Mr. Moy, we've got a first and a second.
4 Could you take a roll call, please?

5 MR. MOY: When I call your name, if you would
6 please respond with a yes, no, or abstain to the motion made
7 by Chairman Hill to approve the relief that's requested.
8 This is the request for modification. The motion was second
9 by Mr. Blake.

10 Zoning Commissioner Rob Miller?

11 Mr. Smith?

12 MEMBER SMITH: Yes.

13 MR. MOY: Mr. Blake?

14 Chairman Hill?

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: We have a Board member not present.

17 Staff would record the vote as 4-0-1. This is on
18 the motion by Chairman Hill to approve. The motion to
19 approve second by Mr. Blake. Also in support of the motion
20 to approve: Zoning Commissioner Rob Miller, Mr. Smith, Mr.
21 Blake, Chairman Hill. There are no other Board members.
22 Again, the motion carries on a vote of 4-0-1.

23 CHAIRPERSON HILL: Okay, great.

24 (Whereupon, the above-entitled matter went off the
25 record at 10:33 a.m.)

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Before: DC BZA

Date: 05-18-22

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